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Refusal of Rajasthan Speaker's Plea by Supreme Court

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Why in News

Recently, the **Supreme Court** (SC) has **refused Rajasthan Assembly Speaker's** plea to stop the **State's High Court** from deciding the **validity** of the **anti-defection** notices.

Earlier, the Speaker had issued notice to the 19 dissident Congress MLAs of the ruling Party on the ground of plotting conspiracy to bring down the government.

Key Points

- **Background:**

The **19 rebel MLAs of Rajasthan's ruling party (Congress) have filed a petition** before the High Court challenging the disqualification notices issued to them by the Assembly Speaker under Anti Defection Law.

- **High Court's Stand:**

- The High Court directed the **speaker** to defer action on the disqualification notices by stating that he cannot decide the matter.
- It also directed him to extend the time to file replies to disqualification notices.

- **Speaker's Argument:**
 - **Unconstitutional:** Seeking a stay on the High Court's direction, the speaker stated that **it is unconstitutional and in derogation of the powers of the Speaker** under the Constitution.
 - **Non Intervention of HC:** Giving the reference to the *Kihoto Hollohan versus Zachillu and Others, 1992* he argued that his decision is totally in the domain of the Speaker to decide on disqualification of members, and **no court can intervene** in between.
 - He also stated that HC has no jurisdiction to ask him to defer the proceedings.
 - The proceedings under the **Tenth Schedule** before the Speaker are proceedings of the Legislature and as such cannot be interfered with, **as envisaged under Article 212** which has been read with para 6(2) of the Tenth Schedule.
 - **Show Cause Notice:** He said he had only issued **show cause notices to the MLAs** on a complaint filed by the Congress chief.

Show cause notice means an order that requires a party to explain why a certain course of action should not be taken against it. If the party cannot convince or fails to appear, that course of action is taken.
 - The notice was an opportunity for the MLAs to explain their conduct.
- **Supreme Court's Argument:**
 - **Voice of Dissent:** SC has questioned about shutting down a legislator's "**voice of dissent**" with the threat of disqualification in a **democracy**.

It asked whether expressing dissent amounts to voluntarily giving up the party membership under **Paragraph 2(1)(a) of the Tenth Schedule of the Constitution** and inviting anti-defection proceedings.
 - **Speaker as a Tribunal:** It further stated that the Speaker is like a tribunal and he must not have acted with political intentions.

Disqualification under the Tenth Schedule

- The **Anti-Defection Law** was passed in **1985 through the 52nd amendment** to the Constitution. It added the Tenth Schedule to the Indian Constitution. The main intent of the law was to combat "the evil of political defections".
- According to it, a **member of a House belonging to any political party** becomes disqualified for being a member of the House, if:
 - He **voluntarily gives up** his membership of such political party; or
 - He **votes or abstains from voting** in such House contrary to any direction issued by his political party without obtaining prior permission of such party and such act has not been condoned by the party within 15 days.

Exceptions to the Disqualification on the Ground of Defection

- If a **member goes out of his party as a result of a merger** of the party with another party. A merger takes place when two-thirds of the members of the party have agreed to such a merger.
- If a member, after **being elected** as the presiding officer of the House, **voluntarily gives up the membership** of his party or rejoins it after he ceases to hold that office. This exemption has been provided in view of the dignity and impartiality of the office.

Powers of Speaker with regard to Anti-Defection Law

Any question **regarding disqualification** arising out of defection is to be decided by the presiding officer of the House.

Source: TH