



**LEGISLATIVE ASSEMBLY
NATIONAL CAPITAL TERRITORY OF DELHI
OLD SECRETARIAT, DELHI 110 054**

F.No.25(63)/2019/LAS-VI/Leg./2571

Dated: 20.08.2019

To

✓ Shri Sandeep Kumar,
Hon'ble Member,
Delhi Legislative Assembly,
Delhi-110054.

Sub: Petition filed by Shri Saurabh Bharadwaj, Hon'ble Member seeking disqualification of Shri Sandeep Kumar, Hon'ble Member, Delhi Legislative Assembly on grounds of Defection.

Sir,

Kindly refer to the subject cited.

In this regard, I am directed to furnish you a copy of the decision of the Hon'ble Speaker dated 20.08.2019 on the subject matter.

Yours Sincerely,


C. Velmurugan
Secretary

Encl: As above.

F.No.25(63)/2019/LAS-VI/Leg./

Dated: 20.08.2019

Copy for information to:-

Hon'ble Speaker, Delhi Legislative Assembly, Delhi-54.

✓
C. Velmurugan
Secretary

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

In the matter of

Saurabh Bharadwaj

..... Petitioner

Through: Mr. R. Arunadhri Iyer, Advocate

Vs.

Sandeep Kumar

Respondent

Through: Shri Ritesh Bahri

Petition for disqualification of Shri Sandeep Kumar, 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 Government of National Capital Territory of Delhi, Act, 1991 and The Members of Delhi Legislative Assembly (Disqualification on Grounds of Defection) Rules, 1996

1. On 01.07.2019 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 Government of 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 Sandeep Kumar, 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 Bahujan Samaj Party (hereinafter referred to as BSP)



and thus has voluntarily given up his membership of his party namely the Aam Aadmi Party (hereinafter referred to as AAP).

2. The Petitioner has declared that he 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 under the Tenth Schedule of the Constitution.

3. The Petition and the annexures thereto have been verified in accordance with Order VI Rule 15 of the Code of Civil Procedure, 1908.

4. The petition complies with the requirements of Rule 6 of The Members of Delhi Legislative Assembly (Disqualification on Grounds of Defection) Rules, 1996.

5. The Petitioner avers that the Respondent was set up as a candidate from Sultanpur Majra Constituency by his original party namely the Aam Aadmi Party in the General Elections to the Legislative Assembly of the National Capital Territory of Delhi held on 07.02.2015. The Respondent was elected from the above constituency on 11.02.2015 and thus became a member of the above Assembly. The Petitioner has filed the above petition on the ground that the Respondent has voluntarily given up the membership of the AAP and therefore his prayer is that the Respondent be disqualified for being a member for the Assembly.

Contentions of the Petitioner.

6. The Petitioner has annexed IX annexures in support of his Petition. His contentions are:

i. The Respondent unequivocally stated in an interview on 01.02.2019 that Mayawati was his only leader and the BSP was his only party (Ms. Mayawati is the National President of the Bahujan Samaj Party). The interview was given to the Dalit News Network which uploaded it to the YouTube on the same day. The video link is annexed to the petition under



Annexure III and the transcript thereof is annexed to the petition and marked as Annexure IV. The contention of the Petitioner is that by openly declaring Ms. Mayawati as his only leader and the BSP as his only party, the Respondent has demonstrated that he has voluntarily given up the membership of the AAP.

ii. The Respondent joined the 'nomination filing rally' of the BSP Candidate Shri Rajveer Singh for the North East Delhi Parliamentary Constituency on 18.04.2019 along with leaders of the BSP. The Respondent wore a scarf with BSP's election symbol 'elephant' printed on it and accompanied the BSP candidate in the rally. The video link of the above interview is uploaded to YouTube on 18.04.2019. It is annexed to the petition and marked as Annexure V.

iii. The Respondent after participating in the nomination filing rally of the BSP candidate gave an interview to the NPT News in which he appealed to the voters to vote for the BSP candidate and claimed that he was a member of the BSP. The video containing the above interview was uploaded to YouTube on 18.04.2019 by NPT News. The video link is annexed and marked as Annexure VI. The transcript of the video is annexed and marked as Annexure VII.

