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SC cites 'partisan' Speakers, moots panel on defections

Wants Tribunal To Decide Cases Of Disqualification

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New Delhi: In an important order aimed at rearming the anti-defection law, the Supreme Court on Tuesday set three months as the outer limit for speakers to conclude disqualification proceedings against defectors, while recommending that keeping in view the partisan conduct of Speakers, Parliament should amend the Constitution to set up a permanent tribunal to decide cases under the 10th Schedule.

Noting that the term of an assembly was just five years and a person liable to be disqualified must not be allowed to sit in the House, a bench of Justices R F Nariman, Aniruddha Bose and V Ramasubramanian said, "The Speaker, in acting

'FINISH PROCEEDINGS IN 3 MTHS'

➤ SC set three months as the outer limit for speakers to conclude disqualification proceedings against defectors

➤ Recommends that Parliament should amend Constitution to set up a permanent tribunal to decide cases. Tribunal can be headed by retired SC judge or HC CJ

➤ SC emphasises that ensuring purity of anti-defection law under the

10th Schedule is vital to democracy's functioning

➤ SC decision came in a case related to Manipur Congress MLA T Shyam Kumar, who switched to BJP and became a minister after the party formed govt in 2017

➤ A dozen pleas seeking Shyam's disqualification were filed but Speaker sat over them. SC asks Speaker to decide in 4 weeks

as a tribunal under the 10th Schedule, is bound to decide disqualification petitions within a reasonable period. What is reasonable will depend on the facts of each case, but absent exceptional circumstances for which there is good reason, a period of three months from the date on which the petition is filed is the outer limit within which disqualification petitions filed before the Speaker must be decided if the cons-

titutional objective of disqualification of persons who have infringed the 10th Schedule is adhered to."

The bench stressed that ensuring the purity of the anti-defection law under the 10th Schedule was vital to democracy's functioning as it made a case for constitution of a permanent tribunal compromising retired judges or some other independent mechanism to decide defection cases in the light of

doubts about the impartiality of speakers whose political affiliations endure. "It is time that Parliament has a rethink on whether disqualification petitions ought to be entrusted to a speaker as a quasi-judicial authority when such a speaker continues to belong to a particular political party either de jure or de facto," Justice Nariman, who wrote the judgment, said.

Suggesting a radical reform, it said, "Parliament may seriously consider amending the Constitution to substitute the speaker of LS and legislative assemblies as arbiter of disputes concerning disqualification, which arise under the 10th Schedule, with a permanent tribunal headed by a retired Supreme Court judge or a retired chief justice of a HC, or some other outside independent mechanism to ensure that such disputes are decided both swiftly and impartially, thus giving real teeth to the provisions..."

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Speaker sat on petitions to disqualify MLA

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The decision came in a case related to Manipur Congress MLA T Shyam Kumar, who switched to BJP and became a minister after the party formed government in 2017. Nearly a dozen petitions seeking Shyam Kumar's disqualification were filed but the Speaker sat over them. The SC asked the Manipur Speaker to decide the petitions within a period of four weeks and said failing to do so would warrant interference by the Supreme Court.

On fixing three months as the outer limit for disqualification proceedings which could stretch for years, blunting the impact of disqualification, the bench said, "This period has been fixed keeping in mind the fact that ordinarily the life of Lok Sabha and legislative assembly of states is five years and the fact that persons who have incurred such disqualification do not deserve to be MPs/MLAs even for a single day."