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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION (L) NO. 5741 OF 2022

Janak N. Vyas .. Petitioner

Vs.

State of Maharashtra .. Respondent

WITH
PUBLIC INTEREST LITIGATION (L) NO. 6549 OF 2022

Girish Dattatraya Mahajan .. Petitioner

Vs.

State of Maharashtra .. Respondent

Mr. Subhash Jha a/w Mr. Hare Krishna Mishra i/by Mr. Vishal V. Acharya for petitioner in PILL/5741/2022.

Mr. Mahesh Jethmalani, Senior Advocate with Mr. Gunjan Mangala i/by Mr. Rupesh Lanjekar for petitioner in PILL/6549/2022.

Mr. Ashutosh A. Kumbhakoni, Advocate General with Mr. Akshay Shinde, "B" Panel Counsel and Ms. Jyoti Chavan, AGP for State.

CORAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.

DATE: MARCH 9, 2022

ORAL JUDGMENT:

1. These two writ petitions, invoking the Public Interest Litigation (hereafter 'PIL', for short) jurisdiction of this Court under Rule 4 (e) of the Bombay High Court Public Interest Litigation Rules, 2010 (hereafter "the PIL Rules", for short) raise common questions; hence, they are disposed of by this common judgment and order.

2. In PIL Petition (L) No. 5741 of 2022, instituted by Shri Janak N. Vyas (hereafter "Vyas", for short,) the following relief is claimed:

> "(a) Issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction declaring the notification bearing No. 1/D-9/2021 dated 23.12.2021 for amending Rule 6 and 7 of the Maharashtra Legislative Assembly Rules, 1960, as unconstitutional and illegal in the eyes of law;
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> (b) Issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing the State Government to not implement notification bearing No. 1/D-9/2021 dated 23.12.2021, as the same is unconstitutional and illegal in the eyes of law".

3. The facts leading to institution of PIL Petition (L) No. 5741 of 2022, in brief, are as follows:

(a) Vyas claims to be a public-spirited citizen. In November, 2019, the Maharashtra Vikas Aghadi (hereafter "MVA", for short), a coalition consisting of Shiv Sena, the Indian National Congress and the Nationalist Congress Party formed the Government in the State of Maharashtra. On December 2, 2019, Shri Nana Falgunrao Patole was elected as Speaker of the Maharashtra Legislative Assembly (hereafter "the Assembly", for short). On March 14, 2020, Shri Narhari Zirwal was elected as the Deputy Speaker of the Assembly. On February 5, 2021, Shri Nana Falgunrao Patole resigned from the office of the Speaker of the Assembly. Such office is lying vacant till date. By virtue of Rule 9 of the Maharashtra Legislative Assembly Rules, 1960 (hereafter "the MLA Rules", for short), Shri Narhari Zirwal, the Deputy Speaker, started discharging duties of the Speaker in the Assembly.

(b) A story appeared on July 16, 2021 in a media outlet, 'The Print'. It published an interview of a senior member from the ruling party expressing an apprehension that the Chief Minister is hesitant to hold an election for the Speaker's post through a secret ballot. The reason being that as there are certain disputes amongst the members of the Assembly from the ruling party, even

if a few members vote differently, it will show the Government in poor light and give fodder to the opposition. The tenor of the interview appears to be that with a secret ballot, it would not be possible to identify these members and hence the reluctance to elect the Speaker.

(c) The respondent (mentioned in the cause-title as the State of Maharashtra, through Secretary, Home Department, 2nd floor, Mantralaya) issued the impugned notification bearing No. 1/D-9/2021 dated December 23, 2021 amending Rules 6 and 7 of the MLA Rules, thereby changing the well-established and democratic procedure of election of the Speaker and Deputy Speaker of the Assembly. The procedure of secret ballot was changed to open voting by show of hands or voice vote and also that the date of election of the Speaker is now to be notified by the Governor on the recommendation of the Chief Minister. A comparative chart of Rules 6 and 7 prior to and post amendment, for convenience, is reproduced hereunder reading thus: -

Rules 6 & 7 (pre-amendment)		**Rules 6 & 7 (post-amendment)**
6.(1) When owing to a general election or for any other reason the office of Speaker is vacant or is about to fall vacant, the Governor shall fix a date for the holding of the election and the Secretary shall send to every member notice of the date so fixed. (2) At any time before noon on the day preceding the date so fixed, any member may nominate another member for election by delivering to the Secretary a nomination paper signed by himself as proposer and by a third member as seconder and stating - (a) the name of the member nominated and (b) that proposer has ascertained that such member is willing to serve as Speaker, if elected. (3) On the date fixed for election,		6. <u>Election of Speaker</u>: (1) When owing to a general election or for any other reason the office of Speaker is vacant or is about to fall vacant, the Governor shall fix a date for the holding of the election for electing the Speaker on the recommendation of the Chief Minister and the Secretary shall send to every member notice of the date so fixed. (2) At any time before noon on the day preceding the date so fixed, any member may nominate another member for electing the Speaker for election by delivering to the Secretary a nomination paper signed by himself as proposer and by a third member as seconder and stating-

the Deputy Speaker, the Chairman nominated under rule 8 or the person determined by the Assembly or appointed by the Governor under clause (1) of Article 180 of the Constitution, as the case may be, shall read out to the Assembly the names of the members who have been duly nominated together with those of their proposers and seconders, and, if only one member has been so nominated, shall declare that member to have been elected as the Speaker. If more than one member has been so nominated, the Assembly shall proceed to elect the Speaker by ballot. (4) For the purposes of sub-rule (3), a member shall not be deemed to have been duly nominated if he or his proposer or seconder has not, before the reading out of the names by the person presiding, taken oath or made the affirmation as member of the Assembly. (5) Where more than two candidates have been nominated and at the first ballot no candidate obtains more votes than the aggregate votes obtained by the other candidates, the candidate who has obtained the smallest number of votes shall be excluded from the election and balloting shall proceed, the candidate obtaining the smallest number of votes at each ballot being excluded from the election, until one candidate obtains more votes than the remaining candidate or than the aggregate votes of the remaining candidates, as the case may be. The candidate who obtains more votes than those obtained by the remaining candidate or than the aggregate votes obtained by the remaining candidates, as the case may be, shall be declared to have been elected as the Speaker. (6) Where at any ballot any two candidates obtain an equal number of votes and one of them has to be		(a) the name of the member nominated and (b) that proposer has ascertained that such member is willing to serve as Speaker, if elected. Provided that, a member shall not propose one's own name or second a motion proposing member's own name or propose or second more than one motion. (3) On the date fixed for election, the Deputy Speaker, the Chairman nominated under rule 8 or the person determined by the Assembly or appointed by the Governor under clause (1) of Article 180 of the Constitution, as the case may be, shall read out to the Assembly the names of the members who have been duly nominated together with those of their proposers and seconders, and, if only one member has been so nominated, shall declare that member to have been elected as the Speaker. If more than one member has been so nominated, the Assembly shall proceed to elect the Speaker by ballot. (a) A member, in whose name a motion stands on the list of business, may move or withdraw the motion when called upon to do so and such statement shall be confined to that effect. (b) The motions which have been moved and duly seconded shall be put one by one in the order in which they have been moved and decided if necessary, by division. If equal member of votes are casted during division, the Deputy Speaker, a person determined by Legislative Assembly or a person appointed under clause (1) of Article 180 of the Constitution of India shall have the right to Casting Vote.

