IN THE SUPREME COURT OF INDIA
CIVIL ORDINARY JURISDICTION
WRIT PETITION (CIVIL) NO. 468, 469, 470, 479, 493 & 538 of 2022
[LEAD MATTER WP(C) No. 493 of 2022]

IN THE MATTER OF:
SUBHASH DESAI …PETITIONER

VERSUS

PRINCIPAL SECRETARY,
GOVERNOR OF MAHARASHTRA & ORS. …RESPONDENTS

CONSOLIDATED WRITTEN SUBMISSIONS
OF PETITIONERS IN W.P NOS 470, 479, 493 & 538 of 2022

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1. The present case is a classic example of the malaise of 'political defections', described by this Hon'ble Court as a 'social and political evil', which poses a threat to the very existence of our democracy. The respondents (group of MLAs led by Sh. Eknath Shinde), after committing the constitutional sin of defection, have sought to avoid the consequences of their unlawful acts.

2. The petitioners respectfully submit that the respondents have committed acts constituting disqualification in terms of Para 2(1)(a) and Para 2(1)(b) of the Tenth Schedule. The acts are undisputed and in the public domain. However, by misusing the law laid down in *Nabam Rebia's* case, by abusing the process of this Hon'ble Court, and by misusing the office of Governor, the respondents have vitiated the process of the disqualification proceedings by appointing their own Speaker in the Assembly on 03.07.2022. Entrustment of the disqualification proceedings to the Speaker would be against the most basic notions of natural justice, and would be contrary to the entire object and scheme of the Tenth Schedule.

3. This Hon'ble Court has consistently applied the principle of purposive interpretation, and the requirement to uphold Constitutional values while deciding violations of the Tenth Schedule. This Hon'ble Court has repeatedly taken the view that advances the object behind the Tenth Schedule, namely, preventing and punishing the menace of political defections. The Petitioners respectfully submit that in the present case, well-settled principles of Constitutional adjudication require this Hon'ble Court to itself decide the question of disqualification. The outcome would determine the legal validity of subsequent developments, which are also impugned in the present petitions.

CHAPTER 1
AN OVERVIEW

4. By the order dated 23.08.2022, ten substantial questions of law have been referred for consideration of this Hon'ble Constitution Bench. These questions have arisen in the following backdrop:

5. From 20th June, 2022 till 22nd June, 2022, the respondents committed several acts that amount to "voluntarily giving up membership" of the Shivsena political party, and thereby incurred disqualification under Para 2(1)(a) of the Tenth Schedule. The acts were:

   (i) Cross-voting in Maharashtra Legislative Council elections on 20th June, 2022, resulting in loss of one seat for Shiv Sena.

   (ii) Failure / refusal to attend meetings of Shiv Sena Legislature Party on 21st June, 2022 and 22nd June, 2022 [**Attendance Sheets: 21st June – Pg 13-17; 22nd June – Pg 33-36, Common Convenience Compilation Vol-II (***hereinafter referred to as* **"CCC-II")**].

   (iii) Attempting, without jurisdiction, to appoint Mr. Bharat Gogawale as Chief Whip in place of Sh. Sunil Prabhu, who was the duly appointed Chief Whip since 2019 [**Pg 42 – 48, CCC-II; Pg 710 – 718, CCC-II**].

   (iv) Hobnobbing with BJP leaders to destabilise the MVA Government in Maharashtra [**Pg 58 & 214 – 222**, **CCC-II].**

6. These acts led to filing of disqualification petitions on 23.06.2022 before the Dy. Speaker (exercising the powers of Speaker since February, 2021) against 16 MLAs [**Pg 59 – 211, CCC-II**]**.** A disqualification petition against 22 MLAs was thereafter filed on 27.06.2022 incorporating further developments since 22nd June, 2022 **[Pg 296 – 312, CCC-II].**

MISUSE OF LAW LAID DOWN IN *NABAM REBIA*

7. The respondents tried to pre-emptively disable the Dy. Speaker from proceeding with the Disqualification petitions by issuing a Notice under Article 179 on 22.06.2022, proposing to remove the Deputy Speaker [**Pg 49 – 53, CCC-II**].

8. The Dy. Speaker did not take the Notice for removal on record, as its genuineness and veracity had not been ascertained [**Pg 223, CCC-II].** Notices dated 25.06.2022 were issued by the Deputy Speaker on the disqualification petitions to Sh. Eknath Shinde and Sh. Bharat Gogawale [**Pg 243 – 246, CCC-II**]**.**

9. The Respondents challenged the Notices dated 25.06.2022 before this Hon'ble Court [**W.P. (Civil) No. 468 of 2022 and W.P. (Civil) No. 469 of 2022; Pg 194 – 235 and Pg 127 – 193, respectively, Common Convenience Compilation Vol-I (***hereinafter referred to as* **"CCC-I")**]. It was contended that the Deputy Speaker had no power to issue the impugned notices as a notice for removal of the Deputy Speaker was pending. This was clear misuse of the law laid down in ***Nabam Rebia & Bamang Felix* v. *Deputy Speaker, Arunachal Pradesh Legislative Assembly*, (2016) 8 SCC 1 [Pg 960 – 1213, Common Compilation of Judgments and Orders Vol-I (***hereinafter referred to as* **"CCJ-I")].**

10. It is pertinent to note that the notice for removal of the Deputy Speaker has not been taken to its logical conclusion till date, which proves that it was issued only as a tactic for avoidance of the Tenth Schedule.

MISUSE OF PROCESS OF THIS HON'BLE COURT

11. Further, in their Writ Petitions, the respondents concealed a vital fact that the notice for removal of the Deputy Speaker had not been taken on record. Consequently, on 27.06.2022, his Hon'ble Court was misled into granting a *quia timet* indulgence to the Respondents as it extended the time for filing of reply to the disqualification petitions till 12.07.2022.

12. In para 7 of the Affidavit, the Secretary of the Legislative Assembly has clearly stated that the purported notice was received *via* email of one Vishal Acharya, Advocate and the replies to the decision of the Speaker was also communicated on 24.06.2022 at 23.18 pm by email **[see Pg 252, CCC-I]**. This factum of rejection of the notice under Article 179 (c) was completely suppressed when Writ Petitions were filed on 26.06.2022 [**Pg 127 – 193 & 194 – 235, CCC-I]** and argued on 27.06.2022.

13. It is submitted that this suppression formed the basis of the submissions made before this Hon'ble Court on 27.06.2022 where it was argued that the Deputy Speaker has been proceeding ahead despite there being a live notice under 179 (c). Had the relevant facts of rejection of notice been pleaded and brought to the notice of this Hon'ble Court, this Hon'ble Court may not have interfered with the process of disqualification initiated by the Deputy Speaker. The said order of rejection of Article179 (c) notice has not even been challenged in any of these proceedings and as such that order has attained finality. In these circumstances, the entire fulcrum of the submissions made before this Hon'ble Court that there was live Article 179 (c) notice stands totally falsified by the records of the Assembly and the affidavit of the Secretary of the Legislative Assembly.

14. It is well settled that a party who is guilty of the suppression of material facts and obtains an order cannot reap the benefits of such suppression. This Hon'ble Court has taken a dim view of litigants trying to take interim orders by suppressing material facts. This Hon'ble Court has held that once the suppression has come to light the status prevailing prior to obtaining the interim order has to be restored and the guilty party cannot be permitted to avail the fruits of their sin. In this regard, the attention of this Hon'ble is invited to **Prestige Lights Ltd. v. SBI, (2007) 8 SCC 449 [Pg 877 – 890, CCJ-I]; Dalip Singh v. State of U.P., (2010) 2 SCC 114 [Pg 902 – 912, CCJ-I]; K. Jayaram v. BDA, 2021 SCC OnLine SC 1194** [**Pg 1408 – 1413, CCJ-I**].

15. Despite the settled law that the purpose and object of an interim order is only to preserve the *status quo*, and in gross abuse of the process of this Hon'ble Court, the respondents completely inverted the power equation in the Maharashtra Legislative Assembly.

MISUSE OF THE OFFICE OF GOVERNOR TO VITIATE THE PROCESS OF DISQUALIFICATION PROCEEDINGS

16. Before the date for filing reply as extended by this Hon'ble Court (12.07.2022), the following impugned developments were orchestrated by the Respondents in collusion with the BJP:

(i) The Hon'ble Governor invited Sh. Eknath Shinde to be sworn in as Chief Minister on 30.06.2022, with the support of BJP MLAs and the Respondent MLAs who had incurred disqualification [**Pg 322 – 332, CCC-II**]. This was in violation of Article 164-1B of the Constitution;

(ii) The Governor convened a Special Session of the Assembly on 03.07.2022 for considering a resolution for appointment of the Speaker, a post that had been vacant since February, 2021 [**Pg 336, CCC-II**]. This was clear vitiation of process of the disqualification proceedings, as Sh. Eknath Shinde who is himself facing disqualification proceedings, advised the Governor to convene an Assembly Session for appointment of a Speaker, thereby appointing a person of their own to decide the question of their disqualification;

(iii) On 03.07.2022, a new Speaker was appointed with the support of the Respondents. The respondents violated the whip dated 02.07.2022 issued by the Chief Whip [**Pg 340, CCC-II**], and thus incurred disqualification under Para 2(1)(b) of the Tenth Schedule. Accordingly, a disqualification petition was filed against 39 Respondent MLAs on 03.07.2022 [**Pg 345 – 365, CCC-II**].

(iv) Further, a floor test was held on 04.07.2022, where the disqualified MLAs voted in support of the Eknath Shinde government in defiance of the whip issued by the Chief Whip Sh. Sunil Prabhu. These acts have led to filing of disqualification petition against 39 Respondent MLAs on 05.07.2022 [**Pg 372 – 387, CCC-II**].

THE SPEAKER'S BIASED CONDUCT AFTER APPOINTMENT

17. The Speaker's immediate acts upon his appointment demonstrate his patent bias against the petitioners. On 03.07.2022, the Speaker recognized Sh. Bharat Gogawale as the Chief Whip of Shiv Sena pursuant to his unlawful appointment by the Respondents on 22.06.2022 [**Pg 367 – 370, CCC-II**], in violation of the position that Legislature Party members have no jurisdiction to appoint the Chief Whip.

18. This unlawful and biased act by the Speaker is the basis on which the respondents have filed disqualification petitions against the petitioners for defying the so-called whip issued by Sh. Bharat Gogawale [**Pg 388 – 581, CCC-II**].

