

DISQUALIFICATION ON GROUND OF DEFECTION

The Constitution (Fifty-second Amendment) Act, 1985 popularly known as the anti-defection law came into force w.e.f. 1 March 1985. It amended articles 101, 102, 190 and 191 of the Constitution regarding vacation of seats and disqualification from membership of Parliament and the State Legislatures and added a new schedule *i.e.* the Tenth Schedule to the Constitution setting out certain provisions as to disqualification on ground of defection.

In articles 102/191, a new clause (2) has been inserted which reads as follows:—

“(2) a person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.”

The main provisions of the Tenth Schedule are—

Grounds of Defection

2. The grounds on which disqualification can be incurred are as under:—

(i) Members belonging to political parties

A member of a House belonging to any political party shall be disqualified for being a member of House—

- (a) if the member has voluntarily given up the membership of such political party; or

- (b) if the member votes or abstains from voting in such House contrary to any direction issued by the political party to which she/he belongs or by any person or authority authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.

An elected member of a House shall be deemed to belong to the political party, if any, by which she/he was set up as a candidate for elections as such member.

Nominated member of a House shall—

- (i) where she/he is a member of any political party on the date of her/his nomination as such member, be deemed to belong to such political party;
- (ii) in any other case, be deemed to belong to the political party of which she/he becomes, or, as the case may be, first becomes, a member before the expiry of six months from the date on which she/he takes her/his seat after complying with the requirements of article 99 or, as the case may be, article 188.

(ii) Member elected otherwise than as candidate set up by any political party

An elected Member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if she/he joins any political party after such election.

(iii) Nominated Members

Nominated member of a House shall be disqualified for being a member of the House if she/he joins any political party after the expiry of six months from the date on which she/he takes her/his seat after complying with the requirements of article 99 or as the case may be, article 188.

Cases of split

3. The Tenth Schedule as added to the Constitution by the Constitution (Fifty-second Amendment) Act, 1985 contained a provision (paragraph 3 of the Tenth Schedule) to the effect that no member will be disqualified from the membership of the House where she/he makes a claim that she/he and any other members of her/his legislature party constitute a group representing a faction which has arisen as a result of a split in her/his original political party and such group consists of not less than one third members of the legislature party concerned.

This provision (paragraph 3) has since been omitted from the Tenth Schedule by the Constitution (Ninety-first Amendment) Act, 2003, which came into force with effect from 1 January, 2004. Consequent upon the omission of Paragraph 3, it is not now permissible to claim a split in the legislature party.

Cases of merger

4. No member will be disqualified from the membership of the House where her/his original political party merges with another political party and she/he claims that she/he and any other members of her/his original political party have become members of the other political party or of the newly formed political party provided not less than two third of the members of the legislature party concerned have agreed to such merger.

Exemption to persons elected to the office of Speaker/Chairman or Deputy Speaker/Deputy Chairman

5. No disqualification is incurred by a person who has been elected to the office of the Speaker or the Deputy Speaker of the House of the People or of the Legislative Assembly of a State or to the Office of the Deputy Chairman of the Council of States or the Chairman or the Deputy Chairman of the Legislative Council of a State if she/he severs her/his connections with her/his

political party after such election. Also, no disqualification is incurred if she/he, having given up by reason of her/his election to such office, her/his membership of the political party to which she/he belonged immediately before such election, rejoins such political party after she/he ceases to hold such office.

Chairman/Speaker to decide questions as to disqualification on ground of defection

6. The question as to whether a member of a House of Parliament or State Legislature has become subject to disqualification will be determined by the Chairman/Speaker of the House and such decision will be final. Where the question is with reference to the Chairman/Speaker herself/himself, it will be decided by a member of the House elected by the House in that behalf and her/his decision will be final.

All proceedings in relation to any question as to disqualification of a member of a House under the Tenth Schedule shall be deemed to be proceedings in Parliament within the meaning of article 122.

Bar on Jurisdiction of Courts

7. Paragraph 7 of the Tenth Schedule provides that notwithstanding anything contained in the Constitution, no court has any jurisdiction* in respect of any matter

* Kihoto Hollohan vs. Zachillhu—AIR 1993, SC

connected with the disqualification of a member of a House on ground of defection. The Supreme Court in Kihoto Hollohan case* has held that this paragraph is *ultra vires* of the Constitution. This provision continues to be a part of the Tenth Schedule as the Constitution has not been amended to omit it from the Tenth Schedule.

Power to make Rules

8. The Chairman or the Speaker of a House has been empowered to make rules for giving effect to the provisions of the Tenth Schedule. The rules are required to be laid before each House and are subject to modifications/disapproval by the House.

The Chairman or the Speaker of the House may without prejudice to the provision of article 105 or as the case may be, article 194, and to any other power which she/he may have under the Constitution direct that any wilful contravention by any person of the rules made under paragraph 8 of the Tenth Schedule may be dealt with in the same manner as a breach of privilege of the House.

Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985

9. The Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985 as framed by the

* Kihoto Hollohan vs. Zachillhu—AIR 1993, SC

Speaker under the Tenth Schedule were laid on the Table of the House on 16 December, 1985 and came into force with effect from 18 March, 1986.