excluded from the election under sub-rule (5), the question shall be decided by the person presiding by exercising his casting vote. (7) Where at any ballot any three or more candidates obtain an equal number of votes and one of them has to be excluded from the election under sub-rule (5), the determination, as between the candidates whose votes are equal, of the candidate who is to be excluded shall be by drawing of lots.	(c) If any motion is carried, the person presiding shall, without putting later motions, declare that the member, whose name is proposed in the motion which has been carried, has been elected as the 'Speaker'. (4) For the purposes of sub-rule (3), a member shall not be deemed to have been duly nominated if he or his proposer or seconder has not, before the reading out of the names by the person presiding, taken oath or made the affirmation as member of the Assembly.
Rule 7 When, owing to the existence of a vacancy in the office of Deputy Speaker, election of the Deputy Speaker is necessary, the Speaker shall fix a date for the holding of the election. The provisions of rule 6 shall, so far as may be, apply to such election.	**Rule 7** Selection of Deputy Speaker: When, owing to the existence of a vacancy in the office of Deputy Speaker election/selection of the Deputy Speaker is necessary, the Speaker shall fix a date for the selection. The provisions of rule 6 shall, so far as may be, apply to such election/selection.

4. On February 28, 2022, the PIL petition of Vyas was listed for admission. We heard Dr. Abhinav Chandrachud, learned counsel appearing on behalf of Vyas and Mr. Kumbhakoni, learned Advocate General for the respondent, when the following order came to be passed:

> "1. We have heard Mr. Kumbhakoni, learned Advocate General for the State of Maharashtra in support of the preliminary objection that this PIL petition is not maintainable. We have also heard Dr. Chandrachud, learned advocate for the petitioner in response to such objection.
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> 2. Before we proceed to hear the parties further on the preliminary objection to the maintainability of this PIL petition, we are inclined to invoke the power conferred by Rule 7A of the Bombay High Court Public Interest Litigation Rules, 2010. The PIL petitioner is directed to put in a security deposit of Rs. 2 lakh by Thursday next (3rd March 2022). If such deposit is made, the PIL petition shall be listed on Friday next (4th March 2022) at 12.00 noon. In default of such deposit, the PIL petition will stand dismissed without reference to the Bench."

5. The PIL petition of Vyas was next heard on March 4, 2022, when we passed the following order:

> "1. We are informed by Dr. Abhinav Chandrachud, learned advocate appearing on behalf of the petitioner, that in compliance with the order dated February 28, 2022, the petitioner has put in a security deposit of Rs.2,00,000/- (Rupees two lakh only).
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> 2. We have heard Mr. Ashutosh Kumbhakoni, learned Advocate General appearing on behalf of the respondent-State in support of the preliminary objection to the maintainability of the Public Interest Litigation (PIL), which challenges an amendment of the rules for choosing of a Speaker/Deputy Speaker of the Maharashtra Legislative Assembly notified on 23rd December, 2021.
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> 3. Dr. Abhinav Chandrachud is in the midst of his arguments. Due to paucity of time, hearing cannot progress today. We propose to hear him further on Tuesday next (March 8, 2022). The PIL petition be placed fairly high on board on that day."

6. Mr. Kumbhakoni in justification of the preliminary objection first submitted that although quashing of the notification dated December 23, 2021 is sought, the Principal Secretary, Maharashtra Legislative Assembly, who issued the same, is not impleaded as a respondent. Referring to paragraph 6 of the PIL petition, it is urged that Vyas is guilty of perjury. Secondly, he raised the ground of delay. It was contended that the impugned notification having been issued on December 23, 2021, institution of this PIL petition by Vyas on February 24, 2022 after the Chief Minister had requested the Governor to fix March 9, 2022 as the date for election of the Speaker must be held to have been belatedly filed for which there is no satisfactory explanation. Thirdly, he contended that Vyas, in his capacity as a member of the general public, has nothing to do with the election of the Speaker/Deputy Speaker. Fourthly, it is submitted that having regard to the powers and privileges of the Assembly, and as contemplated by Article 212 of the Constitution, the validity of any proceedings in the Legislature of a State shall not be called in

question on the ground of any alleged irregularity of procedure, much less by Vyas, who is not even a member of the Legislature of the State. Next, he submitted that the members of the general public have no role to play in choosing a Speaker/Deputy Speaker, which is the exclusive function of the Assembly under Article 178 of the Constitution; thus, no public interest would be served in granting the relief claimed.

7. Strong reliance was placed by Mr. Kumbhakoni on the decision of the Apex Court in the case of **Tehseen Poonawalla Vs. Union of India**[1] to contend that the hallmark of a public interest petition is that a citizen may approach the Court to ventilate the grievance of a person or class of persons who are unable to pursue their rights. In his submission, such is not the present case. He further submitted that the PIL petition of Vyas is only an attempt to settle political rivalries in the Court, and hence, should not be entertained. Much emphasis was placed on paragraphs 96 to 98 in **Tehseen Poonawalla** (supra).

8. In response to these preliminary objections, Dr. Chandrachud submitted thus:

(a) The writ petition at the behest of Vyas, in the nature of public interest, espousing an issue of great public importance, is maintainable.

(b) Article 212 of the Constitution does not preclude the constitutional Courts from examining whether rules enacted by the Legislature having the force of law is unconstitutional or illegal. Article 212 only prohibits an investigation into mere irregularities of the procedure. Reliance was placed on the following decisions of the Apex Court which are as under:

1 (2018) 6 SCC 72

(1) **Raja Ram Pal v. Hon'ble Speaker**[2] (Paragraphs 357, 360, 362, 366, 377, 384, 386);

(2) **Rojer Mathew v. South Indian Bank Ltd.**[3] (Paragraphs 97-99); and

(3) **Powers, Privileges and Immunities of State Legislatures**[4] In re (Paragraph 61).

(c) The impugned amendment to Rule 6(1) of the MLA Rules contravenes Article 163 of the Constitution, which requires that the Governor is to act on the aid and advice of the Council of Ministers and not the Chief Minister alone. Reference was made to Article 167 of the Constitution to contend that the Chief Minister merely communicates the decision of the Council of Ministers to the Governor. Thus, sans the aid and advice of the Council of Ministers, any rule conferring a power on the Chief Minister alone to recommend a date to the Governor for conducting the election of the Speaker will render the amended Rules 6 and 7 unconstitutional. Reliance was placed upon the following decisions of the Apex Court:

(i) **Pu Myllai Hlychho vs. State of Mizoram**[5] (Paragraphs 12-15); and

(ii) **Nabam Rebia & Bamang Felix vs. Deputy Speaker, Arunachal Pradesh Legislative Assembly**[6] (Paragraphs 151-155).

