Ending Speakers' Inaction on Disqualification

Why in News?

The Supreme Court has made some decisions on the position of Speaker as the adjudicating authority under the Anti-Defection Law (ADL).

What is Anti-Defection Law?

- The ADL is contained in the **10th Schedule** of the Indian Constitution.
- It was enacted by Parliament and came into effect in 1985.
- Its purpose is to **curb political defection** by the legislators.

What are the aspects to SC's new decision?

- The Parliament should **replace the Speaker with a permanent tribunal** or external mechanism to render quick and impartial decisions on questions of defection.
- Its extraordinary ruling that the reference by another Bench, in 2016, of a key question to a Constitution Bench was itself unnecessary.

What are the questions arisen? Why?

- The question awaiting determination by a larger Bench is whether courts have the power to direct Speakers to decide petitions seeking disqualification within a fixed time frame.
- The question had arisen because several presiding officers have allowed defectors to bolster the strength of ruling parties.
- These officers have allowed the defectors be sworn in Ministers by merely refraining from adjudicating on complaints against them.
- Some States have seen en masse defections soon after elections.
- Speakers have been wilfully failing to act as per law, thereby helping the ruling party, which is the one that helped them get to the Chair.
- They do this in the security of the belief that no court would question the delay in disposal of disqualification matters as long as the matter was pending before a Constitution Bench.

What was the reference made?

- The reference to a larger Bench, in 2016 in S.A. Sampath Kumar vs. Kale

Yadaiah was based on the landmark judgment in **Kihoto Hollohan** (1992) which upheld the validity of the ADL.

- This verdict had also made the **Speaker's order subject to judicial review** on limited grounds.
- It made it clear that the court's jurisdiction would not come into play unless the Speaker passes an order, leaving no room for intervention prior to adjudication.
- The 2016 Bench found several pending complaints before Speakers.
- So, it decided that it was time for an authoritative verdict on whether Speakers can be directed to dispose of defection questions within a time frame.

What is the present case?

- In the present case, Justice R.F. Nariman has fixed a **3-month limit** for the Manipur Assembly Speaker to decide the disqualification question in a legislator's case.
- He has also held that the reference was made on a wrong premise.
- He has cited a Constitution Bench judgment in which the Uttar Pradesh Speaker's order refusing to disqualify 13 defectors was set aside on the ground that he had failed to exercise his jurisdiction.
- The jurisdiction that he failed to exercise was to decide whether they had attracted disqualification, while recognising a split in the legislature party.
- As "**failure to exercise jurisdiction**" is a recognised stage at which the court can now intervene, the court has thus opened a window for judicial intervention in cases in which Speakers refuse to act.
- This augurs well for the enforcement of the law against defection in letter and spirit.

Source: The Hindu

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