

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 797 OF 2021

IN THE MATTER OF:

Ashish Shelar & Ors.

...Petitioners

Versus

The Maharashtra Legislative
Assembly & Anr.

...Respondents

**COUNTER AFFIDAVIT ON BEHALF OF THE
RESPONDENT NO. 2**

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ADVOCATE FOR RESPONDENT NO. 2: SACHIN PATIL

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RESPONDENT NO. 2**

I, Satish Baban Waghole, Age 53 years, Occupation service as In Charge Secretary, Parliamentary Affairs Department, Mantralaya, Mumbai 400 032, Maharashtra, do hereby solemnly affirm and state on oath as under:

1. I have ascertained the facts from the records maintained in my office and on the basis thereof I am swearing this Counter Affidavit.
2. I have perused the present Writ Petition and seek to file this Counter Affidavit to oppose the averments and contentions raised in the present Writ Petition and to bring the true and correct facts on record, despite the fact that no reliefs have been claimed in the Writ Petition against this Respondent.
3. I deny each and every allegation, statement and averment made in the Writ Petition, which are contrary to and inconsistent with what is stated herein, except in so far as matters of record and what is admitted herein. Nothing shall be deemed to be admitted for want of denials or otherwise unless specifically admitted by me.
4. The present Writ Petition is filed inter alia challenging the resolution dated 5th July 2021 passed by Respondent No. 1 thereby suspending twelve members ('twelve MLAs') from the Respondent No. 1 for a period of one year ('the Resolution'). Three suspended members, namely Mr. Ashish Shelar, Mr. Atul Bhatkhalkar and Mr. Abhimanyu Pawar have filed the present Writ Petition. Four suspended members, namely Mr. Kirtikumar Bhangdiya, Mr. Ram Satpute, Mr. Narayan Kuche and Mr. Girish Mahajan have filed Writ Petition No. 800 of 2021. Two suspended members, namely

Dr. Sanjay Kute and Mr. Parag Alavani have filed Writ Petition No. 807 of 2021. Three suspended members, namely Mr. Harish Pimple, Mr. Jayakumar Rawal and Mr. Yogesh Sagar have filed Writ Petition No. 808 of 2021. Thus, all the twelve suspended members have challenged the impugned resolution before this Hon'ble Court.

5. I say that the present Writ Petition is liable to be dismissed on the following amongst other grounds, which are taken without prejudice to one another. I state that this Affidavit is being filed due to urgency in the matter and paucity of time and this Respondent craves leave to file a detailed Counter Affidavit, as and when directed by this Hon'ble Court.

6. I deny the contention of the Petitioners that the impugned resolution is passed in violation of Article 14 of the Constitution as no opportunity of hearing or furnishing written explanation was given to the Petitioners. The members of the House of Respondent No. 1 had themselves witnessed the undisciplined and unbecoming behaviour of the Petitioners which had maligned the dignity of the House of Respondent No. 1. Further, a sincere apology was tendered by the Leader of the Opposition on behalf of the members of the Opposition to the Chairman, regarding the unruly behaviour in the House of Respondent No. 1. In the circumstances, there was no question of hearing or furnishing written explanation been given to the Petitioners. The Petitioners committed acts maligning the dignity of the House of Respondent No. 1 in the face of the House of Respondent No. 1 and it was the decision of the House of Respondent No. 1 to suspend the Petitioners. There was no question of granting an opportunity of hearing or furnishing written explanation being given to the Petitioners in view of the fact that the Petitioners had committed acts of contempt of the House committed in the House while it was sitting. Hence, there is no violation of the principles of natural justice or Article 14 of the Constitution, and the Writ Petition under Article 32 is not maintainable and ought to be dismissed on this ground alone.

7. The Petitioners attempt to seek the video recordings of the entire proceedings of the House of Respondent No. 1 for 5th July 2021 and 6th July 2021 ('the video recordings') was a belated attempt to create a false ground of non-compliance of the principles

of natural justice, namely that the members of the House of Respondent No. 1 relied upon the video recordings to identify the Petitioners and the video recordings ought to have been shown to the Petitioners. However, the Respondent No. 1 had informed the Petitioners that 'Guidelines and Undertaking' dated 12th April 2013 ('the Guidelines') had been issued by Respondent No. 1 regarding video recordings of the House of Respondent No. 1, which inter alia provided that the video recordings could not be used for submission before any Court or Tribunal. The Respondent No. 1 further informed the Petitioners that it would not be appropriate to make available the video recordings to them for use in court proceedings. The Petitioners have not challenged the validity of the Guidelines in these proceedings and the video recordings were not provided to the Petitioners by the Respondent No. 1 as the Petitioners proposed to use them in contravention of the Guidelines. Hence, even on this ground there is no violation of the principles of natural justice or Article 14 of the Constitution, and the Writ Petition under Article 32 is not maintainable and ought to be dismissed on this ground alone.