9. In the context of Constitutional convention in England, Dr. Chandrachud submitted that in England, the date for election of the Speaker is, in effect, fixed by the monarch in consultation with the Privy Council, and not the Prime Minister alone. To support this proposition, learned counsel invited our attention to the following materials:

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2 (2007) 3 SCC 184
3 (2020) 6 SCC 1
4 AIR 1965 SC 745
5 (2005) 2 SCC 92
6 (2016) 8 SCC 1

(i) **Sir David Lidderdale (ed), Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament**[7] (pages 259, 264, 265);

(ii) **Lord Hailsham of St. Marylebone (ed.), Halsbury's Laws of England**[8] (pages 430, 433); and

(iii) **"The Privy Council", House of Commons Library**[9]**.**

10. Dr. Chandrachud then submitted that the constitutional convention in India's Parliament now is that the Ministry of Parliamentary Affairs conveys the decision of the Government regarding the date for election of the Speaker to the President of India. According to him, the Prime Minister is no longer involved in the process. He placed reliance on the materials authored by Shri M. N. Kaul and S. L. Shakdher, Practice and Procedure of Parliament (Lok Sabha Secretariat, 2016), more particularly at page 100.

11. It was next urged by Dr. Chandrachud that in 18 other states in India, the rules of legislative procedure do not contemplate that the Chief Minister would alone have the right to advise the Governor regarding the date of the election of the Speaker of the house.

12. Certain questions touching upon the provisions of Chapters II and III of Part VI of the Constitution were posed to Dr. Chandrachud, which we shall indicate at a later part of this judgment. He was also called upon to deal with paragraphs 96 to 98 of the decision in **Tehseen Poonawalla** (supra). Since ready answers to such questions could not be provided and Dr. Chandrachud required some time to return better prepared, hearing could not progress on March 4, 2022. As indicated in our order of even date, we had fixed March 08, 2022 to further hear Dr. Chandrachud.

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7 London : Butterworths, 1976, 19th Edition.
8 London : Butterworths, 1997, 4th Edition.
9 Briefing Paper, 8th February, 2016, page 3.

13. On March 08, 2022, we were informed that Dr. Chandrachud is no longer appearing for Vyas and that Mr. Subhash Jha, learned counsel is now appearing on Vyas's behalf. We, therefore, heard Mr. Jha, appearing on behalf of Vyas. We place on record that neither did Mr. Jha adopt the submissions of Dr. Chandrachud, earlier representing Vyas, nor Mr. Jha relied on the decisions cited by Dr. Chandrachud; instead, submissions were advanced by Mr. Jha as if the PIL petition of Vyas was listed for the first time.

14. Mr. Jha went on to make the following submissions:

(a) The present PIL petition raises a concern of grave public interest. Each member of the Assembly represents the people of the State; hence, the members discharge functions of great public importance. Vyas, as a citizen, is therefore, directly affected if the Speaker/Deputy Speaker is elected/selected in violation of the Constitutional provisions and those of the MLA Rules. According to him, the amended rules are in "brazen violation" of the Constitution as well as the procedure prescribed by Rules 224 and 225 of the MLA Rules. He urged that the amendments amount to interfering with the Constitutional scheme, inasmuch as, absolute power is conferred only on one person, i.e., the Chief Minister to recommend who would be the Speaker. This, according to him, is against the mandate of Article 178 of the Constitution. He vehemently urged that the MLA Rules have been varied, amended and altered in violation of the Constitutional mandate. According to him, the amendment to Rule 6(1) has resulted in such a drastic change that a high constitutional functionary like the Governor is now expected to function on the basis of a decision taken by just one person, viz. the Chief Minister, without the members of the Assembly electing the Speaker. Referring to Rule 224 of the MVA Rules, it was contended that in the absence of the Speaker, who is

the ex-officio Chairman of the Rules Committee, the MVA Rules could not have been changed, altered or amended.

15. In support of his submission that Vyas has the requisite *locus standi* to maintain the PIL petition since a matter of grave public interest is involved, Mr. Jha relied upon the following decisions of the Supreme Court:

(i) **Kazi Lhendup Dorji Vs. Central Bureau of Investigation and Ors.**[10] **;**

(ii) **Guruvayoor Devaswom Managing Committee and Anr.**[11.] **; and**

(iii) **Ashish Shelar And Ors. Vs. Maharashtra Legislative Assembly and Anr.**[12].

and the following decisions of this Court:

(i) **Ratan Soli Luth Vs. State of Maharashtra and Anr.**[13]; and

(ii) **Nanasaheb Vasantrao Jadhav Vs. State of Maharashtra and Ors.**[14].

16. The connected PIL, being PIL Petition (L) No. 6549 of 2022, is instituted by Girish Dattatraya Mahajan (hereafter "Mahajan", for short). He is a member of the Assembly, elected from a constituency in Jalgaon district as appears from the cause-title. The pleaded case in Mahajan's PIL petition to a large extent resembles the case pleaded by Vyas in his PIL petition. Also, prayer (a) of Mahajan's PIL petition is word by word the same as in Vyas's PIL petition with the sole exception of the word "impugned" having been inserted before "Notification".

17. Mr. Kumbhakoni having vehemently objected to the conduct of Mahajan in instituting this PIL petition on March 3, 2022 in the

10 1994 Supp (2) SCC 116
11 (2003) 7 SCC 546
12 2022 SCC OnLine SC 105
13 2021 SCC OnLine Bom 1806
14 2022 SCC OnLine Bom 383

wake of expression of reservation by us on the question of maintainability of Vyas's PIL petition on a previous occasion, we made the following order on March 4, 2022 on Mahajan's PIL petition:

> "1. Mr. Ashutosh Kumbhakoni, learned Advocate General for the respondent-State has taken serious objection to the maintainability of this Public Interest Litigation (hereafter 'PIL' for short). According to him, the proceedings have been triggered because of the deliberations in open Court on February 28, 2022, when PIL Petition (L) No. 5741 of 2022 was being considered.
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> 2. We need not indicate at this stage the details of the multiple points of objection raised by Mr. Kumbhakoni; however, *prima facie*, we are inclined to the view that the approach made by the petitioner, a sitting member of the Maharashtra Legislative Assembly, on March 3, 2022, raises suspicion about his *bona fides*.
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> 3. We, therefore, call upon the petitioner to put in a security deposit of Rs. 10,00,000/- (Rupees ten lakh) by 12.00 noon of Monday (March 7, 2022).
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> 4. In the event the security deposit is put in, this PIL petition shall be listed on Tuesday (**March 8, 2022**) along with PIL Petition (L) No. 5741 of 2022."

18. Mahajan having made the requisite deposit of Rs.10 lakh, we proceeded to hear the PIL petition instituted by him today.

