

Decision of the Hon'ble Speaker of the Legislative Assembly of NCT Delhi

In the matter of,

Shri Saurabh Bharadwaj (Petitioner)

Through: Mr. R. Arunadhri Iyer, Advocate

Vs.

Kapil Mishra (Respondent)

Through: Mr. Ashwani Kumar Dubey, Advocate

Petition for disqualification of Shri Kapil Mishra, Hon'ble Member, under para 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, 1996.

1. The above mentioned Petitioner filed this petition under the provisions of the Tenth Schedule of the Constitution of India (hereinafter referred to as Tenth Schedule), read with Article 191 (2) of the Constitution, Section 16 of the National Capital Territory of Delhi, Act, 1991 and the provisions of The Members of the Delhi Legislative Assembly (Disqualification on Grounds of Defection) Rules, 1996 (hereinafter referred to as the Rules).

The Petitioner seeks the disqualification of the Respondent under para 2(1)(a) of the Tenth Schedule on the ground that the latter has voluntarily given up the membership of his party, the Aam Aadmi Party. Both the Petitioner and the Respondent are sitting members of the Assembly and belong to the Aam Aadmi Party.

The petition was filed on 1st July, 2019. It contains a declaration that the Petitioner has satisfied himself of the existence of reasonable grounds for believing that a question has arisen as to whether the Respondent has become subject to disqualification for being a member of the House under the Tenth Schedule of the Constitution of India.



2. On receiving of the above petition it was examined in terms of the requirements of Rule 6 of the Rules and it was found that the petition complied with the requirements of the said Rule.
3. Thereafter, on 1.7.2019 a copy of the petition along with the annexures was forwarded to the Respondent as per the requirement of Rule 7(3)(a) of the Rules. A copy of the petition was also forwarded to the Leader of the Legislature Party namely the Aam Aadmi Party, Shri Arvind Kejriwal who is the Chief Minister as well as the Leader of the Legislature Party of the Aam Aadmi Party in the Assembly in compliance with Rule 7(3)(b). A hearing was also fixed for 10.7.2019 in the matter.
4. The leader of the Legislature Party has, by his letter dated 2nd July, 2019, stated that the party has no objection to the Respondent being disqualified from the membership of the Assembly.
5. On 9.7.2019, i.e., one day prior to the date fixed for the hearing, the Respondent in a written application complained that he did not receive the copy of the petition in full and requested that he may be supplied the full petition together with the annexures. In fact the Secretariat had sent the copy of the petition to the email address of the Respondent also. Anyway, I directed the Secretariat officials to provide him a fresh copy of the petition alongwith the annexures which was handed over to him personally during the hearing on 10.07.2019 which was originally fixed for presentation of the case by the Respondent. Despite the fact that the petition was served in full on 1.7.2019, in the interests of justice, he was granted further time to submit his comments. The Respondent requested 4 weeks time to comments. But in terms of Rule 7(3) one week was granted to the Respondent to furnish his comments, which was sufficient in my view. Accordingly, the presentation of the case was fixed for 17.07.2019.



6. But, the Respondent failed to submit his comments on 17.7.2019 also. Instead he submitted three applications to the Secretariat. By his first application he had sought dismissal of the petition on the grounds that it was not maintainable as no disciplinary action had been taken against him by the Aam Aadmi Party; the Speaker lacks jurisdiction on matters not related to the Legislative Assembly; he had not violated any whip of the Party and that the petitioner had no *locus standi* as there was no evidence of him being authorised by the Aam Aadmi Party to initiate any disciplinary action. By his second application he had sought additional three weeks time to furnish his comments in writing in response to the petition if his first application is not accepted. He had also moved a third application seeking tagging (clubbing) of the present petition with the petition which he had filed seeking disqualification of the Chief Minister under the Tenth Schedule. The applications were taken on record. In the hearing on 17.7.2019, Shri Dubey appearing for the Respondent reiterated the objections as raised in the application. He submitted that the Speaker ought to take a decision on the Applications before proceeding further. Shri Iyer appearing for the Petitioner opposed hearing on the applications, and submitted that even the High Court has held that the office of the Speaker cannot be compelled to decide disqualification petitions piecemeal and the Respondent should file written comments or his right should be closed.

7. As no written comments were furnished on the petition presented in terms of Rule 7(3), the Respondent was granted a last opportunity to file his comments by 3.30 p.m. on 18.07.2019 and also appear for personal hearing at 5.00 p.m. on the same day. The Respondent filed his written comments to the petition on 18.7.2019 and also an application seeking an opportunity to cross examine the petitioner, Shri Saurabh Bharadwaj and other party leaders. These were taken on record. Shri Dubey, Counsel for Respondent stated that he had not countersigned the Respondent's comments in writing



to the petition but he was aware of its contents and agreed to it. Shri Dubey and Shri Iyer were heard in the matter. The Respondent was also accorded personal hearing, during which he reiterated his submissions in the written comments. Keeping in view the facts of the case, cross examination of only Shri Saurabh Bharadwaj, Petitioner was allowed and the hearing was fixed for 23.07.2019. This was communicated to the parties by letter dated 19.7.2019.