19. In another act smacking of discrimination and bias, the Speaker has issued notices on 08.07.2022 only on the disqualification petitions filed by the respondents against the petitioners [**Pg 612 – 666, CCC-II**], but failed to even issue notice on the disqualification petition under Para 2(1)(b) filed by the petitioner against the respondents on 05.07.2022.

20. Thus, the result of respondents' misuse of the interim indulgence granted by this Hon'ble Court is that the question of respondents' disqualification would be considered by a Speaker (i) whose appointment was initiated by misuse of the office of the Governor, in violation of the law that a Governor cannot interfere in disqualification proceedings; (ii) who was appointed as Speaker with active participation of the very MLAs whose membership of the Assembly is in question; and (iii) who has acted in a patently biased and *mala fide* manner immediately after his appointment. Thus, apart from the fact that the Speaker's appointment is impugned in the present petitions, the Speaker by his conduct after appointment has proven himself unworthy of being reposed with public trust and confidence, as held by this Hon'ble Court in ***Shrimanth Balasaheb Patil*** **v.** ***Karnataka Legislative Assembly,*** **(2020) 2 SCC 595 [Pg 1236 – 1299, CCJ-I].**

21. In order to belatedly set-up a defence which is wholly alien to the scheme of the Tenth Schedule, Sh. Eknath Shinde has on 19.07.2022 filed a petition before the Election Commission under Para 15 of the Symbols Order, claiming that the respondents' group is the real Shiv Sena [**Pg 670 – 697, CCC-II**]. The petition is primarily based on the respondents' claim that they enjoy majority in the legislative wing, which status is itself in question in the present proceedings.

22. The petitioners respectfully submit that in order to uphold Constitutional values, and to give effect to the spirit and object behind the Tenth Schedule, this Hon'ble Court must itself decide the question of Respondents' disqualification from the Maharashtra Legislative Assembly, and then consider the legality of subsequent developments based on that determination. That would be the only way to uphold the democratic spirit of the Constitution.

23. The petitioners crave leave to rely on a brief list of dates and events, which is annexed to these written submissions as **ANNEXURE A**.

CHAPTER 2
SUMMARY OF SUBMISSIONS

24. It is respectfully submitted that the questions that have been referred to this Hon'ble Constitution Bench vide order dated 23.08.2022 may be answered as follows:

25. **Question (a)**: Whether notice for removal of a Speaker restricts him from continuing with disqualification proceedings under Tenth Schedule of the Constitution, as held by this Court in ***Nabam Rebia & Bamang Felix* v. *Deputy Speaker, Arunachal Pradesh Legislative Assembly*, (2016) 8 SCC 1**?

The petitioners respectfully submit that the law laid down by this Hon'ble Court in ***Nabam Rebia's*** case requires reconsideration and clarification. This Hon'ble Court's premise that proceedings for disqualification under the Tenth Schedule are distinct from and unrelated to the proceedings for removal of a Speaker is clearly erroneous, since the Speaker is the authority designated under the Tenth Schedule to decide the issue of disqualification. There may be situations, like the present case, where the two proceedings are inter-twined. The Constitution cannot be interpreted in a manner that allows it to be misused for achieving unconstitutional goals.

The law laid down in ***Nabam Rebia's*** case allows for the possibility that persons committing the sin of defection disable the incumbent Speaker from considering the petitions for their disqualification, and replace him with a person who would decide the question of disqualification in their favour. This would defeat the entire purpose and intent behind enactment of the Tenth Schedule.

26. **Questions (b) and (c)**: Whether a petition under Article 226 or Article 32 lies, inviting a decision on a disqualification petition by the High Courts or the Supreme Court, as the case may be? AND Can a court hold that a member is "deemed" to be disqualified, by virtue of his / her actions, absent a decision by the Speaker?

The Constitution is a living document that needs to be interpreted dynamically. The petitioners respectfully submit that in exceptional circumstances, a Constitutional Court under Article 226 or Article 32 can and must itself decide the question of disqualification

under the Tenth Schedule, when it is necessary to uphold constitutional values and give effect to the spirit and intent behind enactment of the Tenth Schedule. Such necessity may arise in a variety of circumstances, including as in the present case, where the process of disqualification proceedings has been vitiated and the person holding the position of Speaker, through his conduct, has proved himself unworthy of the public trust and confidence reposed in the Office of Speaker.

It is submitted that if this Hon'ble Court itself considers and decides the issue of disqualification, the decision by this Hon'ble Court, absent a determination by the Speaker, would not amount to "deemed" disqualification, but would in fact be the only fair and constitutionally valid determination of the disqualification issue in the facts and circumstances of the present case.

27. **Questions (d) and (e)**: What is the status of proceedings in the House during the pendency of disqualification petitions against the members? AND If the decision of a Speaker that a member has incurred disqualification under the Tenth Schedule relates back to the date of the action complained of, then what is the status of proceedings that took place during the pendency of a disqualification petition?

The petitioners respectfully submit that disqualification under the Tenth Schedule relates back to the date, when the act constituting disqualification was committed. This has two implications:

One, the defence to the plea of disqualification must have arisen at the time when the acts constituting disqualification were committed.

Second, the validity of proceedings / events in the intervening period, whose outcome is dependent on participation of members who have incurred disqualification, would have to be subject to the ultimate decision on the issue of disqualification. In case the members are held to be disqualified, the proceedings whose outcome depended on the participation of disqualified members would be vitiated.

28. **Question (f)**: What is the impact of the removal of Paragraph 3 of the Tenth Schedule?

The petitioners respectfully submit that the omission of Paragraph 3 from the Tenth Schedule implies that a split from the original political party, by at least 1/3rd of elected

legislators of that party, cannot be a defence to disqualification incurred under Paragraph 2 of the Tenth Schedule. Thus, the only defence available is if the defectors merge themselves into another political party. The members who have split from the original political party cannot raise a defence that they are the original political party.

29. **Question (g)**: What is the scope of the power of the Speaker to determine the Whip and the leader of the house legislature party? What is the interplay of the same with respect to the provisions of the Tenth Schedule?

The petitioners respectfully submit that the original political party is exclusively empowered to determine which member of the house shall be the Whip, and also the leader of the House Legislature Party. The Speaker is bound to recognise the persons who are communicated by the leadership of the original political party to be its Whip and Leader of the House Legislature Party. The Speaker's role in this regard is merely administrative in nature. The Speaker cannot abuse this role to defeat the spirit and intent behind the provisions of the Tenth Schedule.

30. **Question (h)**: Are intra-party decisions amenable to judicial review? What is the scope of the same?

The petitioners respectfully submit that in exceptional circumstances, intra-party decisions, which have a bearing on constitutional validity of acts committed by members of the House, are amenable to judicial review. The scope of the Constitutional Court's interference in intra-party decisions is extremely limited and confined to upholding of Constitutional provisions and values.

31. **Question (i)**: What is the extent of discretion and power of the Governor to invite a person to form the Government, and whether the same is amenable to judicial review?

It is respectfully submitted that the exercise of discretion by the Governor in inviting a person to form the government must be in accordance with Constitutional provisions and values. While democracy and rule by majority is part of the Constitutional scheme, the prohibition on defection is equally a Constitutional mandate. Hence, while according respect to the principle of rule by majority as envisaged in a democracy, the Governor

must have regard to the Constitutional prohibition on defection. Consequently, the Governor is duty-bound to refuse to recognize a majority that has been secured through unconstitutional means. The scope of judicial review of the exercise of discretion by the Governor would necessarily extend to ensuring that the discretion was not exercised in a manner that disregarded the Constitutional methods of securing the right to govern.

32. **Question (j)**: What is the scope of the powers of the Election Commission of India with respect to determination of a split within a party?

The petitioners respectfully submit that the Election Commission of India is empowered under the Symbols Order of 1968 to determine the question as to which faction is entitled to the symbol of a political party, when there is a split within the political party. However, the Election Commission has no power to determine the ingredients of the constitutional sin of disqualification under the Tenth Schedule. Hence, as per settled principles of harmonious construction, the Election Commission while exercising its powers under the Symbols Order cannot proceed on the basis that a faction or group of MLAs belong to a political party, when that faction or group of MLAs have committed acts that amount to "voluntarily giving up membership" of the political party in terms of Para 2(1)(a) of the Tenth Schedule. Hence, in a case where a split in a political party has been occasioned by acts which constitute Disqualification under the Tenth Schedule, the Election Commission would have to respect and follow the decision taken by the competent authority on the aspect of disqualification.

33. These submissions are substantiated with reference to relevant facts and materials in the following chapters.

CHAPTER 3
RECONSIDERATION AND CLARIFICATION OF THE LAW LAID DOWN IN *NABAM REBIA'S* CASE

WHETHER NOTICE FOR REMOVAL OF A SPEAKER RESTRICTS HIM FROM CONTINUING WITH DISQUALIFICATION PROCEEDINGS UNDER TENTH SCHEDULE OF THE CONSTITUTION, AS HELD BY THIS COURT IN *NABAM REBIA & BAMANG FELIX* V. *DEPUTY SPEAKER, ARUNACHAL PRADESH LEGISLATIVE ASSEMBLY*, (2016) 8 SCC 1?

34. It is respectfully submitted that the law laid down by this Hon'ble Court in *Nabam Rebia's* [**Pg 960 – 1213, CCJ – I**] case to the effect that a Speaker against whom notice for removal is pending cannot consider disqualification petitions under the Tenth Schedule, requires reconsideration and clarification, as it is based on the erroneous premise that proceedings for removal of a Speaker are distinct from and unrelated to the proceedings for disqualification under the Tenth Schedule.

35. This issue has arisen in the present case because the Respondents have misused the *Nabam Rebia's* case to obtain *quia timet* indulgence from this Hon'ble Court, and then misused the interim order of this Hon'ble Court to unlawfully appoint a Speaker in the Assembly, who is completely biased against the petitioners. Consequently, the prescribed procedure under Para 6 of the Tenth Schedule for deciding disqualification petitions has been vitiated.

BACKGROUND IN WHICH THE SPEAKER'S ROLE WAS CONSIDERED AND EXPLAINED IN *NABAM REBIA*

36. In *Nabam Rebia's* case, a notice of resolution for removal of the Speaker of the Arunachal Pradesh Legislative Assembly was moved on 19.11.2015 by 13 MLAs, 11 belonging to the BJP and 2 Independent [**Para 12**]. Thereafter, the disqualification petitions against 14 MLAs of the INC were filed before the Speaker on 7.12.2015, and the Speaker issued notice thereon on 07.12.2015 itself [**Para 17**]. The Speaker had decided the disqualification petitions on 15.12.2015 [**Para 23**], whilst the Governor had passed an order on 09.12.2015 preponing the Assembly Session to 16.12.2015, for taking up the notice of resolution for removal of the Speaker [**Para 19**].