8. I submit that Article 212 of the Constitution provides that 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 in Courts. The Resolution and the alleged irregularity of procedure, if any, clearly deals with proceedings in the House of Respondent No. 1 and cannot be called in question in this Hon'ble Court. Hence, the Writ Petition under Article 32 is not maintainable and ought to be dismissed on this ground alone.

9. I say that the facts that are necessary for appreciating the controversy in the matter are as follows:

- a. The Monsoon session of Respondent No. 1 was scheduled to be held on 5th July 2021 and 6th July 2021.
- b. On 5th July 2021 the House of Respondent No. 1 was being presided over by the Chairman, nominated under Rule 8 of the Maharashtra Legislative Assembly Rules. There was heated exchange between the members of the ruling party and the opposition party and 12 MLAs rushed to the well of house, snatched the Rajdand (mace), uprooted mikes, etc. Hence the

House of Respondent No. 1 was adjourned and Chairman retired to his chambers.

- c. Thereafter, the members rushed to the Chairman's chamber and heated exchanges occurred between the members in the Chairman's chamber. In the chambers few members also misbehaved with the Chairman.
- d. On resumption of the House of Respondent No. 1, a sincere apology was tendered by the Leader of the Opposition on behalf of the members of the Opposition to the Chairman, regarding the unruly behaviour in the House of Respondent No. 1.
- e. A resolution for suspension of twelve MLAs was moved by the Minister of Parliamentary Affairs of this Respondent, inter alia stating that (a) the twelve MLAs tried to snatch the mike and Rajdand (mace) and (b) also misbehaved in the chamber of the Speaker. The resolution stated that due to undisciplined and unbecoming behaviour the dignity of the House was maligned and the twelve MLAs should be suspended for one year.
- f. A resolution was passed by the House of Respondent No. 1 thereby suspending twelve MLAs from the Respondent No. 1 for a period of one year.
- g. The aforesaid facts were widely reported in the print and electronic media in Maharashtra.
- h. Being Aggrieved by the order / resolution dated 04.12.2021 the Petitioner has filed the present Special Leave Petition.

10. I say that the House of Respondent No. 1 has the power to reprimand or admonish its members who commit acts which malign the dignity of the House or contempt of the House. The House of Respondent No. 1 has the power to pass resolution(s) suspending members who commit acts which malign the dignity of the House. In fact, any member who wilfully obstructs the business of the House and/or maligns the dignity of the House is guilty of contempt of the House and is liable to punishment by suspension from the House according to the judgment of the House, i.e. by passing a resolution by the House. The power is vested in the House by virtue of its right to exclusive cognisance of matters arising within the House and to

regulate its own internal concerns. Any acts done in the House while it is sitting are matters to be dealt with by the House itself and that the House has the power to take suitable action against members who transgress the limits laid down in Clause (1) of Article 194 of the Constitution. I say that the inherent power of the House of Respondent No. 1 to reprimand or admonish or suspend its members is independent of the power of the Speaker of the House to order withdrawal of members under the Maharashtra Legislative Assembly Rules ('the MLS Rules').

11. Without prejudice to the aforesaid, I shall now deal with the Writ Petition, to the extent necessary.

12. With reference to paragraph 1 of the Writ Petition I deny that the Resolution passed by Respondent No. 1 is arbitrary or capricious or malafide. I deny that the Resolution is passed in violation of Article 14 of the Constitution for the reasons alleged or at all. I deny that the Resolution suffers from the vice of arbitrariness for the reasons alleged or at all. I deny that the Resolution has been passed without the authority of law.

13. With reference to paragraph 2 of the Writ Petition, I say that the contents thereof are matters of record and need no reply.

14. With reference to paragraph 3 of the Writ Petition, I deny the suggestion that the business of the house was being conducted in a unilateral manner or there was any effort to suppress the voice of the Opposition Party. I deny that on any motion, the Leader of Opposition was denied an opportunity to respond. I deny that the suspension is a fall out of the heated exchanges or is political in nature. I repeat and reiterate that there was heated exchange between the members of the ruling party and the opposition party and 12 MLAs rushed to the well of house, snatched the Rajdand (mace), uprooted mikes, etc. The Chairman was pleased to adjourn the House of Respondent No. 1 and the Chairman retired to his chambers.

