

**Surat Singh Yadav Vs. Sudama Prasad Goswami and anr.**

**LegalCrystal Citation :** [legalcrystal.com/462211](http://legalcrystal.com/462211)

**Court :** Allahabad

**Decided On :** Dec-01-1964

**Reported in :** AIR1965All536

**Judge :** N.U. Beg, J.

**Acts :** [Constitution of India](#) - Articles 56(1), 67, 124(2), 156(2), 179, 190(3), 208, 212(2) and 226; Uttar Pradesh Legislative Assembly Rules of Procedure and Conduct of Business, 1958 - Rule 278(1), 278(2), 278(4), 278(5) and 278(6)

**Appeal No. :** Writ Petn. 690 of 1963

**Appellant :** Surat Singh Yadav

**Respondent :** Sudama Prasad Goswami and anr.

**Advocate for Def. :** J.S. Trivedi, Adv., for Opposite Party No. 1, ;Standing Counsel, for Opposite Party No. 2

**Advocate for Pet/Ap. :** H.D. Srivastava and ;Umesh Chandra, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

N.U. Beg, J.

1. This writ petition has been filed by Sri Surat Singh Yadava. Opposite Party No. 1 in this writ petition is Sri Sudama Prasad Goswami. Sri Sudama Prasad Goswami was elected a member of the Vidhan Sabha, Uttar Pradesh, on the Congress ticket in the last general elections held in the year 1962 from 311, Moth Assembly Constituency, District Jhansi, The case of the petitioner in the writ petition is that Shri Sudama Prasad Goswami has resigned his seat in the U. P. Vidhan Sabha. The cause of the resignation of his seat by Opposite Party No. 1 in the Vidhan Sabha, as stated in the writ petition, was the arrest in connection with a dacoity case of one Sii Raghunath Singh who belonged to the Jan Sangh party. The allegation of the petitioner is that the police who had arrested him did not disclose information regarding the circumstances leading to the arrest of the said Raghunath Singh. This was resented by Sri Sudama Prasad Goswami Opposite Party No. 1 who resorted to a fast as a measure of protest against the high-handed action of the Police. The arrest of Sri Raghunath Singh was made on the 6th of October, 1003, at about 7 p. m. Sri Sudama Prasad Goswami started his fast on the morning of the 7th of October, 1963. On the

same day a public meeting was held in which, according to the petitioner, Opposite Party No. 1 made an announcement that he had resigned his seat in the Vidhan Sabha, U. P., and sent his letter of resignation to the Speaker Vidhan Sabha, Uttar Pradesh,

The Speaker, Vidhan Sabha, Uttar Pradesh, is impleaded as opposite party No. 2 in this writ petition. The version of opposite party No. 1 Sri Sudama Prasad Goswami, however, is that in his speech in, the meeting he had not stated that the letter of resignation had been sent by him to the Speaker, Vidhan Sabha, U. P. His announcement in the meeting was that he had sent his letter of resignation to the All India Congress Committee, New Delhi, to be forwarded thereafter to the Proper authority empowered to deal with it in case of their approval. According, to Sri Sudama Prasad Goswami, being a member of the Congress party, he felt that he was bound by the rules of discipline to refer the matter to the High Command for approval and the letter was to be sent by the President All India Congress Committee to the Speaker only if he gave his consent to his proposed resignation.

2. It appears that the news of the fast undertaken by Sri Sudama Prasad Goswami reached Lucknow and Sri Newal Kishore, M.L.A., former Deputy Home Minister, Uttar Pradesh Government, reached Lalitpur on the 8th of October, 1963. He held out an assurance to Sri Sudama Prasad Goswami that an inquiry would be held into the matter leading to the arrest of Sri Raghunath Singh. Opposite party No. 1 was thus persuaded to end his fast in the evening of the 8th of October, 1963, after lapse of about thirty-six hours.