37. This Hon'ble Court considered the legality of decision of the Governor to prepone the Assembly Session. It was noticed that there was no doubt that the incumbent Chief Minister and his Council of Ministers were still enjoying the confidence of the majority in the House. It was consequently held that the Governor's decision to prepone the Assembly session was unlawful, as the Governor had acted without the aid and advice of the Council of Ministers:

> **167.** Since it is not a matter of dispute that the Governor never called for a floor test, it is reasonable for us to infer that the Governor did not ever entertain any doubt that the Chief Minister and his Council of Ministers were still enjoying the confidence of the majority, in the House. Nor was a motion of no confidence moved against the Government. In the above situation, the Governor just could not have summoned the House, vide his Order dated 9-12-2015, in his own discretion, by preponing the 6th Session of the Legislative Assembly from 14-1-2016 to 16-12-2015. This, for the simple reason, that the Governor neither had the jurisdiction nor the power to do so, without the aid and advice of the Council of Ministers with the Chief Minister as the head.
>
> **[see Pg 1124, CCJ-I]**

38. This Hon'ble Court also considered the legality of Governor's message dated 09.12.2015, containing directions that the notice of resolution for removal of the Speaker should be taken up in the Assembly before any other business, and that the Presiding Officer shall not alter the party composition in the House. This Hon'ble Court considered the contention that the Governor's message was issued for the reason that the Notice for removal of the Speaker had been pending since 19.11.2015, and that the Speaker in the meantime had been presented with disqualification petitions which could have altered the composition in the Assembly. However, it was held that since the Governor has no constitutional role to play in removal of a Speaker under Article 179(c), and also in disqualification proceedings under the Tenth Schedule, the Governor's message dated 09.12.2015 was held to be unlawful and set aside:

> **174.** During the course of hearing, it emerged that one of the primary reasons for addressing the message dated 9-12-2015, was the fact, that a notice of resolution for the removal of the Speaker Nabam Rebia, dated 19-11-2015, was addressed by 13 MLAs (11 belonging to the BJP, and 2 Independent MLAs), to the Secretary of the Legislative Assembly. Accordingly, in the understanding of the Governor, it would constitute a constitutional impropriety, if the above notice of resolution

for the removal of the Speaker, was not taken up for consideration forthwith, namely, immediately after the expiry of 14 days, provided for in the first proviso under Article 179. Insofar as the instant aspect of the matter is concerned, whilst we do not doubt the bona fides of the Governor, it cannot be overlooked that the Governor has no express or implied role under Article 179 on the subject of "the removal of the Speaker or Deputy Speaker". The aforesaid issue of removal of the Speaker (or Deputy Speaker), squarely rests under the jurisdictional authority of the Members of the Legislative Assembly, who must determine at their own, whether the notice of resolution for the removal of the Speaker (or the Deputy Speaker) should be adopted or rejected. In the instant view of the matter, the participatory role at the hands of the Governor, in the matter concerning the removal of the Speaker, can neither be understood nor accepted, and may well be considered as unwarranted.

175. Another important reason, for addressing the message dated 9-12-2015 to the House was, that a petition had been preferred by the Chief Whip of the Congress Legislature Party, Rajesh Tacho on 7-12-2015, for disqualification of 14 MLAs belonging to INC, under the Tenth Schedule. It was, therefore, that the Governor in his message dated 9-12-2015, ventured to inform the Presiding Officer of the House, that till the 6th Session of the Assembly was prorogued, the party composition of the House "shall" not be altered. Once again, for exactly the same reasons, as recorded in the preceding paragraph, it is imperative for us to express that the Governor has no role, in the disqualification of Members of the Assembly. The exclusive jurisdiction on the above issue, rests with the Speaker of the Assembly, under Para 6 of the Tenth Schedule. Whether the Speaker's actions fall within the framework of the Constitution, or otherwise, does not fall within the realm of consideration of the Governor. The remedy for any wrongdoing under the Tenth Schedule, lies by way of judicial review. Neither the provisions of the Constitution nor the Conduct of Business Rules assign any such role to the Governor. It does not lie within the domain of the Governor, to interfere with the functions of the Speaker. The Governor is not a guide or mentor to the Speaker. The Governor cannot require the Speaker to discharge his functions in the manner he considers constitutionally appropriate. Both the Governor and the Speaker have independent constitutional responsibilities. The Governor's messages with reference to such matters (as were expressed in the message dated 9-12-2015), do not flow from the functions assigned to him. The Governor cannot likewise interfere in the activities of the Assembly, for the reason that the Chief Minister, or the entire Council of Ministers, or an individual Minister in the Cabinet, or for that matter even an individual MLA, are not functioning in consonance with the provisions of the Constitution, or in the best interest of the State. The State Legislature, does not function under the Governor. In sum and substance, the Governor just cannot act as the Ombudsman of the State Legislature.

> **176.** In view of the above, we have no hesitation in concluding, that the messages addressed by the Governor to the Assembly, must abide by the mandate contained in Article 163(1), namely, that the same can only be addressed to the State Legislature, on the aid and advice of the Council of Ministers with the Chief Minister as the head. The message of the Governor dated 9-12-2015, was therefore beyond the constitutional authority vested with the Governor.
>
> **177.** For all the reasons recorded hereinabove, we are of the considered view that the impugned message of the Governor dated 9-12-2015 is liable to be set aside. We order accordingly.
>
> **[see Pg 1127 – 1128, CCJ-I]**

39. In this background, this Hon'ble Court also considered the question whether the Speaker was justified in considering and deciding Disqualification petitions under the Tenth Schedule, when a notice for his removal was pending.

LAW LAID DOWN IN *NABAM REBIA* REGARDING POWER OF THE SPEAKER TO CONSIDER DISQUALIFICATION PETITIONS WHEN A NOTICE FOR HIS REMOVAL IS PENDING

40. It was held that it was just and appropriate in such circumstances for the Speaker to first demonstrate his right to continue as such by winning support of the majority in the State Legislature, and only then consider the petitions for disqualification filed before him:

> **188.** The issue canvassed and answered hereinabove with reference to the Tenth Schedule, does not fully answer the controversy which has arisen for consideration before us. *The proposition canvassed also relates to the propriety of the Speaker, in conducting proceedings under the Tenth Schedule, when his own position as the Speaker of the Legislative Assembly, is under challenge.* After all, this was the real basis of the Governor having passed the impugned Order and message dated 9-12-2015. The challenge to the Speaker's position, in the instant case, was based on a notice of resolution for his removal dated 19-11-2015. The resolution was moved by 13 MLAs (11 belonging to the BJP, and 2 Independent MLAs). Despite the above, unmindful of the challenge raised to his own position, the Speaker went on with the disqualification proceedings initiated by the Chief Whip of the Congress Legislature Party on 7-12-2015, by issuing a notice to them on 7-12-2015 itself, seeking their response by 14-12-2015. All the 14 MLAs aforementioned, were disqualified by an order passed by the Speaker on 15-12-2015, under the Tenth Schedule. Was this action of the Speaker, justified? The learned counsel for the rival parties, pointedly addressed us on this issue. We are also of the view, that this issue needs to be determined in view of the directions which will eventually emerge on the basis of the consideration recorded hereinabove. A repeat performance of the earlier

process, would bring the parties back to the threshold of this Court, for the redressal of the same dispute, which is already before us.

> **189.** When the position of a Speaker is under challenge, through a notice of resolution for his removal, *it would "seem" just and appropriate, that the Speaker first demonstrates his right to continue as such, by winning support of the majority in the State Legislature. The action of the Speaker in continuing, with one or more disqualification petitions under the Tenth Schedule, whilst a notice of resolution for his own removal, from the Office of the Speaker is pending, would "appear" to be unfair.* If a Speaker truly and rightfully enjoys support of the majority of the MLAs, there would be no difficulty whatsoever, to demonstrate the confidence which the Members of the State Legislature, repose in him. The Office of the Speaker, with which the Constitution vests the authority to deal with disqualification petitions against MLAs, must surely be a Speaker who enjoys confidence of the Assembly. After all, disposal of the motion under Article 179(*c*), would take no time at all. As soon as the motion is moved, on the floor of the House, the decision thereon will emerge, forthwith. Why would a Speaker who is confident of his majority, fear a floor test? After his position as the Speaker is affirmed, he would assuredly and with conviction, deal with the disqualification petitions, under the Tenth Schedule. And, why should a Speaker who is not confident of facing a motion, for his removal, have the right to adjudicate upon disqualification petitions, under the Tenth Schedule? The manner in which the matter has been examined hereinabove, is on ethical considerations. *A constitutional issue, however, must have a constitutional answer. We shall endeavour to deal with the constitutional connotation of the instant issue, in the following paragraphs*.
>
> **[see Pg 1132 – 1133, CCJ-I]**

41. Reliance was placed on the words "*all the then members of the assembly*" occurring in article 179 (c) of the Constitution, and it was held that the words "*passed by a majority of all the then members of the assembly*" would prohibit the Speaker from going ahead with disqualification proceedings under the Tenth Schedule:

> **191.** Article 179(*c*) provides that a Speaker (or Deputy Speaker), "may be removed from his Office by a resolution of the Assembly passed by a majority of all the then Members of the Assembly". A notice of resolution for the removal of the Speaker (or the Deputy Speaker) of the Assembly, would therefore, have to be passed by a majority "of all the then Members of the Assembly". The words "all the then Members" included in Article 179(*c*), are a conscious adage. If the words "all the then Members" are excluded from clause (*c*) of Article 179, it would affirm the interpretation which the appellants, wish us to adopt. The connotation placed by the appellants, would legitimise the action of the Speaker, in going ahead with the proceedings under the Tenth Schedule, even though a notice of resolution for his removal from the Office of

> the Speaker was pending. The words "all the then Members" were consciously added to Article 179(*c*), and their substitution was not accepted by the Constituent Assembly. ***We are satisfied that the words "passed by a majority of all the then Members of the Assembly", would prohibit the Speaker from going ahead with the disqualification proceedings under the Tenth Schedule, as the same would negate the effect of the words "all the then Members", after the disqualification of one or more MLAs from the House.*** The words "all the then Members", demonstrate an expression of definiteness. Any change in the strength and composition of the Assembly, by disqualifying sitting MLAs, for the period during which the notice of resolution for the removal of the Speaker (or the Deputy Speaker) is pending, would conflict with the express mandate of Article 179(*c*), requiring all "the then Members" to determine the right of the Speaker to continue.
>
> **[see Pg 1134, CCJ-I]**