8. On 23.07.2019, none appeared for Respondents. Instead the Secretariat received a Counter Affidavit and three applications on behalf of the Respondent. The Respondent sought adjournment for 12 days contending that the Respondent had planned a family trip and would be out of station till 01.08.2019. He stated, albeit incorrectly, in his application that the Application seeking an opportunity to cross examine the Petitioner was refused and that the matter was treated as closed on 18.07.2019. In the other two applications he sought recusal of the Speaker on the grounds of bias, and summoning of witnesses for examination.
9. Shri Iyer for the Petitioner submitted that the hearing for 23.07.2019 was fixed for cross examination of Shri Saurabh Bharadwaj, Hon'ble Member / Petitioner and that at least the Counsel for the Respondent ought to have been present since he has filed his Vakalatnama in the matter. He submitted that the written comments itself amounts to an admission that the Respondent has voluntarily left his Party, and prayed that the proceedings be concluded. However, in interest of justice and with a view to allow the Respondent to cross examine the Petitioner, I decided to accord another opportunity to the Respondent. Also, the news articles annexed with the petition needed to be verified in view of the contentions of the Respondent, and hence the editors/ reporters concerned were directed to be called as witness. All persons concerned were informed to be present for the hearing to be held on 26.07.2019 at 5 pm.



10. However, even on 26.07.2019, none appeared on behalf of the Respondent. The media personnel viz., Shri Amit Baruah (City Editor, The Hindu), Shri Jatin Anand (Principal Correspondent, The Hindu), Shri Saurabh (City Editor, Dainik Jagaran), Shri Sanjev Kumar Mishra (Senior Reporter, Dainik Jagaran) called as witnesses were examined individually by me under oath. All of them agreed and stated under oath that they confirmed their news articles and its contents as they appeared in the annexures to the petition. The submitted that the respective reporters were personally present during these events and have themselves seen the Respondent participating in the events.

11. Shri Iyer appearing for the Petitioner opposed the grant of further time to the Respondent. He submitted that there is no justification for the Respondent or his Advocate not remaining present to appear before the Speaker. He submitted that there is enough material on record to decide the Petition and that the Respondent is merely delaying proceedings. Having considered the repeated requests for further time at every juncture and for adjournments, I was of the view that the same were without any reasonable grounds. It was felt that no further time was needed to be given to the Respondent given that sufficient opportunities were already granted to the Respondent, who chose to not avail of the same and thus, the hearing was concluded on 26.07.2019 and the matter was reserved for orders. The main contentions of the Petitioner are the following,

(a) On 27.1.2019, the Respondent joined the Bhartiya Janta Party's (BJP) programme hosted by Shri Vijay Goel, a Union Minister and Shri Manoj Tiwari, the President of the Delhi unit of the BJP. This programme was launched against Shri Arvind Kejriwal, the Chief Minister and leader of the Legislature Party of the Aam Aadmi Party. Thus the Respondent has voluntarily given up the membership of the Aam Aadmi Party.



(b) On 02.05.2019 the Respondent launched a campaign called *"Saaton seetein Modi ko"* in Delhi. This campaign was designed and owned by the Respondent. The purpose of this campaign was to seek votes in all the seven Parliamentary constituencies in Delhi for Shri Modi, the Prime Ministerial candidate of the BJP. This act of designing and launching a campaign by the Respondent for the rival party, namely the BJP, and against his original political party, namely the Aam Aadmi Party showed that the Respondent has voluntarily given up the membership of his party.

(c) Sections of media reported on 05.05.2019 that the Respondent organised and led a campaign rally *"Saaton seetein Modi ko"* along with one Shri Tejasvi Surya, a candidate of the BJP from Bengluru (South) Constituency for Shri Narendra Modi, the Prime Ministerial candidate of the BJP. The campaign rally was held in the India Gate Lawns, New Delhi. This act of the Respondent in supporting the rival BJP against his original political party amounts to voluntarily giving up the membership of his original political party.

(d) On 07.05.2019 the Respondent tweeted from his official Twitter account the following *"kal sham 5 baje – Ramlila Maidan @Narendramodi ji ki aitihasik rally 'saaton_seetein_modi_ko #DelhiwithModi."* Through this tweet the Respondent appealed to the public to join the rally of the BJP and sought votes for the BJP so that all the seven seats could be won by that party. The Respondent also posted on 07.05.2019 a video on his official twitter account to join the election rally of Shri Narendra Modi on 08.05.2019.

(e) The Respondent became a signatory to a representation which was written on the letterhead of the BJP and sent to the Lt. Governor of Delhi by Shri Manoj Tiwari, the President of the Delhi unit of the BJP. The above representation was also signed by the



other members of the Assembly belonging to the BJP. Thus the Respondent has shown that he has voluntarily given up the membership of his original political party.

(f) The Respondent joined a delegation led by Shri Manoj Tiwari, the President of the Delhi Unit of the BJP to the office of the Lt. Governor, Delhi to represent against an educational programme organised by the Government. of NCT, Delhi being run by the Aam Aadmi Party, the Respondent's original political party.

