IN THE SUPREME COURT OF INDIA

EXTRAORDINARY ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 797 OF 2021

IN THE MATTER OF:

Ashish Shelar and Ors. …Petitioners

Versus

The Maharashtra Legislative Assembly & Anr. …Respondents

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In the matter of:

Ashish Shelar and Ors. **…Petitioners**

Versus

The Maharashtra Legislative Assembly & Anr. **…Respondents**

SUBMISSIONS OF SIDDHARTH BHATNAGAR, SENIOR ADVOCATE ON BEHALF OF THE PETITIONERS

The issue in the present case relates to a Resolution dated 5th July 2021 passed by the Maharashtra Legislative Assembly (**"the Assembly"**), leading to suspension of membership of 12 Members of the Legislative Assembly ("**MLAs"**) from that Assembly for a period of one year. Further, during that period the MLAs were restrained from entering into the premises of Vidhan Bhawan at Mumbai and Nagpur. It is the case of the Petitioners that such exercise of power by the Assembly is unreasonable, impermissible, irrational and arbitrary, besides being contrary to Basic Structure of the Constitution and also violative of Constitutional Morality.

A. LIST OF DATES

2021	The monsoon session of the Assembly took place on 05.07.2021 to 06.07.2021 (**Page 3**).
05.07.2021	The Assembly was being presided over by the acting Chair (under Rule 8 of the Assembly Rules). On account of certain alleged heated exchanges near the Chamber of the acting Chair, a Resolution for suspension of 12 MLAs was moved by the Minister, Parliamentary Affairs (**Pages 6 – 8; Annexure P.1, Pages 22 – 24**). The title of the Resolution was "*Contempt of the House by objectionable behaviour"*. Suspension for a period of one year was proposed. The Resolution was tabled and voted on the same day (**Page 24**). As a result, 12 MLAs stood suspended for a period of one year and during that period were restrained from entering into the premises of Vidhan Bhawan at Mumbai and Nagpur. (No committee or inquiry was constituted before the Resolution of suspension was passed.)

07.07.2021 The Leader of the Opposition wrote various letters asking for CCTV and video recordings of the incident. (**Annexures P.2 - 7, Pages 26 - 32**)

15.07.2021 The Principal Secretary of the Legislative Secretariat declined to provide CDs of the proceedings to the MLAs. (**Annexures P.9, Pages 36 - 37**)

- Present Writ Petition was, thus, filed praying for quashing of the Resolution dated 05.07.2021.

B. LEGAL SUBMISSIONS

(i) Suspension is a Disciplinary and not a Remedial measure:

Article 208(1) of the Constitution empowers the Legislative Assembly to make rules regulating its procedure and the conduct of its business, subject to the provisions of the Constitution. In *Ratilal v. Collector of Customs* (1967) 3 SCR 926, a Constitution Bench held (**at page 929**) as follows :-

> *"….As explained in Pandit Sharma's case (1959) Supp 1 SCR 806, these powers and the procedure prescribed by the rules has the sanction of enacted law and an order of committal for contempt of the Assembly is according to procedure established by law. Das, C.J., speaking for four learned Judges said at page 861: "Article 194(3) confers on the Legislative Assembly those powers, privileges and immunities and Article 208 confers power on it to frame rules. The Bihar Legislative Assembly has framed rules in exercise of its powers under that Article. It follows, therefore, that Article 194(3) read with the rules so framed has laid down the procedure for enforcing its powers, privileges and immunities. If, therefore, the Legislative Assembly has the powers, privileges and immunities of the House of Commons and if the petitioner is eventually deprived of his personal liberty as a result of the proceedings before the Committee of Privileges, such deprivation will be in accordance with procedure established by law and the petitioner cannot complain of the breach, actual or threatened, of his fundamental right under Article 21." Subba Rao J. in his minority judgment in that case and the Court in Special Reference No.1 of 1964 did not say anything to the contrary on this point."*

Suspension or withdrawal of a Member is intended to prevent and remedy disorder which is likely to hamper proceedings of the Assembly and is necessarily for a limited period. Being a disciplinary proceeding, suspension / withdrawal is invariably dealt within under the Rules for Parliament and various Legislative Assemblies.

