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**IN THE HIGH COURT AT CALCUTTA**

**(Constitutional Writ Jurisdiction)**

**ORIGINAL SIDE**

**Present:**

**The Hon'ble Justice Krishna Rao**

**W.P.O. No. 276 of 2026**

**Sobhandeb Chattopadhyay**

**Vs.**

**Hon'ble Speaker, West Bengal**

**Legislative Assembly & Ors.**

Mr. Kalyan Bandopadhyay, Sr. Adv.
Mr. Suman Sengupta
Mr. Anit Kumar Das
Mr. Sirsanya Bandopadhyay
Mr. Rahul Kumar Singh
Ms. Sneha Sarkar
Mr. Suhotro Roy

....For the petitioner.

Mr. Billwadal Bhattacharya, Ld. AAG.
Mr. Suryaneel Das
Mr. Aditya Mondal

....For the respondent nos. 1 to 3.

Mr. Jaydip Kar, Sr. Adv.
Mr. Pijush Biswas

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Mr. Abhishek Baran Das

....For the respondent nos. 5 and 6.

Mr. Arka Kumar Nag
Mr. Ashish Dutta
Mr. Aashutosh Bhattacharyya
Md. Danish Farooqui

....For the respondent no. 7.

Hearing Concluded On : 20.11.2026

Judgment Delivered On : 27.11.2026

Judgment Uploaded On : 27.11.2026

**Krishna Rao, J.:**

**1.** The petitioner has filed the present writ petition praying for the following reliefs:

> *"a) An Order do issue dispensing with compliance of Rule 26 of the Rules of this Hon'ble Court relating to applications under Article 226 of the Constitution;*
>
> *b) A declaration do issue declaring that recognition of Respondent No. 5, who has already been expelled from the AITC as the Leader of Opposition and Respondent No. 6 as the Chief Whip of the AITC, and non-recognition of the Petitioner as the Leader of Opposition is invalid, ultra vires to Article 14 of the Constitution of India and precedents and practice of the West Bengal Legislative Assembly.*
>
> *c) A writ of and/or in the nature of Mandamus do issue directing Respondents, especially the Respondents No. 1, 2, and 3 and/or their men or agents, whether acting individually or collectively, to recognize the Petitioner as the Leader of the Opposition of the 18th West Bengal Legislative Assembly.*

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*d) A Writ of and/or in the nature of Mandamus do issue directing Respondents, especially the Respondents No. 1, 2, and 3 and/or their men or agents, whether acting individually or collectively, to allot an office to the Petitioner inside the West Bengal Legislative Assembly which the Petitioner is entitled to as the Leader of Opposition;*

*e) A writ of and/or in the nature of Prohibition do issue, thereby prohibiting the Respondents from recognizing the Respondent No. 5 as the Leader of the Opposition and the Respondent No. 6 as the Chief Whip of the AITC in the 18th West Bengal Legislative Assembly.*

*f) A Writ of and/or in the nature of Certiorari do issue directing the respondents and/or their men/agents/ servants to forthwith and/or immediately certify and transmit all records of the case including the impugned decision to recognize Respondent No. 5, who has already been expelled from the AITC as the Leader of Opposition and Respondent No. 6 as the Chief Whip of the AITC, and non-recognition of the Petitioner as the Leader of Opposition to certify the same and on being so certified declare the same to be illegal, arbitrary, unconstitutional, and void ab initio and quash the same so that conscionable justice may be rendered;*

*g) Rule NISI in terms of prayers (b) to (f) above and to make the Rule absolute if no cause and/or any insufficient cause is shown in reply thereto;*

*h) An ad-interim order do issue directing the Respondents No. 1 to 3 to stay the operation of the purported Order of the Respondent No. 1 thereby recognizing Respondents No. 5 and 6, the Leader of the Opposition and Chief Whip of the AITC, during the pendency of the instant Writ Petition;*

*i) An ad-interim order do issue restraining Respondents No. 5 and 6 from functioning as the Leader of the Opposition and the Chief Whip of the AITC in the 18th West Bengal Legislative Assembly pending the final disposal of the instant writ petition;*

*j) Ad-interim orders in terms prayers (h) and (i) hereinabove; of*

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> *k) Cost incurred in filing of the instant Writ Petition;*
>
> *l) Pass such other or further order or orders and/or direction or directions as Your Lordships would deem fit and proper."*

**2.** Initially the petitioner has prayed for an interim order in terms of prayer (h) and (i) of the writ petition. By an order dated 18th June, 2026, this Court refused to grant interim order and directed the parties to exchange their affidavits to the writ petition. The petitioners being aggrieved with the order dated 18th June, 2026, have preferred an appeal being APOT No. 110 of 2026. The Appellate Court has disposed of the appeal on 18th August, 2026 by passing the following order:

> *"**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.*

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> ***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."*

**3.** All parties have accepted the judgment passed by the Appellate Court and have filed their respective affidavits. The Hon'ble Appellate Court has raised the following issues which is to be decided by this Court after exchange of affidavits.

*(i). Whether by not communicating the decision of the Speaker dated 3rd June, 2026 to the petitioner, though the claim of the petitioner was prior to the claim of the respondent no.5 and not publishing decision of the Speaker dated 3rd June, 2026 in the official website and only produced before this Court on the second day of hearing of the writ petition for grant of interim order is bad in law and not legally sustainable?*

*(ii). Why the Speaker had waited to take decision till 3rd June, 2026 though the National General Secretary of the All India Trinamool Congress submitted intimation regarding appointment of Leader of Opposition, Deputy Leader of Opposition and Chief Whip on behalf of the All India Trinamool Congress on 9th May, 2026 wherein the 58 elected TMC members of the Legislative Assembly*

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*requested for appointment of the Respondent no.5 as Leader of Opposition and respondent no.6 as Chief Whip on 3rd June, 2026 and on the same day, the Speaker has taken decision and passed the impugned order by appointing the Respondent no.5 as Leader of Opposition and the Respondent no.6 as Chief Whip.*

*(iii). Whether the Speaker has acted in consonance with the Constitutional morality of being impartial and neutral or whether the Speaker allowed time to the respondent no.5 to muster support from majority of the members ignoring the decision of the 70 members which was communicated by the National General Secretary of the All India Trinamool Congress on 9th May, 2026.*

*(iv). Whether without making any further query from the 70 legislators, who signed on the resolution or who attended the meeting dated 6th May 2026 and after receipt of the objection from the two of the signatories on the allegation of forgery of their signature in the resolution, the Speaker held that the resolution is doubtful knowing fully that the respondent no.5 was an expelled member is sustainable under law?*

*(v). Whether the claim of the petitioner that the petitioner and the Chief Minister by holding hand of the Speaker to his chair on 15th May, 2026, as per convention which also appears in the News Paper Publication would indicate that the Speaker recognize the petitioner as Leader of Opposition on 15th May, 2026 itself.*

**4.** 18th West Bengal Legislative Assembly Election was held in the month of April, 2026 for 294 Assembly Constituencies seats out of which, the

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Bharatiya Janata Party (hereinafter referred to as "BJP") secured 207 seats and All India Trinamool Congress (hereinafter referred to as "AITC") secured 80 seats being the second largest political party in the said election.

**5.** Mr. Kalyan Bandopadhyay, Learned Senior Advocate, representing the petitioner submits that after declaration of result of the West Bengal Legislative Assembly Election on 4th May, 2026, a meeting of all the elected Members of the Legislative Assembly belongs to the AITC was conveyed on 6th May, 2026, wherein 70 elected Members of the Legislature Party of the AITC were participated including the respondent nos. 5 and 6. In the said meeting, the name of the petitioner was proposed to be appointed as Leader of Opposition, name of Smt. Asima Patra and Smt. Nayna Bandyopadhyay were proposed to be the Deputy Leaders of Opposition and Mr. Firhad Hakim as the Chief Whip and no members raised any objection to the said proposals including the respondent nos. 5 and 6. In pursuance of the decision of the meeting of the Legislature Party of the AITC held on 6th May, 2026, the National General Secretary of the AITC by a letter dated 9th May, 2026, intimated to the Speaker for appointment of Leader of Opposition, Deputy Leaders of Opposition and Chief Whip.

**6.** Mr. Bandopadhyay submits that as per the precedents and practice of the West Bengal Legislative Assembly, and also the Parliament, the Hon'ble Speaker recognizes the Leader of Opposition on the basis of the recommendation made by the second largest political party which is in

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opposition. He submits that since the year 2001, the same procedure was followed till the year 2021. On 15th May, 2026, after the election of the Hon'ble Speaker, the Hon'ble Chief Minister and the petitioner, as Leader of Opposition, following the practice, procedure and respect to the newly elected Speaker, escorted the respondent no.4 herein to the chair of the Hon'ble Speaker by holding hands. He further submits that during the welcome speech by the newly elected Speaker recognized the petitioner as the Leader of Opposition.

**7.** The respondent no.3 by a letter dated 18th May, 2026, requested the National General Secretary of the AITC to furnish relevant Minutes/ Resolution of the meeting of the Legislature Party of the AITC along with the signatures of the members of AITC, who attended the said meeting for taking further action. By a letter dated 20th May, 2026, the National General Secretary of the AITC furnished relevant excerpts of the Resolution Book and Attendance of all the members who were present in the meeting dated 6th May, 2026. On 23rd May, 2026, the respondent no.3 informed the National General Secretary of AITC that the letter dated 20th May, 2026, is received on 21st May, 2026 and will be placed before the Speaker on 25th May, 2026 and orders of the respondent no.4 will be communicated to as soon as it is passed.