The Petitioner contends on the basis of the above averments that Respondent has voluntarily given up membership of the Aam Aadmi Party and requests the Speaker to disqualify him under para 2(1)(a) of the Tenth Schedule of the Constitution.

12. In his written comments, the Respondent has routinely used intemperate language, and has made various allegations of commission of illegalities, including against me. While the contumacious language is doubtless likely to have consequences in law, in view of the constitutional functions to be discharged by me, I am considering his written comments nonetheless without regard to the offensive statements made therein. His submissions, relevant to the present proceedings are as follows.

- (a) That the Petition is illegal and unconstitutional.
- (b) That the hearings are an abuse of power, and in violation of law and due process.
- (c) That the Petitioner has fearlessly exposed various corruption scams by the former administration, as well as of leaders of the Aam Aadmi Party.
- (d) That the proceedings are being held / continued with a predetermined frame of mind.
- (e) That the Respondent has no expectations / hope of getting any justice out of the present proceedings or the outcome thereof.



(f) That the Speaker cannot consider whether a member of a political party has acted contrary to the interests of a political party. Only the party can make that decision. The party has not initiated any proceedings against the Respondent.

(g) That I am acting in excess of my powers in considering the present Petition or questions of speeches made by a member outside the assembly.

(h) That the Respondent is not acting contrary to the interests of his Party, whereas the leader of the legislature party of the Aam Aadmi Party is so acting.

(i) That various leaders and members, present and former of the Party ought to be examined to ascertain whether the leader of the legislature party of the Aam Aadmi Party has acted against the interests of the Party.

(j) That the Respondent opposed what he perceived to be corrupt and / or anti-national activities of the Party / its leaders / its members.

(k) That the Respondent has material to disclose corruption in the Government / Party, which he seeks permission to place on record.

(l) That the Petitioner has no authority to present the Petition. That the matter pertains to an issue between the Respondent and his Party. That no proceedings were ever initiated against the Respondent by the Party.

(m) That the Respondent seeks permission to cross examine the leader of the legislature party, the Petitioner and the members of the Political Affairs Committee of the Party.

(n) That as regards the allegation of the Respondent incurring disqualification for having run the campaigns "Mera PM mera abhiyaan" and "saaton seetein Modi ko", the public voted for the present Prime Minister of India because they perceived him to be a better candidate. That the Respondent cannot be held liable for the success of the Prime

Minister of India and the loss of the Party's candidates.



(o) That the Respondent is being prosecuted *inter alia* because he campaigned for the Prime Minister of India.

(p) That the Respondent is participating in the ongoing unconstitutional proceedings out of respect for the Assembly.

(q) That it is irrelevant to the Assembly as to which person the Respondent supports for becoming the Prime Minister in the Lok Sabha Elections.

(r) That the Speaker ought to consider the Petition filed by the Respondent under the Tenth Schedule.

13. The Respondent submitted a counter affidavit on 23.07.2019. It must be noted that the Rules do not contemplate a counter affidavit being filed, inasmuch as adjudication is to be done once written comments are filed, based on material available. However, in the interests of justice, given that the Respondent has chosen to not utilise the opportunities provided to him to present his case, the said counter affidavit was also considered. His submissions are as follows:-

(a) That petition filed by the Petitioner is not maintainable as he has no *locus standi* to file such a petition.

(b) The Speaker is not impartial as he participated in the political campaigns in the recent elections to the Lok Sabha and asked the people to vote for the Aam Aadmi Party. Thus, the Speaker has become an interested party and therefore, in the interest of justice he should recuse himself from hearing this case.

(c) The list of dates and synopsis are false and incorrect. The Petitioner misled the Speaker by stating that the Respondent was involved in anti-party activities and thus violated the constitution of the Aam Aadmi Party. On a perusal it will be found that

none of the alleged acts of the Respondent is covered by the Constitution of the Aam Aadmi Party. (The Respondent quoted some portions of the said Constitution)



(d) The Petitioner has filed this petition in his individual capacity and therefore, has no authority to file the petition. There is no evidence on record that the Petitioner has been authorised by the party to file this petition.

(e) The basic ingredients of the Tenth Schedule of the Constitution are absent in the present petition.

(f) The Petitioner has failed to bring on record any document in support of his contentions. Thus, the Petitioner has failed to establish his claim regarding the involvement of the Respondent in anti-party activities.

(g) The decision to file disqualification petition for anti-party activities must be based on the provisions of the party constitution. As per the party constitution, a notice must be issued mentioning the charges and the erring member must be given an opportunity to counter that charges. The Respondent has not been issued any notice by the Aam Aadmi Party in respect of the alleged anti-party activities.

(h) The Speaker has been misled by the Petitioner who succeeded in getting the notice issued to the Respondent. The Speaker has accepted the petition without satisfying himself or without verifying the basic questions from the Petitioner.

(i) The Tenth Schedule is applicable only in the case of defiance of Whip by a member inside the Assembly. The root of the anti-defection law is primarily on the stability of the Government. Since the Petitioner has failed to provide any evidence that the Respondent has violated the Party Whip or caused any threat to the stability of the Government, the petition should be quashed.