In Maharashtra, it is Rule 53 of the Assembly Rules which deals with the *"Power to order withdrawal of a member"* and reads as follows:-

> *"**53**. The Speaker may direct any member who refuses to obey his decision, or whose conduct is, in his opinion, grossly disorderly, to withdraw immediately from the Assembly and any member so ordered to withdraw shall do so forthwith and shall absent himself during the remainder of the day's meeting. If any member is ordered to withdraw a second time in the same Session, the Speaker may direct the member to absent himself from the meetings of the Assembly for any period not longer than the remainder of the Session, and the member so directed shall absent himself accordingly. The member so directed to be absent shall, during the period of such absence, be deemed to be absent with the permission of the Assembly within the meaning of clause (4) of Article 190 of the Constitution."*

The limited period is provided for on account of the fact that suspension is considered to be a step reasonably necessary for proper exercise of functions of a Legislative Assembly and to ensure that legislative business during that limited time period is not hampered.

(ii) <u>Period of Suspension:</u>

The period of Suspension, advisedly provided for in Rule 53, is to meet the emergent objective of ensuring that the work of the Assembly during the Session is not affected. It is respectfully submitted that the said period ought not to be extended even if the Assembly exercises inherent power under Article 193(4) of the Constitution. It is respectfully submitted that the period of suspension must be for periods analogous to those provided in Rule 53 only, as anything above that period is liable to become punitive and is beyond what is reasonably necessary to achieve the purpose.

In the case of *<u>Barton v. Taylor</u>* (1886) 11 SC 197, the Privy Council held as follows:-

> "*The power, therefore, of suspending a member guilty of obstruction or disorderly conduct during the continuance of any current sitting, is, in their Lordship's judgment, reasonably necessary for the proper exercise of the functions of any Legislative Assembly of this kind and it may very well be, that the same doctrine of reasonable necessity would authorise a suspension until submission or apology by the offending member; which, if he were refractory, might cause it to be prolonged (not by the arbitrary discretion of the Assembly, but by his own wilful default) for some further time. The facts pleaded in this case do not raise the question whether that would be ultra vires or not. If these are the limits of the inherent or implied power, reasonably deducible from the principle of general necessity, they have the advantage of drawing a simple practical line between defensive and punitive action on the part of the Assembly. <u>A power of unconditional suspension, for an indefinite time, or for a definite time depending only on the irresponsible discretion of the Assembly itself, is more than the necessity of self-defence seems to require, and is dangerously liable, in possible cases, to excess or abuse.</u> It is true that confidence may, generally, be placed in such bodies; and there may be cases (as in such very important colonies as this of New South Wales) in which there may be*

preponderating reasons for entrusting them with much larger powers than those which ought to be implied from the mere necessity of the case……...

……. To argue that expulsion is the greater power and suspension the less, and that the greater must include all degrees of the less, seems to their Lordships fallacious. The rights of constituents ought not, in a question of this kind, to be left out of sight. Those rights would be much more seriously interfered with by an unnecessarily prolonged suspension than by expulsion, after which a new election would immediately be held." (emphasis provided)

The said judgment has been cited in the judgment of the Constitution Bench in *Raja Ram Pal v. Hon'ble Speaker, Lok Sabha* (2007) 3 SCC 184 (**at paragraph 284, Page 321**).

(iii) Suspension has become punitive and worse than even Expulsion:

Suspension is not punitive or remedial in nature. It is respectfully submittedthat suspension in the present case imparts a character of punitive punishment worse than expulsion. Expulsion, is recognized as a remedial measure to remove an undesirable member from the Assembly, upon which the seat is declared vacant. The seat is then filled in within a limited period of six months and the expelled member is free to contest the vacant seat again[1]. However, suspension when liable to be exercisable for periods that can extend to long or indefinite lengths has the effect of creating a *de-facto* vacancy but not a *de jure* vacancy. Consequently, the seat remains unfilled potentially for unlimited periods of time.