3. The case of the petitioner further is that after ending his fast opposite party No. 1 addressed a Press Conference at Jhansi on the 9th of October, 1963, in which also he stated that he had sent his letter of resignation from the membership of the Vidhan Sabha, U. P. to the opposite party No. 2. He further stated that he felt distressed at the action of the Police and had resorted to fasting for his self-purification. The petitioner has filed copies of a daily newspaper 'Jagran' of Jhansi, dated the 10th of October, 1963 (Annexure 2), of Weekly 'Vir Arjun', New Delhi, dated the 16th of October, 1963 (Annexure 3), of 'Tarun Bharat' dated the 13th of October, 1963 (Annexure 4), and the 'Sunday Standard', New Delhi, dated the 18th October 1963 (Annexure 5) in support of his version. On the other hand, the version of opposite party No. 1 is that in the Press Conference the statement made by him was that he intended to resign his membership of the U. P. Vidhan Sabha and had forwarded his resignation to the President of the All India Congress Committee, New Delhi. After he had made the above statement Sri Bhagirath put a question to the deponent as to why he had not sent his resignation to the Speaker of the Vidhan Sabha, U. P. and in reply he had stated that he was elected a member of the Vidhan Sabha on the Congress ticket and was bound by the discipline of the Congress Party and consequently he had forwarded his resignation to the President of the All India Congress Committee, New Delhi, who could take such action on the resignation as he thought fit. He made a similar statement in a Press conference at Lucknow. In support of this version opposite party No. 1 has filed copies of 'Dainik Bhaskar', a daily issued from Jhansi, dated the 10th of October, 1963 (Annexure 2), of the 'Aaj' of Varanasi dated the 15th of October, 1963 (Annexure A3) and of the 'Swatantra Bharat' of Lucknow dated the 14th October, 1963 (Annexure A4).

4. The petition then goes on to state that a meeting of the Assembly was held on the 17th of October, 1963. when opposite party No. 1 was seen sitting in the Vidhan

Sabha and treating himself as a member of that House. At that time another member of the Vidhan Sabha. Sri Brahma Dutta Mayar, an M.L.A. from Saharanpur, inquired from Sri Madan Mohan Verma, Speaker of the Vidhan Sabha U. P. who was occupying the chair at that time whether the resignation letter of opposite party No. 1 had been received by him or not. Sri Madan Mohan Verma thereupon replied that he had not received any letter of resignation from Sri Sudanis Prasad Goswami. The latter kept quiet and did not contradict the statement of Sri Brahma Dutta and later on left the House.

Opposite party No. 1 in his counter-affidavit admitted the allegation that he had attended the session of the House on the 17th of October, 1963, and further admitted that the said question was raised in the Assembly at the instance of Sri Brahma Dutta Mayar, M.L.A. According to him, however, there was no necessity on his part to contradict the statement of Sri Mayar as the Speaker had already replied that he had not received any letter of resignation from him. Further, according to opposite party No. 1 he continued sitting in the House upto 1 p.m. when the House had broken up for the lunch recess. Thereafter he reattended the afternoon session of the House, Opposite party No. 1 further stated in his counter affidavit that on the 17th of October 1963, he had written a letter to the Speaker Vidhan Sabha, explaining the circumstances and nature of his alleged letter of resignation. In this letter he had stated that as a disciplined member of the Congress Party he had sent his letter of resignation to the President of the All India Congress Committee, and sent a copy of the same to the President of the U. P. Congress Committee as well as to the President of the District Congress Committee. He had not sent any letter of resignation to the Speaker. The letter of resignation sent by him to the President of the All India Congress Committee contained a request that the said resignation might be forwarded to the proper authorities. As he had received no permission to submit his resignation from the membership of the Legislative Assembly, he had not sent any letter of resignation to the Speaker. A copy of this letter is filed as Annexure A-5 by the opposite party No. 1.

5. According to the allegations of the petitioner opposite party No. 1 did not attend the sitting of the Vidhan Sabha on the next day, i.e. the 18th of October 1963, The insinuation behind this allegation appears to be that opposite party No. 1 was absent from the sitting of the House on that date as he realised that he had ceased to be a member of the Vidhan Sabha. On the other hand, the case of opposite party No. 1 is that he could not attend the session of the Vidhan Sabha on that date as he had to attend a meeting in his own district in connection with the Education Week which was being celebrated there during the period. Further he did not attend on the 19th and the 20th of October 1963, as well, as they were off days for the U. P. Vidhan Sabha. He attended the session again thereafter on the 21st of October 1963.

6. According to the petitioner when opposite party No. 1 attended the session on the 21st of October 1963, Sri Nek Ram Sharma M. L. A. and Deputy Leader of the Independent party in the Vidhan Sabha, U. P. pointed out to the Speaker, opposite party No. 2 that a stranger (meaning thereby Sri Sudama Prasad Goswami) was sitting in the House and that he should be penalised under Article 193 of the [Constitution of India](#). This allegation of the petitioner is accepted in paragraph 9 of the counter-affidavit of opposite party No. 1.