(j) The Speaker has no jurisdiction to decide the question of freedom of speech of elected Members outside the Assembly. Tenth Schedule of the Constitution does not confer such jurisdiction on the Speaker.



(k) The Petitioner has not provided any evidence to prove that the Respondent has caused any threat to the stability of the Government.

(l) The Petitioner has failed to file any document to prove that the Respondent has taken the membership of any other political party.

(m) The Petitioner failed to file the petition within 15 days of the act attributed to the Respondent, which is the basis of disqualification.

(n) The averment of the Petitioner that the Respondent campaigned against Aam Aadmi Party in the Lok Sabha elections is a blatant lie.

(o) The Respondent does not accept any of the newspaper clippings etc. provided by the Petitioner as evidence as genuine as these can be doctored. The Respondent has to examine each writer/publisher of those newspapers.

(p) That the Speaker ought to consider the Petition filed by the Respondent under the Tenth Schedule.

14. In the para-wise replies provided by the Respondent, he has stated that the petition is an abuse of law and not maintainable. The Respondent has further stated that the applicant has failed to prove the authority of law under which the Respondent is accused as guilty and having acted contrary to the constitution and byelaws of the Aam Aadmi Party. The Respondent has also stated that the contentions raised by the Petitioner are imaginary and do not fall under the provision of Tenth Schedule. He further submits that his participation in the election campaigns of the BJP do not amount to violation of Whip or has any implication for the stability of the Government. Another submission of the Respondent is that the Petitioner was never personally present in any of the events mentioned in the petition.



On the basis of these submissions the Respondent prays that the Petition be dismissed being not maintainable, being without jurisdiction and the Petitioner having no *locus standi*.

15. Now, I proceed to deal with the main issue, namely the request for disqualification of the Respondent under para 2(1)(a) of the Tenth Schedule.

16. But before I come to the main issue, I am called upon to decide the issue of the bias of the Speaker, which was raised as a preliminary issue by the Respondent's Counsel who wanted it to be settled before we proceeded to deal with the main issue. The matter was heard fully and in accordance with the procedure prescribed under the Rules, the same is being decided alongwith all the contentions raised by the Respondent. The contentions of the Respondent are that since the Speaker has participated in the election campaign of the Aam Aadmi Party, he is biased and he cannot decide the matter of disqualification under the Tenth Schedule. The Respondent, therefore, made a strong plea for my recusal from the hearings.

17. Tenth Schedule of the Constitution vests the adjudicatory authority solely on the Speaker /Chairman of the Legislative House. The Tenth Schedule does not bar Speaker /Chairman from being member of political parties. All Speakers/Chairmen in the Indian Legislatures are members of political parties. That has not disabled them from performing the adjudicatory role assigned to them by the Tenth Schedule of the Constitution.

The possibility of political bias on the part of the Speaker was raised and settled decisively by the Supreme Court in the *Kihoto Hollohan V. Zachillhu* (AIR 1993 SC 412).

The Supreme Court said,



"The office of the Speaker is held in the highest respect and esteem in Parliamentary tradition. The evolution of the institution of Parliamentary democracy has as its pivot the institution of the Speaker. He is said to be the very embodiment of propriety and impartiality. It would indeed be very unfair to the high traditions of that great office to say that investiture in it of this function would be vitiated by violation of a basic feature of democracy. It is inappropriate to express distrust in the high office of the Speaker. The roles of the Speaker do change and elevate the man inside".

The Court then decisively rejects the suggestion of bias of the Speaker in the following words,

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

The above decision of the Supreme Court decisively settles the issue of political bias of the Speaker. I do not wish to add anything on the issue of bias and recusal. I, therefore reject the suggestion of bias made by the Respondent in his petition and hold that the plea of recusal is ill thought out and unsound in law.

18. Other preliminary objections

Briefly considering the other preliminary objections, it must be noted that,

(a) The various allegations of other members of the Party acting against the interests of the Party are irrelevant to the present proceedings, which pertains to whether the Respondent has voluntarily given up his membership of the Party.

(b) The Respondent was provided an opportunity to cross-examine the Petitioner as well as the reporters and editors concerned regarding the news reports filed with the Petition as sought by him. However, he has chosen to not avail the same.



(c) The various witnesses referred to were stated to be necessary for proving allegations against various party members, which is irrelevant to the present proceedings. In any event, the Respondent has not averred any ground in defence for which he seeks examination of such witnesses. In this regard, as will be noted at a more appropriate juncture, the Respondent has admitted to a few allegations against him, and has not denied any of the allegations, except that he has indulged in anti-party activities.

(d) The Petition filed by the Respondent is admittedly an independent Petition and is hence not being discussed herein.

(e) The aspect of the Tenth Schedule being applicable only in the event of violation of the whip of a party is misconceived, being in the teeth of Para 2(1)(a) of the Tenth Schedule.

19. The issue

The main issue that has been brought up for determination by me is the disqualification of the Respondent under Para 2 (1)(a) of the Tenth Schedule on the ground that the Respondent has voluntarily given up the membership of the Aam Aadmi Party.