Vacancy of seats in Assemblies arises under Article 190 of the Constitution for State Legislatures (Article 101 for Parliament). Vacancies can arise in the following manner :-

(i). By a person vacating one seat when he / she is a Member of both Houses of a State Legislature [**Article 190(1)**]

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[1] From the book "*Theory and Practice of Parliamentary Procedure in India by S.H. Belavadi*" (N.M. Tripathi Private Limited, 1988 – only Edition) at page 252 (Chapter 26)

"Expulsion:

In more serious matters, a Member can be expelled from the House and his seat declared vacant. Expulsion does not create disqualification in the Member expelled and he is free to contest the vacant seat again if he so chooses. Such a case had arisen in the Maharashtra Legislative Assembly. One Jambuwantrao Dhote, a Member of the Maharashtra Legislative Assembly, was expelled on a motion passed to that effect by the House. Thereupon, his membership ceased and his seat was declared vacant. Subsequently, in the election held to fill that seat, Dhote contested the election and also was elected. When he returned to the House in a triumphant mood and questioned the right and wisdom of the House to expel him, the Speaker, T.S. Bharde, promptly replied that both his expulsion from the House for his grossly disorderly behaviour and misconduct in the House and his return to the House after being duly elected in the bye-election, were fully in accordance with the parliamentary practice and procedure. The reason why there is no disqualification in such a case is that it is not intended to subvert the right of the whole body of the electorate of the Kingdom; otherwise such a disqualification would result in disqualifying or disfranchising the whole constituency."

(ii) If a person is a Member of a Legislature of two or more States [**Article 190(2)**];

(iii) If a Member becomes subject to disqualification under Article 191(1) or 191(2) **[Article 190(3)];**

(iv) In turn, Article 191(1) deals with disqualifications such as holding of office of profit, unsound mind, undischarged insolvent, not a citizen of India or disqualified by Parliamentary Law. Further, disqualification under Parliamentary Law includes those prescribed in Chapter III of the Representation of Peoples Act, 1951 such as conviction for offences (Section 8), disqualification for corrupt practices (Section 8-A), disqualification for government contracts (Section 9-A) etc. The disqualification under Article 191(2) relates to the 10th Schedule. **[Article 190(3)(a)];**

(v) By resigning his seat. **[Article 190(3)(b)];**

(vi) When the seat is declared vacant for absence from all meetings of the House for a period of sixty days; the said period being computed as per the proviso [**Article 190(4)]**

To the above, two further methods by which the seat becomes vacant may be added i.e. on death or on expulsion of a Member, expulsion being pursuant to exercise of inherent powers and privileges under Article 194(3).

In each of the above situations, once a seat becomes “vacant” (including in a case of expulsion), it is required to be filled under Part IX of the Representation of Peoples Act, 1951 (in particular, under Section 151-A) within a period of six months from the date of occurrence of the vacancy. Thus, in every case wherever there is a vacation of a seat, that seat is required to be filled by an election to be held within a period of six months. This ensures that no seat is left vacant and no constituency remains unrepresented in the House for a period greater than six months.

Section 151-A of the Representation Peoples Act was inserted by Act 21 of 1996 w.e.f. 01.08.1996. The Lok Sabha debates dated 26.07.1996 indicate that the (The Representation of People (Second Amendment Bill), 1996 was introduced after a full political consensus. Under the proviso to Section 151-A, there are only two situations in which a seat is kept vacant :-

(i) if the remainder of the term is less than one year; OR

(ii) if the Election Commission in consultation with the Central Government certifies that it is difficult to hold the bye-election within the said period.

There is no third situation. It is respectfully submitted that a House/Assembly cannot, by an indirect method, virtually add a third clause to the proviso i.e. keeping a seat *de facto* vacant but saying that it is not *de jure* vacant.

Thus, in the present case, a one-year suspension is worse than not only "expulsion" but worse even than "disqualification" or "resignation" in so far as the right of the constituency to be represented before the House/Assembly is concerned. An unnecessarily long suspension would affect rights much more seriously than expulsion wherein a new election would be held in a limited time. Thus, the Impugned Resolution is unreasonable, irrational, and arbitrary and liable to be set aside.

It may also be noted that when "suspension" takes place under the Assembly Rules (Rule 53), the absence of the Member is not reckoned towards counting their seat as vacant. In other words, Article 190(4) does not apply as the absence for "suspension" is deemed to be with permission of the House/Assembly under Article 190(4).

