Speakers' power over MLA's resignations

Why in news?

A split verdict was delivered by the Himachal Pradesh High Court on whether the court can impose a timeline on the Speaker for accepting MLA resignations.

What is the case?

- The case revolves around the resignation of three independent MLAs who joined the BJP after submitting their resignations to the Speaker of the Himachal Pradesh Assembly.
- The Speaker, instead of immediately accepting the resignations, issued show-cause notices and directed an inquiry to ascertain the voluntariness of the resignations.
- The Speaker said that action could be taken under *anti-defection law* could be taken against the 3 independent MLAs as they joined another party before the acceptance of their resignation.
- In response to the delay in acceptance of their resignations, the three independent MLAs filed a petition in the Himachal Pradesh High Court seeking to quash the show-cause notices and prompt acceptance of their resignations.

What is Anti-defection law?

- **Anti-defection law**- It punishes individual MPs/MLAs for leaving one party for another.
- **10th Schedule-** It was added by *52nd Constitutional Amendment Act* as the Tenth Schedule in 1985.
- It was a response to the toppling of multiple state governments by party-hopping MLAs after the general elections of 1967.
- **Deciding authority**- The Presiding Officer of the House is empowered to make rules to give effect to the provisions of the 10th schedule.
- **Role of judiciary**- The decision can be challenged before the higher judiciary.

Type	Defection
Member of political party	• Voluntarily giving up the membership of political party (or) • Voting or abstain from voting in that House contrary to the direction issued by the political party
Independent candidate	• If an MP/MLA who has been elected as an independent candidate joins a political party later
Nominated member	• If nominated legislators joins a political party after 6 months of being appointed to the House

- **Exemptions**- The law allows a group of two-third MP/MLAs to join (merger) another political party without inviting the penalty for defection.

- If a person is elected as the Speaker of Lok Sabha or the Chairman of Rajya Sabha, then he could resign from his party and re-join the party once he demits the post.
- **91st Amendment Act, 2005**- It deleted the exemption from disqualification in case of split by 1/3rd members of legislature party.

What does the law say about MLAs resignation?

Article 190

- Article 190(3)(b) of the Constitution of India outlines the process for an MLA's resignation and the subsequent vacancy of their seat.
- **Resignation process**-An MLA can resign by submitting a written resignation addressed to the Speaker or the Chairman (as applicable).
- **Vacant seat**- If the Speaker or Chairman accepts the resignation, the seat becomes vacant.
- **Speaker's discretion**- The Speaker has the authority to inquire into the resignation.
- **Acceptance-** If the Speaker is satisfied that the resignation is voluntary and genuine, they may accept it immediately.
- **Non-acceptance-**If there are doubts about the voluntariness or genuineness, the Speaker can choose not to accept the resignation.

Rule 287 of the Rules of Procedure and Conduct of Business in Himachal Pradesh Legislative Assembly

- It provides guidelines for the Speaker's powers.
- **Speaker's role-**If the resignation letter is personally handed over to the Speaker members confirm its voluntariness and genuineness, the Speaker may accept it promptly.
- Otherwise, the Speaker has discretion to withhold acceptance.

Why have the judges disagreed with each other?

Refused to direct Speaker	Court can direct Speaker
• The judge emphasized the Speaker's constitutional authority and refused to direct the Speaker to immediately accept the resignations of independent MLAs. • **Pratap Gouda Patil vs State of Karnataka, 2019**- The Supreme Court did not specify a timeline for the Speaker to address the resignations of Karnataka Assembly members. • The judge suggested that the independent MLAs, by seeking judicial intervention, were attempting to override the Speaker's role in assessing the validity of their resignations.	• The other judge argued that the court could instruct the Speaker to make a prompt decision if there is an unreasonable delay. • **Rajendra Singh Rana vs Swami Prasad Maurya, 2007-** The Supreme Court intervened due to the Speaker's prolonged inaction over disqualification petitions. • The court could involve itself at a "pre-decisional stage" if there is inaction or indecision on the part of the Speaker.

What lies ahead?

- The case may be escalated to a larger bench of the Himachal Pradesh High Court for a final decision.
- Alternatively, the MLAs could appeal to the Supreme Court for resolution.

Reference

[The Hindu- HC split verdict on MLA resignation]

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