7. At that time Sri Madan Mohan Verma, Speaker of the Vidhan Sabha, U. P, in reply to Sri Nek Ram Sharma said that an open letter of resignation of opposite party No. 1

addressed to him (the Speaker) had been found on the table of the Secretary of Vidhan Sabha on October 18, 1963, at 3-30 p. m. after he had returned from the Assembly Hall. The counter affidavit of Sri Brij Nath Mittal, Secretary, Uttar Pradesh Legislative Assembly filed in this case states that there was no envelope attached to this letter and there was no indication as to how it was placed on the deponent's table. There was nothing to show as to whether it was received by post or left there by some messenger. Annexure 1 filed by the petitioner is a true copy of the said letter of resignation. The explanation of the aforesaid discovery of the alleged letter of resignation on the table of the Secretary of the Vidhan Sabha given by opposite party No. 1 in the counter-affidavit is that he had prepared two duplicates of the letter of resignation sent by him to the All India Congress Committee, New Delhi. One was sent to the President District Congress Committee, Jhansi and the other to the President U. P. Congress Committee, Lucknow. One of the aforesaid letters appears to have been pilfered by someone, and placed on the table of the Secretary in a clandestine fashion and without his knowledge. Most probably according to him, this was done at the instance of Sri Roshan Singh, President District Congress Committee, Jhansi, who is hostile to him owing to the fact that he had failed to get a Congress ticket for the Vidhan Sabha for 311 Moth Assembly Constituency, Jhansi, as against him. Further in the Congress Party meeting held to nominate a candidate for the Presidentship of Zila Parishad, Jhansi, he had successfully opposed Sri Roshan Singh's candidature.

8. The letter of resignation found on the table of the Secretary was read out by the Speaker in the Vidhan Sabha. The Speaker also said that this letter of resignation was not in proper form in so far as it did not mention from which date the member was resigning nor did it mention the exact time of resignation, i. e., whether it was to take effect in the forenoon or in the afternoon. The Speaker thereafter said that he would send the letter to Sri Sudama Prasad Goswami for being presented in a proper form. After reading out the said letter, the Speaker said that subsequently on the 19th October, 1963 he had received at his residence another letter from Sri Sudama Prasad Goswami stating that he had sent his letter of resignation to the President, All India Congress Committee, New Delhi and not to him. In this situation the Speaker declared that he was going to take action under Rule 278 of the Rules of Procedure and Conduct of Business of the U. P. Legislative Assembly, 1958. The purpose of the Speaker in embarking on proceedings under Rule 278 was obviously to satisfy himself as to the genuineness and voluntary nature of the letter of resignation before giving his decision. Before, however, he could do anything in the matter, the petitioner filed the present writ petition in this Court on the 24th of October, 1963, impleading Sri Sudama Prasad Goswami as opposite party No. 1 and the Speaker, Vidhan Sabha, U. P. as opposite party No. 2.

In this petition the petitioner prayed for the issue of :

(i) A writ of quo warranto or a writ, order or direction in the nature of quo warranto requiring opposite party No. 1 to show the authority under which he still claims to be a member of the Vidhan Sabha, U. P.

(ii) a writ of mandamus or a writ, order or direction in the nature of mandamus commanding opposite party No. 2 to refrain from treating opposite party No. 1 as a member of the Vidhan Sabha U. P. and to further direct him to take steps for getting the seat tilled up in accordance with law,

(iii) a writ of mandamus or a writ, order or direction in the nature of mandamus directing the opposite party No. 1 not to treat himself as a member of the Vidhan Sabha, U. P. on the basis of the results of the general elections of 1962,

(iv) any other appropriate writ, order or direction to which the petitioner may be held entitled in the circumstances of the case.

Lastly he has prayed for the award of costs of the petition from the opposite parties.

9. This application was strongly contested on behalf of opposite party No. 1 Sri Sudama Prasad Goswami. The initial plea on which reliance was placed on his behalf was that the Speaker had taken action under Rule 278 of the Rules of Procedure and Conduct of Business of the U. P. Legislative Assembly, 1958, and no decision was given by him as yet. These rules are framed under Article 208 of the [Constitution of India](#) and are legally valid. Under the circumstances interference by the Court at this stage would be premature. In this connection the learned counsel appearing on behalf of the opposite parties also relied on the provisions of Article 212(2) of the [Constitution of India](#). Learned counsel for both the parties argued the case on merits as well. On behalf of the petitioner it was argued that the version set out by him is a correct one, whereas on behalf of the opposite parties it was argued that the version set out by the petitioner was an incorrect one. It was also argued on behalf of opposite party No. 1 that the circumstances and probabilities of the case supported his version.

10. Having heard learned counsel of the parties at length I am of the opinion that the contention of the learned counsel for the opposite parties that this application is a premature one should be accepted. This contention is based on the provisions of Rule 278 of the Rules of Procedure and Conduct of Business of U. P. Legislative Assembly, 1958. This rule deals with the manner of submission of resignation under Article 190(13)(b) of the [Constitution of India](#) and the procedure to be followed in respect thereof. Rule 278 runs as follows :

'278, Resignation of seats in the House--(1) a member wishing to resign his seat in the House shall do so in the form prescribed.