42. It was further held that the purpose sought to be achieved through the Tenth Schedule is clear and unambiguous, and that the same is unrelated to and distinct from the purpose sought to be achieved through Article 179 (c). Neither of the said provisions were held to be conflicting with each other:

> **192.** It would also be relevant to notice, that the Tenth Schedule was inserted in the Constitution, by the Constitution (Seventy-third Amendment) Act, 1992, with effect from 24-4-1993. ***The purpose sought to be achieved through the Tenth Schedule, is clear and unambiguous. The same is unrelated to, and distinct from, the purpose sought to be achieved through Article 179(c). Neither of the above provisions, can be seen as conflicting with the other.*** Both, must, therefore, freely operate within their individual constitutional space. Each of them will have to be interpreted, in a manner as would serve the object sought to be achieved, without treading into the constitutional expanse of the other. ***The interpretation would have to be such, as would maintain constitutional purpose and harmony.*** We would now venture to examine the instant issue from the above perspective, in the following paragraph.
>
> **[see Pg 1134 – 1135, CCJ-I]**

43. This Hon'ble Court then proceeded to consider how the notice for removal of a Speaker and petitions for disqualification under the Tenth Schedule would play out. It was held that a difficulty would arise only if the disqualification petitions are taken up first, and motion for removal of the Speaker is taken up thereafter:

193. If a Speaker survives the vote, on a motion for his removal from the Office of the Speaker, he would still be able to adjudicate upon the disqualification petitions filed under the Tenth Schedule. The process of judicial review, cannot alter the above position. But, if a disqualification petition is accepted by the Speaker, the disqualified MLAs will have no right to participate in the motion moved against the Speaker under Article 179(*c*). A disqualified MLA, as we all know, can assail the order of his disqualification, by way of judicial review. If he succeeds, and his disqualification from the House is set aside, such a disqualified MLA, would be deprived of the opportunity to participate in the motion against the Speaker, under Article 179(*c*). In this situation, the process of judicial review, can also alter the position, if a disqualification order passed by the Speaker, is set aside by a court of competent jurisdiction. In the event of an MLA having been disqualified by the Speaker, the notice of resolution for the removal of the Speaker, would surely be dealt with, and will be disposed of, during the period when the MLA concerned stood disqualified. Alternatively, if an MLA has not been disqualified when the motion for the removal of the Speaker is taken up, he would have the right to vote on the motion pertaining to the removal of the Speaker, whereafter, the petition for his own disqualification would certainly be considered and decided, by the Speaker. It is apparent that the difficulty arises only if the disqualification petition is taken up first, and the motion for the removal of the Speaker is taken up thereafter. The possibility of a disqualification petition being decided on political considerations, rather than on merits, cannot be ignored. In fact, that is a real possibility. Therefore, while it will not adversely affect the Speaker, if he faces the motion of his own removal from the Office of the Speaker, before dealing with the disqualification petitions, it could seriously prejudice MLAs facing disqualification, if petitions for their disqualification are taken up and dealt with first. The adoption of the former course, would also result in meaningfully giving effect to the words "all the then Members" used in Article 179(*c*), as discussed in the foregoing paragraph. This interpretation would also purposefully give effect to the rejection of the amendment suggested during the Constituent Assembly Debates, that the motion for removal of the Speaker, should be the majority of "the Members of the Assembly present and voting". This interpretation would also result in disregarding the retention of the words "all the then Members of the Assembly", in Article 179(*c*). If the Speaker faces the motion of his own removal first, both the constitutional provisions would have their independent operational space preserved. None of the constitutional provisions concerned would interfere with the free functionality of the other, nor would one usurp the scheme postulated for the other. We are, therefore, of the view that constitutional purpose and constitutional harmony would be maintained and preserved, if a Speaker refrains from adjudication of a petition for disqualification under the Tenth Schedule, whilst his own position, as the Speaker, is under challenge. This would also, allow the two provisions [Article 179(*c*) and the Tenth Schedule] to operate in their individual constitutional space, without encroaching on the other.

> **194.** For the reasons recorded hereinabove, we hereby hold, that it would be constitutionally impermissible for a Speaker to adjudicate upon disqualification petitions under the Tenth Schedule, while a notice of resolution for his own removal from the Office of the Speaker, is pending.
>
> **[see Pg 1135 – 1136, CCJ-I]**

44. In the concurring judgment of Hon'ble Mr. Justice Dipak Misra, it has been observed **(Para 21)** that the intendment of Article 179(c) was to prohibit a Speaker from adjudicating under the Tenth Schedule after a notice for his removal has been moved.

REASONS WHY THE LAW LAID DOWN IN NABAM REBIA NEEDS TO BE RECONSIDERED / CLARIFIED

45. It is respectfully submitted that the above law laid down by this Hon'ble Court deserves to be re-considered and clarified.

Erroneous premise that proceedings under the Tenth Schedule and proceedings for removal of a Speaker are unrelated and operate in separate constitutional space

46. This Hon'ble Court proceeded on the basis that proceedings under the Tenth Schedule and the notice for removal of Speaker operate in separate constitutional space, and that they are unrelated to and distinct from each other:

> **192.** It would also be relevant to notice, that the Tenth Schedule was inserted in the Constitution, by the Constitution (Seventy-third Amendment) Act, 1992, with effect from 24-4-1993. ***The purpose sought to be achieved through the Tenth Schedule, is clear and unambiguous. The same is unrelated to, and distinct from, the purpose sought to be achieved through Article 179(c). Neither of the above provisions, can be seen as conflicting with the other.*** Both, must, therefore, freely operate within their individual constitutional space. Each of them will have to be interpreted, in a manner as would serve the object sought to be achieved, without treading into the constitutional expanse of the other. The interpretation would have to be such, as would maintain constitutional purpose and harmony. We would now venture to examine the instant issue from the above perspective, in the following paragraph.
>
> **[see Pg 1134 – 1135, CCJ-I]**

47. In *Nabam Rebia's* case, the notice for removal of the Speaker was moved by certain MLAs of the BJP, whereas the disqualification proceedings were filed against certain MLAs of the INC. ***On the other hand***, in the present case, the Notice for removal of the Deputy Speaker [**Pg 49 – 53, CCC-II**] was moved by the same MLAs of Shiv Sena, who had also committed the anti-party activities prohibited under the Tenth Schedule.

48. Further, in *Nabam Rebia's* case, the notice for removal of the Speaker was moved on 19.11.2015, whereas the disqualification petitions were filed before the Speaker on 07.12.2015. ***On the other hand***, in the present case, the respondents committed anti-party activities from 20th June, 2022 onwards, and moved the motion for removal of the Deputy Speaker on 22nd June, 2022, after having been issued notices for attending the Shiv Sena Legislature Party meeting on 22nd June, 2022 [**Pg 24 – 26, CCC-II**], failure to attend which was indicated to lead to disqualification proceedings.

49. Thus, it is clear that in the present case, the notice for removal of the Deputy Speaker was moved by the Respondents on 22.06.2022 to pre-emptively disable the Deputy Speaker from considering their disqualification petitions.

50. This clearly demonstrates that the proceedings under the Tenth Schedule and the proceedings for removal of a Speaker are not necessarily unrelated and distinct. In *Nabam Rebia's* case, this aspect was not considered or contemplated because the facts therein were different. However, the Hon'ble Court laid down a principle of Constitutional law of seemingly universal application, which is clearly erroneous. The premise of the Hon'ble Court is also self-contradictory, because in its ultimate conclusion, it held that the Speaker must await the outcome of the proceedings for his removal before considering the disqualification proceedings, which itself shows that both proceedings were related.

Erroneous interpretation of "all the then members" in Article 179(c)

51. The Hon'ble Court interpreted the words "all the then members" in Article 179(c) as providing the Constitutional answer to the question that it posed to itself.

52. It is respectfully submitted that a plain reading of Article 179(c) shows that the reference to "all the then members" is relatable to the point in time when the resolution for removal

of the Speaker is taken up in the Assembly. "All the then members" does not relate to the point in time when the notice for removal of the Speaker is moved.

53. Article 179(c) only speaks of removal of the Speaker through a resolution passed by a majority of all the then members of the Assembly. It does not speak of the notice for removal of the Speaker.

54. The first proviso to Article 179 speaks about the notice of at least fourteen days' for the purpose of clause (c). In the proviso, there is no mention of "all the then members".

55. Therefore, it is respectfully submitted that this Hon'ble Court's reasoning in *Nabam Rebia's* case that use of the words "all the then members" in Article 179(c) mandates that the composition of the House cannot be changed once a notice for removal of a Speaker is issued [**Para 191**], is erroneous and against the plain language of the provision as compared to the language of the first proviso.

Significance of Article 181

56. It is respectfully submitted that Article 181 places beyond doubt the plain meaning of Article 179(c) explained above. Article 181 of the Constitution reads as follows:

> **181.** (1) At any sitting of the Legislative Assembly, ***while any resolution for the removal of the Speaker from his office is under consideration***, the Speaker, or while any resolution for the removal of the Deputy Speaker, from his office is under consideration, the Deputy Speaker, **shall not, though he is present, preside**, and the provisions of clause (2) of article 180 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker, is absent.
>
> (2) The Speaker shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly while any resolution for his removal from office is under consideration in the Assembly and shall, notwithstanding anything in article 189, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

57. Thus, it is clear that by virtue of Article 181(1), the Speaker is restrained from presiding over the proceedings in the Assembly ONLY when resolution for his removal is under consideration. By necessary implication, mere issuance of notice for removal of a Speaker does not disentitle him from presiding or performing his regular functions.

58. By disabling the Speaker from exercising his functions on mere issuance of a notice for his removal, the process can be abused by any party or member as a way to stifle any progress by calling for the removal of speaker whenever an important issue (like disqualification) is to be considered. Article 181 can therefore be seen as a safeguard as it assures that any illicit tactics are avoided, and the Speaker's powers are impaired only for the limited duration that the "resolution" is being considered.