Para 2 of the Tenth Schedule is as follows.

*2. Disqualification on ground of defection

1. Subject to the provisions of Paras 4 and 5 a member of a House belonging to any political party shall be disqualified for being a member of the House.

*(a) if he has voluntarily given up his membership of such political party;**

The Petitioner states in his petition that the Respondent is a member of the Legislative Assembly of NCT Delhi elected from Karawal Nagar Assembly Constituency (No. 70) on 10 Feb. 2015. He was set up as a candidate by the Aam Aadmi Party in the said election.

The Petitioner contends that the Respondent has voluntarily given up the membership of the Aam Aadmi Party and therefore he should be disqualified. He has produced certain



pieces of evidence to prove that the Respondent has voluntarily given up the membership of the Aam Aadmi Party.

20. Appraisal of the evidence

The Petitioner has cited five grounds in support of his request for disqualification of the Respondent under para 2(1)(a) of the Tenth Schedule.

The first ground is that the Respondent joined a campaign led by the BJP along with senior leaders of BJP like Shri Vijay Goel, the then Union Minister and Shri Manoj Tiwari, the President of the Delhi unit of the BJP against Shri Arvind Kejriwal, the Chief Minister and National Convenor of the Aam Aadmi Party. This, according to the Petitioner, was a political campaign run by the BJP against the Aam Aadmi Party and its leader Shri Kejriwal. The Petitioner has annexed a screen shot of the post made on the Respondent's face book page (Annexure III of the petition). The screen shot shows three persons sitting on what appears to be a stage. It is understood that the two are Shri Manoj Tiwari, the President of the Delhi unit of the BJP and Shri Vijay Goel, the Union Minister belonging to the BJP respectively. The third person is Shri Kapil Mishra, the Respondent in the present petition. In the background of the stage is written in bold letters a few slogans in Hindi which reads as follows.

"Kejriwal ne Dilli ko barbad kiya Kejriwal bhagao Dilli bachao Vijay Goel ka Dhol Andolan Lok Abhiyan".

The second ground cited by the Petitioner in support of his petition for disqualification of the Respondent is that the Respondent designed and launched a political campaign named *"saaton seetein Modi Ko"* in Delhi. The Petitioner contends that this campaign was run to seek votes of the voters of Delhi in favour of Shri Narendra Modi, the Prime Ministerial candidate of the BJP. The said campaign was announced through a Press Conference held by the Respondent on 02.05.2019. The above Press Conference was



carried by the media. The Petitioner has annexed a CD containing the video uploaded on You Tube by TEN News (Annexure IV of the petition). He has also annexed the transcript of the above video (Annexure V of the petition).

The third ground cited by the Petitioner is that the Respondent organised and led a campaign rally along with one Tejasvi Surya, the candidate of the BJP from Bengluru South Constituency for Shri Narendra Modi. The event was held in the India Gate Lawns, New Delhi. The Petitioner has annexed the original copy of news clipping of the Hindi daily the Dainik Jagaran dated 05.05.2019 as evidence (Annexure VI of the petition).

The fourth ground cited is a post on Twitter by the Respondent from his official (verified) Twitter account. The theme was,

Kal Sham 5 baje – Ramlila Maidan @narendramodi ji ki aitihasik rally Saaton_seetein_Modi_Ko #DelhiwithModi.

The Petitioner has contended that the Respondent through this tweet appealed to the public to join the election campaign rally of Shri Narendra Modi and sought votes so that the BJP could win all the 7 seats in Delhi. A screen shot of this tweet is seen in Annexure VII of the petition.

Another piece of evidence the Petitioner provides is a video posted on 07.05.2019 by the Respondent on his verified twitter account on 07.05.2019 appealing to the people to join the election rally of Shri Narendra Modi and also an appeal to the people of Delhi to vote the BJP in the elections. The Petitioner has downloaded the video from his twitter profile and annexed it as Annexure VIII of the petition. The transcript of the above video is also annexed to the petition as Annexure IX.

The fifth ground cited by the Petitioner is a tweet by Sh. Amit Bhardwaj, special correspondent of TIRANGA News which shows that the Respondent was one of the signatories on a representation sent by Sh. Manoj Tiwari, the President of the Delhi unit



of the BJP to the Hon'ble Lt. Governor of Delhi. This representation was written on the official letter head of the BJP and carried the signatures apart from the Respondent, the other members of the Assembly belonging to the BJP also. The Petitioner has annexed screen shots of the Twitter profile of Amit Bhardwaj of the TIRANGA News, his tweets on 21.6.2019 and a copy of the above mentioned representation carrying signature of the Respondent (Annexure X of the petition).

The Petitioner has also annexed a news report published in the English daily THE HINDU on 22.6.2019 showing that the Respondent was a member of the delegation led by Sh. Manoj Tiwari, State President of the BJP which met the Lt. Governor of Delhi to represent against an education related programme organized by the Government. of NCT of Delhi run by the Aam Aadmi Party. This report is annexed as Annexure-XI of the petition.