#### FORM OF RESIGNATION

To

The Speaker,

Legislative Assembly,

Uttar Pradesh.

Sir,

I hereby tender my resignation of ray seat in the House with effect from ..... (date) forenoon/afternoon.

Yours faithfully,

Place ..... (Signature of Member Date..... of the House). Note.--The date and time of resignation given in the letter shall not be earlier than the one on which the letter is written.

(2) As soon as may be, the Speaker shall on receipt of the letter of resignation, if he is satisfied about the genuineness and voluntary nature thereof, inform the House that such and such a member has resigned his seat in the House :

Provided that when the House is not in session the Speaker shall inform the House of it immediately after it reassembles.

(3) The resignation shall take effect from the date and time specified in the letter of resignation.

(4) The Secretary shall, as soon as may be, after receipt of resignation by the Speaker, cause the said fact of resignation published in the Gazette and forward a copy of the notification to the Election Commission for taking steps to fill the vacancy thus caused.

(5) If any dispute arises as regards the genuineness or voluntary nature of the resignation the same shall be determined by the speaker before action is taken under Sub-rule (2) or Sub-rule (4).

(6) If any letter of resignation is not in the form prescribed it shall be returned to the Member concerned for the purpose of being submitted in the prescribed form.'

In the present case Sub-rules (2) and (5) of the above rule are relevant. So far as Sub-rule (5) is concerned, there is no doubt that a dispute has arisen regarding the voluntary nature of the resignation. On the one hand, the case of the petitioner is that opposite party No. 1 had written out a letter of resignation to be sent to the Speaker and that the said letter had reached the speaker having been found on the table of the Secretary on the 18th of October, 1983. On the other hand, the case of the opposite party No. 1 is that although the letter of resignation was written out by him it was not sent by him to the Speaker. It was sent to the President of the All India Congress Committee, New Delhi, for the purpose of obtaining the approval of the President of the Congress Organisation. According to opposite party No. 1 such a step was necessary on his part under the rules of discipline governing a member of the Congress Party. Further, according to opposite party No. 1 the discovery of the letter on the Secretary's table at 3.30 p. m. on the 18th of October, 1983, was the result of a fraudulent device. It was an act of his enemies done for the purpose of injuring him. It was not his voluntary act and the letter of resignation found on the table of the Secretary cannot, therefore, be described to be of a voluntary nature. In fact, according to the case of the opposite party No. 1, it was not his act at all. Under these circumstances there can be no manner of doubt that Sub-rule (5) of Rule 278 has come into play, and the dispute has got to be decided by the Speaker before action is taken by the Speaker under Sub-rule (2).

It is also the admitted case of the parties that when the Speaker was faced with this situation he declared that he was going to take action under Sub-rule (5). Before, however, he could proceed with his inquiry and give his decision in the matter the petitioner precipitated the matter by filing the present writ petition in this Court. We do not know what the decision of the Speaker on the dispute that has arisen before

him would be. This Court's hands should not be forced in a matter pending for consideration before the Speaker. Interference at this stage by the Court would disturb the operation of Rule 278 and nullify its salutary purpose and design. Any such interference at this stage would, therefore, be uncalled for and unwarranted. Under these circumstances the present application deserves to be dismissed on the ground that it is misconceived being premature.

11. In reply, the learned Counsel appearing on behalf of the petitioner has, however, strenuously argued that the provisions of Rule 278 are ultra vires being inconsistent with the provisions of Article 190(3)(b) of the [Constitution of India](#).

12. The relevant portion of Article 190(3)(b) runs as follows :-

'190(3) If a member of a House of the Legislature of a State-

(a) .....

(b) resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be,

his seat shall thereupon become vacant.'