iv. The Respondent has in another interview to a TV Channel named Fan Ambedkar TV, in Punjab on 16.05.2019 stated that he was campaigning for the candidates fielded by the Punjab Democratic Alliance of which BSP was a constituent. The AAP was opposed to the above political alliance and had fielded its own candidates in different constituencies in the State of Punjab. The video of the interview was uploaded on YouTube on 16.05.2019 and annexed to the petition as Annexure VIII. The transcript of the video is annexed and marked as Annexure IX.

On the basis of these facts the Petitioner contends that the respondent has voluntarily given up the membership of his party i.e. the AAP. He therefore prays that the respondent be



disqualified under paragraph 2(1)(a) of the Tenth Schedule to the Constitution. The Petitioner also states that the Respondent has not yet resigned his seat in the Assembly.

Contentions of the Respondent.

7. The Respondent contends that.

i. The Petitioner has no locus standi to file the petition because he has not been authorised by any person to file it. The Petitioner has not mentioned under what provisions of law or notification he has filed it, and therefore, it is not maintainable.

ii. The petition is 'false, forged, fabricated and manipulated'.

iii. The CDs annexed to the petition are not authentic.

iv. The Petitioner was not present when the interviews were held and he has merely downloaded the videos from YouTube without permission from the licence holder.

v. The affidavit submitted by the Respondent and the certificate issued under section 65B of the Evidence Act are false, forged and manipulated.

vi. Even the transcription furnished by the Petitioner is incomplete. The voice is tampered with and the Petitioner has deliberately and intentionally picked up certain parts of a speech and transcribed it. There is no mention of any place and time indicating when the transcriptions were made. Therefore incomplete transcription cannot be the criteria and ground for disqualification.

vii. The proof of the CDs annexed to the petition is the affidavit. Affidavits are not evidence and are not considered so under the law. Section I of the Indian Evidence Act says that the Act is not applicable to the affidavit. Since the mode of proof presented by the Petitioner is absolutely illegal, the procedure prescribed under the Indian Evidence Act should be followed.



viii. The Petitioner has not given any proof regarding the voluntarily giving up of membership of AAP by the Respondent. There is no documentary proof annexed or even mentioned by the Petitioner to show that the Respondent has given up his membership of his party. Hence no disqualification can be done merely based on CDs which are inadmissible as evidence under the Evidence Act.

ix. In the para-wise reply the Respondent says that the Petitioner is a habitual complainant and he is intentionally targeting the Respondent. The Respondent states further that he has not resigned from his original party. However, he states that paragraphs 1 to 3 (G) of the petition are 'matter of record', in Paragraph 3 (A) to (G) of the Petition, the Petitioner has listed the facts of the case and also mentioned the events based on which he alleges that the Respondent has voluntarily given up his membership of AAP.

x. Similarly the Respondents states that he was denying paragraph 5 of the grounds in the petition because it is wrong. The above paragraph states that the Respondent has yet to resign from the Assembly. The Respondent terms the prayer clause as misconceived and wrong.

8. The copy of the petition was forwarded to the Respondent on 01.07.2019. He was directed to submit his comments to the petition on or before 09.07.2019. He was also informed that the hearing on the petition would be held on 10.07.2019.

9. Instead of sending his reply to the petition in writing, the Respondent raised certain preliminary objections on 09.07.2019. The main objections raised by the Respondent are as follows:

i. The petition is not maintainable since the Respondent is not arrayed as a party in the Petition and therefore the petition should be rejected.



ii. The Petitioner has not come with clean hands and concealed material evidence. This is evident from his statement that he is in possession of certain other evidence and he would produce them at the relevant time of the hearing. The Petitioner has no right to surprise the Respondent during the hearing.

iii. The present petition is incomplete and is based on conjectures and surmises and is without any evidence. The Petitioner has deliberately and intentionally withheld the material evidence and thereby is causing prejudice to the Respondent.