**8.** Mr. Bandopadhyay submits that no decision of the Speaker was communicated either to the petitioner or to the National General Secretary of the AITC but in the meantime, the petitioner came to know that two members of the Legislature Party of the AITC, namely, Shri

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Ritabrata Banerjee, the respondent no.5 herein and one Shri Sandipan Saha have made a complaint to the respondent no.1 that the alleged signatures in the Resolution dated 15th May, 2026, were forged. The respondent no.1 directed the respondent no.3 to file a complaint with respect to the alleged complaint before the concerned police authorities and the respondent no.3 has lodged a complaint before the police authorities on 27th May, 2026 and the Hare Street Police Station registered a case being FIR No. 98 of 2026 under Section 318(4)/ 336(2)/336(3)/338/340(2)/61(2) of the Bharatiya Nyaya Sanhita, 2023. The respondent no. 5 and Shri Sandipan Saha were subsequently expelled from the AITC on 1st June, 2026, on the allegation of anti-party activities. By a letter dated 1st June, 2026. On the same day, it was informed to the respondent no. 4. The National General Secretary of AITC again by a letter dated 1st June, 2026, informed the respondent no.1 about the practices and norms relating to the recognition of the Leader of Opposition, the Chief Whip and the Deputy Leaders of Opposition and requested to recognize the petitioner as Leader of Opposition and other posts as per the request dated 9th May, 2026.

**9.** Mr. Bandopadhyay submits that the petitioner came to know from media reports that on 3rd June, 2026, a rebel group of MLAs, led by the respondent no.5, who allegedly expelled from AITC on 1st June, 2026, submitted a representation with the purported signatures of 58 MLAs and the respondent no.5 claimed to be the Leader of Opposition on the strength of such purported support in the Legislature Party of the AITC

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and accordingly, the respondent no.1 recognized the respondent nos. 5 and 6 as Leader of Opposition and Chief Whip. Neither any communication was made to the petitioner nor the impugned order dated 3rd June, 2026, uploaded in the Website of the West Bengal Legislative Assembly or it is disclosed in the public domain.

**10.** Mr. Bandopadhyay submits that the appointment of the Respondent Nos. 5 and 6 as Leader of Opposition and Chief Whip of AITC, respectively are totally illegal, arbitrary and contrary to the practice and procedure of the recognition of Leader of Opposition and Chief Whip in the West Bengal Legislative Assembly and are violative of Article 14 of the Constitution of India. He submits that the respondent no.1 demonstrated undue haste in recognizing the claim of rebel faction on the same day, it was submitted, while deliberately kept the official communication from the AITC submitted on 9th May, 2026.

**11.** Mr. Bandopadhyay submits that the pendency of a criminal investigation into alleged forged signature cannot be a valid ground to stall the recognition of the officially nominated Leader of Opposition. He submits that the Speaker failed to provide any opportunity to the AITC party leaders to be heard before recognizing the rival claim by violating the fundamental principles of natural justice. He submits that the respondent no.1 is bound to recognize the proposal from the official office-bearers of a recognized political party. The letter of the National General Secretary was the only legitimate communication. By taking into consideration of the representation of the expelled members and a

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splinter group, the respondent no.1 has acted beyond his jurisdiction and interfered in the internal democratic functioning of a political party. He has relied upon the judgment in the case of ***Subhash Desai Vs. Principal Secretary, Governor of Maharashtra and Others*** reported in ***(2024) 2 SCC 719*** and submits that the "Political Party" and "Legislature Party" cannot be conflated. 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 polices, that they could appeal to the voters on the basis of their affiliation with the party, but 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. The Speaker must recognize the Whip and the Leader of Opposition who are duly authorized by the political party with reference to the provisions of the party constitution, after conducting an enquiry.

**12.** Mr. Bandopadhyay has relied upon the judgment in the case of ***Nabam Rebia and Bamang Felix Vs. Deputy Speaker, Arunachal Pradesh Legislative Assembly and Others*** reported in ***(2016) 8 SCC 1*** and submits that the Speaker is expected to have a sense of elevated independence, impeccable objectivity and irreproachable fairness, and above all, absolute impartiality. The Speaker has the duty to see that

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business of the House is carried out in a decorous and disciplined manner.

**13.** Mr. Bandopadhyay has relied upon the judgment in the case of ***Shrimanth Balasaheb Patil Vs. Speaker, Karnataka Legislative Assembly and Others*** reported in ***(2020) 2 SCC 595*** and submits that the Speaker being a neutral person, is excepted to act independently while conducting the proceedings of the House or adjudication of any petitions. His political affiliations cannot come in the way of adjudication.

**14.** Mr. Bandopadhyay has relied upon the judgment in the case of ***B. Prabhakar Rao and Others Vs. State of Andhra Pradesh and Others*** reported in ***1985 (supp) SCC 432*** and submits that the Hon'ble Supreme Court has relied upon the judgment in the case of ***Lord Denning, M.R in Bradbury Vs. London Borough of Enfield*** wherein it is held that if the local authority does not fulfil the requirements of the law, this Court will see that it does fulfil them. Even if chaos should result, still the law must be obeyed.

**15.** Mr. Bandopadhyay has relied upon the judgment in the case of ***Lal Bihari Yadav Vs. Chairman/ Sabhapati U.P. Legislative Council Vidhan Bhawan Lko and Another*** reported in ***2022 SCC OnLine All 731*** and submits that whenever the Speaker recognizes any person as a leader of opposition he does so on the basis of precedent or practice of the Legislature in question, keeping in view at the same time, the

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definition of the Act. If the basis of recognition is not the Act in question but the practice prevailing then he has to follow the practice of recognizing the leader of an opposition party which has not only the greatest numerical strength as required by the definition in the Act, but also one tenth of the total membership of the House.

**16.** Mr. Bandopadhyay has relied upon the judgment in the case *of* ***Dr. Sunil Kumar Singh Vs. Bihar Legislative Council (Through Secretary) and Others*** reported in ***(2026) 2 SCC 364*** and submits that the Constitutional Courts are entrusted with the responsibility of ensuring the lawfulness of the decisions of the Legislature rather than substituting their judgment to decide the rights of the parties. A decision making authority, be it the Legislature or otherwise, while exercising its powers, must act within the limits prescribed by the Constitution. Any determination by the authority concerned, if found to be in excess of its constitutional authority or violative of fundamental rights, is subject to judicial probe. Such overarching decisions cannot be sustained to preserve integrity in the legal system by preventing excess and abuse of power.

**17.** Mr. Billwadal Bhattacharya, Learned AAG, representing the respondent nos.1 to 3 submits that the respondent no.1 has not acted mechanically or arbitrarily upon the communication dated 9th May, 2026. The respondent no.1 on receipt of communication dated 9th May, 2026, had called for the Minutes of the Meeting dated 6th May, 2026, to verify the proposed proposal of the petitioner as Leader of Opposition to

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establish that whether the petitioner has received individual support from the elected members. He submits that the entire claim of the petitioner rests upon the Resolution dated 6th May, 2026 but the said document is specifically disputed by two Members before the respondent no.1 and alleged that the signatures appearing in the resolution dated 6th May, 2026, is forged one.

**18.** Mr. Bhatrtacharya submits that it is the admitted case of the petitioner in the writ petition that the Resolution dated 6th May, 2026, is signed by the members on 19th May, 2026, thus on 6th May, 2026, there was no resolution. He submits that the petitioner has made out a new case in the writ petition that the Resolution dated 6th May, 2026, signed by the elected members on 19th May, 2026 but the said fact was not disclosed to the respondent no.1. He submits that the petitioner has filed the present writ petition by suppressing the facts that the petitioner had the knowledge that on 6th May, 2026, there was no signatures of the members in the resolution but the National General Secretary of the AITC submitted request to the respondent no.1 on 9th May, 2026 with the proposal to appoint the petitioner as Leader of Opposition, thus the writ petition filed by the petitioner is liable to be dismissed. In support of his submissions, he has relied upon the judgment in the case of ***Prestige Lights Ltd. Vs. State Bank of India*** reported in ***(2007) 8 SCC 449*** and submits that the petitioner has not disclosed full facts and suppressed relevant materials and is guilty of misleading the Court. He has further relied upon the judgment in the

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case of ***Pehlad Ram and Others Vs. Haryana Urban Development Authority and Others*** reported in ***(2014) 14 SCC 778*** and submits that the petitioner has not disclosed that without signatures of the elected members in the Resolution dated 6th May, 2026, the National General Secretary of the AITC has submitted request for appointment of the petitioner as Leader of Opposition and the said fact was also not brought to the notice of the respondent no.1.

**19.** Mr. Bhattacharya submits that the respondent no.1 fully justified in declining to treat the disputed resolution as conclusive evidence of numerical strength of the Legislative Party. He submits that the respondent no.1 himself has not adjudicated the criminality of the allegation of forgery. On receipt of complaint, the same was forwarded to the police authorities for taking appropriate action. He submits that the respondent no.1 has passed the impugned order on the basis of the materials available before him and has not taken into consideration of the criminal case initiated for forgery of signatures.

**20.** Mr. Bhattacharya submits that out of total 80 elected Members belonging to the AITC, 58 Members appeared before the respondent no.1 and expressed their support for the appointment of the respondent no.5 as Leader of Opposition. The respondent no. 1 finds that the said number constituted a strength equal to the quorum fixed to constitute a sitting of the House. He submits that the said Rule unilaterally followed by all the State Assemblies and the Lok Sabha is consonance with the principles of Article 189(3) of the Constitution of India and as

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well as in terms of Rule 121(1)(c) of the Directions by the Speaker Lok Sabha (popularly known as Mavlankar, Rules).

