



2026:CHC-OS:354-DB

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

Present: The Hon'ble Justice Shampa Sarkar
AND
The Hon'ble Justice Ajay Kumar Gupta

APOT/110/2026
IA NO: GA/1/2026

SOBHANDEB CHATTOPADHYAY
VS
HON'BLE SPEAKER, WEST BENGAL LEGISLATIVE ASSEMBLY AND ORS.

For the appellant	:Mr. Kalyan Kumar Bandopadhyay, Sr. Adv. Mr. Suman Sengupta. Adv. Mr. Anit Das, Adv. Ms. PramitiBandopadhyay, Adv. Mr. SirsanyaBandopadhyay, Adv. Mr. Rahul Kr. Singh, Adv.
For the respondent nos. 1 to 3	:Mr. BilwadalBhattacharyya Ld. AAG. Mr. Suryaneel Das, Ld. AGP Mr. Aditya Mondal, Adv.
For the respondent nos. 5 & 6	:Mr. JaydipKar, Sr. Adv. Mr. Piyush Biswas, Adv. Mr. Abhishek Baran Das, Adv.
For the respondent no. 7	:Mr. Arka Kumar Nag, Adv. Mr. SaifulAlam, Adv. Mr. Ashish Dutta, Adv. Mr. Aashutosh Bhattacharyya, Adv.
Hearing concluded on	: 17.07.2026
Judgment pronounced on	: 18.08.2026
Judgment delivered on	: 18.08.2026



Shampa Sarkar, J.:-

1. The appeal arises out of the order dated June 18, 2026, passed by the learned Single Judge in WPO No. 276 of 2026.
2. By the order impugned, His Lordship refused the interim relief prayed for by the appellant, and inter alia, declined to stay the operation of the order dated June 3, 2026, passed by the respondent No.1, the Hon'ble Speaker of the West Bengal Legislative Assembly. By the order dated June 3, 2026, the respondent No. 1 recognized the respondent No.5 as the Leader of the Opposition and the respondent No. 6 as the Chief Whip (CW) of the 18th West Bengal Legislative Assembly. The West Bengal Legislative Assembly election was held in the year 2026. The Bharatiya Janata Party (BJP), secured the highest number of seats by winning 207 seats out of the total 294 assembly constituencies. The BJP was invited by His Excellency, The Governor, to form the government in the State of West Bengal. The All India Trinamool Congress (AITC) won a total of 80 seats out of 294, thereby constituting the second-largest political party in the 18th West Bengal Legislative Assembly. According to the established convention and the statutory provisions, the AITC held the position of the principal opposition party as it possessed the greatest numerical strength amongst all the parties in opposition. Explanation 1 to Section 3 of the West Bengal Legislative Assembly (Members' Emoluments) Act, 1937 (hereinafter referred to as the said Act) provides that the Leader of the Opposition would be the member of the West Bengal Legislative



Assembly who, at any given time, acted as the leader in the state assembly of the political party which stood in opposition to the state government and which possessed the largest number of members among all parties sitting in the opposition within the legislative assembly.

3. Mr. Kalyan Bandopadhyay, learned senior advocate for the appellant, submitted that immediately upon the result being declared on May 4, 2026, steps were taken to facilitate a meeting of those elected members belonging to AITC at the AITC headquarters. The meeting was convened on May 6, 2026. The primary purpose of the meeting was to democratically deliberate and elect from amongst the party's legislators, the Leader of the Opposition, the Deputy Leader of the Opposition, and the Chief Whip.
4. On May 6, 2026, approximately 70 members from amongst the elected members (legislature party), including the appellant as well as the respondents 5 and 6, assembled at the party's headquarters and participated in the meeting. The meeting was presided over by Mr. Firhad Hakim. During the course of the meeting, Mr. Madan Mitra proposed the name of the appellant for the pivotal role of the Leader of the Opposition and none of the members present at the meeting, including the respondent nos. 5 and 6, raised any objections to the proposal. The case run by the appellant in the writ petition was that, after the said consensus was reached with regard to the Leader of the Opposition, the process of nominating party functionaries continued in an open and participative manner. All the members present in the



meeting on May 6, 2026, left it open to the chairperson of the AITC to select the leader of the opposition, the Deputy Leader of the Opposition, and the Chief Whip of the AITC. Another senior member of the party formally proposed the names of Smt. Asima Patra and Smt. Nayna Bandyopadhyay, to be designated as the Deputy Leader of the Opposition.