iv. The Petitioner made caste based remarks against the Respondent on several occasions in the presence of others. The Petitioner has never missed an opportunity to malign the reputation of the Respondent. He has also insulted Dr. Baba Sahab Ambedkar. He quotes several instances where the Petitioner allegedly insulted him because of his caste.

v. The present petition is being filed in a malafide manner in order wreak vengeance on the Respondent.

vi. The CDs annexed to the petition is false, tampered, manipulated and concocted. These should be sent to the Central Forensic Science Laboratory (CFSL) to verify the authenticity. Since the Petitioner is on hostile terms with the Respondent, the CDs may be verified by a CFSL Laboratory situated outside Delhi.

vii. The Petitioner has picked and chosen certain extracts from the CDs and presented them as evidence. He has concealed the material facts from the Speaker. The true intention of the speeches can be understood only when the entire transcription of the CDs is seen. Hence, the Petitioner may be asked to hand over the whole transcription of the speeches.



10. Many of the points raised as preliminary objections have been repeated in the main reply submitted by the Respondents. I therefore, propose to deal with them when the analysis of the contentions is made later.

11. Since no written comments on the merits of the Petition were filed, a further opportunity was granted to the Respondent to file his written comments and the matter was adjourned to be heard on 17.7.2019. After the preliminary objections were raised the Respondent submitted an application on 17.07.2019 praying that one judicial officer as well as a member from the National Commission for Scheduled Castes be associated with the hearing of his case as he apprehends that the Speaker may act in a biased manner. The Respondent then repeats his earlier contention that there is no original source and the CDs were downloaded from You Tube and the Petitioner himself has recorded all the speeches. Thus, the whole case is based on hearsay evidence only.

12. The Respondent alleges that since the Speaker has not sent the CDs to the CFSL for verification and accepted them as reliable evidence which according to him is a legal necessity under Section 45 and 45 A of the Indian Evidence Act, the Speaker appears to have made up his mind and is ready to cause prejudice to the Respondent. Since Speaker is also an MLA of the AAP, the Respondent cannot be expected to get justice from him. Therefore, he has requested that a member from the SC Commission and a judicial officer not below the rank of Additional Session Judge may be appointed to assist the Speaker in the conduct of the proceedings. The Respondent also wants the Hon'ble Lt. Governor also to intervene in the matter as according to him the LG has more power than the Chief Minister. In the hearing on 17.7.2019, Shri Bahri appearing for the Respondent reiterated the submissions made in the preliminary objections and the applications, and submitted that unless a decision is taken on the same, the matter cannot



proceed 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.

13. The Respondent further sent an undated application seeking permission to cross-examine the Petitioner, the person who recorded the video and the person who allegedly uploaded it in You Tube. The Respondent sent another application on 18.07.2019 requesting the photocopy of the proceeding of the last session of the Vidhan Sabha which, he believed, would demolish the case of the Petitioner. The written comments of the Respondent were also filed on 18.7.2019. On 18.7.2019, the Counsel for the Respondent and Counsel for Petitioner were heard and the Petitioner was also afforded a personal hearing. Both parties effectively reiterated their respective contentions. Shri Bahri appearing for the Respondent additionally contended that unless the material sought was not furnished, the Respondent will not be able to effectively defend himself. Shri Iyer appearing for the Petitioner additionally contended that the application seeking material is nothing but an attempt to delay proceedings. He submitted that it is not the case of the Petitioner that the Respondent has acted against the whip of the Party, and that in any event, any submissions sought to be made on the basis of the Respondent's actions when the House was in session are not likely to be denied by the Petitioner contrary to record. 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.

14. On 23.07.2019, none appeared for Respondent. Instead the Secretariat received an application from the Respondent seeking adjournment of the proceedings as he was alleged



admitted to the Sanjay Gandhi Memorial Hospital, Mangolpuri, Delhi due to hypertension. 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.