**21.** Mr. Bhattacharya submits that the total strength of the West Bengal Legislative Assembly is 294. 10% of the same would be 29.4 which is to be treated as 30. 58 elected Members supported the respondent no.5, which satisfy the numerical strength. He has relied upon the Section 3 of the Bengal Legislative Assembly (Members' Emoluments) Act, 1937 (hereinafter referred to as "Act of 1937") read with Explanations-I and II, which provides the statutory framework for deciding the Leader of Opposition and expressly recognizes the authority of the Hon'ble Speaker in cases where ambiguity arises in identifying the opposition party having the greatest numerical strength. By referring the said provisions, he submits that where any question or ambiguity arises as to which party in opposition has greatest numerical strength, the decision of the Hon'ble Speaker shall be final and conclusive. He submits that there is no degree of permanence on being recognized as a Leader of Opposition. It is a dynamic concept which remains altering from time to time.

**22.** Mr. Bhattacharya submits that the principle of natural justice cannot be mechanically imported into every administrative or statutory decision irrespective of the nature of the function, the statutory scheme and the circumstances in which the decision is required to be taken. In support of his submissions, he has relied upon the judgments reported in the case of ***Rasiklal Vs. Kishore*** reported in ***(2009) 4 SCC 446***

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wherein the Hon'ble Supreme Court held that the principles of natural justice is not a *"mantra"* to be applied in vacuum in all cases. The question as to what extent, the principles of natural justice are required to be complied with, will depend upon the facts of the case. They are not required to be complied with when it will lead to an empty formality.

**23.** Mr. Bhattacharyya has further relied upon the judgment in the case of ***Karnataka State Road Transport Corporation and Another Vs. S.G. Kotturappa and Another*** reported in ***(2005) 3 SCC 409*** wherein the Hon'ble Supreme Court held that the question as to what extent, the principles of natural justice are required to be complied with would depend upon the fact situation obtaining in each case. The principles of natural justice cannot be applied in vacuum. The Principles of natural justice are furthermore not required to be complied with when it will lead to an empty formality.

**24.** Mr. Jaydip Kar, Learned Senior Advocate, representing the respondent nos. 5 to 6 submits that save and except for some judicial pronouncements, there is no prescribed method or procedure as to how the Speaker is to proceed regarding recognition of the Leader of Opposition. He submits that the First Explanation under Section 3 of the Act of 1937 defines the term "Leader of the Opposition" but is of no help as to how the Leader of Opposition is to be appointed. He submits that Rule 364 of the Assembly Rules empowers the Speaker to

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prescribe the manner of the detailed working in any context where no specific rule exists.

**25.** Mr. Kar distinguished the case of ***Subhash Desai (supra)*** and submits that the said judgment is totally different from the facts of the present case. He submits that the political party normally nominates the leader of the political party in opposition, as contemplated in the Tenth Schedule of the Constitution, but in the present case admittedly, the political party itself had assigned the job of selecting the Leader of Opposition to its Legislators/ legislative partly democratically.

**26.** Mr. Kar has referred to the meeting, the Resolution and the attendance sheets which the petitioner has relied upon and submits that the so called meetings and the decisions are all of the Legislature Party. He submits that apart from the elected legislators there were no others present or taking a political decision. He submits that the political party clearly left it to the legislature party to decide "democratically" as to who should be the Leader of Opposition. He submits that on 3rd June, 2026, 58 legislators signed the letter and presented to the Speaker and were personally present in support of their resolution for appointment of the respondent no.5 as Leader of Opposition and accordingly the respondent no.1 accepted the said nomination and passed a reasoned order on 3rd June, 2026. He submits that the respondent no.1 while accepting the request of the 58 Legislators for appointment of the respondent no.5 as Leader of Opposition, applied

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the numerical rule as contemplated under Article 189(3) of the Constitution of India, read with Rule 364 of the Assembly Rules.

**27.** Mr. Kar submits that the First Speaker of Lok Sabha, namely, G.V. Mavlankar, which are properly known as the "Mavlankar Rules" issued directions wherein in Direction 121(c) provides that the party having at least 10% of the strength of the House is to be recognized as a Parliamentary Party, and the leader of the largest such Parliamentary Party in opposition is to be designated as the Leader of Opposition. He submits that the 10% Rule is based upon Article 189(3) of the Constitution of India. He has relied upon the judgment in the case of ***Lal Bihari Yadav Vs. Chairman/ Sabhapati U.P. Legislative Council Vidhan Bhawan Lko and Another*** reported in ***2022 SCC OnLine All 731*** and submits that the Leader of Opposition in each house is recognized as leader of the opposition provided that the party has the strength which would enable it to keep the House i.e., the number should not be less than the quorum fixed to constitute a sitting of the House which is one tenth of the total members of the House.

**28.** Mr. Kar submits that the Tenth Schedule under Articles 102(2) and 191(2) are not to be read in isolation. The said two Articles deals with disqualification in the House and nothing else. He submits that in the present case, there is no disqualification petition pending, thus the question of applicability of the Tenth Schedule is in circumspection. He submits that no defection petition against 58 legislators is filed by the AITC, thus it can be construed that they have done nothing contrary to

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the mandate of the AITC party and the selection is made democratically, which was the mandate of the political party.

**29.** Mr. Kar submits that the AITC communicated the first nomination on 9th May, 2026 but the office of the Speaker was vacant. On 15th May, 2026, the Speaker took oath and on 18th May, 2026, he asked for minutes backing the nomination. On 20th May, 2026, the alleged minutes were submitted. On 27th May, 2026, complaints of forgery were submitted to the Speaker. The Speaker referred the matter for investigation without forming any opinion. On 1st June, 2026, the newly elected Members took oath. On 3rd June, 2026, the Speaker received second nomination and order is passed. He submits that in the meantime, the Speaker was out of station on several dates, thus there is no delay in taking decision by the Speaker.

**30.** Mr. Kar submits that the Speaker has considered every material placed before him by every party with due weightage. Everything was on record, and no oral hearing was necessary. He submits that even if this Court is of the view that an oral hearing would have been better practice and the view taken by the Speaker is a plausible view, it would not be appropriate for this Court to interfere within judicial review to substitute the view of the Speaker. He has relied upon the judgment passed by the Hon'ble Division Bench wherein it is held that in order to prevent any disruption or disorderliness in the House, the order of the Speaker dated 3rd June, 2026, treated as provisional decision and appointment of the respondent nos. 5 and 6 were also made

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provisional. By referring the said portion of the order of the Hon'ble Appellate Court, Mr. Kar submits that in case, this Court directs the Speaker to revisit his decision, the order of the Appellate Court as far as the provisional order is concern can be maintained with a time limit prescribe for the decision.

**31.** Heard the Learned Counsel for the respective parties, perused the materials on record and the judgments relied by the parties. After declaration of result of the election of 18th West Bengal Legislative Assembly on 4th May, 2026, the National General Secretary of the AITC submitted request to the respondent no.1 on 9th May, 2026, informing that 70 elected members of AITC have unanimously resolved to appoint the petitioner as Leader of Opposition, Smt. Asima Patra and Smt. Nayna Bandyopadhyay as Deputy Leader of Opposition and Mr. Firhad Hakim as Chief Whip of the 18th West Bengal Legislative Assembly. Though the above request was made on 9th May. 2026 but the Speaker was appointed on 15th May, 2026. On 19th May, 2026, the office of the Speaker requested the National General Secretary of the AITC to place on record of the relevant Minutes/ Resolution of the Meeting of the Legislative Party of AITC along with the signatures of the members of the AITC who attended the said meeting for taking further action on the matter. On 20th May, 2026, the documents were submitted to the respondent no.1. By a letter dated 23rd May, 2026, the respondent no. 3 informed that the documents submitted on 20th May, 2026, will be placed before the respondent no.1 on 25th May, 2026 and it was also

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informed that the orders of the respondent no.1 will be communicated as soon as it is passed. After 23rd May, 2026, no communications were made by the office of the respondent no.1 either to the petitioner or to the National General Secretary of the AITC. On 1st June, 2026, the AITC expelled the respondent no.5 and one Shri Sandipan Saha from their primary membership of the party. The same was also communicated to the respondent no.1, though the office of the respondent no.1 refused to accept the said communication, the same was sent by mail on 2nd June, 2026. In the meantime on 27th May, 2026, the respondent no.5 and Mr. Sandipan Saha have submitted a joint written complaint to the respondent no.1 wherein it is stated that their signatures are appearing at serial nos. 60 and 61 in the Resolution dated 6th May, 2026 but it is alleged that they were only asked to put their signatures on the meeting Resolution Book on 19th May, 2026, but they never gave consent to the petitioner being elected as the Leader of Opposition. It is also alleged that many signatures are in block letters and they are not the signatures of those persons. On receipt of the said complaint, the respondent no.1 forwarded to the police authority and a case is registered. On 1st June, 2026, the National General Secretary of AITC again requested the respondent no.1 to recognize the petitioner as Leader of Opposition, Smt. Asima Patra and Smt. Nayna Bandopadhyay as Deputy Leader of Opposition and Mr. Firhad Hakim as Chief Whip. On 3rd June, 2026, 58 elected Members of Legislative Assembly submitted request to appoint the respondent no.5 as Leader of Opposition and the respondent no. 6 as

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Chief Whip. On the very same day i.e. on 3rd June, 2026, the respondent no.1 has passed the impugned order by recognizing the respondent no.5 as Leader of Opposition and the respondent no.6 as Chief Whip of the 18th West Bengal Legislative Assembly. The order dated 3rd June, 2026, neither communicated to the petitioner or to the AITC nor it was uploaded on the website.