59. It is respectfully submitted that the majority in *Nabam Rebia* did not even consider the effect and import of Article 181(1). The only limited discussion is in the concurring opinion of Misra, J. as follows:

> **234.** In this regard, I may usefully refer to Article 189 of the Constitution. It provides for voting in Houses, power of Houses to act notwithstanding vacancies and quorum. Sub-Article (1) of Article 189 stipulates that save as otherwise provided in the Constitution, all questions at any sitting of a House of the legislature of a State shall be determined by a majority of votes of the members present and voting, other than the Speaker or Chairman, or person acting as such. The said sub-Article also provides that Speaker or Chairman or person acting as such shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes. The said sub-Article, thus, clearly states about the majority of votes of the members present and voting and secondly, it empowers the Speaker to exercise his power of voting in case of equality of votes. In contradistinction to the same, Article 181 provides that Speaker or the Deputy Speaker not to preside while resolution for his removal from office is under consideration and he is entitled to vote in the first instance on such resolution but not in the case of an equality of votes. Article 181(2) which is relevant for the present purpose reads as follows:
>
> > "181(2). The Speaker shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly while any resolution for his removal from Office is under consideration in the Assembly and shall, notwithstanding anything in Article 189, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes."
>
> **235.** The purpose of referring to the said Article is to highlight the nature of participation of the Speaker when the question of his removal arises. It is clearly different. Under the Constitution he is entitled to take part in the proceedings and speak. Therefore, he is in a position to contest. Appreciating the scheme of the Constitution and especially keeping in view the language employed in the first proviso to Article 179(c) it is quite clear that it is the constitutional design that the Speaker should not do any act in furtherance of his interest till the resolution is moved.
>
> **[see Pg 1153 – 1154, CCJ-I]**

60. It is clear from the above that the Hon'ble Bench in *Nabam Rebia's* case failed to consider the true meaning and import of Article 181 on the issue of Speaker's powers.

61. It is respectfully submitted that a conjoint reading of Article 179(c), the first proviso thereto and Article 181(1) would clearly demonstrate that the words "all the then members" can only relate to the point in time when the resolution for Speaker's removal is taken up in the Assembly, and not at the time of issuance of notice.

Effect of Constituent Assembly Debates not properly considered

62. It is further respectfully submitted that the discussions in Constituent Assembly Debates on the words "all the then members" in other provisions also fortify the view submitted above.

63. The Constituent Assembly debates on Article 179/Draft Article 158 had taken place on 02.06.1949 [**Pg 205 – 208, Common Compilation of Statue/Rules/Research Material (***hereinafter referred to as* **"CCS")**]. In *Nabam Rebia*, this Hon'ble Court observed that as far as the Amendment moved by Mohd Tahir is concerned, "*The constituent assembly debates do not appear to have recorded any discussion on the above amendment. The decision on the proposed amendment was however minuted*".

64. However, what was not noticed by this Hon'ble Court was that the term "the then Members" occurring in several other articles namely Articles 67, 90, 94, 183, had been debated and explained in great detail already in the earlier debates prior to 02.06.1949.

65. On 29.12.1948, Article 67 [Draft Article 56] was discussed in relation to the words 'all the then Members' [**Pg 191 – 204, CCS**]. Shri Mohd. Tahir had in fact moved a moved a similar amendment to Draft Article 56(b) [present Article 67(b)] as he had moved in relation to the Draft Article 158. The amendment moved by Shri Mohd. Tahir reads as follows –

> "Mr. Mohd. Tahir: I beg to move:
>
> That in clause (b) of the proviso to article 56, for the words `all the then members of the Council' the words, 'the members of the Council present and voting' be substituted."

Now, Sir, if my amendment is accepted the clause will read thus:

"The Vice-President may be removed from his office for incapacity or want of confidence by a resolution of the Council of States passed by a majority of the Members of the Council present and voting".

Now, Sir, in this connection I want to submit that the existing provision says "by a resolution of the Council of States passed by a majority of all the then members of the Council". I want to make a distinction between all the then members of the Council" and "the members of the Council present and voting". Now, the provision "all the then members of the Council" also includes those members who, although they are members of the Council, may be absent from the Council, but the intention evidently is that the resolution should be moved and passed by those members who are present and voting Sir, Dr. Ambedkar is not attending to this.

Mr. Vice-President: Dr. Ambedkar, Mr. Tahir wants your attention.

Mr. Mohd. Tahir: I was saying that the provision "by a majority of all the then members of the Council" also includes those members who, although they are members of the Council, may not be present in the Council, while the intention evidently is that the resolution should be passed by a majority of the members who are present and voting. Therefore I submit that the wording "members of the Council present and voting" will be more suitable than the existing words "all the then members of the Council". With these words, I move.

66. **Dr. B.R. Ambedkar** explaining the importance and phraseology of the word 'the then members' observed that;

"the word "then" is important. The word "then" means all members whose seats are not vacant. It does not mean members sitting or present and voting. It is because of this provision, that all members who are members of Parliament and whose seats are not vacant, that their votes also have to be counted, that we have said--passed by a majority of the then members."

[see Pg 202, CCS]

67. It is submitted that as explained by the Constituent Assembly the word 'the then' is relatable to the composition of the House at the time of voting and not merely to the Members who are present and voting.

68. The further discussion in this regard is also relevant and is extracted hereunder for convenience –

"Shri H. V. Kamath: Does it mean the total number of members of the Council of States?

The Honourable Dr. B. R. Ambedkar: Yes. The word 'then' is necessary.

Shri H. V. Kamath: On a point of clarification, Sir.Yesterday in article 50, we used the phraseology `passed by a majority' in place of the two-thirds majority. Should we not do the same thing here, to make the meaning clearer?

The Honourable Dr. B. R. Ambedkar: I shall explain it presently. The reason is due to the fact that we have to use the word `then' **which is intended to distinguish the case of members present and voting, and members who are members of the House whose seats are not vacant, and voting**.

Shri H. V. Kamath: Am I to understand that unless otherwise specified, when you say a resolution is passed or adopted, it means that it is by a simple majority?

The Honourable Dr. B. R. Ambedkar: Yes.

Now, coming to the point raised by my friend Mr. Tahir ,amendment No. 1266. If I understood him correctly, what he says is that the resolution of no-confidence should require to be passed by two-thirds. This may be good or it may be bad. I cannot say. **All I can say is that this provision is also on a par with the provision regarding the want of confidence in the Speaker.** There also we do not require that it should be passed by two-thirds majority or two-thirds of the members of the House."

69. The aforesaid provision was meant to be in *pari materia* to the provisions for removal of the Speaker and therefore the interpretation placed by the members of the Constituent Assembly to Draft Article 56 would apply *mutatis mutandis* to the provisions of Article 179(c).

70. Thus, words 'the then Members of the Assembly" can only mean and refer to the constitution of the House at the time of the consideration of the resolution for removal of the Speaker/Deputy Speaker and cannot be interpreted in any other manner. The term "the then members" can only refer to the composition of the House at the time of voting and not any date anterior thereto.

71. In contradistinction to Articles 67, 90, 94, 183 where the prescription for voting is by "the then members", Articles 100,108,169,189, 243M, 244A, 249, 312 prescribe the voting by those who are present and voting.

72. In other words, the intention of the framers of the Constitution is that a Speaker can be removed only by a majority of the Members constituting the House at the time when the resolution is considered and not on the basis of a majority Members who are present in the House.

73. If at the time of consideration of the resolution certain seats have fallen vacant under Article 190, then such persons whose seats have fallen vacant prior to the consideration of the resolution for removal of the Speaker/Deputy Speaker are not entitled to vote/participate in the proceedings for removal of Speaker/Deputy Speaker.

74. The framers of the Constitution were completely conscious and aware of the fact that a seat may have fallen vacant for the reasons mentioned in Articles 190/191 then such a person cannot cast his/her vote in relation to a resolution for removal of the Speaker/Deputy Speaker.

75. This clearly shows that if a disqualification order has been passed and a seat has fallen 'vacant', such a person is not entitled to vote in the resolution for removal of the Speaker.

76. The upshot and the sequitor of the above debates is that where a seat has fallen vacant, such a member cannot cast his vote. Accordingly, the debates envisage situations where seats could fall vacant on account inter alia of disqualification post the notice for removal of the Speaker is moved. There is no constitutional prohibition against the Speaker deciding the disqualification proceedings after a notice for his removal is moved.

Failure to consider possibility of misuse

77. In *Nabam Rebia,* this Hon'ble court did not consider the possibility of misuse of the legal position that it laid down. For instance, the Court did not consider a situation where the acts constituting disqualification are committed by a number of MLAs that is large enough to tilt the balance of majority in the assembly. This Hon'ble Court observed that the Governor had not entertained any doubt that the Chief Minister and his Council of Ministers enjoyed confidence of the majority in the House [**Para 167**]. ***On the other hand***, in the present case, the election results in the Maharashtra Legislative Assembly had returned a fractured mandate, where the previous Chief Minister belonging to the

Shiv Sena was governing with the support of the INC and the NCP. The respondents, who committed the constitutional sin of defection, were large enough in number to tilt the balance of majority in the Assembly, as is evident from the fact that Sh. Eknath Shinde is presently the Chief Minister with the support of the BJP.

78. Thus, in holding that the proceedings for removal of a Speaker are unrelated to and distinct from disqualification proceedings under the Tenth Schedule, this Hon'ble Court failed to consider that in cases where the balance of majority in the House is likely to turn on account of defection by certain MLAs, the two proceedings can be intricately connected and inter-twined. By securing a majority in the House after defection, and disabling the Speaker from proceeding with the disqualification proceedings by moving a notice for his removal, the defectors can effectively replace the Speaker by a person of their choosing. That is precisely what has happened in this case.

79. In such circumstances, the law laid down by this Hon'ble Court in *Nabam Rebia's* case can lead to the absurd and unconstitutional situation that the delinquent MLAs are able to avoid the consequences of disqualification, and are able to secure a majority in the Assembly through the constitutional sin of defection. That could never have been the intention of the Hon'ble Judges while deciding *Nabam Rebia*'s case.

80. In fact, a perusal of Para 193 of the judgment in *Nabam Rebia's* case would show that the Hon'ble Court did not even consider the possibility that by requiring the resolution for removal of the Speaker to be decided first, the defecting MLAs who have tilted the balance of majority in the Assembly can effectively appoint a different person as Speaker supported by the party in whose favour they have defected. This amounts to permitting the defecting MLAs to choose the person who will decide their fate in the Assembly. It is respectfully submitted that the same would be in complete violation of basic norms of natural justice.

Absurd consequences that flow from Nabam Rebia

81. The law laid down in *Nabam Rebia* can lead to absurd and unconstitutional consequences. For instance, whilst an improper disqualification made by the Speaker is subject to judicial review, the same is not true in case of improper removal of a Speaker by Members of the House who subsequently are disqualified.

82. It is submitted that the impugned observations can lead to a constitutional hiatus and give an escape route to "constitutional sinners" who commit the sin of defection and then are protected by the mere issuance of a notice for removal of the Speaker/Deputy Speaker which then has the effect of stalling the proceedings under the Tenth Schedule.