5. It was urged that, a prominent member of the party moved the proposal for appointment of Mr. Firhad Hakim as the Chief Whip of the AITC Legislature Party. Each of the nominations met with an unanimous approval of all the members present at the said meeting. The collective endorsement was neither qualified nor opposed by any of the legislators, including the respondent nos. 5 and 6. Pursuant to the decision arrived at in the meeting on May 6, 2026, the National General Secretary of AITC issued a formal communication by letter dated May 9, 2026 to the Hon'ble Speaker. According to the appellant, as per precedence, practice and convention of the West Bengal Legislative Assembly, the Speaker always recognized the Leader of the Opposition on the basis of the recommendation made by the political party which was in opposition. On May 15, 2026, after the election of the Speaker, the Chief Minister and the appellant, being the party's choice as the Leader of the Opposition escorted the Hon'ble Speaker to the chair and led the Hon'ble Speaker by holding his hand as per tradition. This very act of the appellant in ushering the Hon'ble Speaker to his chair along with the Chief Minister was adequate recognition by the Hon'ble Speaker that the appellant was accepted as



the Leader of the Opposition. In the welcome address, the Speaker recognized the appellant as the Leader of the Opposition.

6. It was specifically pleaded in the writ petition that, the unrevised record of the proceedings of the West Bengal Legislative Assembly, dated 15 May 2026, would stand testimony to such claim of the appellant. By a letter dated May 18, 2026, the respondent No.3, that is, the Principal Secretary of the West Bengal Legislative Assembly, requested the National General Secretary of the AITC to furnish the relevant minutes, resolutions of meetings of the Legislative Party of the AITC, along with the signature of the members of the AITC who attended the meeting for selection/nomination of the Leader of the Opposition, Chief Whip and Deputy Leaders of the Opposition.
7. Another meeting of the members of the West Bengal Legislative Assembly was convened on May 19, 2026, and the resolution dated May 6, 2026 was signed by the members. In a separate sheet, the attendance of the members was also recorded. The notice of the meeting dated May 19, 2026 was circulated via WhatsApp on May 16, 2026, and a reminder of the said notice was also sent on May 18, 2026. By a letter dated May 20, 2026, the National General Secretary duly furnished the relevant excerpts of the resolution book and the attendance sheet of the members who were present in the meeting dated May 6, 2026. The letter dated May 20, 2026, was duly acknowledged by the respondent No. 3 by a letter dated May 23, 2026. The National General Secretary was informed that the documents would be placed before the Speaker on May 25, 2026, for



consideration and necessary order. The respondent No. 3 also informed the General Secretary of the AITC that he would duly communicate the order of the respondent No. 1 in this regard.

8. According to Mr. Bandopadhyay, recommendation of the political party was sufficient for appointment of the appellant as the Leader of the Opposition, Smt. Asima Patra and Smt. Nayna Bandyopadhyay as the Deputy Leaders of the Opposition and Shri Firhad Hakim as the Chief Whip. Thus, the persistent inaction on the part of the respondent No. 1 in appointing the persons recommended by AITC as the Leader of the Opposition and the Chief Whip was unreasonable and a total disregard for the democratic process, the usual convention and the constitutional scheme.
9. The appellant filed an application under Section 6 of the Right to Information Act 2005 (RTI Act), before the respondent No. 3, and requested the respondent No.3 to furnish the procedure that had been followed for recognition of the Leader of the Opposition in the West Bengal Legislative Assembly in the years 2011, 2016, and 2021. The inaction of the respondent No. 3 in furnishing those information raised various doubts.
10. Mr. Bandopadhyay urged that, despite receiving the application under the RTI Act, the respondent No.3 did not furnish the requisite information. A reminder letter was also sent by the appellant.
11. Later, the appellant came to know that a complaint was lodged by two members of the Legislature Party of AITC, namely, the respondent No.5 and one, Sandipan Saha alleging that many of the



signatures in the resolution dated May 6, 2026, were forged. On the basis of such complaint, the respondent No. 3 was directed by the Speaker to file a complaint before police. Accordingly, on the basis of the complaint of the respondent No. 3, Hare Street Police Station Case No. 98 of 2026, under Section 318(4)/336(2)/336(3)/338/340(2)/61(2), of the Bharatiya Nyaya Sanhita, 2023 was registered on May 27, 2026.

