



GAHC010005952021

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**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/182/2021**

DEBABRATA SAIKIA  
S/O LATE HITESWAR SAIKIA  
RESIDENT OF HOUSE NO. 7, NANDAN NAGAR, SARUMOTORIA. PO AND  
PS DISPUR, GUWAHATI 781006, KAMRUP M AND PRESENTLY RESIDING AT  
C-6. M S FLAT, OLD MLA HOSTEL, DISPUR, GUWAHATI 781006

VERSUS

THE HONBLE SPEAKER, ASSAM LEGISLATIVE ASSEMBLY AND 3 ORS  
ASSAM SECRETARIATE, DISPUR, GUWAHATI 781006

2:THE SECRETARY  
ASSAM LEGISLATIVE ASSEMBLY  
ASSAM SECRETARIATE  
DISPUR  
GUWAHATI 781006

3:THE STATE OF ASSAM

REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM  
DISPUR GUWAHATI 781006

4:THE PRINCIPAL SECRETARY  
ASSAM LEGISLATIVE ASSEMBLY  
ASSAM SECRETARIATE  
DISPUR GUWAHATI 78100

**Advocate for the Petitioner : MR. S SARMA**

**Advocate for the Respondent : GA, ASSAM**



**BEFORE  
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

**JUDGMENT & ORDER (ORAL)**

**Date : 10-02-2021**

Heard Mr. S Sarma, learned counsel assisted by Mr. J Deka learned counsel for the petitioner, Mr. D Saikia, learned senior counsel, assisted by Mr. P Nayak, learned counsel for the respondents No.2 and 4 being the Secretary to the Assam Legislative Assembly and the Principal Secretary to the Assam Legislative Assembly, respectively, and Mr. D Mazumdar, learned Senior counsel and Additional Advocate General for the respondent No.3 being the State of Assam through the Chief Secretary to the Government of Assam.

2. Considering the structure of the writ petition and nature of the relief sought for in prayer No.1 seeking setting aside of the notification dated 01.01.2021 of the Secretary to the Assam Legislative Assembly, we are inclined to delete the respondent No.1, being the Hon'ble Speaker to the Assam Legislative Assembly from the array of respondents. Although the prayer No.2 is for a mandamus for restoring the writ petitioner as the Leader of Opposition in the 14<sup>th</sup> Assam Legislative Assembly, but such prayer would have to be construed to be a relief which would be a consequence and an effect of allowing the prayer No.1, rather than it being an independent relief being sought for.

3. The petitioner, Sri Debabrata Saikia was elected as a Member to the 14<sup>th</sup> Assam Legislative Assembly from the No.104 Nazira Legislative Assembly, being a candidate of the political party the Indian National Congress (for short, INC), which is stated to be a recognized national political party. In the 14<sup>th</sup> Assam Legislative Assembly, at the time of its constitution the INC had 26 seats in a situation where the total strength of the Members of Assam Legislative Assembly is 126 seats.

4. The Speaker of the 14<sup>th</sup> Assam Legislative Assembly was informed by the INC that the



petitioner Sri Debabrata Saikia had been elected as the Leader of the INC Legislature Party. Pursuant to such information, an announcement was made in the Assembly on 03.06.2016 whereby the Members of the 14<sup>th</sup> Assam Legislative Assembly were informed that on 30.05.2016 a letter was received from Sri Ripun Bora, the President of the Assam Pradesh Congress Committee informing that in the meeting of the Congress Legislature Party held on 27.05.2016, Sri Debabrata Saikia had unanimously been nominated as the Leader of the Congress Legislature Party. The 14<sup>th</sup> Assam Legislative Assembly was further informed that Sri Debabrata Saikia had been recognized as the Leader of Opposition w.e.f. 03.06.2016 under Section 2 of the Salary and Allowances of the Leader of Opposition in the Assam Legislative Assembly Act 1978 (for short, Salary and Allowances Act, 1978) read with Rule 2(1)(p) of the Rules of Procedure and Conduct of Business in Assam Legislative Assembly (for short, Rules of Procedure in Assembly) and Clause 11(2)(i)(c) of the Directions by the Speaker Assam Legislative Assembly.

Subsequent thereto, the Notification No.LLE 8/2016/113 dated 04.06.2016 of the Principal Secretary to the Assam Legislative Assembly was issued wherein it was provided that Sri Debabrata Saikia who is a Member belonging to the INC Legislature Party in the 14<sup>th</sup> Assam Legislative Assembly having been recognized as its Leader and having fulfilled all the requirements for being recognized as the Leader of the Opposition, the Hon'ble Speaker of the Assam Legislative Assembly had been pleased to recognize Sri Debabrata Saikia as the Leader of Opposition in the Assam Legislative Assembly w.e.f. 03.06.2016 and that such recognition had been made under Section 2 of the Salary and Allowances Act, 1978 read with Rule 2(1)(p) of the Rules of Procedure in Assembly and Clause 11(2)(i)(c) of the Directions by the Speaker Assam Legislative Assembly.

5. By a subsequent Notification No.LLE 8/2016/883 dated 01.01.2021 of the Secretary to the Assam Legislative Assembly it was provided that Sri Debabrata Saikia had been recognized as a Leader of the Opposition in the 14<sup>th</sup> Assam Legislative Assembly, but as the present strength of the INC Legislature Party in the Assam Legislative Assembly is not equal to the quorum fixed to constitute a sitting of the House, i.e., one-sixth of the total number of the Members of the House, the Hon'ble Speaker of the Assam Legislative Assembly had been



pleased to withdraw the recognition of Sri Debabrata Saikia as the Leader of the Opposition in the Assam Legislative Assembly w.e.f. 01.01.2021.

6. The Notification dated 01.01.2021 providing for the withdrawal of the recognition of Sri Debabrata Saikia as the Leader of the Opposition in the Assam Legislative Assembly is assailed in this writ petition.

7. Mr. S. Sarma, learned counsel for the petitioner has raised two fold contention against the Notification dated 01.01.2021 providing for the withdrawal of the recognition of Sri Debabrata Saikia as the Leader of the Opposition. The first contention raised by the learned counsel is that the provisions of Direction 11 of the Directions by the Speaker of the Assam Legislative Assembly providing for the concept of 'Legislature Party' and 'Legislature Group' would not be applicable for understanding the expression 'Leader of the Opposition', inasmuch as, the expression 'Leader of the Opposition' had clearly been defined under Rule 2(p) of the Rules of Procedure in Assembly as well as in the Salary and Allowances Act, 1978 and such definitions do not in any manner either refer or provide for any relevance of Direction 11 in the Directions by the Speaker of the Assam Legislative Assembly, nor does it provide for any reference to the concept 'Legislature Party' being related to a requirement of having one-sixth of the total Members of the House. The other contention raised by Mr. S. Sarma, learned counsel is that after the Tenth Schedule to the Constitution had been brought in, wherein, the term 'Legislature Party' had been defined, the discretion which was earlier available with Speaker under the Rules of Procedure in Assembly, to give a meaning to the concept 'Legislature Party', is no longer available and whatever meaning had been given to the concept 'Legislature Party' under the Rules of Procedure in Assembly had become redundant and inapplicable, inasmuch as, the same would be in conflict with the constitutional provisions in the Tenth Schedule to the Constitution while defining the term 'Legislature Party'.