**32.** The respondent no.1 took oath on 15th May, 2026. Much prior to the oath of the Speaker i.e. on 9th May, 2026, the request for appointment of Leader of Opposition, Deputy Leader of Opposition and Chief Whip was submitted by AITC. Four days after taking oath, i.e. on 19th May, 2026, the respondent no.1 directed the AITC to furnish Minutes/ Resolution of the meeting of the Legislature Party of the AITC along with signature of the members who attended the meeting. The same was furnished on 20th May, 2026. Though the respondents have not taken any stand in the affidavits that the respondent no.1 was on Tour on and from 19th May, 2026 till 24th May, 2026 but at the time of hearing, it was argued that the respondent no. 1 was on Tour on and from 19th May, 2026 to 24th May, 2026. On 25th May, 2025, the respondent no.1 reached Kolkata. The respondent no.5 and one Mr. Sandipan Saha have filed their complaint only on 27th May, 2026 but in between 25th May, 2026 till 27th May, 2026, the respondent no.1 was silent on the request of the AITC dated 9th May, 2026 and no decision was taken for appointment of Leader of Opposition and other posts. On the very same day, when the respondent no.1 received complaint from

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the respondent no. 5 and Mr. Sandipan Saha immediately referred the matter to the police and on the same day, the police registered the case. Even if assume that the respondent no.1 has taken appropriate action on the complaint of the respondent no. 5 but thereafter the respondent no.1 was silent and no communication was made either with the petitioner or with the AITC. He waited till 3rd June, 2026, without any reason and immediately on receipt of the request of 58 members supporting the respondent no.5 on 3rd June, 2026, the respondent no.1 has passed the impugned order by recognizing the respondent no. 5 as Leader of Opposition and the respondent no. 6 as Chief Whip.

**33.** The respondent no.1 has directed the AITC to submit Minutes/ Resolution of the meeting along with the signature sof the members who attended meeting. On receipt of the same, the respondent no.1 has not taken any action. The respondent has waited for the complaint of the respondent no.5 and only on receipt of complaint of the respondent no. 5, referred the matter to the police authority. It is the specific case of the respondent nos. 5 to 6 in the written notes of argument that the Speaker has not expressed any opinion regarding the allegation of forgery and referred the matter to the Police.

If the respondent no.1 has not expressed his opinion regarding the allegation of forgery then under what circumstances, the respondent no.1 ignores the request of the AITC for appointment of Leader of Opposition and Other Posts. In the impugned order dated 3rd June, 2026, it is recorded that :

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> *"On receipt of the said letter, my attention was drawn by some Members belonging to the All India Trinamool Congress Legislature Party to the effect that the signatures contained in the Resolution Book therein were actually forged and fabricated. Some Members of the said Legislature Party even complained before the media that inspite of them being confined in their respective residences on 6th may 2026, they find their signatures appended to the said Resolution. They also stated that the signatures of some of the Members were in Block Letters".*

In the affidavit-in-opposition, the respondent no.1 to 3 in para 5 at bullet point 4 stated that "*The Hon'ble Speaker received serious complaints about the signatures appearing on the purported resolution of 6th May, 2026 being forged. The Hon'ble Speaker thus decided not to act upon the said document which was marred by controversy. Upon receiving the complaint the Hon'ble Speaker referred the matter for investigation to the competent police authority".*

The respondent nos.1 to 3 have disclosed the complaint submitted by the respondent no.5 along with one Shri Sandipan Saha dated 27th May, 2026, being Annexure R/1 at page 25 in the Affidavit-in-opposition. In the complaint dated 27th May, 2026, it is the allegation of the respondent no.5 and Mr. Sandipan Saha that in the Resolution dated 6th May, 2026, their signatures are appearing in Serial Nos. 60 and 61 respectively but the fact that they were asked to put their signatures on the Meeting Resolution Book on 19th May, 2026. It is the specific case that they have not given any consent to the petitioner being elected as Leader of Opposition. From the complaint, it reveals that neither the respondent no.5 nor Mr. Sandipan Saha has disputed

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their signatures and on the other hand, they have admitted their signatures. Thus there is no allegation by the respondent no.5 and Mr. Sandipan Saha that their signatures are forged.

It is also the allegation in the complaint that the respondent no.5 and Mr. Sandipan Saha noticed that many signatures are in block letters and they are not the signatories. The respondents have filed their Affidavit-in-Opposition as well as supplementary affidavits but in none of the affidavits, the respondents have disclosed any complaint of the other elected members who have stated that the signatures are not the said members.

There is no document or any evidence on record other than the joint complaint of the respondent no.5 and one Mr. Sandipan Saha that the other members have made any allegation of forged signatures. If assuming that the respondent no.1 enquired from other members and the said members corroborate the complaint of the respondent no.5 but the Resolution dated 6th May, 2026, consist of 70 members. The respondent no.1 ought to have enquired the matter amongst all the members whose signatures appearing in the Minutes Book, but the respondent no.1 has not provided any opportunity to the members whose names are appearing in the Resolution dated 6th May, 2026 and only on the basis of the complaint received from the respondent no.5 on 27th May, 2026, acted upon and on 3rd June, 2026, ignoring the request of the AITC has passed the impugned order. The respondent no.1 even failed to informed the impugned decision either to the

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petitioner or to the AITC, though in the communication of the respondent no. 3 dated 23rd May, 2026, it is categorically informed to the petitioner and the AITC that kind orders of the Speaker will be communicated to the petitioner as soon as it is passed but it was not done.

**34.** Mr. Bhattacharya representing the respondent nos. 1 to 3 raised the contention that the petitioner has twisted the case in the writ petition as the petitioner has not disclosed to the respondent no.1 about the signing of the Resolution dated 6th May, 2026 on 19th May, 2026 but in the complaint of the respondent no.5, it is categorically stated that they have been asked to put their respective signatures on the Meeting Resolution Book on 19th May, 2026. Once the fact is admitted by the parties, it cannot be said that one of the party has suppressed the fact before the Court. Thus the Judgment relied by Mr. Bhattacharya in the cases of ***Prestige Lights Ltd. (supra)*** and ***Rasiklal (supra)*** are not applicable in the present case.

**35.** In the case of ***Nabam Rebia (supra),*** the Hon'ble Supreme Court held that:

> *"**224.** Having perceived the guidance from the precedents and keeping in view the cohesive constitutional precepts, I shall proceed to analyse the language employed in Article 179(c). Prior to that, I think it condign to dwell upon the importance of the Office of the Speaker. There is no shadow of doubt in my mind that to appreciate the significance of the provision, namely, Article 179(c), in the context of constitutional supremacy and constitutional consciousness, it is necessary to understand the position of the Speaker in the*

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*Constitution. Office of the Speaker in our history had its origin in 1921 when the Central Legislative Assembly was constituted under the Montague-Chelmsford Reforms. At that time, Office of the Speaker did not enjoy much importance. But, a significant one, after the Constitution came into force, as is evident from the constitutional scheme of ours, the Speaker enjoys high constitutional status and the Constitution reposes immense faith in him. For this reason alone, the Speaker is expected to have a sense of elevated independence, impeccable objectivity and irreproachable fairness, and above all, absolute impartiality. This expectation is the constitutional warrant; not a fond hope and expectation of any individual or group.*

***225.*** *The Speaker has the duty to see that business of the House is carried out in a decorous and disciplined manner. This functioning requires him to have unimpeachable faith in the intrinsic marrows of the Constitution, constitutionalism and, "Rule of Law". The faith, needless to emphasise, should be a visible and apparent one. That is why, possibly, former the Speaker of the House of Commons of the United Kingdom, Baroness Boothroyd, stated:*

> *"When you have been committed all your adult life to the ideals and policies of one party, impartiality is a quality that you have to work at. But if you cannot put aside partisanship you have no right to even think of becoming the Speaker."*

*I have referred to the aforesaid only to stress upon the impartial functioning and the constitutional neutrality of the Speaker."*

**36.** In the case of ***Shrimanth Balasaheb Patil (supra),*** the Hon'ble Supreme Court held that :

*"**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*

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*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."*

**37.** In the case of ***B. Prabhakar Rao (supra),*** the Hon'ble Supreme Court held that:

*"The argument about administrative chaos has been well met by Lord Denning, M.R. in Bradbury v. London Borough of Enfield where the Master of Rolls in his characteristic and forceful way observed:*

> *"It has been suggested by the chief education officer that, if an injunction is granted, chaos will supervene. All the arrangements have been made for the next term, the teachers appointed to the new comprehensive schools, the pupils allotted their places, and so forth. It would be next to impossible, he says, to reverse all these arrangements without complete chaos and damage to teachers, pupils and public. I must say this : if a local authority does not fulfil the requirements of the law, this Court will see that it does fulfil them. It will not listen readily to suggestions of 'chaos'. The department of education and the council are subject to the rule of law and must comply with it, just like everyone else. Even if chaos should result, still the law must be obeyed; but I do not think that chaos will result. The evidence convinces*

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> *me that the 'chaos' is much overstated. .. . I see no reason why the position should not be restored, so that the eight schools retain their previous character until the statutory requirements are fulfilled. I can well see that there may be a considerable upset for a number of people, but think it far more important to uphold the rule of law. Parliament has laid down these requirements so as to ensure that the electors can make their objections and have them properly considered. We must see that their rights are upheld."*

**38.** This Court finds that since 9th May, 2026, the respondent no.1 has kept the request of the petitioner till 18th May, 2026, though the respondent no. 1 took oath on 15th May, 2026. The respondent no. 1 has called for the Minutes/ Resolution on 19th May, 2026 and left for tour from 19th May, 2026 to 24th May, 2026. From the circumstances and sequences, it is crystal clear that the respondent no.1 has killed time to give an opportunity to the respondent no. 5 and once the respondent no.5 has placed the representation on 3rd June, 2026, with signatures of 58 members, has passed the impugned order on the same day without considering that the signature of 58 members are common to that of the signatures appearing in the Minutes/ Resolution dated 6th May, 2026. The respondent no.1 has given several opportunities to the respondent no. 5 but no opportunity was provided to the petitioner. It is true that there is no provisions of opportunity of hearing but once the respondent no.1 has given an opportunity of hearing to the respondent nos. 5 and 58 Members, the respondent no.1 ought to have given an opportunity to the petitioner also.