12. Mr. Bandopadhyay submitted that the respondent No. 5 and Mr. Sandipan Saha were expelled from the AITC on June 1, 2026 for anti-party activities. A letter dated June 1, 2026, was also served upon the expelled MLAs via Whatsapp. By a letter dated June 1, 2026, the National General Secretary of the AITC informed the respondent No. 1 about the practices and norms followed for the purpose of recognition of the Leader of Opposition and the Chief Whip and requested the respondent No. 1 to recognize the appellant as the Leader of Opposition of the West Bengal Legislative Assembly. It has been alleged that two of the MLAs from AITC visited the office of the respondent No. 1 to serve the letter dated June 1, 2026, but the respondent No.1 refused to accept the said letter. Thereafter, one of those MLAs left the letter in the office of the respondent No. 1 and the entire process was videographed. In view of the refusal to accept the letter, the same was sent by the National General Secretary to the respondent No. 1 by email on June 1, 2026. According to Mr. Bandopadhyay, in a strange turn of events, the appellants came to learn from media reports that on June 3, 2026, a rebel group of the



MLAs of AITC led by the respondent No.5 submitted a representation to the respondent No. 1 with signatures of 58 MLAs. The respondent No.5 allegedly claimed to be the Leader of the Opposition on the strength of such support by other 58 members. The appellant came to learn that the respondent No. 1 had recognized the respondent No.5 as the Leader of the Opposition and the respondent No. 6 as the Chief Whip of the opposition respectively. The respondent No. 1 also allowed the respondent No.5 to use the chambers allotted for the Leader of the Opposition. Neither any formal notice with regard to the recognition of the respondent No. 5 had been uploaded on the website of the assembly, nor had the decision been published.

13. The specific contention of Mr. Bandopadhyay was that, despite the National General Secretary having communicated continuously on and from May 9, 2016, no information in this regard was sent either to the appellants or to the National General Secretary of AITC. The decision of the speaker was handed over in court, in the midst of hearing of the writ petition. The further contention of Mr. Bandopadhyay was that, the respondent No.1 violated constitutional morality and attempted to destroy the democratic practices by acting as per the dictates of the BJP. The respondent No.1 was required to act impartiality and with neutrality, but he acted in a politically motivated manner. The Speaker demonstrated undue haste in recognizing the claim of an alleged rebel faction and in accepting the decision of such faction. Such decision was taken in violation of principles of natural justice. The Speaker did not afford any



opportunity either to the appellant or to the National General Secretary before recognizing the rival group. The Speaker was bound to recognize the communication of the office bearers of a recognized political party and not act on the communication of those 58 legislators. By accepting the decision of the rival group, the Speaker had acted beyond his jurisdiction and had interfered with the democratic functioning of a political party. The Leader of the Opposition and the Chief Whip could only be selected by the political party and not by the legislature party. In support of such contention, Mr. Bandopadhyay relied on the decision of Hon'ble Supreme Court in ***Subhash Desai vs Principal Secretary, Governor of Maharashtra and Ors.*** reported in **(2024) 2 SCC 719**. According to learned senior Advocate, the Leader of the Opposition voices the will of the party members and decides the strategy for debates and discussions on the basis of the party's views and ideology. The 58 MLAs could not be treated as the political party. Party was much greater than the elected representatives.

14. According to Mr. Bandopadhyay, the respondent No.1, did not have any option or choice. He was bound to act on the basis of the communication of the National General Secretary of the AITC. The respondent No.1 was an expelled member. Although, the respondent No.1 took note of the order of expulsion of respondent No.5, he chose to justify why the order was bad in law. According to Mr. Bandopadhyay, the Speaker exceeded his jurisdiction in acting on the basis of the letter of the rival faction dated June 3, 2026, and as such,



the order of the speaker should be set aside on the ground of violation of the principles of natural justice, substantial illegality, malafide and unconstitutionality.

15. Mr. Bandopadhyay submitted that the learned Single Judge ought to have stayed the operation of the said order. His Lordship's interpretation of Explanation 1 and Explanation 2 of Section 3 of the West Bengal Legislative Assembly (Members' Emoluments) Act, 1937 was erroneous. His Lordship's finding that, as 58 out of 80 elected members displayed the greatest numerical strength of the AITC in the Assembly, the majority view had been accepted by the Speaker, was not legally tenable. Mr. Bandopadhyay further urged that, interim relief for stay of the operation of the order dated June 3, 2026, was denied on a misunderstanding that the persons having the majority support from amongst the elected members of the AITC (legislature party) should be recognized as the Leader of the Opposition and Chief Whip. While doing so, the learned Single Judge had conflated the concept of legislature party with political party. Such interpretation was patently illegal and erroneous and ran contrary to the entire constitutional scheme. It was urged that the learned Single Judge failed to appreciate that the legislature party was merely a subset of the political party which neither had any significant existence nor any identity to hold itself out to be the parent political party. He referred to the 10th Schedule of the Constitution of India to demonstrate the difference between a legislature party and a political party.