15. 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 to cross examine the Petitioner and adjourned the proceedings on 26.7.2019. However, even on 26.07.2019, none appeared on behalf of the Respondent. 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's 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 attempting to delay the 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.

Evaluation of the contentions and the appraisal of evidence on record.

16. The main contention of the Petitioner is that the Respondent has voluntarily given up the membership of his party, namely, the AAP and therefore he has become subject to disqualification under paragraph 2 (1)(a) of the Tenth Schedule of the Constitution of India. The



Petitioner quotes three different instances to prove his contention that the Respondent has voluntarily given up his membership of his party.

17. In the first instance, the Respondent makes certain assertion about his political loyalty in an interview given to a news channel called Dalit News Network on 01.02.2018. The Respondent says,

"I tell the members of the Bahujan Samaj Party that we have only one leader and only one party. Our party is Bahujan Samaj Party and Behenji (Mayawati) is our leader."

The Respondent appears to have also used unparliamentary language with reference to leaders of the AAP, which is not being quoted here.

18. In the second instance, the Petitioner attached the CD as well as the transcript of a video interview given by the Respondent to the NPT News on 18.04.2019. The context is the filing of the nomination by the BSP candidate, Shri Rajveer Singh from the North East Delhi Parliamentary Constituency. The Respondent who belongs to the AAP, participated in the rally organized by the BSP in connection with the filing of nomination and was seen standing alongside the leaders of the BSP wearing a scarf on which is printed an elephant, the election symbol of the BSP.

In the interview given by the Respondent on that occasion he asserts that the real homage to Dr. Baba Saheb Ambedkar and Manyavar Kanshiram is to press the button in favour of 'elephant'. He also states that he considers that the Congress, the BJP and the AAP are all one and the same and claims that there is no greater leader than Behenji (Ms. Mayawati).

The Respondent further says that he is in Bahujan Samaj Party because he gets proper respect in that party, because it is his own house.



On a question being asked by the reporter of the above channel whether he has formally joined the BSP, the Respondent replies that one does not need an invitation to go to one's own house. He claims that he is a member of the family called BSP and will always remain its member. The Respondent is also confident that the BSP will win the maximum number of seats in Delhi. Finally, the Respondent says emphatically and authoritatively that he is in the BSP.

19. The third instance is of an interview given by the Respondent to Fan Ambedkar TV on 16.05.2019 in the city of Ludhiana, in the State of Punjab where he went to campaign for the BSP. In this interview, the Respondent says that his family is BSP and he will work for that party throughout his life and that he will never stand for election from a 'Manuvadi' Party. The Respondent further says that the TV channels being run by the Bahujan Samaj Party can be trusted and not others.

20. The Respondent strongly counters the contentions raised by the Petitioner. The main argument of the Respondent is that the CDs and their transcripts are hearsay evidence and the Petitioner relies only on the hearsay evidence. Further, he alleges that the CDs are manipulated and concocted. Therefore, he wants all the CDs to be sent to the CFSL to verify their authenticity. The Respondent further alleges that the Petitioner has concealed material evidence and the petition is based on surmises and conjectures. The Respondent raises a particularly strange point, namely that the Respondent is not arrayed as a party and therefore the petition should be rejected. Rule 6(5) describes that context of the petition. It says that (i) it shall contain a concise statement of the material facts on which a Petitioner relies, (ii) it shall be accompanied by copies of the documentary evidence, if any, on which the Petitioner relies, (iii) every petition shall be signed by the Petitioner and verified in the manner laid down in the Code of Civil Procedure



Code, 1908, and (iv) every annexure shall also be signed by the Petitioner and verified in the same manner as a petition.

The petition conforms to this requirement. In any event, the Respondent has been heard and considered in the matter in his capacity as a respondent.

21. I will now deal with the contention of the Respondent that the CDs which have been presented as evidence by the Petitioner are false and concocted and their authenticity should be verified by the CFSL. He further contends that CDs are hearsay evidence and is therefore inadmissible.