83. Further, this Hon'ble Court has not outlined or provided for any other alternative adjudicatory mechanism in the event a notice of resolution for removal of Speaker is moved. It is submitted that given the significance of the Tenth Schedule, the disqualification proceedings need to be conducted and concluded with alacrity in the shortest possible time. It is submitted that the effect of the impugned observations is to create a constitutional vacuum in the adjudication of Tenth Schedule proceedings by incapacitating the Speaker and at the same time not providing for any alternative adjudication mechanism to decide proceedings under the Tenth Schedule during the period when there is pendency of a notice of a resolution for removal of the Speaker.

84. It is respectfully submitted that this Hon'ble Court erred in observing in para 177 that if a Speaker survives the vote, on a motion for his removal from the office of Speaker, he would still be able to adjudicate upon the disqualification petitions filed under the Tenth Schedule. This Hon'ble Court has further noted that if a disqualification petition is accepted by the Speaker, the disqualified Member will have no right to participate in the motion moved against the Speaker under Article 179(c).

85. It is submitted the aforesaid observations upset the balance between various constitutional actors. It is submitted that Article 179(c) could not have been interpreted in a manner so as to take away the powers of the Speaker to decide disqualification petition if a notice of resolution for his removal is moved. This is because if a Speaker has been removed on the basis of a notice issued by the same person who is facing disqualification, the Speaker would have no chance for agitating his grievance in any forum. He would not have any second chance. He would have lost the office of the Speaker on the basis of an invalid vote.

86. On the other hand, if the disqualification proceedings are allowed to proceed and even if the Speaker has disqualified a Member against the principles enshrined in the Tenth Schedule, the remedy of judicial review is available and if the said Member succeeds eventually the Member can thereafter again bring a notice of resolution for removal of

the Speaker. Such an interpretation would balance both the provisions of the Article 179(c) as well as provisions of the Tenth Schedule.

There was no occasion for the impugned observations to be laid down in Nabam Rebia

87. It is respectfully submitted that the impugned observations in *Nabam Rebia* on the role of the Speaker did not arise in the facts of the case. As noted by Hon'ble Justice Madan Lokur in para 396 and 401, the aforesaid question never arose for consideration.

> **396.** The question here is not whether the disqualification of fourteen members of the Legislative Assembly is valid or not. That was a matter pending consideration in the Gauhati High Court when judgment in these appeals was reserved, but has since been decided. We are not concerned with the decision of the Gauhati High Court or the power or propriety of the decision of the Speaker. The narrow question is whether the Deputy Speaker could, by his order dated 15th December, 2015 set aside the order of the 73 Sanjeev Coke Manufacturing Co. v. Bharat Coking Coal Ltd., (1983) 1 SCC 147 326 Speaker also dated 15th December, 2015 disqualifying fourteen members of the Legislative Assembly including the Deputy Speaker himself.
>
> **401.** In the view that I have taken, I am of opinion that the view expressed by my learned Brothers relating to the power or propriety of the Speaker taking a decision under the Tenth Schedule of the Constitution with regard to the fourteen members of the Legislative Assembly does not at all arise in these appeals.
>
> **[see Pg 1210 – 1211, CCJ-I]**

Need to prevent misuse of Constitutional law for achieving unconstitutional results

88. Lastly, it is respectfully submitted that there is an overarching Constitutional concern that necessitates re-consideration of the law laid down in *Nabam Rebia's* case. A principle of Constitutional law can never be permitted to be misused for achieving unconstitutional goals.

89. The Tenth Schedule seeks to prohibit and prevent the constitutional sin of political defections, which is recognised to be a grave threat to the very existence of our

democracy [***Kihoto Hollohan* v. *Zachillhu*, 1992 Supp (2) SCC 651,** Para 33 - **Pg 71 – 164, CCJ–I**] . The Tenth Schedule confers the power of deciding petitions for disqualification on the Speaker of the House. The scheme of the Tenth Schedule is such that the Speaker referred to in Para 6 must be the person occupying the position at the time when the acts constituting disqualification are committed and before whom the petition for disqualification is presented. Holding otherwise would allow a sufficient number of MLAs to first commit the acts constituting disqualification, then pre-emptively issue a notice for removal of the Speaker, and then appoint a Speaker of their own choice who would decide the disqualification petitions in their favour. This would amount to completely nullifying and obliterating the purpose and intent behind the Tenth Schedule.

90. It is a settled principle of Constitutional law that while construing a Constitutional inhibition, the Court must adopt a purposive interpretation in line with the spirit of the provision, so as to cure the targeted evil. This principle was recently adopted in the context of Tenth Schedule by this Hon'ble Court in ***Shrimanth Balasaheb Patil* v. *Speaker, Karnataka Legislative Assembly*, (2020) 2 SCC 595 [Pg 1236 – 1299, CCJ–I],** while upholding the disqualification of MLAs who had sought to avoid the rigours of Tenth Schedule by tendering their resignations from the Assembly.

91. Therefore, it is respectfully submitted that this Hon'ble Court may be pleased to clarify the law laid down in *Nabam Rebia's* case, and hold that **when a notice for removal of the Speaker is issued to interfere with the proceedings for disqualification, the disqualification petitions would have to be decided first, and only then the motion for removal of the Speaker be considered by the Assembly.**

CHAPTER 4
POWER OF A CONSTITUTIONAL COURT TO ITSELF DECIDE THE ISSUE OF DISQUALIFICATION

QUESTIONS (B) AND (C): WHETHER A PETITION UNDER ARTICLE 226 OR ARTICLE 32 LIES, INVITING A DECISION ON A DISQUALIFICATION PETITION BY THE HIGH COURTS OR THE SUPREME COURT, AS THE CASE MAY BE? AND CAN A COURT HOLD THAT A MEMBER IS "DEEMED" TO BE DISQUALIFIED, BY VIRTUE OF HIS / HER ACTIONS, ABSENT A DECISION BY THE SPEAKER?

92. The petitioners respectfully submit that in exceptional circumstances, a Constitutional Court under Article 226 or Article 32 can and must itself decide the question of disqualification under the Tenth Schedule, when it is necessary to uphold constitutional values and give effect to the spirit and intent behind enactment of the Tenth Schedule. Such necessity may arise in a variety of circumstances, including as in the present case, where the process of disqualification proceedings has been vitiated and the person holding the position of Speaker, through his conduct, has proved himself unworthy of the public trust and confidence reposed in the Office of Speaker.

93. It is submitted that if this Hon'ble Court itself considers and decides the issue of disqualification, the decision by this Hon'ble Court, absent a determination by the Speaker, would not amount to "deemed" disqualification, but would in fact be the only fair and constitutionally valid determination of the disqualification issue in the facts and circumstances of the present case.

POLITICAL DEFECTIONS POSE A SERIOUS THREAT TO DEMOCRACY, AND THEREFORE, THE TENTH SCHEDULE HAS BEEN INTERPRETED PURPOSIVELY TO STRIKE DOWN TACTICS FOR ITS AVOIDANCE.

94. It is respectfully submitted that given the seriousness of the evil sought to be prevented / remedied by the Tenth Schedule, this Hon'ble Court has repeatedly applied the principle of purposive interpretation to strike down ingenious methods for avoidance of rigours of the Tenth Schedule.

95. The Tenth Schedule was enacted to tackle the evil of political defections, motivated by lure of office or other extraneous considerations which endanger the foundations of

our democracy. In ***Kihoto Hollohan* v. *Zachillhu*, 1992 Supp (2) SCC 651 [Pg 71 – 164, CCJ-I]**, a Constitution Bench of this Hon'ble Court while upholding the constitutional validity of the Tenth Schedule noted the Objects and Reasons for bringing the same, as follows:

> **4.** Before we proceed to record our reasons for the conclusions reached in our order dated November 12, 1991, on the contentions raised and argued, it is necessary to have a brief look at the provisions of the Tenth Schedule. The Statement of Objects and Reasons appended to the Bill which was adopted as the Constitution (Fifty-second Amendment) Act, 1985 says:
>
> > *"The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it. With this object, an assurance was given in the Address by the President to Parliament that the government intended to introduce in the current session of Parliament an anti-defection Bill. This Bill is meant for outlawing defection and fulfilling the above assurance."*
>
> [**see Pg 88, CCJ-I**]

96. This Hon'ble Court described political defections as

> **33… a real and imminent threat to the very fabric of Indian democracy posed by certain levels of political behaviour conspicuous by their utter and total disregard of well recognised political proprieties and morality. These trends tend to degrade the tone of political life and, in their wider propensities, are dangerous to and undermine the very survival of the cherished values of democracy**.
>
> [**see Pg 99, CCJ-I**]

97. While discussing the possibility of Tenth Schedule stifling legitimate dissent, it was held:

> **49…** Unprincipled defection is a political and social evil. It is perceived as such by the legislature. People, apparently, have grown distrustful of the emotive political exultations that such floor-crossings belong to the sacred area of freedom of conscience, or of the right to dissent or of intellectual freedom. **The anti-defection law seeks to recognise the practical need to place the proprieties of political and personal conduct — whose awkward erosion and grotesque manifestations have been the bane of the times — above certain theoretical assumptions which in reality have fallen into a morass of personal and political degradation. We should, we think, defer to this legislative wisdom and perception.** The choices in constitutional adjudications quite clearly indicate the need for such deference. "Let the end be legitimate, let it be within the scope of the Constitution and all means which are appropriate, which are adopted to that end …." are constitutional. [Katzenbach v. Morgan, 384 US 641 : 16 L Ed 2d 828 (1966)].
>
> [**see Pg 106, CCJ-I**]

98. In light of the crucial importance of preventing and constitutionally penalising political defections, this Hon'ble Court has repeatedly adopted the principle of purposive interpretation to uphold the intent behind enactment of the Tenth Schedule and strike down various methods for its avoidance.