16. The umbilical cord between the legislators and the political party on whose ticket they were elected, could not be severed by any act of the Speaker. The decision of the learned Single Judge, if allowed to stand, would legitimize such a severance, thereby striking at the very root of party-based democracy.
17. According to Mr. Bandopadhyay, the learned Single Judge committed a grave error of law by holding that the Leader of the Opposition should be determined by the numerical strength within the legislature party, independent of the will of the political party. The Hon'ble Apex Court in the matter of **Subhash Desai (supra)** had held that, the Leader of the Opposition should be determined by the numerical strength within the political party.
18. According to Mr. Bandopadhyay, the learned Single Judge erred in holding that the balance of convenience and inconvenience, was not in favour of granting any injunction on the decision of Speaker. According to Mr. Bandopadhyay, individual interest could not override the constitutional mandate/scheme.
19. Mr. Jaydip Kar, learned senior Advocate appeared for the respondent Nos.5 and 6. Mr. Kar submitted that the writ petition was not maintainable. Judicial review of the decision of Speaker was prohibited under Article 212 of Constitution of India. The Speaker had the discretion to decide who would be the Leader of the Opposition. The Speaker had rightly decided on the numbers, inter alia, on the justification that the Leader of the Opposition should be in a position to hold the House. All democratic activities were governed by the



majority rule. 58 out of 80 elected legislators of the AITC had supported the respondent Nos. 5 and 6, as the Leader of the Opposition and the Chief Whip. The appellant would not be in a position to control the House and form a quorum. He would not have the command over the elected legislators, which would lead to a disorderly situation in the House. Moreover, in view of the rival faction emerging, the Speaker has no other alternative, but to go by the numbers and recognize the respondents Nos. 5 and 6 as the Leader of the Opposition and the Chief Whip. The decision of the majority of the legislators was honoured. The reference to the 'legislature party' and 'political party' in decision of **Subhash Desai (supra)** would not be applicable to the facts of this case, inasmuch as, the said view was rendered in reference to the anti-defection law. Applications for disqualification of members were pending when the matter was heard by the court. In the case in hand, there was neither any disqualification application pending nor any allegation for defection. Under such circumstances, the decision of **Subhash Desai (supra)** relied upon by Mr. Bandopadhyay would have no manner of application. The findings of the Hon'ble Apex Court with regard to the power of the Speaker to appoint the Leader of Opposition and the Chief Whip, could not have been taken into consideration by this court. He submitted that, recognition of the Leader of the Opposition and the Chief Whip by the Speaker, was a part of the proceedings of the state legislature. The matter related to conduct of business of the House. Neither the Constitution nor any statute had laid down the



procedure for appointment of Leader of the Opposition and the Chief Whip. In this case, the Speaker's decision was a possible view. Recognizing/appointing the respondent Nos. 5 and 6 as the Leader of Opposition and the Chief Whip, on the basis of number of supporters they had amongst the elected members, could not be treated to be patently illegal. The appellant evidently did not get the majority support from the legislators, and thus, he could never be the Leader of the Opposition in the House. The Speaker exercised discretionary power, which was beyond the scope of judicial review. Reliance was further placed to the decision of ***Kailash Nath Singh Yadav vs Speaker, Vidhan Sabha, Lucknow and another*** reported in **1992 SCC Online ALL 117**, in which the majority view had been upheld.

20. ***Aphali Pharmaceuticals Ltd. vs State of Maharashtra and Ors.*** reported in **(1989) 4 SCC 378**, was relied upon in support of contention that a schedule was a mere explanation to the enactment. The 10th Schedule should not be read in isolation to the constitutional provisions with regard to the power of the Speaker and the mode and manner of conducting the business of the House.
21. Further reliance was placed on the ***Union of India and another vs G. Ganayutham*** reported in **(1997) 7 SCC 463**, in support of the contention that, if the decision of the Speaker was fair, rational and reasonable, the decision was not subject to challenge.
22. The decision in ***State of M.P. and Ors. Vs M.V. Vyavsaya & Co.*** reported in **(1997) 1 SCC 156**, was relied upon in support of the contention that, when disputed questions were involved, the learned



writ court should refuse to pass an interim order, pending final adjudication. The respondents were yet to file their affidavits. This Bench should not interfere with the decision of the Speaker. Further reliance was placed on the decision of Bombay High Court in ***Databhau s/o Annasaheb Pathrikar vs State of Maharashtra and Ors.*** reported in **2007 SCC Online Bom 99**, in support of the contention that, the rule of majority was the cardinal principle governing all democratic institutions. The rule of majority was applied in this case as well. The decision of the Speaker was logical, as the respondent Nos. 5 and 6 garnered the support of majority of the elected members of the AITC, in the state legislative assembly.