15. With reference to paragraph 4 of the Writ Petition, I deny that the Resolution falls foul of the principles enshrined in Article 14 of the Constitution. I deny that there was any failure in complying with the rules of natural justice as alleged or at all. I deny that the

Resolution is passed in arbitrary manner. I deny that there was no material before the members of the House of Respondent No. 1 to identify the Petitioners. The members of the House of Respondent No. 1 had themselves witnessed the undisciplined and unbecoming behaviour of the Petitioners which had maligned the dignity of the House of Respondent No. 1 and there was no question of relying on any material to identify the Petitioners. There was no question of granting an opportunity of hearing or furnishing written explanation being given to the Petitioners in view of the fact that the Petitioners had committed acts of contempt of the House committed in the House while it was sitting.

16. With reference to paragraph 5 of the Writ Petition, I deny the suggestion that the sole power to suspend members for misconduct or unruly behaviour is referable to Rule 53 of the MLA Rules. I say that the Resolution is not an exercise of power under Rule 53. I repeat and reiterate that the inherent power of the House of Respondent No. 1 to reprimand or admonish or suspend its members is independent of Rule 53 of the MLS Rules.

17. With reference to paragraph 6 of the Writ Petition, I deny that the period of suspension is unfair or disproportionate. I submit that the suggestion that the Resolution is passed by the 'Ruling Party' to wipe out the 'Opposition' is merely a conjecture. I say that Resolution is passed by the House of Respondent No. 1.

18. With reference to paragraph 7 of the Writ Petition, I submit that the contentions therein are mere conjectures and I deny the same. I deny that the Resolution is anathema to parliamentary democracy for the reasons alleged or at all.

19. With reference to paragraph 8 of the Writ Petition, I say that the contents thereof relate to the (i) conduct of the House of Respondent No. 1, (ii) correspondence exchanged between the Leader of Opposition and Respondent No. 1 and (iii) the correspondence exchanged between the Petitioners and Respondent No. 1, and do not concern this Respondent and hence this Respondent is not dealing with the same.

20. With reference to paragraph 9 of the Writ Petition, I deny that any questions of law arise for consideration of this Hon'ble Court.

21. With reference to Ground 10.1 of the Writ Petition, I deny that any fundamental rights guaranteed under Article 14 of the Constitution are violated or that the Petitioners are entitled to approach this Hon'ble Court under Article 32 of the Constitution.

22. With reference to Ground 10.2 of the Writ Petition, I deny that the Resolution has been passed in haste or is politically motivated to whittle down the numbers of the opposition. I deny that the requirements of Article 14 of the Constitution have been brushed aside. I say that the ratio laid down by this Hon'ble Court in the case of *Alagaapuram R. Mohanraj & Ors. Vs. Tamil Nadu Legislative Assembly & Anr. Reported in (2016) 6 SCC 82*, does not apply to the facts of the case as that case related to a decision of the Privileges Committee but in the present case it is the decision of the House of Respondent No. 1 to suspend the Petitioners for having committed acts maligning the dignity of the House of Respondent No. 1 in the face of the House of Respondent No. 1.

23. With reference to Ground 10.3 of the Writ Petition, I deny that the Resolution falls foul of Article 14 of the Constitution. I deny that it was incumbent upon Respondent No. 1 to grant opportunity to the Petitioners to meet the case against them. I deny that the Resolution deserves to be quashed for the reasons alleged or at all.

24. With reference to Ground 10.4 of the Writ Petition, I deny that the Resolution shows non-application of mind by the Chairman or the Minister for Parliamentary Affairs. I say that the incident in the chambers of the Speaker was a separate incident and I deny that there was no material before the Chairman or Minister to sustain the action of suspension of the Petitioners. I say that the Petitioners have been suspended essentially for having committed acts maligning the dignity of the House of Respondent No. 1 in the face of the House of Respondent No. 1.

25. With reference to Ground 10.5 of the Writ Petition, I deny the suggestion that the Resolution does not rely on any material while identifying the twelve MLAs. I repeat and reiterate that the ratio laid down by this Hon'ble Court in the case of *Alagaapuram R. Mohanraj & Ors. Vs. Tamil Nadu Legislative Assembly & Anr.*

Reported in (2016) 6 SCC 82, does not apply to the facts of the case as that case related to a decision of the Privileges Committee but in the present case it is the decision of the House of Respondent No. 1 to suspend the Petitioners for having committed acts maligning the dignity of the House of Respondent No. 1 in the face of the House of Respondent No. 1.