22. Electronic evidence is admissible as has been held by the Hon'ble Supreme Court in a number of cases. In Anwar P.V. vs. P.K. Basheer [(2014) 10 SCC 473], the Supreme Court held that electronic evidence becomes admissible provided the following conditions are satisfied.

- (a) There must be a certificate which identifies the electronic record containing the statement;
- (b) The certificate must describe the manner in which the electronic record was produced;
- (c) The certificate must furnish the particulars of the device involved in the production of that record;
- (d) The certificate must deal with the applicable conditions mentioned under Section 65 B (2) of the Evidence Act.
- (e) And the certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.



Thus, in compliance with Section 65B of the Indian Evidence Act, the Petitioner has attached a certificate to the petition which meets the above requirements specified by the Supreme Court in order to admit electronic evidence.

23. Further, in a case decided by the Punjab and Haryana High Court on 29.10.2018 the Court held as follows.

"Hence, besides the relevance of the contents of the information, the authenticity of the recording device, its proper functioning and the information being correct output of the recording are equally important cornerstones for permitting any electronic evidence before the Court."

24. As per the above decisions of the Punjab and Haryana High Court two things are important in respect of admitting electronic evidence; (i) the relevance of the information; and (ii) the proper functioning of the device and its authenticity.

25. As regards the relevance I hold that the information contained in the CDs is relevant given that it pertains to the conduct of the Respondent, which the Petitioner seeks to rely on. As regards the authenticity and the proper functioning of the device the Petitioner has certified it as per the requirement of the Section 65B of the Indian Evidence Act.

Thus, the CDs have been admitted as authentic evidence.

26. As regards the contention raised by the Respondent that the authenticity of the CDs should be verified by CFSL, it must be made very clear that it is the responsibility of the Respondent to lead evidence against the contentions contained in and material produced with the petition. The Respondent further contends that the Petitioner picked and chose certain extracts from the CDs and presented them as evidence and he has concealed material facts.



The Supreme Court has in *Mahachandra Prasad Singh v. Chairman, Bihar Legislative Council* (2004) 8 SCC 747 held as follows.

"There is no *lis* between the person moving the petition and the 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." This observation of the Supreme Court makes it clear that the Petitioner is under no legal obligation to lead evidence to prove his contentions. The Petitioner in this case has attached the evidence that was available to him. If the Respondent feels that the Petitioner has presented a garbled version of the speech or picked and chose certain portions of the speech or concealed material facts he should have led evidence against it and demolished the evidence of the Petitioner. The Respondent did not do it. Further, he was given an opportunity to point out which part of the transcript was tampered with or concocted. The Respondent did not avail himself of this opportunity and repeated a vague and general assertion that the evidence was concocted.

27. The contention that the procedure prescribed by the Indian Evidence Act should be followed in the Tenth Schedule proceedings and that affidavits are not evidence has no basis. Proceedings under the Tenth Schedule are conducted as per the Rules. Rule 7(7) of the Rules clearly states that the procedure which shall be followed by the Speaker shall be so far as may be, the same as the procedure for inquiry and determination by the Committee of Privileges of the House for determination of a question of privilege.

28. The contention that the Petitioner has not given any documentary proof regarding Respondent having voluntarily given up the membership of his party is devoid of any merit as the evidence presented by the Petitioner through CDs is credible and remains uncontroverted. There is no evidence on record, nor has the Respondent specifically denied that he attended the



rallies of the BSP in Delhi and Punjab and gave interviews to News Channels in the manner set out in the Petition. The Respondent has not endeavoured to set up any explanation for disbelieving the videos as presented by the news channels, nor has he sought to present any material to demonstrate that the material presented by the Petitioner is not accurate. There is no reason for me to disbelieve the material produced by the Petitioner in the absence of any effort by the Respondent to discredit the same, barring a demand that the material be verified by the CFSL.

29. Voluntarily giving up the membership of a party is not synonymous with resignation. The Supreme Court has in *Ravi S. Naik V. Union of India* (AIR 1994 SC 1558) explains this difference in the following words,

“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.”