Sub-rule (1) of Rule 278 prescribes a form in which resignation from seat in the House is to be tendered. The matter of resignation is important not only to the member tendering his resignation but also to the House as a whole. The constitution of the House at any particular point of time would depend on the question as to whether a member continues to be a member of the House or has ceased to be so at that time. Safeguards are, therefore, necessary to see that the matter is not left in the pale of doubt. To achieve this purpose it is necessary that such an act should be accompanied with certain formalities. Article 190(3)(b) itself contains indications to that effect. It has prescribed the bare ingredients of the transaction of resignation leaving the details of its practical application to be worked out by the rules framed under Art 208 by the House Rule 278 appears to have been designed to ensure compliance with the formalities required by Article 190(3)(b) and to provide a procedure for its implementation. Thus Article 190(3)(b) prescribes that the resignation by a member should be in writing. Sub-rule (1) of Rule 278 prescribes the form of this writing. Article 190 (3) (b) further lays down that this writing should be addressed to the Speaker. The form prescribed, therefore, contains at the top the specification of the address of the Speaker. Article 190(3)(b) relates to resignation. The form prescribed in this sub-rule, therefore, contains a clear declaration by the member to the effect that he was tendering his resignation. The form further requires a specification of the date and time from which resignation is to take effect. This is necessary for the purpose of giving effect to the resignation, and also for the determination of the constitution of the House at a particular moment. Sub-rule(1) requires the signature of the member tendering the resignation to be affixed to the letter. This is essential for the purpose of ensuring that the statement of resignation is a genuine expression of the intention of the particular person who purports to tender his resignation. This sub-rule further requires a mention of the place and date of signature. The mention of the place and date of the signature is also helpful in determining the genuineness of the letter of resignation. The note at the bottom states that the date and time of resignation given in the letter shall not be earlier than one on which the letter is written. Retrospective resignation would be obviously

inoperative and the direction contained in the note is made to prevent the submission of futile and ineffective resignations. Sub-rule (1) which prescribes the form in which the resignation should be tendered is, therefore, made to ensure full compliance with the provisions of Article 190(3)(b). It is, therefore, difficult to understand as to how it can be said that the prescription of such a form is inconsistent with the aforesaid provision of law in the Constitution.

13. Sub-rule (2) of Rule 278 lays down that on receipt of a letter of resignation and, on the Speaker being satisfied about the genuineness and voluntary nature thereof, the Speaker shall inform the House of the factum of resignation, if a member has resigned his seat information to the House in that regard is necessary. Every member of the House individually as well as the House as a whole is entitled to know whether persons participating in its deliberations are entitled to do so. This rule was, therefore, framed for the purpose of seeing that the information regarding the matter of resignation is conveyed by the Speaker to the House at the earliest possible opportunity. Such information would further be essential for the purpose of conducting business in the House as well as for taking further action towards filling up the vacancy created by the resignation of the said member. There is nothing in this sub-rule which is inconsistent with any of the provisions of the Constitution. This sub-rule also, therefore, appears to be necessary for the purpose of implementing the provisions of the Constitution and facilitating the working of the Legislature concerned.

14. So far as Sub-rule (3) is concerned, it was argued by the learned Counsel that the requirement regarding the specification of date and time in the letter of resignation is ultra vires, as according to Article 190(3)(b) the resignation would become effective from the date on which and the moment of time when the letter is written, signed and addressed to the Speaker. According to the learned Counsel the phraseology of Article 190(3)(b) clearly indicates that it is not possible for a member to resign his seat from a future date. I find it difficult to accept this argument. I do not think that Article 190(3)(b) contains any express prohibition in this regard.

In this connection, the learned Counsel further argued that the receipt of the letter of resignation by the Speaker is not a part and parcel of the act of resignation. I find it difficult to accept this contention as well. The word 'addressed' used in Clause (b) of Sub-rule (3) appears to embrace within it the idea of the receipt of the letter of resignation by the Speaker. If a member of a Legislature writes on a piece of paper that he has resigned his seat and leaves it on the table without sending the same to the Speaker it cannot be said that the writer has resigned his seat from the House. The member should not only write the letter of resignation with the intention of sending it to the Speaker but should also put it in course of transmission so that the letter in question reaches the Speaker. Supposing a member has written a letter of resignation, signed it and kept it in his pocket, can it be said that his resignation has become complete at that stage? The reply to the question must be in the negative. It is open to him to tear off the letter at any time before the said letter is delivered by him to the Speaker. A similar argument was repelled in the case of *M. Kunjukrishnan Nadar v. Hon'ble Speaker, Kerala Legislative Assembly, Trivandrum, AIR 1964 Ker 194*. The relevant portion of the Judgment dealing with this question runs as follows :--

'There is a controversy between Counsel as to the import of the expression 'addressed to the Speaker'. According to the learned Advocate General it is enough if the

contents of the letter show that the letter is to the Speaker, and an actual receipt of the letter by the Speaker is unnecessary. According to Counsel for the petitioner it is essential that the letter must reach the Speaker. In 'A New English Dictionary' by Murray the meaning given for word 'address' includes 'to send as a written message to (someone) ; to write (anything) expressly that it may reach and be read by someone; to destine, inscribe, dedicate. To address a letter to one; To write and send it'. In the context in which the word appears in Article 190(3) that meaning seems quite apt, and that appears in consonance with the object and purpose of the provision. I would therefore hold that the expression 'addressed to the Speaker' in Article 190(3) means conveyed to the Speaker, and not mere naming of the Speaker in the heading of the letter. There is no question that the petitioner's letter of November 23rd has been communicated to the Speaker.'