8. To substantiate his first contention that the meanings given to the expression 'Leader of Opposition' as contained in Rule 2(p) of the Rules of Procedure in Assembly as well as in the Salary and Allowances Act, 1978, do not in any manner refer to the requirement of having one-sixth of the Members of the House and therefore, Direction 11 of the Directions by the Speaker is inapplicable. Mr. S. Sarma, learned counsel submits that Rule 2(p) of the Rules of



Procedure in Assembly merely provides that the 'Leader of Opposition' means the Leader of the largest recognized party in the Opposition. Therefore, as in the 14<sup>th</sup> Assam Legislative Assembly, the INC, irrespective of having one-sixth of the Members of the House or not, is the largest recognized party in the Opposition, therefore, the Leader of the INC Legislature Party would continue to be Leader of the Opposition within the meaning of the expression 'Leader of Opposition' as contained in the Rule 2(p) of the Rules of Procedure in Assembly. Reference is also made to the definition of 'Leader of Opposition' as provided in Section 2 of the Salary and Allowances Act, 1978, wherein, Leader of Opposition is defined to mean a Member of the Legislative Assembly who is the Leader of the party in Opposition in the House having the greatest numerical strength. As the INC Legislature Party for the present, having the numerical strength of 20, which got subsequently reduced to 19, is the party in Opposition having the greatest numerical strength and is the largest recognized party in the Opposition, therefore, the petitioner Sri Debabrata Saikia being the leader of the INC Legislature Party, satisfies the requirement of being the Leader of Opposition under Section 2 of the Salary and Allowances Act, 1978.

Accordingly, the submission is that both as per the definition of Leader of Opposition as provided in Rule 2(p) of the Rules of Procedure in Assembly as well as in Section 2 of the Salary and Allowances Act, 1978, Sri Debabrata Saikia continues to remain the Leader of Opposition in the 14<sup>th</sup> Assam Legislative Assembly and therefore, the withdrawal of the recognition as per the Notification dated 01/01/2021 would be unsustainable.

9. Mr. S. Sarma, learned counsel for the petitioner in order to substantiate the other contention that after the Tenth Schedule had been brought in the concept of 'Legislature Party' and 'Legislature Group' as contained in Direction 11 of the Directions by the Speaker have become redundant and are in conflict with a constitutional provision, refers to the definition of 'Legislature Party' as contained in Paragraph 1(b) of the Tenth Schedule to the Constitution which provides that it means the group consisting of all the Members of that House for the time being belonging to the political party. Accordingly, it is submitted that as the definition of 'Legislature Party' in Paragraph 1(b) of the Tenth Schedule to the Constitution does not distinguish between the concept 'Legislature Party' and 'Legislature Group' therefore, any group consisting of all the Members of the House for the time being



belonging to the political party would constitute a Legislature Party and in the absence of any reference to any requirement of one-sixth of the Members of the House, a group consisting of all the Members of the House, of a political party, irrespective of whether its strength is more than one-sixth of the Members of the House or not, would be a Legislature Party. To further substantiate his contention Mr. S. Sarma, learned counsel refers to a passage in Clause 4.3 in Chapter 30 of the book Parliamentary Procedure by Subhash C Kashyap, wherein it is provided that the Directions by the Speaker providing for recognizing a Parliamentary Party or Parliamentary Group depending on the minimum required number of one-tenth of the membership would have to be looked from the point of view that after the anti-defection law in the Tenth Schedule, every Member of the House who is not elected as an independent or nominated belongs to his party although he may be the only Member of the party and all such party represented in the House automatically gets a constitutional recognition as a party. Further reference is made to the provisions of Clause 4.3 of the book Parliamentary Procedure by Subhash C Kashyap, where it is provided that there is some contradiction between the constitutional provisions and the Directions by the Speaker and therefore, one of the two would need an amendment and until it is done so, in case of a conflict between the two, the constitutional provisions would naturally prevail. Reference is also made to Clause 12.1 of the book Parliamentary Procedure by Subhash C Kashyap, wherein it is provided that under the Tenth Schedule to the Constitution, every Member of the House belonging to a political party would be deemed to belong to a Parliamentary Party in the House irrespective of its numerical strength and all the procedure and precedence of a recognition of the parties and groups by the Speaker have thus become redundant.

10. By referring to the said provisions, it is the submission of Mr. S. Sarma, learned counsel that although the Rules of Procedure in Assembly and the Directions by the Speaker of Assam Legislative Assembly may provide for a distinction between the 'Legislature Party' and 'Legislature Group', depending upon whether the strength of the Members meet the requirement of one-sixth of the Members of the House, but in view of the definition of the expression 'Legislature Party' as contained in the Tenth Schedule to the Constitution, such distinctions have become redundant and cannot be acted upon. Accordingly, it is the submission of Mr. S. Sarma, learned counsel that if the distinction between the concept



'Legislature Party' and 'Legislature Group' would cease to have its effect, the Leader of any Legislature Party in the Opposition having the highest numerical strength would be the 'Leader of Opposition', irrespective of it having or not having the strength of one-sixth of the Members of the House.

11. In view of the above, it is the submission of Mr. S. Sarma, learned counsel that the Notification dated 01.01.2021 of the Secretary to the Assam Legislative Assembly providing for withdrawal of recognition of the petitioner Sri Debabrata Saikia as the Leader of Opposition in the 14<sup>th</sup> Assam Legislative Assembly, would be unsustainable both on facts as well as in law.

12. Per contra, Mr. D. Saikia, learned senior counsel for the respondents no. 2 and 4 being respectively the Secretary and Principal Secretary to the Assam Legislative Assembly in response to the first contention of Mr. S. Sarma, learned counsel that as per the definition of the expression of 'Leader of Opposition' as provided in Rule 2(p) of the Rules of Procedure in Assembly as well as in Section 2 of the Salary and Allowances Act, 1978, Sri Debabrata Saikia continues to remain the Leader of Opposition in the 14<sup>th</sup> Assam Legislative Assembly and therefore, the withdrawal of the recognition is unsustainable, raises the contention that in the definitions, both under Rule 2(p) and Section 2, a Leader of Opposition is not only required to be the Leader of the largest recognized party in the Opposition, or the Leader of the party in the Opposition in the House having the greatest numerical strength, as the case may be, but is also required to be recognized as such by the Speaker. According to the learned senior counsel the requirement of being recognized by the Speaker is also a mandatory requirement and therefore, if any Member who is otherwise the Leader of the largest recognized party in the Opposition or the Leader of the party in the Opposition in the House having the greatest numerical number, but is not recognized as such by the Speaker, such Member merely by virtue of being the Leader of the largest recognized party or the Leader of the party having the greatest numerical number, would not be recognized under the law to be the Leader of Opposition.