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**39.** The respondent no. 1 has not passed any order in connection with the request of the petitioner and the AITC dated 9th May, 2026 and 1st June, 2026, no order was communicated to the petitioner. The respondent no.1 has received a communication from the AITC on 1st June, 2026 wherein it was informed to the respondent no.1 that the AITC has expelled the respondent no.5 and Mr. Sandipan Saha on 1st June, 2026 from the primary membership of the AITC. In the impugned order dated 3rd June, 2026, the respondent no.1 has discussed the same which reads as follows:

> *"On the other hand, the said two Members of Legislative Assembly have also addressed letters to the Secretariat of this House, inter alia alleging that they have gathered knowledge from the media about such purported expulsion, however no communication to that effect has been received by them. More ever, in such letters they have enclosed their Party Constitution as well as the Rules framed by their party. They have stated in their letters that a cursory glance at Rule 6 of All India Trinamool Congress Party. They have stated in their letters that a cursory glance at Rule 6 of All India Trinamool Congress Party Rules, 2000 will go on to show that there cannot be any disciplinary action without resorting to the provisions of the said Rules. It has been their categoric contention that till date no notice directing them to show cause and/ or no opportunity of hearing has been granted to them by their political Party in terms of Rule 6 of the said Rules which is a condition precedent for imposing penalties.*
>
> *I have accordingly also downloaded the AITC Constitution and Rules from the Website of the Election Commission of India. After careful scrutiny of the provisions contained therein, I find that the contentions of the two Members vide their letters are prima facie in consonance with their Party Constitution. Be that as it may, the issue germane is as to who is the Leader of the Opposition of the*

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*Legislative Party. i.e., All India Trinamool Congress".*

**40.** The respondent no.1 had the knowledge that the AITC expelled the respondent no. 5 and Mr. Sandipan Saha from the Primary Membership of the AITC on 1st June, 2026. On 3rd June, 2026, the respondent no. 5 and Mr. Sandipan Saha were not the Member of Political Party i.e., the AITC. The respondent no. 1 has discussed the details what he has received from the respondent no.5 and Mr. Sandipan Saha but has not informed about the same to the AITC and no opportunity was provided to the AITC, who is the Political Party having elected members of the Legislature Party. In the impugned order, it is admitted by the respondent no.1 that he has to decide who is the Leader of Opposition of the Legislature Party i.e. AITC. Once the respondent no.1 had the knowledge that the respondent no.5 has been expelled by the AITC from its primary Membership on 1st June, 2026 and on 3rd June, 2026, the respondent no.5 was not the Member of the AITC, how the respondent no.5 can be the Leader of Opposition of the Legislature Party i.e. the AITC.

**41.** Considering the above circumstances and the sequence of events, this Court has no hesitation to hold that the respondent no.1 has not acted impartial and neutral while deciding the issue for appointment of Leader of Opposition and given weightage to the respondent no. 5 and has not provided any opportunity to the petitioner or the AITC though several opportunities were provided to the respondent no.5.

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**42.** The respondent no.1 has considered the Explanation in Section-3 of the Bengal Legislative Assembly (Members' Emoluments) Act, 1937 and definition of Legislature Party from Tenth Schedule of the Constitution of India which reads as follows:

> *"**3.** There shall be paid to each member a salary at the rate of [ten thousand rupees] per mensem with effect from the date on which he takes his oath:*
>
> *Provided that the salary of any member in respect of any period prior to [the first day of September, 1983], shall be paid at the rate of [two hundred and fifty] rupees per mensem:*
>
> *[Provided further that there shall be paid to the member, who is the Leader of the Opposition, such salaries and allowances as are admissible to a Minister under the West Bengal Salaries and Allowances Act, 1952].*
>
> *Provided also that there shall be paid to the Chief Government Whip such salaries and allowances as are admissible to a Minister of State under the West Bengal Salaries and Allowances Act, 1952.*
>
> *Explanation/.-"Leader of the Opposition" means that member of the West Bengal Legislative Assembly who is for the time being the Leader in the State Assembly of the party in opposition to the State Government having the greatest numerical strength in the said Assembly;*
>
> *Explanation **II.-If any doubt** arises as to which is or was at the material time the party in opposition to the State Government having the greatest numerical strength in the West Bengal Legislative Assembly or as to who is or was at any material time the Leader in the said Assembly of such a party, the question shall be decided for the purposes of this Act, by the Speaker of the said Assembly, and his decision, certified in writing under his hand, shall be final and conclusive."*

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> *"**1(b)** "legislature party", in relation to a member of a House belonging to any political party in accordance with the provisions of paragraph 2 or [***] paragraph 4, means the group consisting of all the members of that House for the time being belonging to that political party in accordance with the said provisions."*

The respondent no.1 considering the above two provisions and the application submitted by Mr. Sandipan Saha and 57 others wherein they have claimed that they formed the Official Opposition Party in the 18th Legislative Assembly of West Bengal and being majority have selected the respondent no. 5 to be Leader of Opposition and Shri Akhruzzaman as Chief Whip and comes to the finding that:

> *"Now, coming back to the original applications, it has been noticed that Indian National Congress; Aam Janata Unnayan Party; All India Secular Front; and Communist Party of India (Marxist) cannot be recognised as the Official Opposition for they lack the numerical strength to form the quorum of the House individually. Only the Legislature Party of All India Trinamool Congress the majority of which has selected Shri Ritabrata Banerjee, MLA (176- Uluberia Purba AC) as its Leader fulfils the criteria of recognition of Official Opposition Party in the 18th Legislative Assembly of West Bengal since the numerical strength which they have asserted fulfils the litmus test, i.e., it can keep the quorum of the House. The other group which earlier allegedly claimed for the same do not possess the required numerical strength to keep the quorum of the House.*
>
> *In the history of this august Legislative Assembly, there has never been a situation as unprecedented as at present, where rival claims are being made by a political Party vis-à-vis, the Leader of Opposition. At this juncture, it is worthwhile to state that two letters purportedly addressed to two Members of Legislative Assembly as set up by All India Trinamool Congress were received as enclosure to a forwarding letter signed*

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*by the Vice-President of All India Trinamool Congress. The enclosures as stated above contained two purported communications addressed to the two Members of Legislative Assembly, inter alia expelling them the primary membership of their Party.*

*On the other hand, the said two Members of Legislative Assembly have also addressed letters to the Secretariat of this House, inter alia alleging that they have gathered knowledge from the media about such purported expulsion, however no communication to that effect has been received by them. More ever, in such letters they have enclosed their Party Constitution as well as the Rules framed by their party. They have stated in their letters that a cursory glance at Rule 6 of All India Trinamool Congress Party. They have stated in their letters that a cursory glance at Rule 6 of All India Trinamool Congress Party Rules, 2000 will go on to show that there cannot be any disciplinary action without resorting to the provisions of the said Rules. It has been their categoric contention that till date no notice directing them to show cause and/ or no opportunity of hearing has been granted to them by their political Party in terms of Rule 6 of the said Rules which is a condition precedent for imposing penalties.*

*I have accordingly also downloaded the AITC Constitution and Rules from the Website of the Election Commission of India. After careful scrutiny of the provisions contained therein, I find that the contentions of the two Members vide their letters are prima facie in consonance with their Party Constitution. Be that as it may, the issue germane is as to who is the Leader of the Opposition of the Legislative Party. i.e., All India Trinamool Congress*

*Paragraph 1(b) of the Tenth Schedule to the Constitution of India leaves no doubt that the leader has to be selected/ elected from amongst the members of the House belonging to that Legislative Party. The Chair has to go by the decision of the majority members of the particular Legislative Party apropos Leader of Opposition.*

*In view of the detailed discussions made hereinabove, and on strength of the fact that*

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*majority Members in the House belonging to All India Trinamool Congress Legislative Party have selected*

*1) Shri Ritabrata Banerjee, MLA (176- Uluberia Purba AC) as the Leader of Opposition; and*

*2) Shri Akhruzzaman, MLA (59- Raghunathganj AC) as the Chief Opposition Whip.*

*I hereby declare*

*1) Shri Ritabrata Banerjee, MLA (176- Uluberia Purba AC) as the Leader of Opposition; and*

*2) Shri Akhruzzaman, MLA (59- Raghunathganj AC) as the Chief Opposition Whip*

*to the 18th Legislative Assembly of West Bengal.*

*All the facilities as available to the Leader of Opposition and the Chief Opposition Whip be made available to them forthwith."*

**43.** The respondent no.1 has taken into consideration of Clause 1(b) Tenth Schedule of the Constitution which reads as follows:

*"**1(b)** "legislature party", in relation to a member of a House belonging to any political party in accordance with the provisions of paragraph 2 or [***] paragraph 4, means the group consisting of all the members of that House for the time being belonging to that political party in accordance with the said provisions."*

In the case of ***Subhash Desai (supra),*** the Hon'ble Supreme Court considered the power to appoint the Leader of Opposition and Whip:

***"95.** The respondents have challenged the communication of the Deputy Speaker dated 21-6-2022 appointing Mr Ajay Choudhari as the Leader*

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*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.*

***96.*** *Article 212(1) stipulates that the Court shall not inquire into the validity of the proceedings of the Legislature of a State on the ground of any alleged irregularity of procedure:*

> *"**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."*

***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, 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, 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, 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*

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*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., 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.*