23. According to Mr. Kar, the decision of the speaker was based on the records and as such, no personal hearing was necessary. The allegation of violation of the principles of natural justice did not have any basis.
24. Upon taking us through the pleadings in the writ Petition, Mr. Kar submitted that the case run by the appellant was that the political party had delegated the decision-making for recommending the names of the Leader of the Opposition and the Chief Whip, to the elected members of the legislative party. Thus, the decision of the rival group was taken as per the delegation by the political party.
25. It was not the case of the appellant that the political party had taken the decision at the meeting on 6th May 2026, but the specific case of the appellant was that 70 members of the legislature party, had held the meeting and unanimously decided who would be the Chief Whip



and the Leader of the Opposition. Mr. Kar submitted that the order of the learned Single Judge did not call for any interference in an intra court appeal.

26. Mr. Billwadal Bhattacharyya, learned senior advocate for the respondent No. 1 and 3, submitted that as per the Mavalankar Rule, the Leader of the Opposition ought to have support of at least 10% of the elected members of the House. In the present case, the appellant did not have such numbers. It was next submitted that the writ petition was not maintainable as the decision was not taken by the Speaker in exercise of powers conferred under the 10th Schedule. Had the Speaker taken the decision in matters relating to the 10th Schedule, such decision could be amenable to writ jurisdiction on the ground of illegality or procedural impropriety. As the impugned decision was taken as a part of the conduct of the business of the House, the same was immune from any challenge by filing a writ petition. Article 212 of the Constitution of India barred such challenge.
27. Further, as disputed questions of facts were involved, the writ Court did not have any jurisdiction to hear the matter. Moreover, the jurisdiction of the Division Bench in an intra-court appeal from an order of refusal of an interim relief was very limited. The learned judge had given reasons and rightly held that the numerical strength of the rival groups indicated that the selection/recognition of respondent No.5 and 6, as the Leader of the Opposition or the Chief Whip was justified. All democracies functioned on the rule of majority, and as



such, the impugned decision was based on such principle. It was also submitted that affidavits were to be filed by the respondent Nos. 1 and 3. The peculiar situation could not be appreciated properly by the court, unless the factual aspects were brought on record.

28. It was submitted that, the appellant did not come to court with clean hands. The dubious and dishonest method by which the alleged signatures of the 70 members had been obtained, would be brought on record by an affidavit. The court would be able to appreciate that the decision of the Speaker was based on constitutional principles. The Speaker recognized the group which approached the Speaker with honesty and truthfulness. Secondly, when there were allegations of forgery of the signatures in the resolution dated May 19, 2026, the question of accepting such a resolution did not arise. A series of complaints and incidents compelled the Speaker to go deeper into the matter in order to understand the game plan behind the decision communicated by the National General Secretary of AITC. When the majority of the elected members out of the 80, disputed such decision, the Speaker had no other choice, but to recognize the respondent Nos. 5 and 6. Moreover, criminal investigation was also pending with regard to the allegations of forgery.

29. Reference was made to the following decisions by Mr. Bhattacharya:-

(a) *State of M.P. and Ors. Vs M.V. Vyavsaaya & Co.* reported in ***(1997) 1 SCC 156,***

(b) *Padi Kaushik Reddy vs State of Telengana and Ors.* reported in ***2025 SCC Online SC 1576,***



(c) *Prestige Lights Ltd. vs State Bank of India* reported in (2007) 8

SCC 449,

(d) *State of Assam and Ors. Vs Arabinda Rabha & Ors.* reported in

2025 INSC 334.

30. Having heard the respective parties, we find that the Speaker had been faced with rival claims from the elected members of the AITC in the 18th State Legislative Assembly election. The action of the Speaker in this particular matter, has been challenged on the ground of illegality, malafide, breach of constitutional provisions and absence of neutrality. Three applications were pending from the end of the National General Secretary of the AITC, requesting the Speaker to recognize the appellant as the Leader of the Opposition, and three others from the elected MLAs as Deputy Leaders of the Opposition and the Chief Whip respectively. First of such letters was issued on 9 May 2026, which was kept pending. On 15 May 2026, the Speaker was elected. On the same day, the appellant and the Chief Minister escorted the Speaker to his chair by holding hands as per convention. The newspaper publication would indicate the basis of such claim by the appellant. The appellant also claimed that the unrevised records of the proceedings of the House dated 15 May 2026, would indicate that the Speaker had recognized the appellant as the Leader of the Opposition. Thus, in our, prima facie, view the nature of allegations made against the Speaker cannot be protected under Article 212 of the Constitution of India. The writ petition is required to be heard.



31. Secondly, we find that the decision of 3rd June 2026, was not in the public domain. It was not published in the official website. It was not communicated to the appellant who had a prior claim. The National General Secretary of the AITC was also not informed. Rather, the appellant gained knowledge from the media reportings. The order of the Speaker was produced on the second day of the hearing of the writ petition before the learned Single Judge. Thus, the allegation of impropriety in the action of the Speaker, is subject to further judicial scrutiny by the learned Single Judge before whom the writ is pending.