26. With reference to Ground 10.6 of the Writ Petition, I deny that the action against the twelve MLAs is arbitrary or violative of Article 14 of the Constitution for the reasons alleged or at all.

27. With reference to Ground 10.7 of the Writ Petition, I deny the suggestion that suspension of members for unruly behaviour is covered by Rule 53 of the MLS Rules.

28. With reference to Ground 10.8 of the Writ Petition, I deny that the Chairman erred in putting the resolution for voting. I deny that a motion for unruly behaviour can never be a subject matter of voting for the reasons alleged or at all. I deny that the Resolution could not have been passed by voting. I say that the power of the House of Respondent No. 1 to reprimand or admonish or suspend its members is independent of the power of the Speaker of the House to order withdrawal of members under the MLS Rules.

29. With reference to Ground 10.9 of the Writ Petition, I deny that suspension for unruly behaviour is solely referable to Rule 53 of the MLS Rules or that the suspension could not have exceeded the prescribed period. I deny that the period of one year is arbitrary or disproportionate for the reasons alleged or at all.

30. With reference to Ground 10.10 of the Writ Petition, I deny that the Chairman nominated under Rule 8 of the MLS Rules loses the character of the Speaker, as alleged. I deny that the exchange outside the House would not invite an action for suspension.

31. With reference to Ground 10.11 of the Writ Petition, I deny that the Chairman has exercised powers under Rule 53 of the MLS Rules. I deny that the Resolution is nonest in law or has been passed without authority of law for the reasons alleged or at all.

32. With reference to Ground 10.12 of the Writ Petition, I deny that Resolution passed by the House of Respondent No. 1 is


violative of Article 14 of the Constitution or is passed without any legal basis.

33. With reference to paragraph 11 of the Writ Petition, I deny that the Petitioners have no alternative or efficacious remedy other than to invoke the jurisdiction of this Hon'ble Court under Article 32 of the Constitution.

34. In the aforesaid circumstances, I pray that the Writ Petition be dismissed with costs.

35. That no new facts and grounds have been pleaded in this Counter Affidavit.

Hence the Counter Affidavit.



(Shri Satish Baban Waghole)
In Charge Secretary,
Parliamentary Affairs Department
Mantralaya, Mumbai.

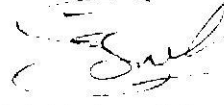
DEPONENT

Drawn by:
Mr. Rahul Chitnis, Advocate

VERIFICATION

I, Satish Baban Waghole, Age 53 years, Occupation service as In Charge Secretary, Parliamentary Affairs Department, Mantralaya, Mumbai 400 032, Maharashtra, do hereby solemn affirmation, that whatever stated herein above is true to the best of my knowledge and information derived from the records and files maintained in the office and I believe the same to be true.

Solemnly affirmed at Mumbai, this 7th day of January, 2022.



(Shri Satish Baban Waghole)
In Charge Secretary,
Parliamentary Affairs Department
Mantralaya, Mumbai.

DEPONENT

I Identified the Deponent :



(Ramesh Sakharam Sarfare)
Deputy Secretary,
Parliamentary Affairs Department,
Mantralaya, Mumbai

Identified by Me :

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...Respondents

**APPLICATION SEEKING EXEMPTION FROM FILING
COUNTER AFFIDAVIT WITHOUT AFFIDAVIT
ATTESTATION**

TO,
THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUDGES OF THE
HON'BLE SUPREME COURT OF INDIA,

THE HUMBLE APPLICATION
OF THE RESPONDENT
ABOVE NAMED:

MOST RESPECTFULLY SHOWETH:

1. That the Applicant is authorized officer of the Respondent No. 2 in the present Writ Petition and is filing this Counter Affidavit in his official capacity on behalf of the Respondent No. 2.
2. It is submitted that due to the current covid restrictions and as the Applicant is Covid-19 positive since Tuesday 5th January 2022 and still in quarantine on medical advice, hence the Applicant/Respondent is unable to get the adjoining Counter Affidavit Notarized. Therefore, in the light of above stated facts, the Applicant/Respondent seeks exemption from filing Notarized Counter Affidavit.

PRAYER

The Respondent, therefore, prays that:-

- A) Exempt Respondent from filing Notarized Counter Affidavit;
- B) Pass any other order or directions as this Hon'ble Court deems fit and proper.

AND FOR THIS ACT OF KINDNESS THE
RESPONDENT SHALL AS IN DUTY BOUNDS EVER PRAY.

Drawn by:
Mr. Rahul Chitnis, Adv

FILED BY:-



(SACHIN PATIL)
Advocate for the Respondent

Place : New Delhi
Filed on : 08.01.2022