***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.*

***103.*** *The observations in Ramdas Athawale 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 must be read in light of our analysis above that procedural infringements would vitiate the proceedings based on their*

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*purpose and the impact of their infringement on the democratic functioning of Parliament.*

***105.*** *Para 1(c) defines "original political party" as the political party to which the member belongs for the purposes of Para 2(1). Para 2 stipulates that a member belonging to "any political party" shall be disqualified from being a Member of the House if they have voluntarily given up membership of such political party, or if they vote contrary to the direction issued by the political party to which they belong or by any person or authority authorised by it. A member who has voted contrary to the direction of the political party would not incur disqualification if such a vote is condoned by the political party or if the prior permission of the political party is secured:*

> *"**2. Disqualification on ground of defection**.—(1) Subject to the provisions of [Paras 4 and 5], a member of a House belonging to any political party shall be disqualified for being a Member of the House—*
>
> *(a) if he has voluntarily given up his membership of such political party; or*
>
> *(b) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.*
>
> *Explanation.—For the purposes of this sub-paragraph—*
>
> *(a) an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member;"*

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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.*

***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:*

***109.1.*** *Parliament in its constituent capacity was conscious of the necessity of not allowing anti-defection laws to stifle intra-party dissent and the freedom of expression of legislators. It was with this objective that the defences of merger, and split (which was later omitted) were introduced. The Tenth Schedule confers legitimacy to the actions of the legislators which would otherwise lead to disqualification if a substantial number of*

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*legislators (two-thirds in the case of a merger, and one-third in the case of the erstwhile provision for a split) disagree with the political party. The Tenth Schedule recognises the independent existence of the legislature party to the limited extent of presenting a defence to the actions of the legislators which would otherwise have amounted to defection; and*

***109.2.*** *Section 29-A of the Representation of the People Act, 1951 requires an association of individuals calling itself a political party to be registered with the ECI. The party need not have returned candidates to the Assembly to be registered as a political party. Under the Symbols Order, a political party receives recognition as a State Party or a National Party based on the total number of candidates returned to the Assembly by the political party, and/or the total percentage of votes secured in the election. The purpose of the requirement under the Symbols Order is to identify whether the political party has a substantial presence in the electoral fray to freeze an electoral symbol for that party. The Symbols Order does not refer to an association of legislators dehors the political party like the Tenth Schedule. It recognises a "legislator" and a "political party". Thus, the reference to provisions of the Symbols Order to argue that the concepts of political party and legislature party are intertwined does not hold merit because the concept of legislature party is not recognised by the Symbols Order.*

***112.*** *Rule 3(4) stipulates that the Leader of the legislature party must furnish the updated information if there has been a change in the information furnished under Rule 3(1). Rule 3(5) states that if a member votes or abstains from voting in the Assembly contrary to the direction of the political party without the prior permission of the political party, the Leader of the legislature Party may within thirty days of such voting or abstention communicate to the Speaker as to whether such voting or abstention has been condoned by the political party. The rule also stipulates that the Leader must inform the Speaker even if they voted contrary to the direction of the*

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*political party. The 1986 Rules neither use nor define the term "Whip".*

***113.*** *The term "Whip" is defined in the 1956 Act. Section 2 of the 1956 Act provides that an MLA shall not be disqualified for holding the offices stipulated in Schedule I. Clause 23 of Schedule I mentions the offices of Chief Whip or Whip in the Maharashtra State Legislature. The Explanation to this clause defines a Whip as follows:*

> *"Explanation.—(1) The expression "Chief Whip" or "Whip", in relation to the Maharashtra Legislative Assembly, means that Member of the House who is, for the time being, declared by the party forming the Government to be the Chief Whip or Whip in that House and recognised as such by the Speaker; and includes a Member of the House, who, is for the time being, declared as such by the party having at least ten per cent of the total number of the House and recognised as such by the Speaker; and*
>
> *(2) The expression "Chief Whip" or "whip", in relation to the Maharashtra Legislative Council, means that Member of the House who is, for the time being, declared by the party forming the Government to be the Chief Whip or Whip in the House and recognised as such by the Chairman; and includes a Member of the House, who, is for the time being, declared as such by the party having at least ten per cent of the total Members of the House and recognised as such by the Chairman."*

***114.*** *On a literal interpretation of the provisions of the Tenth Schedule, the 1986 Rules and the 1956 Act, the direction to vote or abstain from voting arises from the political party and not the legislature party for the following reasons:*

***114.1.*** *Para 2(1)(b) of the Tenth Schedule provides that the direction to vote or abstain from voting must be issued by the political party or by "any person or authority authorised by it", with the word "it" referring to the political party. The provision states that prior permission must have*

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*been received from the political party if the member wants to vote contrary to the direction issued, and the political party must condone such action within fifteen days. The provisions of the Tenth Schedule stipulate in unequivocal terms that the direction must come from the political party and not the legislature party. The distinction between political party and legislature party is made in the definition clause in Para 1. There are no two ways about it. The Tenth Schedule would become unworkable if the term "political party" is read as the "legislature party". A clear demarcation is made between political party and legislature party for the purpose of a merger under Para 4, which stipulates that two-thirds of the members of the legislature party must have agreed to a merger of the original political party before such a merger can be deemed to have taken place. To read the term "political party" as "legislature party" would be contrary to the plain language of the Tenth Schedule;*

***114.2.*** *It is an accepted position that the Whip communicates the directions of the party to its members. The phrase "Whip" is neither used in the Tenth Schedule nor in the 1986 Rules. The phrase finds a mention in the 1956 Act as one of the offices that would not be covered within the meaning of "office of profit". The Explanation to Clause 23 of Schedule I to the 1956 Act states that the Chief Whip is declared by the party forming the Government. The reference to "party" in the explanation clause means political party and not legislature party because the term "party" is used to depict political party in common parlance; and*

***116.1.*** *The phrase "political party" in Para 2(1)(b) cannot be interpreted to mean legislative party while the same phrase in Para 2(1)(a) retains its original meaning;*

***116.2.*** *Such an interpretation would render Explanation (a) to Para 2(1) otiose because a legislature party cannot set up a person as a candidate for election;*

***117.*** *Hence, the plain meaning of the provisions of the Tenth Schedule, the 1986 Rules,*

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*and the 1956 Act indicates that the Whip and the Leader must be appointed by the political party.*

***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.*

***120.*** *That a Whip be appointed by the political party is crucial for the sustenance of the Tenth Schedule. The entire structure of the Tenth Schedule which is built on political parties would crumble if this requirement is not complied with. It would render the provisions of the Tenth Schedule otiose and have wider ramifications for the democratic fabric of this country. Thus, the courts cannot be excluded by Article 212 from inquiring into the validity of the action of the Speaker recognising the Whip.*

***125.*** *The Speaker was aware of the emergence of two factions in the legislature party on 3-7-2022 when he appointed a new Whip and a new Leader because the resolution of the respondents specifically mentions that a "split" had occurred due to prevailing dissatisfaction in some MLAs of the Shiv Sena. Further, the fact that there were two resolutions appointing two different Whips and two different Leaders would no doubt have resulted in the Speaker inferring that there were two factions of the Shiv Sena. The Speaker on taking cognizance of the resolution passed by the faction of SSLP led by Mr Shinde, did not attempt to identify which of the two persons who were nominated (Mr Prabhu or Mr Gogawale) were*

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*authorised by the political party. In a contentious situation such as this, the Speaker should have conducted an independent inquiry based on the rules and regulations of the political party to identify the Whip authorised by the Shiv Sena Political Party. For the reasons detailed in the preceding paragraphs, the Speaker must only recognise the Whip appointed by the political party. The decision of the Speaker recognising Mr Gogawale as the Chief Whip of the Shiv Sena is illegal because the recognition was based on the resolution of a faction of the SSLP without undertaking an exercise to determine if it was the decision of the political party.*

***126.*** *Rule 2(f) defines "Leader" in relation to the legislature party as a member of the party chosen by it as its leader. The term "party" is ambiguous. It is not preceded by either "political" or "legislature". It may be interpreted to mean "legislature party" because the definition clause defines a Leader in relation to "legislature party" and then proceeds to use the phrase "party." Alternatively, it could also take the meaning of "political party" because "party" in common parlance means "political party".*

***127.*** *Under Para 8(1)(b) of the Tenth Schedule and Rule 3(5) of the 1986 Rules, the Leader of the legislature party is required to inform the Speaker if the political party condoned the prohibitory act under Para 2(1)(b) of the Tenth Schedule. Thus, the Leader of the legislature party is the link between the political party and the Legislative Assembly. If the interpretation of the respondents is accepted, the action of the leader condoning an MLA's prohibitory conduct would not reflect the voice of the political party and would instead reflect the voice of the legislature party. This would be contrary to the manner in which the Tenth Schedule is intended to operate. The manner in which the Tenth Schedule would then operate would not effectively prevent or provide a solution to the constitutional sin of defection.*

***130.*** *The Speaker must recognise the Whip and the Leader who are duly authorised by the political party with reference to the provisions of*

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> *the party constitution, after conducting an enquiry in this regard and in keeping with the principles discussed in this judgment."*
>
> ***213.4.*** *The political party and not the legislature party appoints the Whip and the Leader of the party in the House. Further, the direction to vote in a particular manner or to abstain from voting is issued by the political party and not the legislature party. The decision of the Speaker as communicated by the Deputy Secretary to the Maharashtra Legislative Assembly dated 3-7-2022 is contrary to law. The Speaker shall recognise the Whip and the Leader who are duly authorised by the Shiv Sena 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."*

**44.** Taking into consideration of the request of 58 elected Members of the Legislative Assembly, the respondent no.1 came to the conclusion that the respondent no.5 got majority amongst the members of the House belonging to the All India Trinamool Congress Legislative Party and appointed the respondent no.5 as Leader of Opposition and the Respondent No.6 as Chief Whip. The 58 elected members of the West Bengal Assembly contested their election as AITC candidate which is the political party. After declaration of result of the election on 4th May, 2026, a meeting of the elected members of the Legislative Assembly was held on 6th May, 2026 and on 9th May, 2026, the National General Secretary informed about the decision of the political party amongst the elected members of the Legislative Assembly to the Speaker for appointment of the petitioner as Leader of Opposition, Deputy leaders of Opposition and Chief Whip.