Learned Counsel appearing for the petitioner invited my attention to the provisions of Act. 217 (1). Proviso (a) which relates to the resignation by a Judge of a High Court and runs as follows:

'Provided that-

(a) a Judge may, by writing under his hand addressed to the President, resign his office.'

Similar provisions are made with regard to the Supreme Court Judges, Learned Counsel also referred to Article 124(2), Article 179(b) Article 58(1)(a) Article 67 and Article 156(2) which relate to resignation by a Judge of the Supreme Court, a Speaker and a Deputy Speaker, the President of India, the Vice-President of India and by the Governor of a State. The learned Counsel argued that the words 'resign his office' used in the aforementioned provisions may be contrasted with the words 'his seat shall thereupon become 'vacant' used in Article 190(3)(b) of the [Constitution of India](#). The difference in the phraseology, according to the learned Counsel, suggests that resignation of seat under Article 190(3)(b) is automatic whereas this is not so in the case of other dignitaries in respect of whom provision is made in the other Articles mentioned above. The reason for the difference of phraseology in the two cases appears to me to be obvious. In the latter class of cases the matter of resignation is not left to the sweet will of the person tendering the resignation, as there is a provision for the impeachment of such dignitaries and, therefore, acceptance of their resignation is considered necessary in order to avoid the possibility of the persons concerned tendering their resignation for the purpose of defeating the provisions relating to their impeachment.

The only difference between the two cases is that whereas in the case of a member of the Legislature the Speaker is bound to accept the resignation once it is received by him, provided of course that he is satisfied about its genuine and voluntary nature, it is not so in the case of other dignitaries referred to in the provisions relied on by the learned Counsel. In either case, receipt of resignation by the person to whom the resignation is directed to be addressed would be a necessary part of the transaction of resignation.

15. So far as the argument of the learned counsel for the petitioner that resignation cannot be tendered from a future date is concerned, this argument also appears to have no force. Article 190(3)(b) does not deal with question of time at all. In fact, the Article itself is quite silent on it. The learned counsel emphasised the use of the

expression 'his seat shall thereupon become vacant' and argued that from this it necessarily follows that the resignation becomes effective immediately at the moment of the affixation of the signature. I do not think that the use of the word 'thereupon' has the said effect. A similar argument was repelled in the case of M. Kunjukrishnan Nadar, AIR 1964 Ker 191. Dealing with this contention the learned Judge observed as follows ;

'The wording of Article 190(3) is that if a member resigns his seat by writing under his hand addressed to the Speaker 'his seat shall thereupon become vacant.' According to counsel for the petitioner the word 'thereupon' means 'immediately' or 'without delay or lapse of time.' I do not accept this argument. The words thereabout, thereafter, thereat, thereby, therefor, therefrom, thereinto, thereof, thereon, thereto, etc., are of very common use in legal parlance, as combinations of the respective prepositions with the pronoun 'that' or 'it.' Thus 'thereabout' means about that (place); 'thereby' means by that (means); 'therefor' means for that (object or purpose); therein means in that (place or thing) and so on. In this usage, 'thereupon' means 'upon that' that is to say, in consequence of that. In the context of Article 190(3) 'shall thereupon become vacant' means, in my opinion, shall in consequence of the resignation become vacant. It then follows that if the letter of resignation is expressly made to take effect on a specified day the seat would consequently become vacant on such specified day only, and not immediately on its receipt by the speaker. This conclusion gains strength from the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly made by the Assembly under Article 208(1) of the Constitution and published in the Kerala Gazette dated 3rd January, 1981.'

Sub-rule (3) of Rule 278, cannot, therefore, be held to be inconsistent with the provisions of Article 190(b) and ultra vires on that ground.

16. Coming now to Sub-rule (4), this relates only to the publication of the factum of resignation in the Gazette and forwarding a copy of the notification to the Election Commission for taking steps to fill the vacancy thus caused. There is nothing in this sub-rule which is inconsistent with the provisions of Article 190(3)(b) of the [Constitution of India](#). Article 190(3)(b) itself states that the seat becomes vacant as soon as resignation becomes effective. This rule is, therefore, complementary to the said provision, being necessary for the purpose of filling up the vacancy caused and maintaining the strength and Constitution of the House.