19. Mr. Mahesh Jethmalani, learned senior counsel appearing for Mahajan at the outset submitted that he would wish to point out certain facts which would demonstrate the legal *mala fides* that preceded the amendments in the MVA Rules. According to him, following the resignation of Shri Nana Falgunrao Patole from the office of the Speaker of the Assembly on February 5, 2021, the Chief Minister was requested by the Governor several times to fix a date for election of the Speaker but the Chief Minister failed to respond with the result that the vacancy in the office of the Speaker continued. Thereafter, the Assembly was scheduled to be held on July 5 & 6, 2021. As a result of disturbances between the members of the ruling party and the opposition, 12 members of

the Assembly from the opposition came to be suspended. Mahajan was one of them. The proceedings for amendment of the rules commenced from the next date, i.e., July 6, 2021, surreptitiously. These 12 suspended members, including Mahajan, presented proceedings before the Supreme Court challenging such suspension. During the period of Mahajan's suspension, a committee meeting was held for amending the rules some time on October 8, 2021. Though a member of the committee, Mahajan could not attend such meeting because of his suspension. The proceedings before the Supreme Court challenging the suspension culminated on January 28, 2022. The Supreme Court by its decision rendered in **Ashish Shelar** (supra) ruled in favour of the petitioners including Mahajan. The suspension was held to be unconstitutional.

20. Mr. Jethmalani submits that as a result of the illegal suspension, Mahajan was deprived of the opportunity to attend the proceedings for considering amendment of the MLA Rules; and because Mahajan was prevented from attending the Rules Committee meeting on account of his suspension, after the suspension is held unconstitutional, the decision taken by the Rules Committee proposing amendment in the MVA Rules must be declared void, consequently rendering the impugned notification a nullity. Placing reliance on the decision of the Supreme Court in the case of **Ashish Shelar** (supra), he further contends that rationality of the amended rules can be tested, both on the ground of extent of power in the Legislature and examination of how that power has been exercised. It is his submission that it is imperative for the Assembly to adhere to the procedure prescribed in the rules framed by it under Article 208 of the Constitution of India. Inviting our attention to paragraphs 37 to 46 in **Ashish Shelar** (supra), he further submits that law is well

settled that rules made to exercise the powers and privileges of the State Legislature constitute 'law' within the meaning of Article 13 of the Constitution; hence, any deviation from the procedure prescribed for amending the rules, is amenable to challenge by way of a writ petition under Article 226 of the Constitution of India. It is, therefore, his submission, that Mahajan being a member of the Assembly, this PIL petition at his behest is maintainable.

21. Mr. Jethmalani further submits that election of a Speaker can never be within the domain of the Chief Minister. By conferring a power on the Chief Minister to fix a date as per the amendment, the independent power of the Governor is replaced with that of the Chief Minister which militates against the mandate of the Constitutional provisions. Further, fixing of the date for election of Speaker is in the discretion of the Governor and, therefore, the Governor's role in such election has been whittled down by robbing the Governor of his discretionary powers. The impugned amendments, according to him, have been effected in ignorance of the law laid down in paragraph 346 of the decision in **Nabam Rebia** (supra). He urges that as a result of the amendment, the Governor is denuded of his power to fix the date and consequently the Chief Minister is conferred the power to recommend a date which subjects Mahajan, a member of the Assembly, to a substantial injury.

22. Mr. Jethmalani was at pains to point out that the amended rules, which provide for selection of a Deputy Speaker in the discretion of the Chief Minister, is in the teeth of Article 178 of the Constitution of India. It is also his submission that a Speaker/Deputy Speaker is not part of the executive and, therefore, the Chief Minister cannot have any role to play in the matter of election/selection of a Speaker/Deputy Speaker. That, in

effecting the impugned amendments, Rules 223 to 225 of the MLR Rules were violated was also the submission of Mr. Jethmalani. In the alternative, he submitted that in any case, the Chief Minister can only act in accordance with the aid and advice of his Council of Ministers and not independently as this would violate the Constitutional prescription.

23. Briefly responding to the submissions of learned counsel for the petitioners, learned Advocate General submitted that the petition filed by Mahajan is triggered because of the deliberations in open Court on February 28, 2022, when the PIL petition filed by Vyas was considered. He invited our attention to our order dated March 4, 2022. According to the learned Advocate General, it is only to wriggle out of the uncomfortable situation arising out of the queries made by this Court regarding maintainability of the PIL petition at the behest of Vyas, that Mahajan was set up to institute the subsequent PIL petition. To demonstrate the connection between the two PIL petitions and to strengthen his contention that Mahajan was set up to institute the subsequent PIL petition, learned Advocate General produced for our consideration a marked copy of the PIL petition instituted by Mahajan indicating those paragraphs which, according to endorsements contained therein are "exact replica" of the PIL petition instituted by Vyas.

24. For the sake of brevity, we refrain from reproducing the paragraphs in the subsequent PIL petition which Mr. Kumbhakoni has submitted today as the mirror reflection of the earlier PIL petition.

25. Having heard Mr. Kumbhakoni, Dr. Chandrachud followed by Mr. Jha for Vyas, and Mr. Jethmalani for Mahajan and bestowing due consideration to the arguments advanced by them, it is now

time for us to record our reasons in support of our ultimate conclusions.

26. Law is too well-settled to require any reference to an authority that while hearing a PIL, the Court acts as "*sentinel on the qui vive*" discharging its obligations as custodian of Constitutional morals and ethics. However, the red alert warning sounded by the Supreme Court can never be ignored. The Court must broadly be satisfied (a) about the credentials of the litigant approaching it, (b) of the *prima facie* correctness of the nature of information given by him, (c) that the litigant has been acting bona fide and has sufficient interest to maintain an action for redressal of the public wrong or injury; (d) that extent of breach of public duty alleged is of such a high degree that if unredressed, it would promote disrespect for the rule of law, (d) that the process of the Court is not being abused for gaining political advantage; and (e) that the forum is not being misused for oblique motives.

27. Having regard to the aforesaid tests and in view of the caution sounded by the Supreme Court in very many decisions, the conduct of the petitioner approaching the Court assumes relevance while considering a petition which is instituted in public interest. It is based on the guidance provided by such decisions that the conduct of the two petitioners needs to be examined.

28. Hearing of the PIL petition of Vyas was taken up on February 28, 2022 for the first time. Upon hearing the preliminary objections to the maintainability of the PIL petition raised by Mr. Kumbhakoni, we had expressed our mind that *prima facie* the PIL petition did not involve any public interest and also that Vyas, not being a member of the Legislative Assembly, had no right to question the amendments introduced in the MLA Rules vide notification dated December 23, 2021. The order passed on that date records that

Vyas would be required to put in a security deposit of Rs.2 lakh by March 3, 2022, in default whereof the PIL petition would stand dismissed without reference to the Bench. Such deposit was directed in exercise of the power conferred by Rule 7A of the PIL Rules. Ordinarily, such deposit by way of security is not ordered. It is ordered in exceptional situations when the Court, upon a preliminary hearing, either doubts the *bona fides* of the litigant or is of the tentative view that in the guise of public interest the litigant seeks to unleash a private vendetta or personal grouse or some other *mala fide* object. Requiring such a litigant to deposit security is intended to put him on guard of the Court's *prima facie* disinclination to treat him as a *bona fide* public interest litigant. If despite being put on guard the litigant chooses to continue the proceedings and ultimately fails to persuade the Court to take a view different from the one expressed at the inception, consequences are bound to follow.