13. It is the submission of Mr. D. Saikia, learned senior counsel that under the Rules of Procedure in Assembly read with the Directions by the Speaker made under Rule 315 of the

aforesaid Rules, a particular procedure is being provided which is required to be followed by the Speaker for recognizing the Leader of the largest recognized party in the Opposition or the Leader of the party in the Opposition having the greatest numerical strength in order to recognize such Leader to be the Leader of Opposition. In the resultant situation, it is the submission of Mr. D. Saikia, learned senior counsel that the Directions by the Speaker in Direction 11 providing for the procedure for recognition by the Speaker of an association of Members as Legislature Party or Legislature Group has its relevance. It is submitted that if an association of Members would not be recognized by the Speaker to be a Legislature Party, but recognized as a Legislature Group, such recognition would not be a recognition as the largest recognized party in the Opposition nor it would be a party in the Opposition in the House having the greatest numerical strength. As the recognition as a Legislature Party has a requirement that the association of the Members shall have at least a strength equal to the quorum fixed to constitute a sitting of the House, i.e. one-sixth of the total number of the Members of the House, therefore, for the purpose of recognizing or withdrawing the recognition of the Leader of Opposition there is a relevance that the Leader of the party in Opposition in the House claiming to have the greatest numerical strength or to be the largest recognized party in the Opposition should also satisfy the requirement that the association of the Members comprising of such party should have one-sixth of the total number of the Members of the House.

Accordingly, it is the submission that in the instant case as the numerical strength of the INC Legislature Party came below 21 (twenty one), which is the number to comprise one-sixth of the Members of the House, the recognition of the INC Legislature Party as a 'Legislature Party' requires a withdrawal and therefore, Sri Debabrata Saikia, being the Leader of the INC Legislature Party having a strength of less than 21 (twenty one) Members cannot further continue with his recognition as the Leader of Opposition and therefore, the Notification dated 01/01/2021 providing for the withdrawal of such recognition does not require any interference.

14. Mr. D. Saikia, learned senior counsel for the respondent Nos. 2 and 4 being the Secretary and Principal Secretary to the Assam Legislative Assembly, in response to the other contention of Mr. S. Sarma, learned counsel for the petitioner that after the Tenth Schedule





was brought in, the distinction between 'Legislature Party' and 'Legislature Group' as contained in the Directions by the Speaker of the Assam Legislative Assembly has become redundant, raises the contention that the Tenth Schedule to the Constitution of India and the Rules of Procedure in Assembly are brought in and framed for different purposes to be achieved and the provisions thereof, more particularly in relation to the concept 'Legislature Party' and 'Legislature Group' can have a different meaning being given under the two different provisions and both the meanings for its respective purposes would hold good and have its effect. The learned senior counsel Mr. D. Saikia, further contends that the Rules of Procedure in Assembly has been framed by the Speaker in exercise of power under Article 208 of the Constitution of India, which provides that the Speaker make Rules for regulating the procedure and conduct of the business of the Assembly. On the other hand, the Tenth Schedule to the Constitution of India is with reference to Articles 102(2) and 191(2) of the Constitution which pertains to a disqualification of a Member of the Parliament or the Legislative Assembly on the ground of defection which relates to voluntarily giving up the membership of a political party by a Member of a House belonging to such political party or otherwise, voting or abstaining from voting in a manner contrary to any direction that may be issued by the political party to which the Member concern belongs to. According to the learned senior counsel the Tenth Schedule and the Rules of Procedure in Assembly operate in two different and unconnected spheres and therefore, the concept 'Legislature Party' cannot be given the same meaning for both the provisions and if done, the same would defeat the very purpose for which the two different provisions had been brought in the Constitution. According to the learned senior counsel if the distinction between the concept of 'Legislature Party' and 'Legislature Group' depending upon the numerical strength of one-sixth of the Members of the House is brought in while understanding the concept 'Legislature Party' under the Tenth Schedule, the very objective and purpose of the Tenth Schedule of bringing in an anti defection law would stand defeated in a given situation. Similarly, if the concept of 'Legislature Party' as provided in the Tenth Schedule is brought in to understand the concepts of 'Legislature Party' and 'Legislature Group' as found in the Rules of Procedure in Assembly, the purpose of bringing in the distinction between 'Legislature Party' and 'Legislature Group', which again has its own parliamentary historical adoption, would be defeated.



15. To substantiate his contention, Mr. D. Saikia, learned senior counsel for the respondent No.2 refers to Chapter 16 of the book Practice and Procedure of Parliament by M N Kaul and S. L. Shakhder, wherein reference is made to what is commonly termed as Mavalankar Rule. Sri GV Mavalankar was the Speaker in the first Lok Sabha and had developed a concept that democracy will never grow on proper lines unless there are the fewest number of parties, possibly not more than two major parties, which can almost balance each other as the Government and the Opposition. During the first Lok Sabha, on the requests from the leaders of the parties, the matter regarding recognition of Parliamentary Parties and Parliamentary Groups and allotment of seats were discussed by the Speaker Sri Mavalankar with the leading Members of the House. With a view to discourage multiplication of parties and growth of splinter groups, Speaker Sri Mavalankar laid down general principles based on which recognition can be given to political parties for their parliamentary work in the Lok Sabha and these principles were later embodied in the Directions by the Speaker. The Directions by the Speaker so embodied contained the concept that in order to form a Parliamentary Party in the Lok Sabha, the requisite condition to be satisfied also contained that the Members who proposed to form a Parliamentary Party should atleast be able to command a strength which would enable them to keep the House, i.e., their number should not be less than the quorum fixed to constitute a sitting of the House, which was one-tenth of the total membership of the Lok Sabha.

16. Accordingly, the submission is made that the relevance of having one-sixth of the total Members of the House in order to constitute a Legislature Party flows from the Parliamentary history which had been laid down in a statutory form through the Directions by the Speaker, which are of a statutory nature and are constitutional provisions under Article 118 of the Constitution of India.

17. In reply, Mr. S. Sarma, learned counsel for the petitioner refers to the expression 'Largest Recognized Party' appearing in Rule 2(p) of the Rules of Procedure in Assembly and submits that the concept of largest recognized party would have to be read conjointly with the explanation to Section 52 of the Representation of People Act, 1951. By referring to Section 52 of the Representation of People Act, 1951, Mr. S. Sarma submits that if a candidate is set up by the recognized political party, as per the Explanation to Section 52, the

recognized political party means a political party recognized by the Election Commission under the Election Symbols (Reservation and Allotment) Order, 1968.

18. Accordingly, reference is made to Clause 6 of the Election Symbols (Reservation and Allotment) Order, 1968 which provides that for the purpose of said Order and for other purposes, as the Election Commission may specify, political parties are either recognized political parties or unrecognized political parties and further a recognized political party shall either be a national party or a state party. By referring to Clause 6(B), the learned counsel submits that the conditions under which a political party shall be eligible to be recognized as a national party is provided therein. By referring to Clause 6(C), it is submitted that a political party whether recognized as a state party or a national party shall continue to be so recognized after any subsequent general election and it shall be dependent upon the fulfillment by it of the conditions specified for the purpose. By referring to Clause 7 of the said Order, Mr. Sarma submits that if any political party had got its recognition, the said party shall continue to have and enjoy the status of such national party or state party for the purpose of the next general election to the House of the People or the Legislative Assembly of the States but nothing shall preclude the Election Commission from withdrawing the recognition of a party either as a national party or as a state party. By referring to the aforesaid provisions it is the submission of Mr. S. Sarma, learned counsel for the petitioner that in the instant case the INC is a recognized political party which is also a National Party and such recognition can be withdrawn only by the Election Commission. Therefore, in the instant case the withdrawal of the recognition of the INC political party as a Legislature Party by the Hon'ble Speaker would be without jurisdiction inasmuch as the same can be done only by the Election Commission.