17. So far as Sub-rule (5) is concerned it relates to the determination of the dispute relating to the genuineness or voluntary nature of a resignation. According to this sub-rule where such a dispute arises the matter is to be determined by the Speaker. It is under this rule that the Speaker was proposing to act when the present writ petition was preferred. It was argued by the learned Counsel that this rule is not warranted by the provisions of Article 190(3)(b) of the [Constitution of India](#), because once a dispute is raised the Speaker is not competent to decide the matter. I find it difficult to accept this contention-Article 190(3)(b) lays down that the letter of resignation is to be addressed to the Speaker. It has, therefore, to be conceded that the letter of resignation has to be sent to the Speaker and has to be received by him. Under Sub-rule (2) of Rule 278 referred to above it is his duty to inform the House of the factum of resignation. Under the circumstances if a dispute arises in respect of genuineness or voluntary nature of the resignation he is the proper authority whose satisfaction in that regard is necessary before the announcement of resignation is to be made by him to the House. There is no procedure provided either under the

Constitution or under the rules for the decision of the dispute by the Court. If the decision of the matter at that preliminary stage is to be made by the Court, the necessary result of such a procedure would be to paralyse the efficient working of the Legislature. Under the circumstances there can be no manner of doubt that the preliminary decision has to be given by the Speaker and he is the proper authority to act in the matter.

Moreover, he being the person to whom the letter of resignation,, is to be sent, he would be in the best position to decide whether the letter was actually sent to him, and, if sent, whether it was received by him, and, in case it was received by him, whether the writing received by him was of a genuine and voluntary nature. Sub-rule (5), which enables the Speaker to decide the matter prior to taking steps under Sub-rule (2) or Sub-rule (4) thus appears to be a necessary corollary to Article 190(3)(b) which requires that the letter of resignation is to be addressed to the Speaker and the seat in question would be deemed to have become vacant thereafter.

18. The above view would further find support from the following observations made by Govinda Pillai J. in the case of Thankamma v. The Hon'ble Speaker, Legislative Assembly, Travancore Cochin State, AIR 1952 Trav. Co 166 :--

'Article 190(3) provides, that if a member of a House of the Legislature of a State resigns his seat writing under his hand addressed to the Speaker or the Chairman as the case may be, his seat shall thereupon become vacant. This provision necessarily indicates that the letter of resignation must proceed from the member and that the resignation must relate to a membership held by the person who sends the same. The mere receipt by the Speaker of a letter of resignation purporting to be from a member will not cause that member's seat to become vacant. It is open to the Honourable Speaker to enquire whether that is a genuine letter or a forged letter or one obtained by fraud or force and is only a void document.

The position taken, that the Honourable Speaker has no right to enquire into any matter relating to resignation cannot therefore be sustained. What is contemplated in the section is a resignation with the full consent of the writer of his or her own volition and not any letter of resignation.'

19. For the above reasons, Sub-rule (5) of Rule 278 must also be held to be *intra vires*.

20. So far as Sub-section (6) is concerned, it requires that a letter of resignation not in the form prescribed shall be returned to the member concerned for the purpose of being submitted in the prescribed form. This sub-rule was framed only for the purpose of ensuring compliance with Sub-rule (1). If therefore, Sub-rule (1) itself is found to be *intra vires* it necessarily follows that this sub-rule is also *intra vires*.

21. Reference in this connection might also be made to the provisions o Article 208(1) of the [Constitution of India](#) which provides:--

'208 (1) A House of the Legislature of a State may make rules for regulating, subject to the provisions of this Constitution) its procedure and the conduct of its business.'

Article 178 of, the [Constitution of India](#) would indicate that the Speaker is a member of the House and is chosen for the purpose of presiding over its deliberations. Article

189(1) would indicate that the Speaker has also the power of giving a casting vote in the case of equality of votes. The Speaker therefore, is a part of the House of the Legislature of a State and the rules framed for the conduct of business by the Speaker are nothing but the rules framed for the conduct of business of the House, The prescription of the form in which a letter of resignation is to be written and the procedure to be followed in implementing the letter of resignation so far as the House is concerned would thus be a part and parcel of the procedure of the House. The provisions of Rule 278 mentioned above would, therefore, be in full compliance with the provisions of Article 208(1) of the [Constitution of India](#) and would be intra vires the Legislature.

22. On behalf of the opposite parties, the learned Counsel also relied on the provisions of Article 212(2) of the [Constitution of India](#) which runs as follows:--

'212 (2) 'No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.'