29. In compliance with the order dated February 28, 2022, Vyas deposited Rs.2 lakh on March 3, 2022; but, there was one other significant development that did take place on March 3, 2022. On that date, Mahajan instituted his PIL petition and sought for urgent circulation for analogous hearing with Vyas's PIL petition. As has been noted above, contents of the PIL petition of Mahajan to a large extent is a mirror reflection of the PIL petition of Vyas. We were *prima facie* in agreement with Mr. Kumbhakoni that Mahajan instituted the PIL petition to ensure that even though the PIL petition of Vyas is dismissed on the ground of lack of *locus standi*, based on the oral observations made by the Court on the previous occasion, the PIL petition of Mahajan (as member of the Assembly) would survive and the Court urged to examine the contentions raised therein on merits. Hence, Mahajan was similarly required by the order dated March 4, 2022 to put in security but of a much

higher amount than Vyas, because of the multiple objections raised by Mr. Kumbhakoni which *prima facie* gave us reason to suspect his *bona fides*. Undeterred, Mahajan too deposited the security.

30. Be that as it may, on March 8, 2022, Mr. Jha appeared for Vyas and sought for permission to argue on his behalf. Permission, as prayed for, was granted, whereafter Mr. Jha was heard yesterday as well as today.

31. Reference to the progress of proceedings before this Court has been made to highlight the obstinacy of Vyas and Mahajan to pursue the causes, despite being put on guard. We would bear in mind such conduct, which is extremely relevant, while deciding these PIL petitions.

32. We start our discussion dealing with Mr. Kumbhakoni's first submission of the subsequent PIL petition of Mahajan being a "cut and paste" version of Vyas's PIL petition instituted earlier in point of time and, hence, contains even the same error as to non-impleadment of the Principal Secretary, Maharashtra Legislative Assembly. This, according to him, renders both the PIL petitions vulnerable to a challenge on the ground of complete lack of *bona fides*. Together with this, he has also objected to the maintainability by submitting that the Principal Secretary, Maharashtra Legislative Assembly having issued the impugned notification dated December 23, 2021 and not being arrayed as a respondent, relief of quashing of such notification without making such Principal Secretary a respondent and hearing him ought not to be granted. Since the PIL petitions suffer from the defect of non-joinder of a necessary party, Mr. Kumbhakoni's submission has been that the same should fail on this primary ground.

33. We have compared the cause-title of both the PIL petitions. Suffice it to observe that even in the cause-title of Mahajan's PIL

petition, the respondent is described in the same manner as described in Vyas's PIL petition. Pertinently, though the challenge is to the notification issued by the Maharashtra Legislative Secretariat under the signature of the Principal Secretary, Maharashtra Legislative Assembly, the sole respondent in both the PIL petitions is described as the State of Maharashtra, through Secretary, Home Department.

34. Having heard Mr. Kumbhakoni raise these objections, Dr. Chandrachud and Mr. Jethmalani appearing for Vyas and Mahajan, respectively, had prayed for leave to amend the PIL petitions orally on March 4, 2022. We orally declined leave noticing the casual manner in which the PIL petitions were drafted. The extent of casualness could be discerned not only from the cause-title but also from paragraph 6 of Vyas's PIL petition, which is to the effect that the respondent no.1 is the State of Maharashtra through its Secretary, who has issued the impugned notification. Mr. Kumbhakoni went to the extent of urging us to draw up proceedings for perjury. Although, we are inclined to the view that the statement in paragraph 6 of the PIL petition was not made by Vyas for achieving any wrongful gain and, therefore, recourse to section 340, Code of Criminal Procedure, is unwarranted on facts and in the circumstances, we have no hesitation in holding that the casual approach of Vyas in first instituting the PIL petition and thereafter agreeing to continue with the present proceedings upon deposit of Rs.2 lakh as security, evinces a mind set to continue to abuse the process of Court as well as of law despite being put on guard that the Court was *prima facie* against him. We have, therefore, sufficient reason to uphold the contention of Mr. Kumbhakoni that the PIL petition of Vyas should fail on the ground of non-joinder of a necessary party.

35. Since the PIL petition of Mahajan contains several paragraphs bodily lifted from Vyas's PIL petition, paragraph 6 of Mahajan's petition is not too differently worded. Mahajan too referred to the Secretary, Home Department having issued the impugned notification, which is a clear misrepresentation not based on ulterior motive but obviously the result of careless adoption of "cut and paste" option.

36. The Principal Secretary, Maharashtra Legislative Assembly not having been arrayed as a respondent, we would have been perfectly justified in refusing to examine the legality and validity of the impugned notification in the absence of such Secretary; however, we are conscious that these proceedings arise out of PIL petitions and the Courts ought not to be too technical in its approach. We, therefore, proceed to examine the second objection of Mr. Kumbhakoni.

37. That the PIL petitions are not instituted in public interest but are clearly motivated by political considerations for which they are liable to be dismissed at the threshold, is Mr. Kumbhakoni's next submission. In support thereof, Mr. Kumbhakoni has relied on the decision in **Tehseen Poonawalla** (supra). Since paragraphs 96 to 98 thereof have been heavily relied upon, we reproduce the same hereinbelow: -

> "96. Public Interest Litigation has developed as a powerful tool to espouse the cause of the marginalised and oppressed. Indeed, that was the foundation on which public interest jurisdiction was judicially recognised in situations such as those in *Bandhua Mukti Morcha v Union of India [(1984) 3 SCC 161 : 1984 SCC (L&S) 389]*. Persons who were unable to seek access to the judicial process by reason of their poverty, ignorance or illiteracy are faced with a deprivation of fundamental human rights. Bonded labour and under trials (among others) belong to that category. The hallmark of a public interest petition is that a citizen may approach the court to ventilate the grievance of a person or class of persons who are unable to pursue their rights. Public interest litigation has been entertained by relaxing the rules of standing.

The essential aspect of the procedure is that the person who moves the court has no personal interest in the outcome of the proceedings apart from a general standing as a citizen before the court. This ensures the objectivity of those who pursue the grievance before the court. Environmental jurisprudence has developed around the rubric of public interest petitions. Environmental concerns affect the present generation and the future. Principles such as the polluter pays and the public trust doctrine have evolved during the adjudication of public interest petitions. Over time, public interest litigation has become a powerful instrument to preserve the rule of law and to ensure the accountability of and transparency within structures of governance. Public interest litigation is in that sense a valuable instrument and jurisdictional tool to promote structural due process.

97. Yet over time, it has been realised that this jurisdiction is capable of being and has been brazenly mis-utilised by persons with a personal agenda. At one end of that spectrum are those cases where public interest petitions are motivated by a desire to seek publicity. At the other end of the spectrum are petitions which have been instituted at the behest of business or political rivals to settle scores behind the facade of a public interest litigation. The true face of the litigant behind the façade is seldom unravelled. These concerns are indeed reflected in the judgment of this court in *State of Uttaranchal v Balwant Singh Chaufal [(2010) 3 SCC 402 : (2010) 2 SCC (Cri) 81 : (2010) 1 SCC (L&S) 807]*. Underlining these concerns, this court held thus: (SCC p. 453, para 143)

> '143. Unfortunately, of late, it has been noticed that such an important jurisdiction which has been carefully carved out, created and nurtured with great care and caution by the courts, is being blatantly abused by filing some petitions with oblique motives. We think time has come when genuine and bona fide public interest litigation must be encouraged whereas frivolous public interest litigation should be discouraged. In our considered opinion, we have to protect and preserve this important jurisdiction in the larger interest of the people of this country but we must take effective steps to prevent and cure its abuse on the basis of monetary and non-monetary directions by the courts.'