99. In ***Jagjit Singh* v. *State of Haryana*, (2006) 11 SCC 1 [Pg 780 – 820, CCJ-I]**, the validity of orders by the Speaker under Para 2(2) disqualifying certain independent MLAs of Haryana Legislative Assembly *three days prior* to the election for the Rajya Sabha fell for consideration. This Hon'ble Court rejected an argument that the Speaker's order had been passed in haste, observing that the disqualified MLAs were interested in prolonging the disqualification proceedings beyond the date of Rajya Sabha elections [**Para 47**]. Crucially, it was held that an independent MLA cannot be permitted to avoid the consequences of defection merely by not completing the formalities of joining a political party. The substance and spirit of the law was taken as the guiding factor to determine whether the independent MLAs had joined a political party:

> ***29. It is also essential to bear in mind the objects for enacting the defection law also, namely, to curb the menace of defection. Despite defection a Member cannot be permitted to get away with it without facing the consequences of such defection only because of mere technicalities. The substance and spirit of law is the guiding factor to decide whether an elected independent Member has joined or not a political party after his election.*** *It would not be a valid plea for a person who may have otherwise joined a political party to contend that he has not filled up the requisite membership form necessary to join a political party or has not paid requisite fee for such membership. The completion of such formalities would be inconsequential if facts otherwise show that the independent Member has joined a political party. The facts of the four cases of independent elected Members are required to be examined in the light of these principles.*
>
> [**see Pg 798 – 799, CCJ-I**]

100. In ***Rajendra Singh Rana* v. *Swami Prasad Maurya*, (2007) 4 SCC 270 [Pg 821 – 856, CCJ-I]**, this Hon'ble Court rejected an argument that the initial defection by 13 MLAs, followed by the subsequent claim by 37 MLAs that there was a split in the BSP in terms of Para 3 of the Tenth Schedule, meant that there was no disqualification of the initial 13 MLAs. The Court applied the principle of purposive interpretation to hold that disqualification occurs on the date when the acts attracting disqualification are committed, and therefore, the question of disqualification and whether there had been a

split had to be determined with reference to the initial date, and not the subsequent date when 37 MLAs claimed a split:

> **33.** It may be true that collective dissent is not intended to be stifled by the enactment of sub-article (2) of Articles 102 and 191 of the Tenth Schedule. But at the same time, it is clear that the object is to discourage defection which has assumed menacing proportions undermining the very basis of democracy. **Therefore, a purposive interpretation of para 2 in juxtaposition with paras 3 and 4 of the Tenth Schedule is called for.** One thing is clear that defection is a ground for disqualifying a member from the House. He incurs that disqualification if he has voluntarily given up his membership of his original political party, meaning the party on whose ticket he had got elected himself to the House. In the case of defiance of a whip, the party concerned is given an option either of condoning the defiance or seeking disqualification of the member concerned. But, the decision to condone must be taken within 15 days of the defiance of the whip. This aspect is also relied on for the contention that the relevant point of time to determine the question is when the Speaker actually takes a decision on the plea for disqualification.
>
> **34.** As we see it, the act of disqualification occurs on a member voluntarily giving up his membership of a political party or at the point of defiance of the whip issued to him. Therefore, the act that constitutes disqualification in terms of para 2 of the Tenth Schedule is the act of giving up or defiance of the whip. **The fact that a decision in that regard may be taken in the case of voluntary giving up, by the Speaker at a subsequent point of time cannot and does not postpone the incurring of disqualification by the act of the legislator. Similarly, the fact that the party could condone the defiance of a whip within 15 days or that the Speaker takes the decision only thereafter in those cases, cannot also pitch the time of disqualification as anything other than the point at which the whip is defied. Therefore in the background of the object sought to be achieved by the Fifty-second Amendment of the Constitution and on a true understanding of para 2 of the Tenth Schedule, with reference to the other paragraphs of the Tenth Schedule, the position that emerges is that the Speaker has to decide the question of disqualification with reference to the date on which the member voluntarily gives up his membership or defies the whip. It is really a decision ex post facto. The fact that in terms of para 6 a decision on the question has to be taken by the Speaker or the Chairman, cannot lead to a conclusion that the question has to be determined only with reference to the date of the decision of the Speaker. An interpretation of that nature would leave the disqualification to an indeterminate point of time and to the whims of the decision-making authority. The same would defeat the very object of enacting the law.** Such an interpretation should be avoided to the extent possible. We are, therefore, of the view that the contention that (*sic* it is) only on a decision of the Speaker that the disqualification is incurred, cannot be accepted. This would mean that what the learned Chief Justice has called the snowballing effect, will also have to be ignored and the question will have to be decided with reference to the date on which the membership of the legislature party is alleged to have been voluntarily given up.
>
> **35.** In the case on hand, the question would, therefore be whether on 27-3-2003 the 13 members who met the Governor with the request to invite the leader of the Samajwadi Party to form the Government had defected on 27-8-2003 and

> whether they have established their claim that on 26-8-2003 there had been a split in the Bahujan Samaj Party and one-third of the members of the legislature of that party had come out of that party. It may be noted that the clear and repeated plea in the counter-affidavit to the writ petition is that a split had occurred on 26-8-2003. This was also the stand of the petitioner before the Speaker for recognition of a split. The position as on 6-9-2003 when the 37 MLAs presented themselves before the Speaker would not have relevance on the question of disqualification which had allegedly been incurred on 27-8-2003.
>
> [**see Pg 847 – 848, CCJ-I**]

101. In ***Shrimanth Balasaheb Patil* v. *Speaker, Karnataka Legislative Assembly*, (2020) 2 SCC 595 [Pg 1236 – 1299, CCJ-I]**, this Hon'ble Court rejected an argument that once the members against whom disqualification proceedings were initiated had tendered their resignation, the disqualification proceedings did not survive. It was held that the disqualification related back to the date on which the act attracting disqualification was committed. In arriving at its conclusion, this Hon'ble Court relied on the spirit and intent behind enactment of the Tenth Schedule, and the principles of Constitutional interpretation which require the Court to adopt the construction that cures the existing evil, and glorifies the democratic spirit of the Constitution. Paras 89 to 92 of the judgment provide instructive reading in the context of the present case, and therefore, the same are reproduced below:

> **89.** The intent of the amendment is crystal clear. The constitutional amendment sought to create additional consequences resultant from the determination that a person was disqualified under the Tenth Schedule. **If we hold that the disqualification proceedings would become infructuous upon tendering resignation, any Member who is on the verge of being disqualified would immediately resign and would escape from the sanctions provided under Articles 75(1-B), 164(1-B) and 361-B. Such an interpretation would therefore not only be against the intent behind the introduction of the Tenth Schedule, but also defeat the spirit of the 91st Constitutional Amendment**.
>
> **90.** A five-Judge Bench of this Court, in DTC v. Mazdoor Congress [DTC v. Mazdoor Congress, 1991 Supp (1) SCC 600 : 1991 SCC (L&S) 1213] ruled that **an inhibition under the Constitution must be interpreted so as to give a wider interpretation to cure the existing evils**. The relevant extract has been provided below : (SCC pp. 676-77, para 118)
>
> *"118. Legislation, both statutory and constitutional, is enacted, it is true, from experience of evils. But its general language should not, therefore, necessarily be confined to the form that that evil had taken. Time works changes, brings into existence new conditions and purposes and new awareness of limitations. Therefore, a principle*

to be valid must be capable of wider application than the mischief which gave it birth. This is particularly true of the constitutional constructions. Constitutions are not ephemeral enactments designed to meet passing occasions. These are, to use the words of Chief Justice Marshall, "designed to approach immortality as nearly as human institutions can approach it…." [Cohens v. Virginia, 1821 SCC OnLine US SC 16, para 28 : 5 L Ed 257 : 19 US 264 (1821)] . In the application of a constitutional limitation or inhibition, our interpretation cannot be only of "what has been" but of "what may be". See the observations of this Court in Sunil Batra v. Delhi Admn. [Sunil Batra v. Delhi Admn., (1978) 4 SCC 494 : 1979 SCC (Cri) 155] "

(emphasis supplied)

91. In State (NCT of Delhi) v. Union of India [State (NCT of Delhi) v. Union of India, (2018) 8 SCC 501] , a five-Judge Bench of this Court articulated the principles of constitutional interpretation, stating that **Courts are obligated to take an interpretation which glorifies the democratic spirit of the Constitution** : (SCC pp. 645-46, paras 284.1 & 284.5)

"284.1. While interpreting the provisions of the Constitution, the safe and most sound approach for the constitutional courts to adopt is to read the words of the Constitution in the light of the spirit of the Constitution so that the quintessential democratic nature of our Constitution and the paradigm of representative participation by way of citizenry engagement are not annihilated. The courts must adopt such an interpretation which glorifies the democratic spirit of the Constitution.

***

284.5. The Constitution being the supreme instrument envisages the concept of constitutional governance which has, as its twin limbs, the principles of fiduciary nature of public power and the system of checks and balances. Constitutional governance, in turn, gives birth to the requisite constitutional trust which must be exhibited by all constitutional functionaries while performing their official duties."

(emphasis supplied)

92. In addition to the above, **the decision of the Speaker that a Member is disqualified, relates back to the date of the disqualifying action complained of**. The power of the Speaker to decide upon a disqualification petition was dealt by a Constitution Bench of this Court in Rajendra Singh Rana v. Swami Prasad Maurya [Rajendra Singh Rana v. Swami Prasad Maurya, (2007) 4 SCC 270] . This Court, reading the provisions of Paras 2 and 6 of the Tenth Schedule, has clearly held that the Speaker has to decide the question of disqualification with reference to the date it was incurred…

[**see Pg 1272 – 1273, CCJ-I**]

PURPOSIVE INTERPRETATION OF THE TENTH SCHEDULE IN THE PRESENT CASE

102. Applying the principle of purposive interpretation to the present case, and upholding the intent behind the Tenth Schedule would require that the question of disqualification is considered and decided first, with reference to the date on which the acts constituting disqualification were committed. The decision on this issue ought to be made by this Hon'ble Court, for reasons enumerated hereinbelow.

103. In the present case, the Respondents have so far avoided the rigours of Tenth Schedule as indicated earlier. The respondents' misuse of the order dated 27.06.2022 of this Hon'ble Court was in violation of the settled law that the purpose of interlocutory orders is to preserve the *status quo*:

> ***126.*** *The purpose of interlocutory orders is to preserve in status quo the rights of the parties, so that, the proceedings do not become infructuous by any unilateral overt acts by one side or the other during its pendency…*
>
> ***Kihoto Hollohan* v. *Zachillhu*, 1992 Supp (2) SCC 651**
>
> [**see Pg 137, CCJ-I**]

104. It is respectfully submitted that the present situation needs to be suitably dealt with to give effect to the spirit and purpose behind the Tenth Schedule.

THE SPEAKER OF MAHARASHTRA LEGISLATIVE ASSEMBLY IS DISABLED FROM DECIDING THE DISQUALIFICATION PETITIONS IN THE PRESENT CASE, IN VIEW OF THE CIRCUMSTANCES OF HIS APPOINTMENT, AND HIS *MALA FIDE*, BIASED AND DISCRIMINATORY CONDUCT.