On the basis of these pieces of evidence the Petitioner contends that by his conduct, the Respondent has voluntarily given up his membership of his party, namely, the Aam Adami Party. The Petitioner also contends that the Respondent has not resigned his seat in the Assembly. The Petitioner, therefore, prays that the Respondent be disqualified under para 2(1)(a) of the Tenth Schedule of the Constitution.

21. The evidence adduced by the Petitioner to prove that the Respondent has voluntarily given up the membership of his party, consists of (i) the screen shots of tweets (ii) transcripts of video containing interviews etc. and (iii) news paper clippings. So far as the electronic evidence is concerned under section 65A and 65B of the Indian Evidence Act, 1872, electronic evidence is admissible if it is relevant and is accompanied by a certificate contemplated in Section 65B. I find that the electronic evidence presented by the Petitioner is relevant to the issue, namely, the Respondent voluntarily giving up the membership of the party. Since the Petitioner has attached a certificate to the petition in



terms of section 65B of the Indian Evidence Act, the evidence becomes admissible. Although in proceedings under the Tenth Schedule, the rules of evidence of the Indian Evidence Act are not strictly applied. I have decided to examine the electronic evidence presented by the Petitioner in terms of section 65B of the Act. Further, I have followed the principles laid down in *Jatinder Pal Singh Vs. Krishna Kumar Bajaj* (Punjab and Haryana High Court, 24.10.2018) and **Sonu @ Amar Vs. State of Haryana* (Criminal Appeal No. 1418 of 2013, 8 SCC 570) decided by the Supreme Court wherein it is emphasised that the electronic evidence, in order to be admitted, must be accompanied by a certificate in terms of section 65B of the Indian Evidence Act.

I have, therefore, admitted and taken on record the electronic evidence presented by the Petitioner.

So far as the newspaper evidence is concerned, in view of the contentions raised by the Respondent in his reply, the persons concerned in respect of the news item were summoned to verify the contents of the reports. The Respondent was given an opportunity to cross-examine these persons, which the Respondent chose to ignore. The newspapers whose clippings have been presented as evidence are from (1) *Dainik Jagaran* (Hindi daily) and (2) *The Hindu* (an English daily). The persons who appeared before me as witnesses from the *Dainik Jagaran* are Shri Sanjeev Kumar Mishra, Senior Reporter and (2) Shri Saurabh, City Editor. They stated on oath that the content of the news report was true.

The persons who appeared before me from *The Hindu* are (1) Shri Jatin Anand, Principal Correspondent, and (2) Shri Amit Baruah, Resident Editor. They stated on oath that the content of the news report in the *Hindu* was true.



Both Reporters also stated on oath that they were personally present during these events and had seen the Respondent participating in the events concerned.

Upon the content of the news reports being corroborated by the witnesses, I admitted and took on record the Newspaper reports as evidence.

22. One of the contentions raised by the Respondent in his counter affidavit is that in order to charge him with anti-party activities, under the constitution of the Aam Aadmi Party, notice needs to be issued to him and then an internal inquiry is required to be conducted in the present case and none of this was done. So he contends that the petition seeking his disqualification on the ground that he voluntarily gave up the membership of his party has no basis and is not maintainable. The Respondent presumes that a petition under Rule 6 of the Rules should be preceded by a show cause notice, inquiry etc. by his party.

There is no substance in this contention. Tenth Schedule does not stipulate an action under the constitution of a political party as a precondition for proceeding under para 2 against a member. Para 6 of the Schedule clearly says that a petition is filed "if any question arises as to whether a member of a House has become subject to disqualification under this Schedule". Another contention raised by the Respondent is that the Petitioner has no authority to file the present petition as he has filed the petition in his individual capacity and there is no evidence that his party has authorised him to do so. The Respondent, therefore, contends that the petition is without an authority and should therefore be dismissed.

There is no merit in this contention. Under Rule 6 of the Rules, a petition is filed by an individual Member. There is no requirement under the Rules for the political Party to authorize any member to file a petition under the Tenth Schedule. However, it is on



record that the leader of the Aam Aadmi Party has submitted his comments in terms of Rule 7 (3) (b) of the Rules.

23. The Respondent continues to argue that the Speaker is an interested party and hence is biased and therefore he should recuse himself from hearing this case. This point was raised as a preliminary issue also. I have dealt with this matter exhaustively in para 11. I, therefore, do not like to make any further observations in this regard.

24. Another contention the Respondent raise is that Tenth Schedule can be invoked only if a member causes threat to the stability of the government. Since the Respondent has not caused any instability to the government of the Aam Aadmi Party, he cannot be brought within the mischief of the Tenth Schedule.

There is no merit in this contention. Probably the Respondent is referring to an observation in Kihoto Hollohan's (Supra) judgement wherein the court says that since violation of Whip results in disqualification of a sitting Member, the political parties should issue whips only when very important issues like the survival of a Government etc. are before the House. It has no relevance to the present matter because the petition is not based on para 2(i)(b) of the schedule.