Admittedly the Speaker is an officer of the Legislature of a State as contemplated in this provision of the Constitution. The immunity of the said officer from the jurisdiction of Court covers not only the powers vested in him by the Constitution but also extends to powers vested in him under the Constitution. The use of the words 'by' and 'under' is important. The word 'by' relates to powers conferred directly on the Speaker by the provisions of the Constitution, whereas the word 'under' relates to the powers vested in the Speaker under the rules framed within, the framework of the Constitution. As mentioned above Rule 278 is a rule validly framed under Article 208 of the [Constitution of India](#), and further this rule relates to regulation of procedure of the House as well as the conduct of business of the House by the Speaker in that regard. Under the circumstances it was argued on behalf of the opposite parties that this Court has no jurisdiction in the matter of resignation from the House, and, in any case, so far as the initial enquiry to be made by the Speaker is concerned, interference by the Court would be unwarranted and uncalled for.

23. On the other hand, learned Counsel appearing on behalf of the petitioner relied on the cases of AIR 1964 Ker 194 and AIR 1952 Trav.-Co, 166 in support of his contention that this Court has jurisdiction to interfere in such cases. Both these cases appear to be clearly distinguishable on the ground that in both of them a writ was Sled only after the Speaker had given his decision. In fact in Thankamma's case, AIR 1952 Trav-Co 166 as already observed above, it was held that the Speaker has-jurisdiction to make an inquiry into the genuineness or voluntary nature of a letter of resignation. In the present case the writ petition has been filed before the inquiry has been made by the Speaker, and, under these circumstances, I have no doubt in my mind that the writ petition deserves to be dismissed on the preliminary ground that it is premature. The alternative contention of the learned Counsel of the opposite parties which was raised in the form of a preliminary objection should, therefore, be accepted.

So far as the other contention is concerned, the learned Counsel for the petitioner relied on the words 'in the Legislature' in Article 212(2) and contended that the question of resignation is to be decided by the Speaker independently of the proceedings of the Legislature and, therefore, falls outside the protective limits of

Article 212(2). On the other hand, learned Counsel for the opposite parties emphasised the use of the words 'in respect of' as widening the ambit of the protective area covered by the aforesaid provision. He argued that the Speaker has to announce his decision in the House under Sub-rule (2). The power exercisable by the Speaker in this regard is, therefore, obviously 'in respect of' proceedings in the legislature, and, in fact becomes a part and parcel of its proceedings at a subsequent stage. As I have decided the preliminary objection in favour of the opposite parties, it is not necessary for me in this case to express any opinion on this aspect of the matter or to examine the correctness or otherwise of the law laid down in the two afore-mentioned cases in this regard.

24. Learned counsel for both the parties argued the case at length on merits as well. Learned counsel for the petitioner tried to support the version of the petitioner from the various pieces of evidence filed on his behalf. In this connection he relied on news items published in various papers. He also referred to the evidence provided by the tape record which was sought to be filed by him. On the other hand, learned Counsel on behalf of the opposite parties also relied on the version of events as given in a number of other papers which supported his case. Particular reliance was placed on the issue of 'Dainik Bhaskar' of Thansi dated the 10th of October, 1963, in which in the Press Conference held on the previous day the opposite party No. 1 was alleged to have stated that he had sent the letter of resignation to the President of the All India Congress Committee. He also relied on the mysterious circumstances in which the letter of resignation was discovered on the table of the Secretary on the 18th of October, 1963. The letter was found placed there in an open condition and without any envelope. Further, there was no indication that it was brought by any messenger or how it happened to get on the table of the Secretary in his absence. He further referred to the fact that a letter of resignation had already been sent by opposite party No. 1 to the Speaker on the 7th of October, 1983, it is difficult to understand as to why that letter was not received by him within two or three days in the normal course. The very fact that the letter was found without the envelope under such suspicious circumstances indicates that there is some foul play to the matter.

It was further argued on behalf of the opposite party No. 1 that the question regarding the resignation of opposite party No. 1 was already raised in the Assembly on the 17th of October, 1963, in the presence of opposite party No. 1. It is, therefore, inconceivable that opposite party No. 1 would be instrumental in having the letter placed on the table of the Secretary on the next day. It was, therefore, argued that the appearance of the letter on the table of the Secretary must, therefore, be the work of a third person who was interested in damaging the interests of opposite party No. 1. Reference in this connection was also made to the fact that a duplicate of the letter was sent by the writer to the President, District Congress Committee Jhansi, Shri Roshan Singh, and to the allegation of hostility between him and opposite party No. 1. As I have held that this application is premature and should be dismissed on that ground, and, as the matter is still pending for consideration before the Speaker, Legislative Assembly, I do not think that it would be either desirable or proper for me to express any opinion on the merits of the cases of both the parties in regard to their respective versions.

25. For the above reasons I am of the opinion that this writ petition has no force. I, accordingly, dismiss it with costs.