19. In response thereof, Mr. D. Saikia, learned senior counsel for the respondents No. 2 and 4, per contra contends that the provisions of the Representation of People Act, 1951 and that of the Election Symbols (Reservation and Allotment) Order, 1968 is for the purpose of conducting an election by the Election Commission and it has nothing to do with the procedures adopted for the purpose of conducting of business by the Hon'ble Speaker in respect of a Legislative Assembly.

20. Mr. D. Mazumdar, learned senior counsel for the respondent no. 3 also presented his argument in the same line as the other respondents.



**On the contention that the definition of the expression 'Leader of Opposition': In Rule 2(p) of the Rules of Procedure in Assembly and Section 2 of the Salary and Allowances Act, 1978 does not refer to any distinction between Legislature Party and Legislature Group and therefore, by adopting such distinction the recognition of the petitioner as Leader of Opposition could not have been withdrawn:**

21. Mr. S. Sarma, learned counsel for the petitioner as noted above refers to the two definitions of Leader of Opposition as available in Rule 2(p) of the Rules of Procedure in Assembly and Section 2 of the Salary and Allowances Act, 1978. Rule 2(p) of the Rules of Procedure in Assembly defines the 'Leader of Opposition' to mean the Leader of the largest recognized party in the Opposition whereas under Section 2 of the Salary and Allowances Act, 1978 the Leader of Opposition is defined to mean the Member of the Legislative Assembly who for the time being is the Leader of the party in Opposition in the House having the greatest numerical strength. According to the Mr. S. Sarma, as the definition itself do not refer to any other provision providing for any distinction between the Legislature Party and Legislature Group, the only consideration before the Hon'ble Speaker to recognize a Member of the House to be the Leader of Opposition would be whether such Member is the Leader of the largest recognized party or he is the Leader of the party in Opposition in the House having the greatest numerical strength. Admittedly, at the time when the recognition of the petitioner, Sri Debabrata Saikia as the Leader of Opposition was withdrawn by the impugned Notification of 01.01.2021, Sri Saikia continued to remain to be the Leader of the largest recognized party in Opposition as well as the Leader of the party in Opposition in the House having the greatest numerical strength, although the strength of the INC in the 14<sup>th</sup> Assam Legislative Assembly ultimately got reduced to 20 (twenty) and thereafter to 19 (nineteen). But even with a strength of 19 (nineteen) Members the INC continued to remain as the largest party in Opposition in the House having the greatest numerical strength and therefore, going by the strength of the Members of the INC in the 14<sup>th</sup> Assam Legislative Assembly it continued to be the largest recognized party in the Opposition or the party in Opposition in the House having the greatest numerical strength and satisfied the requirements of the definitions of Leader of Opposition as available in Rule 2(p) of the Rules of Procedure in Assembly and Section 2 of Salary and Allowances Act, 1978.

22. Mr. D. Saikia, learned senior counsel for the respondents no. 2 and 4 on the other hand, as noted above has contended that as per the definitions of Leader of Opposition as available in Rule 2(p) of the Rules of Procedure in Assembly and Section 2 of the Salary and Allowances Act, 1978, apart from being the Leader of the largest recognized party in Opposition or the Leader of the party in Opposition in the House having the greatest numerical strength, the Member concerned in order to be recognized as the Leader of Opposition or to continue to be recognized as the Leader of Opposition, would also have to be recognized as such by the Hon'ble Speaker. To substantiate his contention, Mr. D. Saikia, learned senior counsel refers to both the definitions of Leader of Opposition wherein the expression 'recognized as such by the Speaker' is provided in conjunction with the other provisions that the Member concerned should be the Leader of the largest recognized party in the Opposition or the Leader of the party in Opposition in the House having the greatest numerical strength.

23. The definitions of Leader of Opposition in Rule 2(p) of the Rules of Procedures in Assembly and Section 2 of Salary and Allowances Act, 1978 are extracted as below:

*“(2p) “Leader of the Opposition” means the Leader of the largest recognized party in the Opposition and recognized as such by the Speaker.”*

*“(2) In this Act, “Leader of Opposition”, means that member of the Legislative Assembly, who is, for the time being the Leader of the party in Opposition in the House, having the greatest numerical strength and recognized as such by the Speaker.”*

24. It is the further contention of Mr. D. Saikia, learned senior counsel for respondents no. 2 and 4 that for the purpose of recognizing the Leader of the largest recognized party in the Opposition or the Leader of the party in Opposition in the House having the greatest numerical strength, the procedure to be adopted by the Hon'ble Speaker is provided in Direction 11 of the Directions by the Speaker. As Direction 11 of the Directions by the Speaker contemplates a distinction between a Legislature Party and a Legislature Group, therefore, for the purpose of recognizing by the Speaker of the Leader of the largest recognized party in Opposition or the Leader of the party in Opposition in the House having the greatest numerical strength, the Speaker would also have to take into consideration the distinction between the concepts Legislature Party and Legislature Group as emanates from Direction 11.



25. In order to appreciate the rival contentions, we take note of the definitions of 'Leader of Opposition' as available in Rule 2(p) of the Rules of Procedures in Assembly and Section 2 of the Salary and Allowances Act, 1978. A reading of both the provisions make it discernable that in order to be recognized as the Leader of Opposition, the Leader of the largest recognized party in the Opposition or the Leader of the party in Opposition in the House having the greatest numerical strength would also have to be recognized as such by the Hon'ble Speaker. The expression 'recognized as such by the Speaker' in both the definitions is provided in conjunction with the other provisions of the definitions i.e. the Leader of largest recognized party in the Opposition or the Leader of the party in Opposition in the House having greatest numerical strength.

26. Under the law of interpretation, the expression 'and' between two different and separable provisions within the same provision of law indicates that to achieve the object of such provisions of law, both the distinctive and separable provisions are required to be satisfied and such interpretation cannot be that if the requirement of only one such provision is satisfied, the objective of the provisions of the law is achieved. In other words, the expression 'and' would depict a situation that the two provisions would be conjunctive with each other meaning thereby the requirement of both the distinctive and separable provisions would have to be satisfied in order to achieve the object of the provisions of law.

27. In the instant case, in order to be the Leader of Opposition as defined in Rule 2(p) of the Rules of Procedures in Assembly and Section 2 of the Salary and Allowances Act, 1978, two distinctive and separable provisions are required to be satisfied i.e. the Member concerned should be a Leader of the largest recognized party in the Opposition or a Leader of the party in Opposition in the House having the greatest numerical strength and also that it should be recognized by the Hon'ble Speaker that the Member concerned is a Leader of the largest recognized party in the Opposition or the Leader of the party in Opposition in the House having the greatest numerical strength. In view of the two provisions being conjunctive with each other, any Member of the House who is not as such recognized by the Hon'ble Speaker to be the Leader of the largest recognized party in the Opposition or the Leader of the party in opposition in the House having the greatest numerical strength, would not satisfy the requirements of being the 'Leader of Opposition'.

28. The expression 'Leader of Opposition' having a definite meaning and connotation given under the aforesaid provisions, any Member of the House cannot be or continue to remain as the Leader of Opposition if either of the two provisions comprising the definitions of Leader of Opposition, which includes the requirement of being recognized by the Hon'ble Speaker as such, is not satisfied in a given case.