32. Article 212 is reproduced below:-

“212. Courts not to inquire into proceedings of the Legislature

(1)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.

(2)No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.”

33. Moreover, the facts narrated hereinabove, prima facie, do not indicate that the delay on the part of the Speaker in taking any decision or the delay in publishing his decision and letting the other faction (appellant’s faction) know about his decision, can be simply brushed aside as a mere procedural irregularity. When the Speaker was confronted with two sets of claims and the first group to which the appellant belonged had been staking their claim from 9th May 2026, there is no apparent explanation as to why the Speaker was waiting to



take a decision. Moreover, the respondent No. 3 did not answer the queries of the appellant which were made by way of an application under the RTI Act. The respondent No. 3 withheld information.

34. The decision of the Allahabad High Court relied upon by Mr. Kar **Kailash Nath (supra)**, clearly indicates that both the rising factions were heard by the Speaker and the Speaker had taken a provisional decision to recognize the person who had the majority support of the legislators as the Leader of the Opposition until further decision. The court also held that the rival groups were always at liberty to approach the Speaker for a decision when two factions claimed recognition. In this case, the communication of the National General Secretary and also of the appellant were kept in abeyance and the Speaker, as also his office maintained total silence. The question which arises is whether the Speaker had acted with neutrality or impartiality.

35. Reference is made to the decision of the Supreme Court in which the Hon'ble Apex Court had held that the Speaker must be unbiased and neutral. In the matter **Shrimanth Balasaheb Patil vs Hon'ble Speaker Karnataka Legislative Assembly and Ors.** reported in **(2020) 2 SCC 595**, the Hon'ble Apex Court held as follows:-

“153. In the end we need to note that the Speaker, being a neutral person, is expected to act independently while conducting the proceedings of the House or adjudication of any petitions. The constitutional responsibility endowed upon him has to be scrupulously followed. His political affiliations cannot come in the way of adjudication. If Speaker is not able to disassociate from his political party and behaves contrary to the spirit of the neutrality and independence, such person does not deserve to be reposed with public trust and confidence.



154. In any case, there is a growing trend of Speakers acting against the constitutional duty of being neutral. Additionally, political parties are indulging in horse trading and corrupt practices, due to which the citizens are denied of stable governments. In these circumstances, Parliament is required to re-consider strengthening certain aspects of the Tenth Schedule, so that such undemocratic practices are discouraged.”

36. Reference is also made to the decision of the Hon’ble Apex Court in ***Subhash Desai (supra)***. Whether the Speaker was acting in consonance with the constitutional morality of being impartial and neutral or whether the Speaker was allowing time to the rival group to muster support from majority of the members and whether the disregard to the decision of the 70 members which was communicated by the National General Secretary was permissible, are relevant questions for determination. Whether the delay allowed the rival group to gather the numerical strength, is a matter which requires further probe upon the exchange of affidavits. Secondly, out of 70 legislators who signed on the resolution or who attended the meeting on May 6, 2026, two objected to their signatures, alleging forgery. The Speaker held that the resolution was doubtful, without making further query. Both the groups ought to have been heard, as was done by the Speaker in the facts relating to the decision of ***Kailash Nath (supra)***. In this case, the Speaker held that the decision of expulsion of the respondent No. 5 was illegal and not in consonance with the rules or constitution of the AITC party. The Speaker did not have the power under the law to adjudicate such issue. Thus, knowing that the respondent No. 5 was an expelled member, the Speaker brushed aside



this aspect and recognized him as the Leader of the Opposition, without calling a hearing of the two factions. The decision of expulsion of the respondent No. 5 was later stayed by the civil court. Lastly, on June 3, 2026, 58 signatories wrote a letter to the Speaker and the Speaker immediately accepted the proposal on the numerical strength of those persons, although the General Secretary of the AITC submitted copies of the minutes, resolution and signatures of 70 MLAs. The Speaker could have enquired into the matter by calling both the groups and then passed an order upon hearing both the parties and considering the party's will and its constitution. The decision of the political party (AITC) was required to be given precedence. Under such circumstances, at best, the Speaker could have taken a provisional decision to maintain orderliness in the House, subject to further enquiry and not a final decision, by straight away recognizing the respondent No. 5 as the Leader of the Opposition, without hearing the other faction.

37. Coming to the decision of the learned Single Judge, we find that His Lordship understood Explanations 1 and 2 of Section 3 of the 1937 Act to mean that the leader of the opposition would be the person who enjoyed the support of the majority of the elected MLAs of AITC. In our view, the Explanations 1 and 2 do not support such finding, inasmuch as, Explanation 1 states that the Leader of the Opposition for the time being shall be the leader of the legislative party which had the highest numerical strength in the opposition and not the leader of the legislature party who enjoyed majority support from the elected



members. However, His Lordship only had taken a, prima facie, view and decided to hear out the matter upon exchange of affidavits. The allegations against the Hon'ble Speaker cannot be adjudicated in this case without the factual aspects being brought on record.