25. On a perusal of the replies contained in the counter affidavit filed by the Respondent I find that the replies are devoid of any substance. The evidence adduced by the Petitioner is Annexure I to XI unmistakably show that the Respondent has actively involved himself in the political activities being conducted by the BJP which is the main rival of the Aam Aadmi Party to which the Respondent belongs. The Respondent contends that news clipping and videos downloaded from the internet cannot be treated as evidence. While he challenges the admissibility of these as evidence, he does not deny that he is actively participating in the political activities of the BJP and his appearance on the political



stage of the BJP along with its senior leaders as alleged by the Petitioner. The vague statement of the Respondent that the allegation that he campaigned against the Aam Aadmi Party is a blatant lie is unconvincing as he has not specifically denied or explained his presence on the political platform of the BJP and his tweets and campaigning in Delhi for the victory of Shri Narendra Modi, a candidate set up by the BJP. It is worth noting that in his written comments, there has been no denial whatsoever of the allegations of the Petitioner in the Petition. Even in the purported counter affidavit, in reply to paragraphs 3A to 3L, the Respondent does not deny participating in these events, but only makes submissions on how the same has to be interpreted. He has not specifically denied this press conference on 2-5-2019 wherein he is stated to have spoken elaborately about a huge campaign which was being planned in Delhi in support of Shri Narendra Modi. The assertion that all the pieces of evidence presented by the Petitioner are not true or genuine is vague and without any specifics. The Petitioner has verified the Petition and has filed an affidavit in support thereof. Repeated opportunities to cross-examine the Petitioner were ignored by the Respondent. The reporters and editors concerned have verified and confirmed the contents of the news reports. In these circumstances, the vague contention against the evidence that "there is apprehension that some of these evidences can actually be doctored" is insufficient, in my view, to render the evidence inadmissible or unreliable. .

26. The Respondent was given sufficient time to present his case and cross examine the Petitioner and also the news correspondents and editors. The statutorily recognised period considered reasonable to be granted to a Respondent to submit his comments is 7 days as per rule 7(3) (b). The copy of the Petitioner was sent to the Respondent on 1.7.2019, but he submitted the written comments only on 18.7.2019. In the meantime the Respondent kept sending applications each time seeking further time. Thereafter,



within a day of a hearing in the matter on 18.7.2019, he reportedly went on vacation and informed the Secretariat that he would be coming back to Delhi only on 1st of August and requested that further hearing may be conducted only after his return to Delhi.

27. It became apparent that these requests appeared to be a tactic to bide time and prolong the hearing. Moreover, it is unusual for a Respondent to dictate to the Tribunal a time table convenient to him. The Respondent in this case was given the statutorily prescribed period of 7 days. He did not reply within that period. Then he was given one more week to reply. He did not reply within that extended time either. He was asked to be present to present his case and cross examine the Petitioner on different dates thereafter. But he did not attend the hearing. Finally on 26.7.2019 he was given opportunity to cross-examine the Petitioner and the newspaper correspondents and editors. However, neither the Respondent nor his counsel appeared.

28. From these facts it became apparent that the Respondent was not really interested in participating in the hearings or cross examining the Petitioner or witnesses, but only in delaying proceedings interminably. The Counsel for the Petitioner further repeatedly objected to the extensive leeway being afforded to the Respondent, who, despite being represented by an Advocate, has chosen to not instruct / depute anyone for the hearings fixed before the Speaker.

29. The Respondent is a responsible legislator. The overriding concern on his part should be to salvage his reputation as a member of the Assembly and re-establish his credentials as a respectable member of his own party. He was expected to do it at the first available opportunity and co-operate with the Tribunal. The fact that he chose to stay away from most of the hearings and shoot a series of applications seeking extension



and making unwarranted and offensive remarks against the Speaker proves that he believes that he does not have a case to defend.

The Findings

30. The gravamen of the petition is that the Respondent has voluntarily given up his membership of his party, namely, Aam Aadmi Party. The Petitioner's prayer, therefore, is that the Respondent be disqualified for being a member of the legislative Assembly of Delhi, under para 2(1)(a) of Tenth Schedule of the Constitution.

The words "voluntarily given up his membership of the party" have been interpreted and explained in a number of cases by the Supreme Court. In Ravi S. Naik Vs. Union of India (AIR 1994 SC 1558) the Supreme Court held that an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the party.

The court said,

"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 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."

The conduct of the member against whom the petition has been filed and the inference drawn by the Tribunal from that conduct are the crucial elements in a case coming under Para 2 (1) (a) of the Tenth Schedule. This point was reiterated by the SC in Rajendra Singh Rana V. Swami Prasad Maurya [(2007) (4) SCC 270].

31. The Petitioner has adduced evidence relating to the conduct of the Respondent prior to the filing of the petition. I have ruled that the entire evidence annexed to the petition



(Annexure I to XI) is admissible and hence have admitted. Further, except vague denial in general the Respondent did not specifically deny that he was present on the political platforms of the BJP along with its senior leaders. The Respondent did not specifically deny his press conference exhorting the people of Delhi to vote for Sri Narendra Modi of the BJP. He did not deny his campaign "Saaton seetein modi ko" in favour of Sri Narendra Modi. He did not deny specifically his tweets in favour of the BJP. He did not disclaim his signature on the representation against the AAP on the official letter head of the BJP which was sent to the Hon'ble Lt. Governor of Delhi by the BJP Leaders of Delhi. He did not deny that he was a member of the delegation led by the BJP which met the Hon'ble Lt. Governor to complain against the AAP indulging in brain washing the parents of children studying in the Government schools etc. The Respondent is seen prominent in the photo along with the BJP Leaders of Delhi, particularly the Leader of Opposition in the Assembly and another Member.