In such cases, it makes no sense to look for documentary evidence to prove that a person has voluntarily given up his membership of the party he belongs to. The Speaker draws a reasonable inference from the conduct of a member that he has voluntarily given up his membership of the party.

A five judge bench of the Supreme Court in *Rajendra Singh Rana V. Swami Prasad Maurya* (AIR 2007 SC 1205) endorsed the view on *Ravi S. Naik's* judgement on this point. Therefore, the contention of the Respondent on this score should be rejected.



30. Another contention of the Respondent namely, that the petition should be rejected as it is not maintainable, on account of the fact that the Petitioner has not been authorised by anyone and that the Petitioner has not mentioned the law under which he filed the petition, does not deserve any serious consideration. Under Rule 6 of the Rules read with Paragraph 6 of the Tenth Schedule any Member of the House can file a petition. Now, after the Supreme Court's decision in Speaker, Orissa Legislative Assembly V. Utkal Keshari Parida on 17/01/2013, any member of the public can file a petition under the Tenth Schedule. 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). 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.

There is, therefore no legal requirement to authorise a Petitioner to file a petition under the Tenth Schedule.

31. Since the preliminary objections raised by the Respondent are subsumed by the final reply to the petition and hence I do not propose to deal with each of them. The analysis of the main contentions in the reply covers them also. Moreover, no substantive points have been raised in the preliminary objections which would merit further consideration.

32. A point of some significance made by the Respondent in a separate application filed on 17.07.2019 is that a Member of the Scheduled Caste Commission and a Judicial Member of the level of an Additional Sessions Judge should be appointed to assist the Speaker in deciding this case. The reason, as he explains in the application, is that the Respondent apprehends bias on the part of the Speaker on account of his being an elected Member of the Assembly belonging to the



AAP. Further, since the Petitioner, according to him, targets the Respondent because of his caste, association of such authorities with the proceedings is necessary especially in view of the fact that the Petitioner is highly influential.

The possibility of the Speaker acting in a biased manner in Tenth Schedule proceedings was decisively settled in *Kihoto Hollohan V. Zachillun* (AIR 1003 SC 412). The Court says,

"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 is rejected."

Therefore, the political bias of the Speaker is not an issue which merits any consideration.

33. The request made in the application that some external authorities may be associated with the proceedings because the applicant apprehends injustice as he belongs to the Dalit Community is unacceptable. The proceedings under the Tenth Schedule are not ordinary departmental proceedings where the need to protect the basic interest of certain classes of employees is genuine. But proceedings under the Tenth Schedule are adjudicatory exercises of a very high order. The Supreme Court has recognised the high level of the proceedings under the Schedule when it says,

"The office of the Speaker is held in the highest esteem in Parliamentary traditions. 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." [*Kihoto Hollohan* (supra)]



The underlying faith in the impartiality of the Speaker makes the proceedings under the Tenth Schedule a high level of adjudicatory exercise of immense credibility. Further, Tenth Schedule recognises the Speaker as the sole adjudicatory authority.

In *Jagjit Singh V. State of Haryana*, the Supreme Court explains it clearly,

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

Findings

34. I have carefully examined the contentions contained in the petition and the written comments thereto submitted by the Respondent. I have also carefully examined the evidence presented by the Petitioner through CDs and the transcripts thereof. I must make it clear at this stage that the intendment of para 6 of the Tenth Schedule is that if a question arises whether a member of the House has become subject to disqualification under the Schedule, the question shall be referred to the Speaker for his decision. The Petitioner has referred that question to the Speaker in the form of a petition. The petition contains verified and certified annexures which present the most essential evidence before the Speaker for him to take a decision on the ‘question’ referred to in para 6 of the Schedule.

35. As is explained in the foregoing paragraphs, the Petitioner has no legal obligation to lead evidence as in a civil or criminal case. The proceedings under the Tenth Schedule have been characterised by the Supreme Court as different from a Court trial or a departmental inquiry proceedings. It is conducted by the Speaker not on the basis of strict application of the Rules of the Evidence Act, but on the basis of the procedure followed by the Privileges Committees of the Legislature in dealing with a question of breach of privileges.