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**45.** The respondent no.1 has considered that the 58 elected members of the Legislative Assembly who have supported the respondent nos. 5 and 6 on 3rd June, 2026, as political party but has not considered that the political party, namely, All India Trinamool Congress through their National General Secretary informed the respondent no.1 that the members of AITC have unanimously resolved that the petitioner, Smt. Asima Patra, Smt. Nayna Bandyopadhyay and Mr. Firhad Hakim shall hold the position of Leader of Opposition, Deputy Leaders of Opposition and Chief Whip.

**46.** The respondent no.1 received two requests for recognizing Leader of Opposition and Chief Whip. The request of the AITC dated 9th May, 2026 which based on Minutes of the Meeting dated 6th May, 2026, consists of 70 members and 58 members who have submitted their requests to the respondent no.1 on 3rd June, 2026. The 58 members, who have jointly submitted representation on 3rd June, 2026 are out of those 70 members, who have signed Minutes Book/Resolution on 19th May, 2026. The respondent no. 1 ought to have conducted an enquiry with reference to the provisions of the party constitution before recognizing the respondent nos. 5 and 6 as Leader of Opposition and Chief Whip.

**47.** The respondents have contended that the 58 members have personally appeared before the respondent no.1 on 3rd June, 2026, and have consented for appointment of the respondent nos. 5 and 6 but the respondent no.1 has not provided an opportunity to the other members

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and no enquiry was conducted. The respondent no.1 has also not considered the provisions of the constitution of the political party to ascertain whether 58 members can submit their separate consent other than the consent given to the party on 6th May, 2026 or whether the said 58 persons can be treated as political party as per the constitution of the party. The respondent no.1 had the knowledge that the respondent no.5 is expelled by the party on 1st June, 2026, even then the respondent no.1 has recognized the respondent no.5 as Leader of Opposition of the Political Party. Mr. Kar and Mr. Bhattacharya have submitted before the Hon'ble Division Bench at the time of hearing of the appeal that the judgment of ***Subhash Desai (supra)*** is not applicable in the present case but the Hon'ble Division Bench has negated the said argument and taken into consideration of the said judgment. In the case of ***Subhash Desai (supra),*** the Hon'ble Supreme Court held that:

> *"**130.** The Speaker must recognise the Whip and 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."*

**48.** The respondents have further raised the contention that the Speaker has applied the numerical rule contemplated under Article 189(3) of the Constitution of India read with Rule 364 of the Assembly Rules and Procedure and Conduct of Business in Lok Sabha which popularly known as "Mavlankar Rules". They have relied upon the Direction

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121(1)(c) of the said Rules which based upon Article 189(3) of the Constitution of India. It is the submissions that 10% Rule, it was open the Speaker to apply the said Rule.

Article 189(3) of the Constitution of India reads as Follows:

> *"**189.** Voting in Houses, power of Houses to act notwithstanding vacancies and quorum.*
>
> *(1)……*
>
> *(2)…..*
>
> *(3). Until the Legislature of the State by law otherwise provides, the quorum to constitute a meeting of a House of the Legislature of a State shall be ten members or one-tenth of the total number of members of the House, whichever is greater."*

Direction 121 of the Mavlankar Rules reads as follows:

> *"**121.** In recognising a Parliamentary Party or Group the Speaker shall take into consideration the following principles:-*
>
> *(1) An association of members who proposes to form a Parliamentary Party-*
>
> *(a) Shall have announced at the time of the general elections a distinct ideology and programme of Parliamentary work on which they have been returned to House:*
>
> *(b) Shall have an organisation both inside and outside the House: and*
>
> *(c) Shall have at least a strength equal to the quorum fixed to constitute a sitting of the House, that is one –tenth of the total number of members of the House."*
>
> *(2) ***."*

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**49.** Though the respondents have argued the matter relying upon Article 189(3) of the Constitution of India and Mavlankar Rules but neither the respondent no.1 nor the respondents have relied upon the said provisions either in the impugned order or in their affidavits. Relying upon the said provisions, it is the case of the respondents that the AITC submitted request for appointment of the petitioner as Leader of Opposition with the consent of 70 elected members. Out of 70 elected members, 58 appeared before the respondent no.1 and put their signatures in the presence of the respondent no.1, thus only 12 remains with the petitioner. If the argument of the respondents is taken into consideration, the respondent no.1 ought to have conducted enquiry by taking signatures in his presence of all the eighty (80) elected members of the AITC. Why the respondent no.1 has not called all the elected members of the AITC to decide the issue of majority whether it is with the petitioner or with the respondent nos. 5 and 6. The order of the Speaker is founded on the proposition that only the faction of the respondent no.5 has the numbers to sustain quorum, the same is misconception.

**50.** Mr. Kar relied upon the judgment in the case of ***Lal Bihari Yadav Vs. Chairman/ Sabhapati U.P. Legislative Council Vidhan Bhawan Lko & Anr.*** reported in ***2022 SCC OnLine All 731*** wherein the Hon'ble Division Bench of the Allahabad High Court held that:

> *"**22.** Thus, in exercise of Rule 389 of the Rules and Procedures and Conduct of Business in the House of People, the aforesaid directions were*

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*issued by the First Speaker of Lok Sabha i.e., G.V. Mavlankar which are popularly known as "Mavlankar rule'. Direction 121 (c) of the aforesaid directions states that party having at least 10% of the strength of the House be recognized as a Parliamentary Party and leader of the largest such Parliamentary party in opposition is designated as Leader of Opposition.*

***23.*** *Further, this court cannot be oblivious of the fact that Section 2 Salaries and Allowances of the Leader of Opposition in Parliament Act, 1977, defines "Leader of Opposition' as leader of the party in opposition to the government having the greatest numerical strength and recognized by the Chairman of Council of States or Speaker of House of People. However, due to the above 10% rule (Direction 121(c)) currently there is no leader of opposition in the 17th Lok Sabha as the strength of the party in opposition is less than 10% of the total strength of the House of People. As rightly pointed by the Ld. Counsel for the respondent, it was for this reason that the 1st, 2nd, 3rd, 5th, 7th, 8th, and 16th Lok Sabha as well as 1st, 2nd, 3rd, 5th, 7th and 8th Rajya Sabha had no leader of opposition recognized by the Speaker/Chairman, due to the applicability of 10% rule in all these years, since no single opposition party had more than 10% of the total membership of house. It may be pertinent to mention herein that the present Lok Sabha also does not have any leader in opposition and in fact as reported in the news, an application of the numerically largest party to be appointed as a leader of opposition was rejected by the speaker of the Lok Sabha by stating inter-alia that "After consideration of applicable provisions of relevant statutes, Directions by the Speaker, Lok Sabha (Directions 120 and 121) and several past precedents repeatedly followed for the last nearly 60 years which have been based upon decision taken by many eminent Speakers in the past, it has not been found possible to accede to your request."*

***30.*** *Thus, Rule 234 provides for the quorum for conducting business in the Council and provides that in case the number of members in the House is less than 10 members then no business can be*

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*transacted as the quorum would be incomplete. Pertinently, the Mavlankar rule, also gives great significance to the concept of Quorum in choosing a Leader of Opposition. As a corollary, in case the leader of opposition when does not enjoy even the strength of forming a quorum, obviously there cannot be any business transacted in the House and thus would be merely a ceremonial leader, without any relevance. Thus, there is no infirmity in placing reliance on Rule 234 of the Procedure and Conduct of Business Rules, 1956 as has been done in the impugned order dated 07/07/2022 since the rational is that the Leader of Opposition along with his opposition party should be capable of transacting business in the Council even in absence of the remaining members. Relevant to the context, as has been rightly pointed out by the learned Counsel for the respondent that in the Commentary on the Constitution of India, 9th Edition Volume 8 by D.D. Basu, page no. 7933 it has been stated by the great Author as follows:*

> *"The Leader of Opposition in each house is recognized as the leader of the opposition provided that the party has the strength which would enable it to keep the house i.e., the number should not be less than the quorum fixed to constitute a sitting of the house which is one-tenth of the total membership of the house."*

Mr. Bandopadhyay has also relied upon the paras 21, 30 and 32 of the said judgment which reads as follows:

> ***"21.*** *As far as the Indian Parliament is concerned, post-independence, the concept of the opposition took root in 1969, after the split of the Indian National Congress, and Ram Subhag Singh, the leader of the Indian National Congress (Organisation), was regarded as the Leader of the Opposition Party. However, it was only in 1977, with the passage of The Salary and Allowances of Leaders of Opposition in Parliament Act, 1977, that the position of the Leader of opposition came to be formally recognised along with certain emoluments*

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*and perks. Having said so, it is to be noted that neither the Constitution of India nor the Rules of Procedure and Conduct of Business in the Lok Sabha or the Rajya Sabha make any provision or provides for any procedure for appointment of a Leader of the Opposition. Even the Act providing for the salary and allowances of leader of opposition in parliament enacted in the year 1977 does not provide for any procedure and merely defines a leader of opposition for the purposes of that act only. Thus, section 2 inter-alia states:*