98. The misuse of public interest litigation is a serious matter of concern for the judicial process. Both this court and the High Courts are flooded with litigation and are burdened by arrears. Frivolous or motivated petitions, ostensibly invoking the public interest detract from the time and attention which courts must devote to genuine causes. This court has a long list of pending cases where the personal liberty of citizens is involved. Those who await trial or the resolution of appeals against orders of conviction

> have a legitimate expectation of early justice. It is a travesty of justice for the resources of the legal system to be consumed by an avalanche of misdirected petitions purportedly filed in the public interest which, upon due scrutiny, are found to promote a personal, business or political agenda. This has spawned an industry of vested interests in litigation. There is a grave danger that if this state of affairs is allowed to continue, it would seriously denude the efficacy of the judicial system by detracting from the ability of the court to devote its time and resources to cases which legitimately require attention. Worse still, such petitions pose a grave danger to the credibility of the judicial process. This has the propensity of endangering the credibility of other institutions and undermining public faith in democracy and the rule of law. This will happen when the agency of the court is utilised to settle extra-judicial scores. Business rivalries have to be resolved in a competitive market for goods and services. Political rivalries have to be resolved in the great hall of democracy when the electorate votes its representatives in and out of office. Courts resolve disputes about legal rights and entitlements. Courts protect the rule of law. There is a danger that the judicial process will be reduced to a charade, if disputes beyond the ken of legal parameters occupy the judicial space."

38. Although Mr. Jethmalani and Mr. Jha did not at all attempt to distinguish such decision, the aforesaid objection of Mr. Kumbhakoni has been sought to be countered by both of them by contending that the impugned amendments in the MLA Rules would have the effect of abrogating Constitutional provisions and that democracy would be in peril if such amendments were not interdicted. It would not be inapt to quote here a sentence from paragraph 2 of the PIL petition of Vyas. It reads:

> "Further, the petitioner most respectfully states that implementation of the Impugned Notification will lead to death of democracy by giving arbitrary powers to the Chief Minister regarding the appointment of the Speaker in the assembly of Respondent No. 1 State".

39. On March 8, 2022, when Mr. Jha commenced his arguments, he had placed before us two decisions of a common coordinate Bench of this Court of which one of us (Chief Justice) was a member, viz. **Ratan Soli Luth** (supra). The decision was rendered while disposing of a PIL petition seeking direction on the Governor,

Maharashtra to accept the recommendation made for nomination of 12 members to the Maharashtra Legislative Council. Despite months having been passed since the recommendation was made, the Governor in his wisdom had not acted on it. The same submission of democracy being at peril was advanced. Though the Governor is yet to accept the recommendation for nomination, we can take judicial notice of democracy in the State being vibrant. India is known to be the largest democracy in the world and our democratic principles and values are not so brittle so as to crumble only because of an amendment made in the MVA Rules. We, therefore, find no reason to uphold the mere statement that giving effect to the impugned notification would result in "death of democracy" unless something very substantial is shown to us which would have the effect of eroding the very essence of a democratic State.

40. Mr. Jha had also relied on the decision in **Nanasaheb Jadhav** (supra) with the expectation that certain observations made therein as regards *locus standi* would support the cause espoused by Vyas. Little did Mr. Jha realize that the decision in **Nanasaheb Jadhav** (supra) in its paragraph 7 had referred to the decision in **Dattaraj Nathuji Thaware vs. State of Maharashtra**[15] wherein caution in very strong words was sounded by the Supreme Court as regards entertainment of PIL petitions in paragraphs 4, 11 and 12 thereof, which read as follows:

> "4. *** Public interest litigation which has now come to occupy an important field in the administration of law should not be 'publicity interest litigation' or 'private interest litigation' or 'politics interest litigation' or the latest trend 'paise income litigation'. … If not properly regulated and abuse averted, it becomes also a tool in unscrupulous hands to release vendetta and wreak vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of a knight errant borne out of wishful thinking. It cannot also be invoked by a person or a body

[15] (2005) 1 SCC 590

of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration.

***

11. It is depressing to note that on account of such trumpery proceedings initiated before the courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing the gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters — government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorised collection of tax amounts are locked up, detenus expecting their release from detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the courts and having their grievances redressed, busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity, break the queue muffling their faces by wearing the mask of public interest litigation and get into the courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the courts never moves, which piquant situation creates frustration in the minds of genuine litigants and resultantly they lose faith in the administration of our judicial system.

12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest, an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not be

> publicity-oriented or founded on personal vendetta. As indicated above, court must be careful to see that a body of persons or member of the public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well as to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs."

41. Mr. Jha in support of the contention that Vyas does have the *locus standi* to institute a PIL petition and that the proceedings initiated by him are intended to sub-serve public interest relied on the decisions of the Supreme Court in **Kazi Lhendup Dorji** (supra) and **Guruvayoor Devaswom Managing Committee** (supra), which we are inclined to hold does not assist Vyas for the reasons that follow.

42. We have found on reading the decision in **Tehseen Poonawalla** (supra) that it refers to an earlier decision in **Balwant Singh Chaufal** (supra). In paragraph 181 of the decision, the Supreme Court laid down the following guidelines:

> "181. We have carefully considered the facts of the present case. We have also examined the law declared by this court and other courts in a number of judgments. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions: -
>
> (1) The courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.
>
> (2) Instead of every individual judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within

three months. The Registrar General of each High Court is directed to ensure that a copy of the Rules prepared by the High Court is sent to the Secretary General of this court immediately thereafter.

(3) The courts should prima facie verify the credentials of the petitioner before entertaining a P.I.L.

(4) The court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The court should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The court should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations".

43. On a conjoint reading of the decisions in **Dattaraj Thaware** (supra), **Balwant Singh Chaufal** (supra) and **Tehseen Poonawalla** (supra), we find a common thread running through the same, i.e., a PIL petition which is aimed at redressal of genuine public harm or public injury or one that is aimed to deliver social justice to the citizens or to wipe out violation of Fundamental Rights and genuine infraction of statutory provisions must only be entertained; also, that a PIL petition at the instance of busybodies, meddlesome interlopers, wayfarers or officious intervener having absolutely no public interest except for personal gain or private profit, either of themselves or as a proxy of others, or for any other extraneous motivation or for glare of publicity or to settle scores behind the facade of a public interest litigation must be strongly discouraged. Although Mr. Jha has been vociferous in his submissions that the impugned amendments are in "brazen violation" of the provisions of the Constitution and the MLA Rules,

not a single infraction of any such provision has been demonstrated with reference to the pleadings.

