

CHAPTER V

DISQUALIFICATION ON GROUND OF DEFECTION

70. Provisions of the Constitution.—The Tenth Schedule to the Constitution, popularly known as the Anti-Defection Law, introduced by the Constitution (Fifty-second Amendment) Act, 1985 as amended by the Constitution (Ninety-First Amendment) Act, 2003 lays down the conditions regarding disqualification on ground of defection. The main provisions of the Tenth Schedule are summarised below:—

- (i) An elected member of Parliament or a State Legislature, who has been elected as a candidate set up by a political party and a nominated member of Parliament or a State Legislature who is a member of political party at the time she/he takes her/his seat would be disqualified on the ground of defection if she/he voluntarily relinquishes her/his membership of such political party or votes or abstains from voting in the House contrary to any direction of such party.
- (ii) An independent member of Parliament or a State Legislature will also be disqualified if she/he joins any political party after her/his election.
- (iii) A nominated member of Parliament or a State Legislature who is not a member of a political party at the time of her/his nomination and who has not become a member of any political party before the expiry of six months from the date on which she/he takes her/his seat shall be disqualified if she/he joins any political party after the expiry of the said period of six months.
- (iv) Provisions have been made with respect to mergers of political parties. No disqualification would be incurred when a legislature party decides to merge with another party and such decision is supported by not less than two-thirds of its members.
- (v) Special provision has been made to enable a person who has been elected to the office of the Speaker or the Deputy Speaker of the House of 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 Legislative Council of a State,

to sever her/his connections with her/his political party without incurring disqualification.

- (vi) 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 presiding officer of the House; where the question is with reference to the Presiding Officer herself/himself it will be decided by a member of the House elected by the House on that behalf.
- (vii) 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 shall be laid before the House and shall be subject to modifications/disapproval by the House.
- (viii) Without prejudice to the provisions of Article 105 or as the case may be, Article 194 or any other power they may have under the Constitution, the Chairman or the Speaker of a House has been empowered to 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.

Article 361B of the Constitution *inter alia* provides—

“A member of a House belonging to any political party who is disqualified for being a member of the House under paragraph 2 of the Tenth Schedule shall also be disqualified to hold any remunerative political post for duration of the period commencing from the date of her/his disqualification till the date on which the term of her/his office as such member would expire or till the date on which she/he contests an election to a House and is declared elected, whichever is earlier.”

The expression “remunerative political post” means any office under the Government of India or the Government of a State where the salary or remuneration for such office is paid out of the public revenue of the Government of India or the Government of the State, as the case may be; or, under a body, whether incorporated or not, which is wholly or partially owned by the Government of India or the Government of a State and the salary or remuneration for such office is paid by such body, except where such salary or remuneration paid is compensatory in nature.

71. Rules.—The Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985, as framed by the Speaker under para 8 of the Tenth Schedule, were laid on the Table of the House

on 16th December, 1985 and came into force *w.e.f.* 18th March, 1986. 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 House 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, with other particulars regarding such members as in Form-I, and the names and designations of the members of such party who have been authorised by it for communicating with the Speaker for purposes of these rules, 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, also a copy of such rules and regulations/constitution. 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. Where a member belonging to any political party votes or abstains from voting in the House contrary to any direction issued by such political party or by any person or authority authorized by it in this behalf without obtaining, in either case, the prior permission of such political party, person or authority, the Leader of the Legislature Party concerned or where such member is the Leader, or as the case may be, the sole member of such legislature party, such member, is required as soon as may be after expiry of fifteen days of such voting or abstention, and in any case within thirty days from the date of such voting or abstention, inform the Speaker whether such voting or abstention has or has not been condoned by such political party, person or authority. (Form-II has been set out for the purpose).

The Rules also provide that every member who takes her/his seat in the House should before making and subscribing an oath or affirmation and taking her/his seat in the House, deposit with the Secretary-General, her/his election certificate or as the case may be, a certified copy of the notification nominating her/him as a member and also furnish to the Secretary-General a statement giving details of her/his party affiliation as on the date of election/nomination in Form-III set out for the purpose. In the Form-III the members also undertake to intimate the Speaker, Lok Sabha in the event of any change in the information furnished by them in Form-III.

The Rules further provide that no reference of any question whether a member has become subject to disqualification shall be made except by a petition in relation to such member made in accordance with the provisions of the Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985.

Provisions for making a petition under the Rules are as follows:—

- (1) A petition in relation to a member may be made in writing to the Speaker by any other member[#] provided that a petition in relation to the Speaker shall be addressed to the Secretary-General.
- (2) Before making any petition in relation to any member, the petitioner shall satisfy herself/himself that there are reasonable grounds for believing that a question has arisen as to whether such member has become subject to disqualification under the Tenth Schedule.
- (3) Every petition:—
 - (a) shall contain a concise statement of the material facts on which the petitioner relies; and
 - (b) shall be accompanied by copies of the documentary evidence, if any, on which the petitioner relies and where the petitioner relies on any information furnished to her/him by any person, a statement containing the names and addresses of such persons and the gist of such information as furnished by each such person.
- (4) Every petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908), for the verification of pleadings.
- (5) Every annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

[The Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985 are appended to the Rules of Procedure and Conduct of Business in Lok Sabha (Seventeenth Edition) (Appendix II).]

[#] 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.)