29. In the instant case, the provisions appearing in the definitions of Leader of Opposition in Rule 2(p) of Rules of Procedures in Assembly and Section 2 of the Salary and Allowances Act, 1978 also cannot be read to be 'or' inasmuch as the provisions thereof does not satisfy the circumstance under which the expression 'and' can be read as 'or'. The law in this respect had been settled in A.G. v. Beauchamp, (1920) 1 KB 650 and R. v. Oakes, (1959) 2 All ER 92, wherein it had been provided that if a literal reading of the words produces an unintelligible or absurd result 'and' may be read for 'or' and 'or' for 'and' even though the result so modifying the words would be less favourable to the subject provided that the intention of the Legislature is otherwise clear.

30. In Pages 530 and 531 of the Principles of Statutory Interpretation by Justice G P Singh (14<sup>th</sup> Edition), it has been provided as follows:

*“The word 'or' is normally disjunctive and 'and' is normally conjunctive but at times they are read as vice versa to give effect to manifest intention of the Legislature as disclosed from the context.*

*..... However, if the literal reading of the words produces an unintelligible or absurd result 'and' may be read for 'or' and 'or' for 'and' even though the result of so modifying the words would be less favourable to the subject provided that the intention of the Legislature is otherwise clear.”*

31. The law in this respect is clear that in order to read the expression 'and' to be 'or', although in doing so it may be less favourable to the subject involved, but it can be done only when otherwise the intention of the Legislature is clear. In the instant case, nothing can be read in the statutory provisions being the Rules of Procedures in Assembly or the Salary and Allowances Act, 1978, which can lead to an inference that the intention of the Legislature is clear that the expression 'and' appearing in the definitions of Leader of Opposition in Rule 2(p) of the Rules of Procedures in Assembly and Section 2 of the Salary and Allowances Act, 1978, would have to be read as 'or'. In absence of any such intention of the Legislature, the



only manner in which the definition of the expression 'Leader of Opposition' is to be read is that the requirement of 'recognized as such by the Speaker' would have to be read to be a mandatory requirement without which the Member concerned cannot be recognized as the Leader of Opposition, even though he may be the Leader of the largest recognized party in the Opposition or the Leader of the party in Opposition in the House having the greatest numerical strength.

32. As there is a requirement under the law for the Hon'ble Speaker to recognize as such the Member who is the Leader of the largest recognized party in the Opposition or the Leader of the party in Opposition in the House having the greatest numerical strength to be the Leader of Opposition, the recognition by the Hon'ble Speaker as such would also have to follow the procedure for making such recognition. The relevant provision for recognition by the Speaker is available in Direction 11 of the Directions by the Speaker of Assam Legislative Assembly which is extracted below:-

*"11. 1) The Speaker may recognize an association of Members as a Legislature Party or Group for the purpose of functioning in the house and his decision shall be final.*

*2) In recognizing a Legislature Party or Group, the Speaker shall take into consideration the following principles:*

*i) An association of Members who propose to form a Legislature Party-*

*a) Shall have announced at the time of the general elections with a distinct ideology and programme of work on which they have been returned to the House;*

*b) Shall have an organization both inside and outside the House; and*

*c) Shall have atleast a strength equal to the quorum fixed to constitute a sitting of the house, that is one-sixth of the total number of Members of the House.*

*ii) An association of members to form a legislature Group shall satisfy the conditions specified in part (a) and (b) of clause (i) and shall have atleast a strength of 5 members.*

*Facilities to recognize Political Parties*

*(iii) The Speaker may grant the following facilities to a party in the house namely:*

*a) Allotment of blocks of seats in the House in proportion to the Strength of party if such arrangement becomes feasible.*

*b) Allotment of a room in the Assembly premises for the work of the*



*party in connection with the business of the House if the party has strength of not less than 5 elected members.*

*c) Nomination to a Legislature Committee in proportion to the strength of the Party.*

*d) Submission to the Speaker of a panel of names for selection of members to be called to speak in debates.*

*e) Consultation, where necessary, in the matter of arrangement of business of the House or any other important matter coming before the house.*

*f) The Speaker may grant such of the facilities specified in this direction as he may deem fit or feasible to a Legislature Group having a strength of less than 10 but more than 5 members.*

*g) The Speaker's decision in regard to the granting of facilities to Legislature Party or Group shall be final."*

33. Direction 11(1) as extracted above provides that the Hon'ble Speaker may recognize an association of Members as Legislature Party or Legislature Group for the purpose of functioning in the House and his decision shall be final. Recognizing the Leader of Opposition is also for the purpose of functioning in the House. Direction 11 2(i)(c) provides that an association of Members who proposes to form a Legislature Party shall have atleast the strength equal to the quorum fixed to constitute a sitting of the House which is one-sixth of the total number of Members of the House. A conjoint reading of Directions 11(i) and 11(2)(i) (c) make it discernible that the Hon'ble Speaker may recognize an association of Members as Legislature Party when such association of Members have atleast a strength equal to the quorum fixed to constitute a sitting of the House, i.e. one-sixth of the total number of the House. In the instant case, the total number of Members of the 14<sup>th</sup> Assam Legislative Assembly is 126 and therefore, the quorum of one-sixth of the Members is calculated to be 21 Members. In other words, as and when an association of Members in the Opposition in the House has a numerical strength of 21 or above, it would entail a recognition by the Hon'ble Speaker to be a Legislature Party and on the other hand, as and when the numerical strength of an association of Members falls below 21, i.e. 20 or below, such association of Members would entail a recognition by the Hon'ble Speaker to be a Legislature Group and not a Legislature Party.

34. In the instant case, it is an admitted position that the numerical strength of the

association of Members belonging to the INC became 20, which later on became 19 and therefore, it did not meet the requirement of having 21 Members. At the inception of the 14<sup>th</sup> Assam Legislative Assembly, the INC had 26 Members and therefore, it did meet the requirement of 21 Members for being recognized as Legislature Party. In the said circumstance, as revealed from the Note-sheet, a Note was put up by the Principal Secretary to the Assam Legislative Assembly before the Hon'ble Speaker providing that the association of Members of the House belonging to the INC may be recognized as a Legislature Party in the 14<sup>th</sup> Assam Legislative Assembly. The Hon'ble Speaker by his endorsement had approved the proposal put forward by the Principal Secretary and upon such approval, the INC was recognized as a Legislature Party in the 14<sup>th</sup> Assam Legislative Assembly. Upon such recognition of INC as a Legislature Party, an announcement was made in the House on 03.06.2016 that as the petitioner Sri Debabrata Saikia was nominated to be the Leader of the INC legislature party, he accordingly was also recognized as Leader of the Opposition. It is taken note of that at the relevant point of time, when the petitioner Sri Debabrata Saikia was recognized as the Leader of Opposition, the association of Members comprising of the INC had a numerical strength of 26 and in-fact was also the largest recognized party in the Opposition as well as the party in Opposition in the House having the greatest numerical strength. As the association of Members of INC comprised the largest recognized party in the Opposition as well as the party in Opposition in the House having the greatest numerical strength, and as the association of Members of the INC satisfied the requirement of having one-sixth of the total Members of the House, it was recognized by the Hon'ble Speaker as a Legislature Party and the Leader thereof being the petitioner Sri Debabrata Saikia was recognized as the Leader of Opposition.