44. Mr. Jethmalani, appearing for Mahajan, however, intended to tread a different path by submitting that the Chief Minister had not acted on the request of the Governor to have the election of the Speaker conducted; further that the impugned amendments of the MLA Rules were effected at a point of time when Mahajan being under suspension, since held to be illegal and set aside by the Supreme Court in **Ashish Shelar** (supra), the amendments were passed by a slender margin of one vote amongst the members of the Rules Committee which participated in the proceedings and if Mahajan were to participate, the result could have been otherwise; and also that, the recommendation of the Rules Committee had not been placed on the table of the Assembly as required by Rule 225. After facing a barrage of questions from the Court, Mr. Jethmalani eventually had to concede that none of these points argued by him could be traced to the pleaded case of Mahajan. Also, very fairly, he did ultimately concede that despite the suspension of Mahajan being declared to be a nullity by the Supreme Court and despite Mahajan being unable to participate in the proceedings for amendment as a member of the Rules Committee, the clock cannot be turned back and the position reversed by Mahajan being allowed to vote; and that the *de facto* doctrine would save the proceedings of the Rules Committee from being declared invalid.

45. It is indeed true that strict rules of pleadings may not be insisted upon in PIL petitions; but the broad and fundamental principles that regulate the issuance of writs have to be borne in mind lest the exercise of jurisdiction becomes rudderless and unguided. Judicial discretion must follow set legal principles. The cardinal principle is this. What the Court intends by enforcing the rules of pleading is to narrow down the controversy between the

parties as well as to give notice to the parties that a particular point raised by a party to the proceedings in a pleading could be raised by him and that the other party must be ready to meet such point. In other words, the parties should not be taken by surprise in the midst of the proceedings. It admits of no doubt, as contended by Mr. Jha, that a PIL petition may be registered even on the basis of a letter/complaint in which case the rules of strict pleadings may not apply; however, in a case of the present nature where "brazen violation" is complained of by the petitioners, it is, indeed, necessary for us to insist upon pleadings as regards the exact nature of violation alleged and not vague allegations that the Rules have been violated. On more occasions than one, Mr. Jha was called upon to demonstrate from the four corners of the pleadings what the exact nature of violation of either the Constitution or the MLA Rules is, to which the answer was the same, i.e., that there has been an exhaustive enumeration of the violations. The pleadings in the two PIL petitions are indeed deficient as regards the violations alleged in course of hearing. There being no pleading in respect of the exact nature of violation of either the Constitution or the MLA Rules, except a general statement that the MLA Rules have been violated, we are left with no other option but to hold that these PIL petitions must also fail for lack of relevant pleadings.

46. The caution sounded by the Supreme Court that proceedings initiated invoking the public interest jurisdiction of the High Court should not be "politics interest litigation" and that political rivalries have to be resolved elsewhere other than the Courts must be the determining principle for holding whether these PIL petitions involve genuine public interest or whether, at all, Vyas or Mahajan satisfies the test of *uberrima fides,* which is the first requirement for the maintainability of a public interest litigation.

47. On a conspectus of the facts and circumstances narrated above, we unhesitatingly hold that neither Vyas nor Mahajan has passed the test of *uberrima fides*. We, therefore, uphold the contention of Mr. Kumbhakoni that these PIL petitions are not intended to secure public interest. We are of the clear view that political considerations have driven both Vyas and Mahajan to institute these proceedings, which are more in the nature of "politically induced litigation" rather than "public interest litigation". The Constitution is essentially a political document, and the values which the Constitution as a political document incorporates provide the foundation for understanding its text. If issues arise therefrom, which could be categorized as genuine political issues involving interpretation of the Constitution, it could certainly be agitated in a PIL petition provided the same are intended for the larger interest of the public; but not petitions of the present nature which serve only one purpose, i.e., clog the stream of justice by preventing the Court from considering more deserving cases which are made to await their turn for long periods of time.

48. We could have ended our judgment here; however, certain arguments having been advanced by both Mr. Jethmalani and Mr. Jha on the merits of the impugned amendments brought in the MLA Rules, we propose to briefly record our opinion in regard thereto.

49. Although both Mr. Jethmalani and Mr. Jha have in unison taken exception to the amendments by branding them as arbitrary, illegal and unconstitutional and in violation of Rules 223 to 225 of the MLA Rules, they have utterly failed in their effort to demonstrate any infraction, much less genuine infraction as observed above.

50. It was contended that the Rules Committee in terms of Rule 224 of the MVA Rules required the Speaker to be the ex-officio

Chairman. Since Shri Nana Falgunrao Patole had resigned and there was none holding the office of Speaker, the Rules Committee suffered from an illegality *qua* its constitution. Such a contention of violation of Rule 224 alleged in the PIL petition, stands discredited by reason of the admission in paragraphs 7(e) of both the PIL petitions that Shri Narhari Zirwal has been discharging the duties of the Speaker. This is indeed permissible in terms of Article 180 of the Constitution and Rule 9 of the MVA Rules. The basic research that was required to allege infraction of Constitutional or other provisions of law does not appear to have been undertaken. Oblivious of the provisions of Article 180 of the Constitution and Rule 9 of the MVA Rules in pursuance whereof Shri Narhari Zirwal has been acting as the Speaker, wild and reckless allegations have been made. We, therefore, hold this contention to be thoroughly lacking merit.

51. Next, it was contended that the Speaker has to be a member who can maintain neutrality in the Assembly; however, if the Chief Minister were to choose the Speaker, the recommendation to the Governor would be in contravention of the Constitutional scheme. We feel that this contention too merits outright rejection. Rule 6(1), in its new avatar, does not make any significant change in relation to election of the Speaker; further, the other sub-rules are clear how the Speaker is to be elected. Choosing or selection would obviously be ascertaining which member has garnered the maximum votes. The language of amended Rules 6 and 7 are clear and admits of no ambiguity. Further, since Article 178, as distinguished from Article 171(4), does not refer to election but says that the members shall "choose" a Speaker from among themselves, there is no warrant to uphold the contention that it is only through a secret ballot that the Speaker should be elected. We also hold that choosing by show of hands or voice vote does not

offend any provision of the Constitution. For similar reasons, we find no infirmity in selecting a Deputy Speaker other than by way of secret ballot.

52. There is an additional ground on merits to refuse any interdiction. According to Mr. Jethmalani and Mr. Jha, democracy is in peril because by reason of the amendments introduced in the MLA Rules, there would be no election of the Speaker and that the Governor would have no option but to appoint a Speaker by acting on the recommendation of the Chief Minister. It is, indeed, unfortunate that Mahajan, himself being a member of the Legislative Assembly, has either not read the amendments or even after reading the amendments has feigned ignorance of the purport and tenor thereof. Fixing of a date of election and the election itself are not one and the same. The amendment introduced in Rule 6(1) makes it clear in no uncertain terms that the Chief Minister's recommendation is only with regard to the proposed date for election and not a recommendation with regard to the particular member of the Assembly who, according to the Chief Minister, has to be appointed as the Speaker. The procedure for election of the Speaker is charted out in Rules 6(2), 6(3) and 6(4). Since Article 178 of the Constitution refers to choosing of a member from amongst members of the Assembly to be the Speaker and the Deputy Speaker, we do not see any reason to hold that the amendments introduced in the various sub-rules of Rule 6 would have the effect of offending the Constitutional provision in Article 178 or even inflicting a death blow to democracy.