The main provisions of these Rules are given below:

Information etc. to be furnished by leader of a legislature party

10. The Rules cast a responsibility on the leaders of legislature parties in the House to furnish to the Speaker within 30 days after the first sitting of the Houses or within 30 days after the formation of such legislature party as the case may be, a statement containing the names of members of such legislature party, a copy of the rules and regulations/constitution of the political party concerned and where such legislature party has a separate set of rules and regulations, constitution, a copy of such rules and regulations/constitution. This information is required to be given in Form-I as prescribed in Disqualification Rules. The leader of the legislature party is also required to inform the Speaker about the changes that take place in the strength of the party or in its rules, regulations, constitution, etc. Duty is also cast on the leader of the legislature party or the person authorised by the leader in that behalf to communicate to the Speaker any instance of a member of the party voting or abstaining from voting in the House contrary to any direction issued

by such political party without obtaining the prior permission of such party, person or authority. Such communication is required to be furnished in Form-II as prescribed in the Disqualification Rules.

Where a Legislature party consists of only one member, such member is also required to furnish a copy of the rules and regulations of her/his political party to the Speaker within thirty days after the first sitting of the House or where one has become a member of the House after the first sitting, within thirty days after she/he has taken seat in the House or in either case within such further period as the Speaker may for sufficient cause allow.

Information to be furnished by members

11. Every member is invariably required to individually furnish to the Speaker a statement giving details of her/his party affiliation etc. as on the date of election/nomination in Form-III as prescribed in the Disqualification Rules. In the event of any change in the information given by the members in their respective Form-III, in terms of declaration in their forms, they are required to immediately intimate the same to the Speaker.

Petitions *re.* Disqualification

12. Rule 6 of the Rules provides that no reference of any question as to whether a member has become subject to disqualification shall be made except by a petition in relation to such member made in writing to the

Speaker by any other member. The Supreme Court in Orissa Legislative Assembly case* has held that any citizen can make a petition with regard to disqualification incurred by a member.

Every petition is required to contain a concise statement of the material facts and to be accompanied by copies of documentary evidence, if any, on which the petitioner relies. Every petition is required to be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings. Every annexure to the petition is required to be signed by the petitioner and verified in the same manner.

Procedure

13. On receipt of a petition, the Speaker shall consider whether the petition complies with the requirements of the Rules. If the petition does not comply with the requirements, the Speaker shall dismiss the

* The Supreme Court of India in its judgement dated 17 January, 2013 in Civil Appeal No. 469 of 2013 titled Speaker, Orissa Legislative Assembly Vs. Utkal Keshari Parida held that "...we are not inclined to accept the contention that a member of a Legislative Assembly can alone file the petition... Therefore, we hold that the disqualification petitions filed by the petitioner, who is the President of NCP, are maintainable under Rule 6 of the Rules."(President of NCP was not a member of Orissa Legislative Assembly.)

petition and intimate the petitioner accordingly. If the petition complies with the requirements, copies of the petition are forwarded to the member in relation to whom the petition has been made and if the member belongs to any legislature party, and such petition has not been made by the leader thereof, also to such leader, for furnishing their comments in writing to the Speaker on the petition.

After considering the comments, the Speaker may either proceed to determine the question or, if the Speaker is satisfied, having regard to the nature and circumstances of the case that it is necessary or expedient so to do refer the petition to the Committee of Privileges for making a preliminary inquiry and submitting a report to the Speaker.

The procedure which shall be followed by the Speaker for determining the question of disqualification and the procedure which shall be followed by the Committee of Privileges for making preliminary inquiry*

* The Committee of Privileges (14th L.S.) while considering some petitions filed under the Tenth Schedule to the Constitution and the rules made thereunder referred to the Committee by the Speaker gave a very careful thought to the true import of the term "preliminary inquiry". The Committee came to a conclusion that in such matters, the Committee are required only to give their findings on the facts of the case and it isn't the Committee's remit to decide questions of law and arrive at conclusions on the merits of the case and make recommendations.

shall, so far as may be, the same as the procedure for making inquiry and determination by the Committee of any question of breach of privilege of the House.

If the Speaker makes a reference to the Committee of Privileges, the Speaker shall proceed to determine the question as soon as may be after receipt of the report from the Committee.

Neither the Speaker nor the Committee shall come to any finding that a member has become subject to disqualification, without affording a reasonable opportunity to such member to represent her/his case and to be heard in person.

After the conclusion of the consideration of the petition, the Speaker may by order in writing dismiss the petition or declare that the member in relation to whom the petition has been made has become subject to disqualification under the Tenth Schedule and cause copies of the order to be delivered or forwarded to the petitioner, the member in relation to whom the petition has been made and to the leader of the legislature party, if any, concerned. The order of the Speaker disqualifying the member is reproduced in Bulletin- Part II and is also notified in Gazette of India, Extraordinary, Part-II, Section 3 (ii).

Where the Speaker declares that a member has become subject to disqualification under the Tenth

Schedule, she/he shall cease to be member of the House with effect from the date of the order by the Speaker.

The Speaker has power to issue such directions as the Speaker may consider necessary in regard to the detailed working of the Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985.

[Articles 101, 102, 190 and 191 of the Constitution, Tenth Schedule to the Constitution and Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985.]

41

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PREFACE

This Abstract is part of the Parliamentary Procedure Abstracts Series and describes the procedure regarding disqualification on ground of defection. It is based on the Constitution, the Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985 and past precedents. It is intended to serve as a handy guide for ready reference.

The information contained in this Abstract is, however, not exhaustive. It will, therefore, be prudent to refer to and rely on the original sources for full information.

NEW DELHI

Secretary General