38. We do not accept the contention of Mr. Kar and Mr. Bhattacharya that the decision in ***Subhash Desai (supra)*** was restricted to the matter of disqualification of members alone.
39. The decision of the Speaker is subject to judicial review, in the event, the illegality in the procedure goes to the very root of the matter and is derogatory to the democratic principles. A political party, as an organization has an identity and existence beyond the individual members who were elected on its ticket. The party's will, discipline and decisions cannot be ignored by the individual elected members. Elected members / representatives derive their mandate largely from the party's symbol, programme and support under which they contest the election. The Hon'ble Apex Court recognized that political parties have an important role in a parliamentary democracy. Thus, the will of the party was a relevant consideration for the Speaker to recognize the Leader of Opposition and the Chief Whip, in view of the split amongst the members of the legislature party.
40. Reference is made to the following paragraphs of the decision in ***Subhash Desai (supra)*** for proper appreciation of the law involved:-

“95.(iv) The power to appoint the Whip and the Leader of the Legislature Party



95. The respondents have challenged the communication of the Deputy Speaker dated 21-6-2022 appointing Mr Ajay Choudhari as the Leader of the SSLP. The petitioners have challenged the communication of the Speaker dated 3-7-2022 by which : (i) the appointment of Mr Ajay Choudhari was cancelled and Mr Shinde was appointed as the Leader of the SSLP; and (ii) Mr Gogawale was appointed as the Chief Whip in place of Mr Sunil Prabhu. Before adjudicating on the validity of the impugned communications, it is necessary to answer the preliminary objection that the courts cannot inquire into communications recognising the Whip and the Leader of a legislature party because of the bar under Article 212 of the Constitution.

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97. This Court has on earlier occasions construed the scope of the restriction on judicial review of proceedings of the legislature under Article 212 (and the corresponding provision for Parliament, Article 122). In *Powers, Privileges & Immunities of State Legislatures, In re, Special Reference No. 1 of 1964* [*Powers, Privileges & Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*, 1964 SCC OnLine SC 21 : AIR 1965 SC 745] , a seven-Judge Bench observed that Article 212 only restricts judicial review on the ground of “irregularity of procedure” and that proceedings of the legislature can still be challenged if the “procedure is illegal and unconstitutional”. In *Raja Ram Pal* [*Raja Ram Pal v. Lok Sabha*, (2007) 3 SCC 184] , a Constitution Bench held that legislative proceedings can be challenged on the grounds of “substantive illegality or unconstitutionality”. In *K.S. Puttaswamy (Aadhaar-5J.) v. Union of India* [*K.S. Puttaswamy (Aadhaar-5J.) v. Union of India*, (2019) 1 SCC 1] , one of the issues before this Court was whether Article 212 precluded judicial review of the Speaker's authorisation of a Money Bill. Sikri, J. writing for the majority observed that Article 212 only limited challenges on the ground of “irregularity of procedure” and not “substantive illegality”. One of us (D.Y. Chandrachud, J.) observed in his dissenting opinion that Article 212 does not preclude judicial review of proceedings of a legislature if the decision of the Speaker suffers from “illegality or a violation of constitutional provisions”. In *Rojer Mathew v. South Indian Bank Ltd.* [*Rojer Mathew v. South Indian Bank Ltd.*, (2020) 6 SCC 1] , this Court observed that a “gross violation of the constitutional scheme” cannot be considered a procedural irregularity. This Court has consistently held that a substantive illegality or a violation of a constitutional provision is distinct from a mere irregularity of procedure and is amenable to judicial review.

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100. The distinction between irregular procedure and illegal procedure must be drawn based on the nature of the procedure which was violated, and the impact of such a violation on democratic ideals. An infringement of a procedure would be irregular if the purpose of such procedure is unrelated to democratic ideals and its violation does not go to the root of democratic processes.

101. The observations of this Court on the interpretation of Article 212 highlighted above do not make a distinction between irregularity and illegality *solely* based on the source of law. The distinction is not based on whether the procedure is entrenched in the Constitution but whether it is crucial for the sustenance of democracy. A violation of a procedure that fulfils the twin objectives highlighted above and which is necessary for the sustenance of parliamentary democracy would render the action illegal. On the other hand, a violation of a procedure that establishes orderliness may only be irregular.