35. Subsequently, when the numerical strength of the association of Members of INC became less than 21, i.e. one-sixth of the total number of Members of the House, it had lost its eligibility to be recognized as a Legislature Party under the provisions of Direction 11 by the Speaker.

36. Upon the strength of the INC having fallen below 21 i.e. one-sixth of the total numbers of the Members of the House, a Note was put up by the Secretary to the Assam Legislative Assembly before the Hon'ble Speaker, which had provided that the strength of the INC in the

14<sup>th</sup> Assam Legislative Assembly had been reduced to 20 and therefore, the petitioner Sri Debabrata Saikia may be derecognized as the Leader of the Opposition in the Assam Legislative Assembly and the association of Members of the INC may also be derecognized as a Legislature Party in the Assam Legislative Assembly. The Hon'ble Speaker by his endorsement dated 01.01.2021 had agreed with the proposal, meaning thereby that the Hon'ble Speaker had derecognized the petitioner Sri Debabrata Saikia as the Leader of the Opposition in the Assam Legislative Assembly and had also derecognized INC as a Legislature Party in the 14<sup>th</sup> Assam Legislative Assembly.

37. From a reading of the Note Sheets as indicated above, it would be discernible that the association of Members of the INC in the Assam Legislative Assembly had been recognized as a Legislature Party as well as its Leader Sri Debabrata Saikia was recognized as the Leader of Opposition on the strength that the INC had 26 seats in the 14<sup>th</sup> Assam Legislative Assembly, which did meet the requirement of having one-sixth of the total Members of the House. Subsequently, when the strength of the association of the Members of INC in the 14<sup>th</sup> Assam Legislative Assembly was reduced to 20 and thereafter to 19, i.e. it had fallen below the required one-sixth of the total number of Members of the House, the Hon'ble Speaker derecognized the association of the Members of INC as a Legislature Party and also its Leader Sri Debabrata Saikia was derecognized as a Leader of Opposition, which again was done under Direction 11 of the Directions by the Speaker.

38. As the requirement of Rule 2(p) of the Rules of Procedure in Assembly and Section 2 of the Salary and Allowances Act, 1978 also contemplates a recognition by the Speaker as to the Leader of the largest recognized party in the Opposition or the Leader of the party in Opposition having the greatest numerical strength in order to be recognized as the Leader of Opposition and such recognition having been done by the Hon'ble Speaker under the provisions of Direction 11 of the Directions by the Speaker, any de-recognition of the association of Members to continue as the Legislature Party, whose Leader thereof was recognized as the Leader of Opposition, would also be justifiable if the requirements of Direction 11 (2)(c) would no longer be satisfied. As the recognition was made by the Hon'ble Speaker, in view of the satisfaction of the requirements of Direction 11, any de-recognition

also would be justifiable if the requirements of Direction 11 are no longer satisfied.

39. From the aforesaid point of view, we are unable to accept the contention of Mr. S Sarma, learned counsel for the petitioner that the Leader of the largest recognized party in the Opposition or the Leader of the party in Opposition in the House having largest numerical strength would continue to be recognized as the Leader of the Opposition irrespective of whether the Hon'ble Speaker recognizes as such or not.

**On the contention that the Legislature Party having been defined under Paragraph 1(b) of the Tenth Schedule to the Constitution of India, the said definition would be all pervading over any other meaning given to the expression 'Legislature Party' in any other provision:**

40. Mr. S Sarma, learned counsel for the petitioner which refers to paragraph 1(b) of the Tenth Schedule to the Constitution of India which defines 'Legislature Party' in relation to a Member of a House belonging to any political party to mean a group consisting of all the Members of that House for the time being belonging to that political party. By relying on such meaning given to the expression 'Legislature Party' it is the submission of Mr. S Sarma, learned counsel that the group consisting of all the Members of the House belonging to a particular political party would comprise of the 'Legislature Party' in that House and, therefore, in order to be a 'Legislature Party' the constitutional provision does not contemplate the requirement of any given number of members of that political party in the House to constitute a 'Legislature Party'. Mr. S Sarma, learned counsel also refers to a passage in the book 'Parliamentary Procedure' by Sri Subhash C Kashyap wherein in Clause 4.3 of Chapter 30 it is provided that the provisions of the Directions by the Speaker for recognizing a Parliamentary Party or Parliamentary Group requiring the minimum number of one-tenth of the membership of the House have become redundant after the Tenth Schedule providing for the anti-defection law had been brought in. As under the Tenth Schedule if there is a lone Member of a political party in the House, such political party would also be a 'Legislature Party', therefore there would be some contradiction between the constitutional provisions in the Tenth Schedule and the Directions by the Speaker. In the said passage in the book 'Parliamentary Procedure' by Sri Subhash C Kashyap a view had been expressed that

either of the two provisions would need an amendment and until such amendment is brought in, in case of a conflict between the two, the constitutional provision would naturally prevail. The definition of the concept 'Legislature Party' in paragraph 1(b) of the Tenth Schedule and the passage in the book 'Parliamentary Procedure' by Sri Subhash C Kashyap in clause 4.3 of Chapter 30 are extracted hereinbelow:

*“4.3 Direction 120 of the Directions by the Speaker provides for recognizing a parliamentary party or group. To be recognized as a party, the minimum number required is one-tenth of the membership and for a group it should be atleast 30. But, after the Anti-Defection Law, every member of the House who is not elected as an independent or nominated, belongs to his party even if he be the only member of his party i.e., irrespective of the number of its members in the House, every party that is represented in the House comes to automatically get constitutional recognition as a party. Thus, there is some contradiction between the constitutional provisions and the Speaker's directions. One of the two would need to be amended. Until that is done, in case of a conflict between the two, the Constitutional provision would naturally prevail.”*

41. According to Mr. S Sarma, leaned counsel for the petitioner as the expression 'Legislature Party' is defined in the constitution itself, such meaning given in the definition would be applicable for all the purposes of the Constitution meaning thereby that it would be all pervading. To substantiate his submission, Mr. S Sarma relies upon the pronouncement of the Supreme Court in *Burmah Shell Cooperative Housing Society Ltd. and Another Vs. Chief Commissioner of Income Tax (Technical) New Delhi and Others* reported in 1995 Supp.(1) SCC 533 wherein it is provided that where the High Court had dismissed the writ petition holding that the provisions of the Act would have overriding effect on the Bye-laws of the society, there is no ground for interfering with the view taken by the High Court.

42. Mr. S Sarma by relying on the said proposition of law submits that even if there is a conflict between the provisions of the Rules of Procedure in Assembly framed by the Speaker and the constitutional provision under the Tenth Schedule, the constitutional provision would prevail and the Rules of Procedures in Assembly framed by the Speaker cannot be the basis

to give a meaning different to the expression 'Legislature Party'.