> *"2. Definition : In this Act, "Leader of the Opposition", in relation to either House of Parliament, means that member of the Council of States or the House of the People, as the case may be, who is, for the time being, the Leader in that House of the party in opposition to the Government having the greatest numerical strength and recognised as such by the Chairman of the Council of States or the Speaker of the House of the People, as the case may be.*
>
> *Explanation. —Where there are two or more parties in opposition to the Government, in the Council of States or in the House of the People having the same numerical strength, the Chairman of the Council of States or the Speaker of the House of the People, as the case may be, shall, having regard to the status of the parties, recognise any one of the Leaders of such parties as the Leader of the Opposition for the purposes of this section and such recognition shall be final and conclusive.*

*Apparently, the aforesaid Act does not provide for any mechanism or procedure for appointment of a leader of opposition. Thus, one has to search for other collateral law enabling the speaker for recognition of a leader of opposition. This brings us immediately to Article 118 of the constitution of India, which inter-alia provides for making of rules for regulating each house of parliament, its procedure and the conduct of its business, wherein the "Rules of Procedure*

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*and conduct of business in Lok Sabha" have been framed. Rule 389 of the said Rues provides residuary powers to the Speaker to regulate all matters not specifically provided for in these rules and all questions relating to the detailed working of these rules. Since, no specific rule has been provided for the said purposes, time and again the speaker while recognising a leader of opposition has relied on Directions issued under Rule 389. It is in terms of this rules that Direction 121 of the Directions by the Speaker of the Lok Sabha has been provided, which inter-alia provides that in recognising a parliamentary party or group, the Speaker shall take into consideration the following principles:*

> *"(1) An association of members who propose to form a Parliamentary Party—*
> *(a) shall have announced at the time of the general elections a distinct ideology and programme of Parliamentary work on which they have been returned to the House;*
>
> *(b) Shall have an organisation both inside and outside the House; and*
>
> *(c) shall have at least a strength equal to the quorum fixed to constitute a sitting of the House, that is one-tenth of the total number of members of the House.*
>
> *(2) An association of members to form a Parliamentary Group shall satisfy the conditions specified in parts (a) and (b) of clause (1) and shall have at least a strength of 30 members."*

***30.*** *Thus, Rule 234 provides for the quorum for conducting business in the Council and provides that in case the number of members in the House is less than 10 members then no business can be transacted as the quorum would be incomplete. Pertinently, the Mavlankar rule, also gives great significance to the concept of Quorum in choosing a Leader of Opposition. As a corollary, in case the*

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*leader of opposition when does not enjoy even the strength of forming a quorum, obviously there cannot be any business transacted in the House and thus would be merely a ceremonial leader, without any relevance. Thus, there is no infirmity in placing reliance on Rule 234 of the Procedure and Conduct of Business Rules, 1956 as has been done in the impugned order dated 07/07/2022 since the rational is that the Leader of Opposition along with his opposition party should be capable of transacting business in the Council even in absence of the remaining members. Relevant to the context, as has been rightly pointed out by the learned Counsel for the respondent that in the Commentary on the Constitution of India, 9th Edition Volume 8 by D.D. Basu, page no. 7933 it has been stated by the great Author as follows:*

*"The Leader of Opposition in each house is recognized as the leader of the opposition provided that the party has the strength which would enable it to keep the house i.e., the number should not be less than the quorum fixed to constitute a sitting of the house which is one-tenth of the total membership of the house."*

***32.*** *Thus, from the aforesaid, it is evident that the impugned order dated 07/07/2022 wherein reliance has been placed on Rule 234 of the Rules of Procedure and Conduct of Business Rules, 1956 does not suffers from any legal infirmity since the quorum to transact business in the U.P. Legislative Council is 10 and apparently the strength of the opposition party has fallen to 09 therefore, such an opposition party alone would not be able to transact any business in the Legislative Council. In the present case, as soon as the Respondent no. 1 was satisfied that the strength of the opposition party in the Council has fallen below 10 i.e., the minimum number required to complete the quorum to enable the opposition party alone to transact business in the Council, the Petitioner was de-recognized by the impugned order."*

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Whenever the Speaker recognizes any person as a Leader of Opposition, he does so on the basis of precedent or practice of the Legislature in question, keeping in view at the same time, the definition of the Act. If the basis of recognizing is not the Act in question but the practice prevailing then he has to follow the practice of recognizing the leader of opposition which has not only the greatest numerical strength as required by the definition in the act, but has also one-tenth of the total membership of the House. In the present case, the respondent no. I failed to adopt the said practice by taking into consideration of one-tenth of the total membership of the House. The Hon'ble Division Bench of the Allahabad High Court dealt with the numerical strength of an entire political party and not of a faction or group within it.

**51.** Paragraph 3 of the Tenth Schedule of the Constitution of India is omitted by the Constitution (Ninety First Amendment) Act, 2003. Prior to omission, paragraph 3 stood as under:

> *"**3. Disqualification on ground of defection not to apply in case of split.**- Where a member of a House makes a claim that he and any other members of his legislature party constitute the group representing a faction which has arisen as a result of a split in his original political party and such group consists of not less than one third of the members of such legislature party.-*
>
> *(a) He shall not be disqualified under sub-paragraph (1) of paragraph 2 on the ground-*
>
> *i. That he has voluntarily given up his membership of his original political party, or*
>
> *ii. That he has voted or abstained from voting in such House contrary to any*

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*direction issued by such party or by any person or authority authorized by it in that behalf without obtaining the prior permission of such party, person or authority and such voting or abstention has not been condoned by such party, person or authority within fifteen days from the date of such voting abstention; and*

*(b) From the time of such split, such faction shall be deemed to be political party to which he belongs for the purpose of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this paragraph."*

After amendment in paragraph 3 of Tenth Schedule of the Constitution of India, the concept of "split" in original political party and such group consists of not less than one-third of the members of such Legislature Party is deleted, thus if the Speaker is intending to decide the numerical strength, he has to take into consideration of the entire political party and not the faction or split group.

**52.** Mr. Kar and Mr. Bhattacharya have raised an issue that the Election Commission of India by an order dated 17th September, 2026, passed an order under para 15 of the Symbols Order wherein neither of the two groups led by Shri Arup Roy and the other led by Ms. Mamata Banerjee are permitted to use the name of the party "All India Trinamool Congress" simplicitor. Neither of the two groups are also be permitted to use the symbol *"Flowers & Grass"* reserved for "All India Trinamool Congress".

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Both of them further submits that Ms. Mamata Banerjee had filed the Writ Petition (Civil) under Article 32 of the Constitution of India challenging the said order before the Hon'ble Supreme Court but the Hon'ble Supreme Court has not interfered with the order dated 17th September, 2026 and directed the parties to complete pleadings within four weeks and thereafter, the Election Commission of India shall decide the controversy within three months and the time fixed by the Hon'ble Supreme Court will be over by 26th January, 2027 and thus till such time no order can be passed in the present writ petition.

On 17th September, 2026, the Election Commission of India has passed an interim order taking into consideration of the Bye-Election of two constituencies of the West Bengal Legislative Assembly. As both group claiming Symbol of *"Flowers & Grass"* and the issue is pending for adjudication before the Eelection Commission of India and only for the purpose of conducting Bye-Election, the Election Commission of India has passed an interim order by reserving the name and symbol of AITC.

In the present case, the issue is not with regard to the claim of symbol. The issue involved in the present writ petition whether the impugned order of the respondent no.1 is sustainable or not. This Court has nothing to do with the allotment of symbol to the parties. At the time of taking decision by the respondent no.1 the only issue who will be the Leader of Opposition and Chief Whip. At that time there was no dispute with regard to the symbol and name of party.

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Considering the above, this Court did not find any reasons to keep the matter pending till the decision is taken up by the Election Commission of India for allotment of Symbol and name of party.

**53.** The another issue raised by the petitioner that on 15th May, 2026, after the election of the Hon'ble Speaker, the Hon'ble Chief Minister and the Petitioner, as Leader of Opposition following the practice, procedure and respect to the Speaker escorted the respondent no.4 to the chair of the Speaker by holding his hands and during his welcome speech, the respondent no. 4 recognized the petitioner as the Leader of Opposition but subsequently the respondent no.1 has changed its decision. The respondents submits that the petitioner being one of the senior most members of the West Bengal Legislative Assembly, and the petitioner volunteered to escort the Speaker to his chair, such gesture is only a courtesy and nothing else. The petitioner cannot claim to be the Leader of Opposition by the said gesture. The respondents have not denied that the petitioner escorted the speaker to his chair on 15th May, 2026. Whether it is the procedure and practice that the Leader of Opposition and the Hon'ble Chief Minister should escort Speaker to his chair after the oath of the Speaker no documents or any rules or procedure is placed before this Court. No verbatim is placed on record that on 15th May, 2026, the Speaker has recognized the petitioner as Leader of Opposition in his welcome speech. Only because the petitioner escorted the Speaker to his Chair with the Chief Minister cannot be the ground

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to recognize the petitioner as Leader of Opposition unless the Speaker passes an order in accordance with law after due inquiry.

**54.** Considering the above facts and circumstance, this Court finds that the impugned order passed by the respondent no.1 dated 3rd June, 2026 by recognizing the respondent no. 5 as Leader of Opposition and the respondent no. 6 as Chief Whip in the 18th West Bengal Legislative Assembly is not sustainable under Law, accordingly, the impugned Order dated 3rd June, 2026, is set aside and Quashed.

**55.** The respondent no.1 is directed to reconsider the issue afresh for appointment of Leader of Opposition and Chief Whip in accordance with law within 10 days from the date of receipt of this Order.

**56.** **W.P.O. No. 276 of 2026** is thus **allowed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

**(Krishna Rao, J.)**