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103. The observations in *Ramdas Athawale [Ramdas Athawale (5) v. Union of India, (2010) 4 SCC 1]* that it was purely a matter of procedure cannot be interpreted to mean that procedural infringements are not subject to judicial review. This Court observed that the procedure that was alleged to have been violated would only render the proceedings irregular and that it would not vitiate the proceedings themselves. The observations in *Ramdas Athawale [Ramdas Athawale (5) v. Union of India, (2010) 4 SCC 1]* must be read in light of our analysis above that procedural infringements would vitiate the proceedings based on their purpose and the impact of their infringement on the democratic functioning of Parliament.

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106. The petitioners contend that the Whip and the Leader must be appointed by the political party because Para 2(1)(b) requires that the direction to vote in a particular manner in the House must be from the political party or a person authorised by it, meaning the political party. The respondents submit that the distinction between political party and legislature party is artificial and that they are intertwined concepts. For this purpose, reference was made to Para 4(2) of the Tenth Schedule and Para 6-A of the Symbols Order. The term “political party” is not defined in the Tenth Schedule. However, the Explanation to Para 2 creates a deeming fiction while referring to political parties. The Explanation to Para 2 provides that an elected member of a House shall be deemed to belong to the political party by which they were set up as a candidate for election. Para



4 creates another deeming fiction. The provision provides that if the “original political party” merges with another political party and they become members of such other political party or a new political party, then such other political party or the new political party shall be *deemed* to be the political party of the member for the purposes of Para 2. To illustrate, Ms Z belonging to party A shall not be disqualified for voting against the direction of party A if party A merges with party B to form party C or if party A is subsumed by party B. This is because for the purposes of the Tenth Schedule, party B or party C shall be deemed to be their original political party.

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109. “Political party” and “legislature party” cannot be conflated. The contention of the respondents that political party and legislature party is inextricably intertwined is erroneous for the following reasons:

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119. To hold that it is the legislature party which appoints the Whip would be to sever the figurative umbilical cord which connects a Member of the House to the political party. It would mean that legislators could rely on the political party for the purpose of setting them up for election, that their campaign would be based on the strengths (and weaknesses) of the political party and its promises and policies, that they could appeal to the voters on the basis of their affiliation with the party, but that they can later disconnect themselves entirely from that very party and be able to function as a group of MLAs which no longer owes even a hint of allegiance to the political party. This is not the system of governance that is envisaged by the Constitution. In fact, the Tenth Schedule guards against precisely this outcome.

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130. The Speaker must recognise the Whip and the Leader who are duly authorised by the political party with reference to the provisions of the party constitution, after conducting an enquiry in this regard and in keeping with the principles discussed in this judgment.”

41. It was also held that illegality in the procedure in respect of conduct of business of the House should be read in the context of the facts. The doubt which comes to the mind of the court, while appreciating the sequence of events, on and from May 6, 2026 up to June 3, 2026,



cannot be brushed under the carpet, by taking shelter under Article 212 of the Constitution. Prima facie, the delay was not a mere procedural irregularity. In our, prima facie view, the Speaker was required to call both factions, ask them to place their relevant supporting documents and ought to have also considered the party's constitution, rules, code etc. Whether the action of the Hon'ble Speaker was in contravention to, or antithetic to the democratic ideals, or to the principles of democracy, neutrality and impartiality must be specifically decided by the learned Single Judge. The Hon'ble Apex Court in ***Subhash Desai (supra)*** went on to decide that, it was the political party alone which could decide the Chief Whip and the Leader of the Opposition. The Speaker was liable to look into the same and upon holding so, the decision of the Speaker in recognizing a particular candidate in place of others, was set aside. It was held that the Speaker should have made an enquiry into the matter. It was also held that irrespective of the pendency of the issue before the Election Commission of India as to which one was the original political party, the Speaker should decide the matter independently.

42. Under the circumstances, the issues as discussed above, shall be decided by the learned Single Judge. However, in order to prevent any disruption or disorderliness in the House, we do not pass any order of injunction on the decision of the Speaker, but we make the decision of June 3, 2026 a provisional decision and the appointment of the respondent No. 5 and 6 must be treated as provisional. The decision of the Speaker shall be operative for a period of two months, or until



further orders by the writ Court, whichever is earlier. The affidavits have already been called for and shall be filed before His Lordship, if not already filed.

43. Under such circumstances, the order of the learned Single Judge is modified to the above extent.

44. Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties, upon fulfilment of requisite formalities.

(Shampa Sarkar, J.)

I agree.

(Ajay Kumar Gupta, J.)

Later,

45. Mr. Bandopadhyay, learned senior Advocate for the appellant prays for stay of operation of the judgment and order passed by us. The prayer has been considered and refused.

(Shampa Sarkar, J.)

I agree.

(Ajay Kumar Gupta, J.)