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ಇಲಾಖೆ / ವಿಷಯ : DEPARTMENT / SUBJECT: Court matter

ಪತ್ರಿಕೆಯ ಹೆಸರು : NAME OF THE NEWS PAPER: The Hindu ದಿನಾಂಕ : DATE 23/7/2020

SC will hear today Rajasthan Speaker's plea against HC order

He has challenged deferring of anti-defection proceedings against Pilot camp

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A Supreme Court Bench, led by Justice Arun Mishra, is scheduled to hear on Thursday an appeal filed by the Rajasthan Speaker's office challenging the State High Court's order to defer anti-defection proceedings against former Deputy Chief Minister Sachin Pilot and 18 Congress MLAs till July 24.

The other two judges on the Bench are Justices B.R. Gavai and Krishna Murari. The virtual court hearing will begin after 11 a.m.

Mr. Pilot and the other legislators filed a caveat petition in the court, saying "nothing should be done" without notifying them first.

Too early to review | Speaker C.P. Joshi moved the SC against the Rajasthan High Court's order directing him to give 19 MLAs time to reply till July 24, when the court will deliver its verdict. His main contentions are:

- HC's intervention is premature because he is yet to decide the issue of disqualification but has only issued notices
- SC in the Kihoto/Hollohan case specifically barred any judicial intervention prior to the decision-making stage
- SC has said no interference is permissible at interim stage of proceedings and

Judicial review of final decision is available only on limited grounds

• HC cannot interfere in his designated power to decide questions of disqualification under the anti-defection law

• Judicial review cannot cover proceedings of the legislature under Article 212 of the Constitution

In another development, the Enforcement Directorate raided the premises of Chief Minister Ashok Gehlot's elder brother Agrasen Gehlot in Jodhpur in a fertilizer

case. The Congress accused the BJP-led Centre of using the ED to target the ruling party leaders in Rajasthan after failing in its conspiracy to "kidnap democracy" and

topple the State government. The Centre was creating a "raid raj", it said.

Speaker C.P. Joshi expressed the hope that the top court would pass directions before July 24, when the High Court is scheduled to give its verdict on the writ petition filed by Mr. Pilot's camp. "Else, my special leave petition will be rendered infructuous and the Speaker's powers will be curtailed," he said. "I do hope that the dignity of the Speaker's office will be maintained. I respect the judges, but the roles of all constitutional authorities are well-defined," he said.

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SC will hear Rajasthan Speaker's plea today

In a steady progression of events on Wednesday, Speaker C.P. Joshi's office filed the special leave petition in the apex court, through advocate Sunil Fernandes, three minutes to noon on Wednesday and within a day of the High Court order. Shortly after the petition was filed, senior advocate Kapil Sibal, while appearing in another case, happened to complain to Chief Justice of India (CJI) Sharad A. Bobde about the lack of a proper mechanism to mention cases for urgent hearing in the current virtual court system. He said his team had been trying hard, but without success, to mention the Rajasthan Speaker's case for an early hearing.

The CJI told Mr. Sibal that he would apprise the court Registry and see if the case could be put up before a Bench. By evening, the case was listed before Justice Mishra's Bench.

'Lakshman Rekha'

The petition said the High Court crossed the "Lakshman Rekha" by asking the Speaker to put off his decision on the disqualification notices issued to the 19 dissenting legislators on July 14. The High Court order was an affront to the powers of the Speaker. It was "illegal and perverse" and "destroys the delicate balance envisaged by the Constitution between the legislature and the judiciary", it stated.

The Speaker said the

High Court's interim order granting extended time to Mr. Pilot and the other MLAs to file their replies to the July 14 anti-defection notices amounted to violation of Article 212 (courts not to inquire into the proceedings of the legislature).

"The notice dated July 14 is a proceeding in the House and immune from judicial interference at that stage. The notice was only limited to inviting comments from the Respondents [Mr. Pilot and other MLAs] and there was nothing adverse against them at that stage. A notice is much prior to any final determination or decision on disqualification. The proceedings, including the notice, are in the realm of the legislative proceedings under Paragraph 6(2) of the Tenth Schedule," the Speaker's office argued.

It said judicial review of an ongoing anti-defection proceedings was limited.

Kihoto Hollohan case

The petition referred to the Constitution Bench judgment of the top court in the Kihoto Hollohan case in 1992 in this context.

"Judicial review cannot be available at a stage prior to the making of a decision by the Speaker/Chairman and a *quia timet* action would not be permissible. Nor would interference be permissible at an interlocutory stage of the proceedings," the Speaker's office quoted from the 28-year-old verdict.