43. Mr. S Sarma, learned counsel for the petitioner also raises an argument that even if on earlier occasion the Leader of Opposition stood de-recognised as because the numerical strength of the party concerned fell below the one-sixth of the membership of the House, the same would also be an act of the Speaker done contrary to the law and, therefore, the same cannot be the basis for committing the same mistake once again. To substantiate the proposition, Mr. S Sarma, relies upon the proposition laid down by the Supreme Court in paragraph 13 in *Union of India and Another Vs. International Trading Co. and Another* reported in (2003) 5 SCC 437 wherein it is provided as extracted below:

*“.....It is not necessary to deal with that aspect because two wrong has been done in another case direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters there is no discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution of India (in short, "the Constitution") cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the respondents cannot strengthen their case. They have to establish strength of their case on some other basis and not by claiming negative equality.”*

44. Mr. S Sarma, learned counsel also raises a proposition that the expression 'Recognized Party' in the context of political parties has a definite legal connotation and that the expression 'Recognized Party' must necessarily be given the same meaning as assigned to it in the Representation of the People Act, 1951. By raising such contention, Mr. Sarma makes a submission that the INC being a recognized political party as well as recognized as a national party cannot be de-recognized by the Speaker and it is only the Election Commission which would be competent to derecognize it. By raising such contention a submission is made that the de-recognition by the Speaker of INC as the 'Legislature Party' in the 14<sup>th</sup> Assam Legislative Assembly and the consequential de-recognition of the petitioner Sri Debabrata

Saikia as the Leader of the Opposition would be without jurisdiction.

45. Per contra, Mr. D Saikia, learned senior counsel for the respondents No.2 and 4 refers to a passage in the Book, 'Practice and Procedure of Parliament' by Sri MN Kaul and Sri SL Shakhder wherein reference is made to the origin of the concept of Directions by the Speaker. The passage in the book refers to the concept put forth by Sri GV Mavalankar, the first Speaker in the House of People for recognizing the association of Members of different political parties as 'Parliamentary Party'. The said concept of Sri GV Mavalankar was approved by all the political parties of the relevant time and was brought into a written form by means of the Directions issued by the Speaker. Accordingly, a submission is made that the Directions by the Speaker are also in the nature of statutory provisions and, therefore, has its own effect. Accordingly a submission is made that the Rules of Procedure in Assembly framed by the Speaker in exercise of the power conferred under Article 208 of the Constitution and the Directions by the Speaker had been issued in exercise of the power under Rule 315 of the Rules of Procedure in Assembly and, therefore, the Directions by the Speaker also has its own statutory import. To rebut the contention of the petitioner that the meaning given to the expression 'Legislature Party' in paragraph 1(b) of the Tenth Schedule to the Constitution is an all pervading constitutional provision, Mr. D Saikia, learned senior counsel submits that the purpose for which the Tenth Schedule to the Constitution was brought in and the purpose for which the Rules of Procedure in Assembly was framed by the Speaker were for two different and separate purposes and, therefore, the meaning given to the expression 'Legislature Party' in paragraph 1(b) of the Tenth Schedule to the Constitution cannot be imported as such and be also made applicable to the Rules of Procedure in Assembly framed by the Speaker under Article 208 of the Constitution.

46. To appreciate the rival contentions, we take note of the purpose of Tenth Schedule to the Constitution of India and also the purpose of framing of the Rules of Procedures in Assembly by the Speaker. The Tenth Schedule to the Constitution of India had been brought in with reference to Articles 102(2) and 191(2) of the Constitution where both the provisions pertain to disqualification of membership of either House of Parliament or of the Legislative Assembly or Legislative Council, as the case may be.





47. Both the Articles 102(2) and 191(2) provides that a person shall be disqualified from being a Member of either the House of Parliament or of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule. Paragraph 2(1) of the Tenth Schedule provides for a disqualification from being a Member of the House if such Member of a House belonging to any political party voluntarily gives up his membership of such political party or votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs without obtaining prior permission of such political party or without such voting or abstention being condoned by such political party. Paragraph 2(2) provides that an elected Member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified from being a Member of the House if he joins any political party after such election. A reading of the provisions of the Tenth Schedule to the Constitution would go to show that even if a given political party has one Member in the House and such Member either voluntarily gives up his membership of such political party or votes or abstains from voting in the House contrary to any direction issued by the political party, such Member would come within the provisions of the Tenth Schedule for being disqualified as a Member of the House.

48. We have to understand that the expression 'Legislature Party' in paragraph 1(b) of the Tenth Schedule has been given its meaning taking into consideration that even a lone Member of a given political party would be subjected to a disqualification for being a Member of the House if such Member voluntarily gives up his membership of the political party or votes or abstains from voting in the House contrary to any directions issued by any political party.

49. In the said context, if the meaning given to the expression 'Legislature Party' in Paragraph 1(b) of the Tenth Schedule is given a meaning other than the meaning given to it and made subjected to a requirement of having a numerical strength of a given number, the same would not satisfy the requirement for which the Tenth Schedule was brought in. We also take note of that Paragraph 1(b) of the Tenth Schedule begins with the expression "In this Schedule, unless, context otherwise requires". The expression 'In this Schedule unless the context otherwise requires' would have to be understood to mean that the meaning given to the expression 'Legislature Party' in Paragraph 1(b) would remain confined for the purpose of





the Tenth Schedule itself and it would not have an all-pervading meaning for all other purposes under the Constitution. As no other context is discernable within the Tenth Schedule that the expression 'Legislature Party' as defined in the Schedule would also be applicable for the purpose of understanding the expression if available in any provisions of the Constitution, in view of the expression 'unless the context otherwise requires' in Paragraph 1 of the Tenth Schedule, it would have to be understood that the expression 'Legislature Party' as defined in the Tenth Schedule would be applicable only for the purpose of the Tenth Schedule itself and not for the purpose of understanding the expression as may be available in any other provisions of the Constitution.

50. As already discussed above, the Tenth Schedule is for the purpose of disqualification of a Member of a House for voluntarily giving up the membership of the political party or for voting or abstain from voting in a manner contrary to any direction that may be issued by the political party and the meaning given to the expression 'Legislature Party' in Paragraph 1(b) has a reasonable nexus and relevance to the purpose for which the Tenth Schedule was brought in. On the other hand, the Rules of Procedure in Assembly framed by the Speaker is under Article 208 of the Constitution of India which empowers a House of the Legislature of a State to make rules for regulating its procedure and conduct of its business subject to the provisions of the Constitution. The Rules of Procedures in Assembly framed under Article 208 would be for the purpose to regulate the procedures and conduct of its business by the House of the Legislature. The purpose for which the Rules of Procedures in Assembly would be framed under Article 208 would also have to be understood to have been framed for the purpose of regulating the conduct of its business by a House of the Legislature.