53. Mr. Jha relied on the decisions in **Kazi Lhendup Dorji** (supra) and **Guruvayoor Devaswom Managing Committee** (supra). In the former case, investigation by the Central Bureau of Investigation in respect of allegations against a Chief Minister, on the complaint of a former Chief Minister, was sought to be scuttled

by withdrawing the requisite consent under the Delhi Police Establishment Act, 1946. In the latter case, mismanagement of a public trust was carried to the Supreme Court. The law laid down in these two decisions cannot be doubted but we have failed to comprehend the materiality thereof to the facts at hand. Such decisions, therefore, do not advance the cause of the petitioners.

54. Although Mr. Jha, after taking over from Dr. Chandrachud did not adopt what he had argued earlier, we have considered it appropriate not to discard the submissions advanced by him altogether but propose to deal with the same hereafter in the interest of justice. In our view, the decision in **Nabam Rebia** (supra) provides useful guidance for not accepting the submissions so advanced.

55. It was contended by Dr. Chandrachud that the Governor has to act on the aid and advice of the Council of Ministers with the Chief Minister at the head and not on the sole advice of the Chief Minister. True it is, Article 163(1) does support such contention. However, we had referred to Dr. Chandrachud Article 164 of the Constitution which at least conceives of a situation where the Governor acts on the sole advice of the Chief Minister, i.e., when the Council of Ministers are appointed. In addition, we had queried as to whether what is ordained by Article 163, which is part of Chapter II titled "The Executive", would *ex proprio vigore* apply to Chapter III titled "The Legislature", both of which are part of Part VI of the Constitution but providing separate provisions for separate organs of the State, more particularly when a Speaker or a Deputy Speaker, according to the Constitution, is an officer of the Legislature and Article 178 in terms does not refer to the Governor at all, whereas what the Governor is empowered to do is specifically enshrined in some of the Articles forming part of Chapter III, namely, Articles 174 to 176, 200 to 202, etc.

56. Since Dr. Chandrachud did not appear after March 4, 2022 in course of further hearings and neither Mr. Jethmalani nor Mr. Jha addressed us on the aforesaid points, we did not have the benefit of having the answers provided by them. We, therefore, had to conduct our own research. Apart from the situation envisaged in Article 164(1) regarding appointment of the Council of Ministers on the advice of the Chief Minister, it is indeed the requirement of the Constitution that the Governor in the exercise of his functions has to act on the aid and advice of the Council of Ministers unless of course a situation arises where the Governor can act in his discretion. What are these situations? The answer is to be found in the several sub-paragraphs of paragraph 155 of the decision in **Nabam Rebia** (supra). However, in paragraph 147 of the same decision, a discussion is found in respect of Articles 178 to 187 which deal with the officers of the State Legislature, including the Speaker and the Deputy Speaker, as well as, the Secretariat of the State Legislature. While holding that in neither of the above Articles the Governor has any assigned role, the Court concluded paragraph 147 by observing that "*(A)ll in all, it is apparent that the Governor is not assigned any significant role even in the legislative functioning of the State*" (emphasis ours). Although in terms of Article 168 of the Constitution a Legislature of the State shall consist of the Governor, the above observations in **Nabam Rebia** (supra) sufficiently explain what would be the role of the Governor in legislative functioning under Chapter III. Since we are not concerned with the provisions of Chapter IV of Part VI of the Constitution, any discussion in that regard is unnecessary. Significantly, law having been declared by the Supreme Court that the Governor has no significant role in respect of Articles 178 to 187, the hue and cry raised by the petitioners of democracy being

in peril by reason of the amendment in Rules 6 and 7 of the MVA Rules which, according to them, denudes the Governor of fixing the date of election/selection do not appear to have any substance. Although it has been contended by Mr. Jethmalani that the Chief Minister in terms of the Constitutional scheme cannot make any recommendation to the Governor for fixing the date of election and that the recommendation has to be made by the Council of Ministers, we have examined the contents of the two PIL petitions and observe that there is no pleading in any of them that the recommendation made by the Chief Minister to the Governor for fixing March 9, 2022 as the date for holding election of the Speaker is a recommendation made by him in his capacity as the Chief Minister and is not based on the collective decision of the Council of Ministers. There is also no reason to infer on facts and in the circumstances that the recommendation of the Chief Minister does not have the support of the Council of Ministers. Rule 6(1), as amended, if read with Article 168, leaves no manner of doubt that neither is any Constitutional provision offended nor can it be said with any degree of conviction that the death knell of democracy has been sounded with the amendments in Rules 6 and 7.

57. Dr. Chandrachud was heard to submit that in respect of 18 States of India, any provision like amended Rule 6(1) is not to be found in their respective Legislative Assembly Rules of Procedure. Nothing turns on it. According to Article 1 of the Constitution, India is a "Union of States", which means a federation of States. Each Legislative Assembly of the States is independent and can amend their Rules of Procedure, framed under Article 208, subject to the known limitations. There is no law that requires Rules of Procedure of all Legislative assemblies would be the same. There is nothing wrong in the Assembly in this State making amendments in its Rules of Procedure consistent with the provisions of the

Constitution. That apart, 10 other States having different procedures is sufficient indication of the nation's diversity in framing rules that are appropriate for each individual region.

58. In such view of the matter, even the submissions made by Dr. Chandrachud have little merit.

59. We place it on record that since we have not declined interference resting our conclusion on interpretation of Article 212 of the Constitution, we have refrained from applying the law laid down in the decisions in **Raja Ram Pal** (supra) and **Ashish Shelar** (supra).

60. Finally, paragraph 354 of the decision in **Nabam Rebia** (supra) requires consideration. It is part of the concurring opinion of Justice M. B. Lokur (as His Lordship then was). The observations therein are based on the Rules of Procedure of Arunachal Pradesh. We do not consider the observations in the said paragraph to be applicable here, particularly in view of the leading opinion of Justice J.S. Khehar (as His Lordship then was) captured in paragraph 147. Also, whether or not it is within the discretion of the Governor to fix a date for conducting of election for the Speaker has to be answered bearing in mind the leading opinion in paragraph 155. Our understanding of the guidelines in such paragraph do not persuade us to hold that calling for an election of the Speaker is within the discretion of the Governor.

61. For the reasons aforesaid, these two unmeritorious PIL petitions do not merit admission and are, accordingly, dismissed at the threshold. In view of what we propose to say in the concluding paragraph, we refrain from imposing costs.

62. Since precious judicial hours have been wasted by the two petitioners, the respective security deposits of Rs.2 lakh (made by Vyas) and Rs. 10 lakh (made by Mahajan) shall stand forfeited.

Such deposits shall be utilized for charitable purposes of providing better facilities and amenities to senior citizens residing in old age homes and destitute and orphan children residing in children homes and orphanages. The Charity Commissioner is directed to provide a list of three old age homes and three children homes/orphanages to the Registrar General of this Court, who shall thereafter prepare appropriate proposal for being placed before the Chief Justice on the administrative side to secure equal distribution of the aggregate security deposit of Rs.12 lakh among the six old age homes/orphanages/children homes.

(M. S. KARNIK, J.) **(CHIEF JUSTICE)**