The effect of such suspension is visited not only on the constituency that goes unrepresented for potentially long or indefinite periods of time, but also on the functioning of the Assembly itself. Apart from a role in bringing to light the special needs or difficulties of the constituency, a Member also has a role to play in various motions, debates, votes etc. The following are illustrative of proceedings in the House/Assembly (taken from the Maharashtra Assembly Rules) that the Member cannot take part in during such suspension :-

(a) Moving of a motion which requires decision by the Assembly, including by Division (**Rules 23, 40, 41**);
(b) Taking part in a debate on a motion including speeches (**Rules 33,34**);
(c) Asking Questions on Statements made by Ministers (**Rule 47**);
(d) Making of personal explanations (**Rule 48**);
(e) Questions on matters of public concern from Ministers (**Rule 68**);
(f) Short Notice questions for immediate reply on questions of urgent nature (**Rule 86**);
(g) Private member bills (**Rule 111**);
(h) Discussions on matters of sufficient public importance (**Rule 94**);
(i) No confidence motions (**Rule 95**);
(j) Adjournment motions (**Rule 97**);
(k) Participation as members of Committees, including the Committee for consideration of matters of Public importance, Business Advisory

Committee, Public Accounts Committee, Committee on Estimates, etc (**Part XV of the Rules**).

The case of the State of Maharashtra in its Counter Affidavit is as follows:-

> *"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."*
> (emphasis provided)

If this stated case of the State is accepted qua interpretation of Article 194(3), it would mean that suspension can be worse than expulsion. A member can be suspended for a year as in the present case (or any further period), whereas expulsion only creates a vacancy which is filled-in at the earliest by a bye-election and the same Member can recontest for the seat. It is most respectfully submitted that such a position of law cannot be accepted.

Further, since the issue of withdrawal / suspension is already covered in the Rules framed under Article 208, the same cannot be resorted to under Article194 (3) as is being justified by the State in the present case

The State has also argued that the possibility of the vacancy under Article 190(4) will arise only on account of a Member missing 60 days of sittings (which is not to be counted in calendar days), and has not been reached in the present case. It is also the case of the State that exercise, of power of Article 190(4) is 'discretionary' and not 'mandatory' and, thus, a seat may not be declared vacant even if a Member is absent from the House/Assembly for a period of sixty days. In this regard it is submitted as follows:-

(a) This, in fact, strengthens the case of the Petitioners that a vacancy can continue to exist *de-facto* but not *de-jure* (as it is liable to be not

declared as such for unlimited period of time), which is against the constitutional and statutory mandate. Thus, the suspension will be worse than expulsion as it leads potentially to a seat being vacant indefinitely.

(b) Alternatively, to test the interpretation of Article 190(4), one would have to apply the principle that after a *minimum* of 60 days absence, a House can by majority declare a seat as vacant. Thus, in a given case, if a House sits for 60 consecutive days and Member is suspended on day one, such Member can be subject to vacating his seat after 60 days. Thus, when the power to declare the seat vacant is exercised, the disciplinary action of suspension is converted to the punitive action of expulsion**.**

(iv) Action violative of Basic Structure and Constitutional Morality:

It is respectfully submitted, in the light of the above, that no Assembly can have the power to suspend a Member beyond the period mentioned in the Rules of the Assembly (Rule 53 in the present case) and not beyond the duration of a session. Indefinite or long suspension can leave seats in the Assembly un-represented and permit manipulation of majorities / minorities. The consequences of such action is harmful to democracy itself, which is part of the Basic Structure of the Constitution. Apart from this, as stated above, there is forced non-participation in debates, motions and committees of the House.

Further, such action would clearly be a non-adherence to constitutional principles and constitutional norms. In *State (NCT of Delhi) v. Union of India* (2018) 8 SCC 501, a Constitution Bench of this Hon'ble Court (**in paragraph 58**) expounded "Constitutional Morality" in the following terms:-

> *"….this duty imposed by the Constitution stems from the fact that the Constitution is the indispensable foundational base that functions as the guiding force to protect and ensure that the democratic set-up promised to the citizenry remains unperturbed. The constitutional functionaries owe a greater degree of responsibility towards this eloquent instrument for it is from this document that they derive their power and authority and, as a natural corollary, they must ensure that they cultivate and develop a sense of constitutionalism where every action taken by them is governed by and is in strict conformity with the basic tenets of the Constitution".*

It was held (**at paragraph 63**) that *"Constitutional Morality, appositely understood, means morality that has inherent elements in the constitutional norms and the conscience of the Constitution"*.

