



## Judicial indiscipline

Rajasthan HC has disregarded law laid down by SC while admitting plea by Pilot camp

The Rajasthan High Court's order, directing that status quo be maintained in the disqualification proceedings against 19 legislators and holding a legal challenge to the Rajasthan Assembly Speaker's notice under the anti-defection law to be maintainable, borders on judicial indiscipline. The order does not give any reason for admitting the petition and overruling objections to its admissibility, except for saying legal questions have arisen, including one on the validity of a sub-clause in the Tenth Schedule. It is as if the mere fact that some questions have arisen is enough to disregard the doctrine of precedent. There is a specific prohibition in a Constitution Bench verdict of the Supreme Court on courts intervening in disqualification matters at a stage prior to a presiding officer giving a ruling. Of the 13 questions the Division Bench has framed, purporting to arise from the Speaker C.P. Joshi's notices to 19 Congress members in the Sachin Pilot camp, the last one itself shows it cannot entertain the petition. The question is whether the Supreme Court's judgment in *Kihoto Hollohan* (1992) is a bar on the High Court examining the issues. It is illogical that the Bench holds that the petition is maintainable even while proposing to examine whether a Constitution Bench judgment binds it or not. In other words, a petition has been declared maintainable on the ground that the court proposes to examine its maintainability.

And the 1992 judgment, while upholding the validity of the Tenth Schedule to the Constitution, the anti-defection law, also declared that Para 2 – a part of which is now under challenge and is the ostensible reason for the High Court to entertain the petition – does not violate the freedom of speech, vote or conscience of elected members. Yet, the High Court is now venturing to find out whether Para 2(1)(a), which deals with disqualifying lawmakers who "voluntarily give up membership" of their party, has been examined by the apex court from the point of view of "intra-party democracy". If at all the provision's validity is to be tested, it can only be done in a case arising out of it. When no decision has been rendered by the Speaker, it is beyond comprehension how the court entertained arguments on the issuance of the notice and on whether dissidents can be disqualified for questioning the party line. Para 2(1)(a) has been used by Speakers for years, and many such disqualification orders have been upheld by the Supreme Court, including as recently as November 2019 in a Karnataka case. Admitting a matter without explaining how the law laid down by the Supreme Court does not bind a High Court raises grave questions of judicial propriety. However, even as the political crisis plays out on the lawns of Raj Bhavan, the top court itself appears to be raising the question whether dissent within a party can attract disqualification proceedings. Whatever the circumstances, the SC should not condone improper and premature judicial intervention.