32. All this evidence unmistakably show that the Respondent was actively, involved in the political activities of BJP. These activities were clearly contrary to the interests of the Aam Aadmi Party Legislature Party in the Assembly, given that the BJP is effectively the opposition in the Assembly. All the evidence on record show that he is actively working for the opposition party in the Assembly, none of which he actually denies.

33. The entire conduct of the Respondent reflected in the evidence can lead to the only inference, namely, that the Respondent has voluntarily given up the membership of his party, namely the Legislature Party of the Aam Aadmi Party. Thus, the Respondent has become subject to disqualification under the Tenth Schedule of the Constitution.

In Jagjit Singh V. State of Haryana (AIR SC 2006) the Supreme Court was dealing with a case of independent joining a political party without formally joining it. Though this



case is slightly different, the principle to be followed and the approach to be taken in a case under para 2 (1) (a) is the same. The Court says,

"It may be possible in a given situation for the Speaker to draw an inference that an independent Member of the Assembly 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. It is also essential to bear in mind the objects for enacting the defection law, namely, to curb the menace of defection. Despite defection a Member cannot be permitted to get away with it without facing the consequences of such defection only because of mere technicalities. The substance and spirit of law is the guiding factor to decide whether an elected Independent Member has joined or not joined a party."

In drawing the inference as above I am fortified by the following observation of the Supreme Court in Jagjit Singh's case (supra) "If the view taken by the Tribunal is a reasonable one, the court would decline to strike down an order on the ground that another view is more reasonable. 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."

34. I have examined the facts, the circumstances and evidence of this case very objectively and in an absolutely unbiased manner keeping in view the stature of the high office of the Speaker. I have also kept in mind the faith the Constitution makers reposed in the office of the Speaker by vesting in him the adjudicatory function in the cases under the Tenth Schedule. I am also conscious of the approbation by the highest court of the land of the entrustment of this task of the Speaker. I have tried to discharge this adjudicatory duty with the utmost sense of responsibility.



35. Before I part with the subject one more point needs to be decided. The petition has prayed that the Respondent may be disqualified from 27 January 2019 when he appeared on a political platform of the BJP where a campaign called "Dhol Campaign" organized by Shri Vijay Goel, former Union Minister was being launched. This campaign was demonstrably against the Aam Aadmi Party. I have examined the point of retrospective operation of judgement in the light of decided cases. The decision of the Supreme Court in Rajendra Singh Rana's case (supra) is apposite in this case. In that case 13 MLAs belonging to the ruling party met the Governor along with the General Secretary of the party in opposition and requested that the opposition party may be allowed to form the Government as against the advice of the Chief Minister to dissolve the Assembly. The Supreme Court makes the following observation,

"Clearly, from the conduct of meeting the Governor accompanied by the General Secretary of the Samajwadi Party, the party in Opposition and the submission of letters requesting the Governor to invite the Leader of that Opposition Party to form a government as against the advice of the Chief Minister belonging to their original party to dissolve the Assembly, an irresistible inference arises that the 13 members have clearly given up their membership of the MSP. No further evidence or enquiry is needed to find that their action comes within paragraph 2 (1) (a) of the Tenth Schedule."

The court says further,

"The alleged act of disqualification of the 13 MLAs took place on 27.08.2003 when they met the Governor and requested him to call the Leader of the Opposition to form the Government."

36. Applying this yardstick to the present case it can be safely said that the Respondent incurred disqualification on 27.01.2019 when he appeared on the platform and participated in the campaign launched by Sri Vijay Goyal and Sri Manoj Tiwari, both BJP



Leaders against the Aam Aadmi Party. The appearance of and participation by the Respondent in the above campaign on 27.01.2019 was not a casual affair as is evident from his subsequent conduct. It was a part of the Respondent's well thought through decision to join the BJP ultimately. His various tweets, press conference, campaign etc. in favour of Sri Narendra Modi and the BJP leave no one in doubt that the Respondent has voluntarily given up the membership of his original political party. Whether he has formally resigned from the AAP or taken the membership of the BJP formally is immaterial for a decision on his disqualification under Para 2 (1) (a) of the Tenth Schedule.

I NOW DECLARE AS UNDER.

That Shri Kapil Mishra, the Respondent in this case, an elected Member of the Legislative Assembly of the National Capital Territory of Delhi, elected from Karawal Nagar, Constituency No. 70 has become subject to disqualification under Paragraph 2 (1) (a) of the Tenth Schedule of the Constitution. That the disqualification of said Shri Kapil Mishra takes effect from 27.01.2019.

Delhi

Date:

2/04/19




(Ram Niwas Goel)

Speaker

Legislative Assembly,

National Capital Territory of Delhi