(v) <u>The scope of Judicial Review in matters of Parliamentary Powers and Privileges:</u>

It is respectfully submitted that a Constitutional Court is empowered to examine whether proceedings conducted under Article 105(3) or 194(3) are tainted on account of substantive or gross illegality or unconstitutionality.

In *<u>Raja Pam Pal</u>* (supra), the Constitution Bench laid down the principles relating to parameters of judicial review in matters of Parliamentary power and privilege at **Para 431**, (**Pages 371-73**), which include the following:-

"***431***…

(d) The judicial review of the manner of exercise of power of contempt or privilege does not mean the said jurisdiction is being usurped by the judicature;

(e) Having regard to the importance of the functions discharged by the legislature under the Constitution and the majesty and grandeur of its task, there would always be an initial presumption that the powers, privileges, etc. have been regularly and reasonably exercised, not violating the law or the constitutional provisions, this presumption being a rebuttable one;

(f) The fact that Parliament is an august body of coordinate constitutional position does not mean that there can be no judicially manageable standards to review exercise of its power;

(g) While the area of powers, privileges and immunities of the legislature being exceptional and extraordinary its acts, particularly relating to exercise thereof, ought not to be tested on the traditional parameters of judicial review in the same manner as an ordinary administrative action would be tested, and the Court would confine itself to the acknowledged parameters of judicial review and within the judicially discoverable and manageable standards, there is no foundation to the plea that a legislative body cannot be attributed jurisdictional error;

(h) The judicature is not prevented from scrutinizing the validity of the action of the legislature trespassing on the fundamental rights conferred on the citizens;

(i) The broad contention that the exercise of privileges by legislatures cannot be decided against the touchstone of fundamental rights or the constitutional provisions is not correct;

(r) Mere availability of the Rules of Procedure and Conduct of Business, as made by the legislature in exercise of enabling powers under the Constitution, is never a guarantee that they have been duly followed;

(s) The proceedings which may be tainted on account of substantive or gross illegality or unconstitutionality are not protected from judicial scrutiny;

(u) An ouster clause attaching finality to a determination does ordinarily oust the power of the court to review the decision but not on grounds of lack of jurisdiction or it being a nullity for some reason such as gross illegality, irrationality, violation of

constitutional mandate, malafides, non-compliance with rules of natural justice and perversity."

The principles laid down by this Hon'ble Court are not restricted in any manner, as contended. In fact, in *Amarinder Singh v. Punjab Vidhan Sabha* (2010) 6 SCC 113, (**at paragraph 53**), a Constitution Bench of this Hon'ble Court reiterated "*the principles which guide judicial scrutiny of the exercise of legislative privileges (including the power to punish for contempt of the House)",* while referring to the case of Raja Ram Pal (supra). Further, in **paragraph 54**, it was, *inter alia*, held as follows :-

> *"54. Hence, we are empowered to scrutinize the exercise of legislative privileges which admittedly include the power of a legislative chamber to punish for contempt of itself. Articles 122(1) and 212(1) make it amply clear that courts cannot inquire into matters related to irregularities in observance of procedures before the legislature. However, we can examine whether proceedings conducted under Article 105(3) or 194(3) are "tainted on account of substantive or gross illegality or unconstitutionality".*
> (emphasis provided)

After applying the said principles, the expulsion therein was held to be invalid (**paragraph 92**).

Thereafter, in *Alagaapuram R. Mohanraj v. T.N. Legislative Assembly* 2016 (6) SCC 82, this Hon'ble Court applied the said tests to a case of suspension for a period of ten days of the next session, based of the Privileges Committee. The Resolution which accepted the report of the Privilege Committee was set aside as the Committee did not comply with the requirements of natural justice.

C. CONCLUSION:

In view of the submissions made hereinabove, it is most respectfully submitted that the Resolution dated 5th July 2021 of suspension of membership of 12 MLAs from the Maharashtra Legislative Assembly for a period of one year is impermissible, unreasonable, grossly illegal, un-constitutional and an irrational and arbitrary exercise of power. It is, thus, submitted that this Hon'ble Court may be pleased to quash the Resolution dated 5th July 2021.