36. I find the CDs and the transcripts thereof produced by the Petitioner credible. The Petitioner has certified the veracity and authenticity of the CDs as per the requirement of S. 65B of the Evidence Act. The Respondent had been given ample opportunity to lead evidence against these CDs and prove that these are tampered with and not authentic. He has not done that. But he wanted the Speaker to get them verified by the CFSL. The fact that he did not even cross examine the Petitioner and did not avail himself of the opportunity to do that although a date was fixed for that purpose, indicates that he does not intend to strenuously contend against the genuineness of the material produced by the Petitioner.

37. The Respondent did not deny that he participated in the rally organised by the BSP, a rival to the AAP, which is his original political party. On the occasion of the filing of nomination of its candidate in the North East Delhi Parliamentary Constituency and stood along with the Leaders of BSP wearing a scarf sporting the election symbol of the BSP. The Respondent did not specifically deny having given the interview to the Dalit News Network on 01.02.2019, choosing instead to contend that the material produced by the Petitioner is inaccurate. He did not deny having said that Ms Mayawati is his Leader and the BSP is his Party.

38. The participation by the Respondent in the rallies of the rival party, the various interviews he gave to different news channels, which he has not specifically denied, unmistakably prove that he has voluntarily given up the membership of his party, i.e. the AAP. Otherwise, there is no reason why he should be present on an occasion when the candidate of a rival party filed his nomination.

39. The interviews he gave to the news channels clearly show that he has recognised the BSP as his party and Ms. Mayawati as his Leader. The Respondent vainly tried to impugn the genuineness of the CDs presented as evidence by the Petitioner. He could have presented himself



what he considered the genuine version of the CDs and thus disproved the entire evidence produced by the Petitioner. The Respondent did not make any such efforts.

40. He was given sufficient time to plan and present his defence. In the interest of natural justice I extended the time for submission of reply, presentation of the case and personal hearing. The Respondent and his counsel chose to raise unsustainable objections and never once showed genuine interest in disproving the evidence. The Respondent was not interested in presenting his case but made all efforts to prolong it. Finally, he was given an opportunity to cross examine the Petitioner against whom he made serious allegations, but he stayed away from the hearings on 23.07.2019 and 26.07.2019.

41. I have carefully gone through his interviews. The interviews he gave are all free flowing and genuine. There is no incoherence in any portion of his interviews. These are seamless and natural. Therefore, I have rejected his contention that the videos or the transcripts are tampered with. He was specifically asked to point out which portions of the transcripts are tampered with. The Respondent showed his unwillingness to do that, choosing instead to impugn the entirety of the transcript produced.

42. Thus, I have drawn an inference on the basis of his conduct that he has voluntarily given up the membership of the AAP, which had set him up as a candidate in the elections to the Delhi Assembly in 2015. The facts and the totality of circumstances of this case lead me to the only conclusion that the Respondent has by voluntarily giving up the membership of his party, become subject to disqualification under paragraph 2(1)(a) of the Tenth Schedule of the Constitution.

43. The first interview of the Respondent on 01.02.2019 to the news channel mentioned above was the beginning of a series of actions he took in favour of a rival party. He followed it



up on subsequent occasions. So, this should be treated as the first instance of voluntarily giving up the membership of his party. I therefore conclude that the Respondent has incurred disqualification with effect from 01.02.2019.

I NOW DECLARE AS UNDER.

That Shri Sandeep Kumar, the Respondent in this case, an elected Member of the Sixth Legislative Assembly of the National Capital Territory of Delhi, elected from Sultanpur Majra, Assembly Constituency No.10 has become subject to disqualification under Paragraph 2 (1) (a) of the Tenth Schedule of the Constitution. That the disqualification of said Shri Sandeep Kumar takes effect from 01.02. 2019.

Delhi

Date.20.08.2019

(Ram Niwas Goel)

Speaker

Legislative Assembly,

National Capital Territory of Delhi