51. The Supreme Court in paragraph 38 of Sharma M.S.M v. Sri Krishna Sinha, reported in AIR 1959 SC 395 : 1959 Supp. (1) SCR 806 had held in that Rules framed under Article 118 and Article 208, if otherwise valid, constitutes the 'procedure established by law' within the meaning of Article 21:

*“The Bihar Legislative Assembly has framed rules in exercise of its powers under that Article. It follows, therefore, that Article 194(3) read with the rules so framed has laid down the procedure for enforcing its powers, privileges and immunities. If, therefore, the Legislative Assembly has the powers, privileges and immunities of the House of Commons and if the petitioner is eventually deprived of his personal liberty as a result*

*of the proceedings before the Committee of Privileges, such deprivation will be in accordance with procedure established by law and the petitioner cannot complain of the breach, actual or threatened, of his fundamental right under Article 21.”*

52. In Direction 11 of the Directions by the Speaker framed under Rule 315 of the Rules of Procedure in Assembly, the Speaker in order to regulate the conduct of its business had brought in the concept of distinction between a Legislature Party and a Legislature Group, depending on the numerical strength of the association of Members of the political party concerned. Article 208 of the Constitution gives a discretion to the Speaker to frame the Rules for conducting of its business of the House and any such distinction being brought in by the Speaker between the concept of Legislature Party requiring one-sixth of the Members of the House and the concept of Legislature Group having a strength of less than one-sixth of the Members of the House would have to be construed to be a valid provision in the absence of any material being brought or the provision itself being assailed on the ground of being arbitrary. The Constitution bestows discretion on the Speaker to frame the Rules of Procedures and the Rules of Procedures having been framed by the Hon'ble Speaker for the purpose, the same would have to be given a meaning as given by the Speaker while interpreting such Rules. Rule 314 of the Rules of Procedures in Assembly provides that if any doubt arises as to the interpretation of any of the provisions of the Rules, the decision of the Speaker shall be final.

53. From the point of view that the Tenth Schedule to the Constitution of India and the Rules of Procedures in Assembly framed by the Speaker under Article 208 of the Constitution are for two entirely different and unrelated purposes, it would have to be accepted that the meaning given to the expression Legislature Party in Paragraph 1(b) of the Tenth Schedule cannot be imported to give a different meaning to the same expression Legislature Party as contemplated in the Rules of Procedure in Assembly made under Article 208 of the Constitution and the directions by the Speaker made under Rule 315 of the said Rules.

54. If either of the two meanings given to the expression Legislature Party in the Tenth Schedule or in the Rules of Procedures in Assembly framed by the Speaker under Article 208 of the Constitution are sought to be imported so as to give a different meaning to the expression Legislature Party in either of the two provisions, the purpose for which the two



provisions were incorporated may be defeated.

55. For the aforesaid reasons, we are unable to accept the contention that the expression Legislature Party having been given a particular meaning of its own in Paragraph 1(b) of the Tenth Schedule to the Constitution would be all-pervading and carry the same meaning to the expression Legislature Party that may be used for the purpose of any other provisions in the Constitution. The said view is further fortified from the expression 'In this Schedule' appearing in Paragraph 1 to the Tenth Schedule while giving a meaning to the expression Legislature Party in Paragraph 1(b), meaning thereby that the expression Legislature Party as defined therein would have its relevance for the purpose of the Tenth Schedule itself. The said expression having been further fortified with the expression 'unless the context otherwise requires' and no further context being discernable in the provisions of the Tenth Schedule so as to give a meaning to the expression Legislature Party that it would also be applicable for any other purposes of the Constitution, we are unable to accept that the meaning given to the expression Legislature Party in Paragraph 1(b) of the Tenth Schedule would also be the meaning of Legislature Party for the purpose of any other provisions in the Constitution and including for the purpose of the Rules of Procedures in Assembly that may be framed by the Speaker under Article 208 of the Constitution.

56. A further contention has been raised by Mr. S. Sarma, learned counsel for the petitioner that the INC being a recognized political party, its recognition can be withdrawn only by the Election Commission. We take note that such submission is made with reference to the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 which had been framed by the Election Commission in exercise of the powers under Article 324 of the Constitution read with Section 29(A) of the Representation of People Act, 1951 and Rule 5 and 10 of the Conduct of Election Rules, 1961 and all other powers related thereto. Although the proviso to Clause 7 of the Election Symbols (Reservation and Allotment) Order, 1968 provides that nothing shall preclude the Election Commission from withdrawing the recognition of a political party as a national party or as a state party, we take note of that Article 324 of the Constitution pertains to the vesting of the superintendence, directions and control of election on the Election Commission, whereas Section 29(A) of the Representation of People Act, 1951 pertains to the registration of any association or body of individuals



calling itself a political party with the Election Commission, whereas Rule 5 and 10 of the Conduct of Elections Rules, 1961 pertains to the process of conduct of elections. For the purpose of the aforesaid provisions, an association of individuals or a body calling itself to be a political party gets a recognition as a recognized party and further as a national party or a state party, as the case may be. The recognition of a group of individuals calling itself to be a political party resulting in a recognized party is for the purpose of conducting an election whereas the recognition of an association of Members in a House is for the purpose of conducting the business of the House.

57. Any recognition or withdrawal of recognition of an association of Members in the House as a Legislature Party or otherwise would have no bearing on the recognition of a group of individuals calling itself to be a political party and being recognized as a recognized party and the process of recognition of an association of Members of a House as a Legislature Party or otherwise is not within the domain of the Election Commission, but under the Rules it is within the domain of the Speaker of the House. In such circumstance, it would be unacceptable that the recognition of an association of Members of a House as a Legislature Party or otherwise de-recognition thereof would be within the domain of the Election Commission as sought to be contended by the petitioner.

58. The Note-sheets leading to the recognition of the INC as a Legislature Party and de-recognition thereof have been annexed to the affidavit-in-opposition by the respondents no. 2 and 4.

59. By referring to the Note-sheets a contention has been raised that the respondents without notifying the withdrawal of recognition of the INC as a Legislature Party had notified the de-recognition of the Leader of Opposition and therefore, such de-recognition would be untenable.

60. We have perused the two Note-sheets of 03.06.2016 and 01.01.2021 respectively. In the Note put forwarded by the Principal Secretary to the Assam Legislative Assembly in the Note-sheet dated 03.06.2016 it was provided that the INC may be recognized as a Legislature Party in the Assam Legislative Assembly and the file was laid before the Hon'ble Speaker and the Hon'ble Speaker by his endorsement had approved the same, meaning thereby that the



Hon'ble Speaker had granted the approval to the recognition of INC as a Legislature Party. Again in the Note-sheet dated 01.01.2021 it had been provided that in view of what had been stated in the Note, the petitioner Sri Debabrata Saikia perhaps be de-recognized as Leader of Opposition and further the INC Legislature Party may also be de-recognized as a Legislature Party. The Hon'ble Speaker accordingly puts his endorsement as 'agreed' to such proposal meaning thereby that through such agreement, the Hon'ble Speaker had approved the de-recognition of the petitioner, Sri Debabrata Saikia as the Leader of Opposition and further also de-recognized the INC Legislature Party to be a Legislature Party in the Assam Legislative Assembly. In the circumstance, we do not find any infirmity to the extent that the Leader of Opposition had been de-recognized without de-recognizing the INC as a Legislature Party.

61. In view of the above, we are unable to accept that the petitioner has made out a case for any interference with the Notification dated 01.01.2021 of the Secretary, Assam Legislative Assembly by which it was provided that the Hon'ble Speaker of the Assam Legislative Assembly was pleased to withdraw the recognition of the petitioner, Sri Debabrata Saikia as the Leader of the Opposition in the Assam Legislative Assembly with effect from 01.01.2021.

62. Writ petition accordingly is held to be devoid of any merit and the same is dismissed. The interim order passed earlier stands vacated.

63. A copy of this judgment certified by the Court Master may be provided to the respective parties.

**JUDGE**

**Comparing Assistant**