105. It is respectfully submitted that in the peculiar facts of the present case, the determination of the issue of disqualification cannot be entrusted to the present Speaker of Maharashtra Legislative Assembly, as the circumstances of his appointment and his conduct have demonstrated him to be unworthy of being reposed with public trust and confidence.

106. Para 6 of the Tenth Schedule provides that the question whether a member of a House has become subject to disqualification under the Schedule shall be decided by the Hon'ble Speaker.

107. In ***Kihoto Hollohan* v. *Zachillhu*, 1992 Supp (2) SCC 651 [Pg 71 – 164, CCJ-I]**, while upholding the Constitutional validity of para 6, this Hon'ble Court repelled the contention that the office of the Speaker does not answer the test of an independent adjudication machinery for resolution of electoral disputes. This was held on the premise that the office of the Speaker enjoys high status and importance, and is held in the highest respect and esteem in Parliamentary traditions:

> ***115.*** *The question is, whether the investiture of the determinative jurisdiction in the Speaker would by itself stand vitiated as denying the idea of an independent adjudicatory authority. We are afraid the criticism that the provision incurs the vice of unconstitutionality ignores the high status and importance of the office of the Speaker in a Parliamentary democracy. The office of the Speaker is held in the highest respect and esteem in Parliamentary traditions. The evolution of the institution of Parliamentary democracy has as its pivot the institution of the Speaker. 'The Speaker holds a high, important and ceremonial office. All questions of the well being of the House are matters of Speaker's concern.' The Speaker is said to be the very embodiment of propriety and impartiality. He performs wide ranging functions including the performance of important functions of a judicial character.*
>
> **[see Pg 132, CCJ-I]**

108. However, the experience of the last few decades has shown that the trust reposed in the high office of the Speaker has been belied to such an extent that calls for amendment of para 6 of the Tenth Schedule have been made by high functionaries and institutions.

109. In ***Jagjit Singh* v. *State of Haryana*, (2006) 11 SCC 1 [Pg 780 – 820, CCJ-I]**, this Hon'ble Court took judicial notice of this aspect, and observed:

> ***85.*** *Undoubtedly, in our constitutional scheme, the Speaker enjoys a pivotal position. The position of the Speaker is and has been held by people of outstanding ability and impartiality. Without meaning any disrespect for any particular Speaker in the country, but only going by some of the events of the recent past, certain questions have been raised about the confidence in the matter of impartiality on some issues having political overtones which are decided by the Speaker in his capacity as a tribunal. It has been urged that if not checked, it may ultimately affect the high office of the Speaker. Our attention has been drawn to the recommendations made by the National Commission to review the working of the Constitution recommending that the power to decide on the question as to disqualification on ground of defection should vest in the Election Commission instead of the Speaker of the House concerned. Our attention has also been drawn to the views of number of other experts, committees/Commissioner to the effect that the power of disqualification as a result of defection need to be exercised in*

accordance with the opinion of the Election Commission as in the case of decision on question as to disqualification of Members provided for in Articles 103 and 194(2) of the Constitution. (See Anti-Defection Law and Parliamentary Privileges by Dr. Subhash C. Kashyap, M.P. Jain's Indian Constitutional Law, 5th Edn., Constitutional Law of India, 2nd Edn. by T.K. Tope, Reviewing the Constitution edited by Dr. Subhash C. Kashyap, First V.M. Tarkunde Memorial Lecture on "Indian Democracy Reality or Myth?" delivered by Shri Soli J. Sorabjee.)

***86.** Whether to vest such power in the Speaker or Election Commission or any other institution is not for us to decide. It is only for Parliament to decide. We have noted this aspect so that Parliament, if deemed appropriate, may examine it, bestow its wise consideration to the aforesaid views expressed also having regard to the experience of last number of years and thereafter take such recourse as it may deem necessary under the circumstances.*

[see Pg 820, CCJ-I]

110. The **Law Commission of India** in its **255th Report on Electoral Reforms** dated 12.03.2015 has recommended substitution of the Speaker with the President / Governor acting on the advice of the Election Commission for the purposes of Para 6 of the Tenth Schedule. [**Pg 153 – 163, CCS]**

111. In ***Shrimanth Balasaheb Patil* v. *Karnataka Legislative Assembly*, (2020) 2 SCC 595 [Pg 1236 – 1299, CCJ-I]**, while noting the "growing trend" of Speakers acting against their Constitutional duty of being neutral, this Hon'ble Court held that when a Speaker behaves contrary to the spirit of neutrality and independence, such person does not deserve to be reposed with public trust and confidence:

***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 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**.*

[see Pg 1290, CCJ-I]

112. It is respectfully submitted that in the present case, the Hon'ble Speaker of Maharashtra Legislative Assembly has proved himself unworthy of being reposed with public trust and confidence, in view of the following facts:

a. The office of Speaker of Maharashtra Legislative Assembly had been vacant since 04.02.2021. In the absence of a Speaker, the Deputy Speaker, Sh. Narhari Zirwal, had been exercising the powers of Speaker in terms of Article 180(1) of the Constitution.

b. On 22nd June, 2022, the respondents moved a notice purportedly dated 21.06.2022 for removal of the Deputy Speaker. It is pertinent to note that this notice has not been taken to its logical conclusion in the Assembly till date, which proves that the only objective for issuance of the notice was to misuse the law laid down in *Nabam Rebia*.

c. Having obtained *quia timet* indulgence from this Hon'ble Court on 27.06.2022, and after swearing in of Sh. Eknath Shinde as the Chief Minister of Maharashtra on 30th June, 2022, the Governor, acting on the aid and advice of the new CM who has himself incurred disqualification, convened a Special Session of the Maharashtra Legislative Assembly on 3rd July, 2022 for election to the post of Speaker. This was gross misuse of the office of the Governor, to vitiate the process of the disqualification proceedings.

d. Sh. Rahul Narwekar, an MLA belonging to the BJP was elected as the Speaker, with the active support of the Respondents, who had earlier incurred disqualification in terms of Para 2(1)(a) of the Tenth Schedule. The respondents voted for Sh. Narwekar in defiance of the whip dated 02.07.2022 issued by the Chief Whip of the Shiv Sena Shri Sunil Prabhu [**Pg 339 – 340, CCC-II**], and thereby further incurred disqualification in terms of Para 2(1)(b) of the Tenth Schedule.

e. Immediately upon his appointment, in the evening of 03.07.2022, the Speaker recalled the order dated 21.06.2022 of the Hon'ble Deputy Speaker recognizing Shri Ajay Chaudhari as the leader of Shiv Sena Legislature Party [**see Pg 369, CCC-II**]. This decision dated 21.06.2022 was *sub judice* before this Hon'ble Court, as it had been challenged by the Respondents in W.P. (Civil) 469 of 2022 [Prayers (c) and (d) @ **Pg 190 – 191 of CCC-I**], and this Hon'ble Court had not granted any interim direction in respect of

the same in its order dated 27.06.2022. In these circumstances, the decision dated 03.07.2022 recalling the order dated 21.06.2022 amounts to clear over-reach of this Hon'ble Court, and smacks of *mala fides* and bias on the part of the Hon'ble Speaker.

f. Further the action of the Speaker on 03.07.2022 clearly amounts to a review of the decision of the Deputy Speaker of 21.06.2022 [**Pg 22 – 23, CCC-II**] which is impermissible.

g. The Speaker, by the same communication dated 03.07.2022, also recognized Sh. Bharat Gogawale as the Chief Whip of Shiv Sena Legislature Party [**see Pg 369, CCC-II**]. This was also a biased and *mala fide* act, which enabled the respondents to issue a whip to the petitioners to support their group in the Floor Test on 04.07.2022, and file disqualification petitions against the petitioners when they obviously disobeyed the illegal whip of the respondents [**Pg 388 – 581, CCC-II**].

h. Despite having been presented with two sets of disqualification petitions on 04.07.2022, one by the petitioners' group and the other by the respondents' group, the Hon'ble Speaker has been pleased to issue notice only in the disqualification petitions preferred by the respondents against the petitioners. The Speaker has proceeded to issue notice on 08.07.2022 [**Pg 612 – 666, CCC-II]** in respect of Disqualification Petitions filed by the Respondents against 14 MLAs of Shiv Sena, however, the Disqualification Petitions filed on 03/05.07.2022 [**Pg 345 – 365 & 372 – 387, CCC-II]** against the Respondents have been kept pending. This wanton act of discrimination in respect of the disqualification Petitions itself shows a clear bias and the *mala fide* actions of the Speaker. A Speaker who in his own *ipsi dixit* has decided to only process one set of disqualification petitions and completely ignored other sets of disqualification petitions has misconducted himself and for this reason alone the Speaker cannot be entrusted with the important responsibility of deciding disqualification proceedings under Para 6.

113. Hence, it is respectfully submitted that the law laid down by this Hon'ble Court in Para 153 of ***Shrimanth Balasaheb Patil* v. *Karnataka Legislative Assembly*, (2020) 2 SCC 595** is clearly attracted in the facts of the present case. Consequently, the Hon'ble Speaker, Maharashtra Legislative Assembly cannot be entrusted with the responsibility of deciding the disqualification petitions in the present case.

THE IMPERATIVE NEED FOR THE ISSUE OF DISQUALIFICATION TO BE DECIDED BY THIS HON'BLE COURT.

114. It is respectfully submitted that it would be eminently just and appropriate for this Hon'ble Court to itself determine the issue of disqualification, as the constitutionality of subsequent events impugned before this Hon'ble Court namely, the Hon'ble Governor's directions dated 28.06.2022 for holding of a floor test; the swearing in of Sh. Eknath Shinde as Chief Minister on 30.06.2022, the appointment of Hon'ble Speaker on 03.07.2022; the floor test held on 04.07.2022, and the claim filed by the Eknath Shinde group/Respondents before the Election Commission under Para 15 of the Symbols order are all hinged on the status of the Respondents as members of the Legislative Assembly. In these peculiar facts, the Petitioners in Writ Petition No. 493 of 2022 have *inter alia* prayed for the following relief:

> d. "call for the records of all pending Disqualification Petitions filed against Respondent 4, Respondent No. 8 to 48 pending before Respondent No. 6 [Speaker]/Respondent No.49[Deputy Speaker] under para 2(1)(a) and para 2(1)(b) of Tenth Schedule and under Article 142 transfer the aforesaid Petitions to this Hon'ble Court and this Hon'ble Court may be pleased to decide the said disqualification petitions;"
>
> [**see Pg 99, CCC-I]**

115. It is submitted that a bare perusal of the sequence of events of the instant case would show that this is a fit case for the exercise of extraordinary jurisdiction by this Hon'ble Court for deciding the issue of disqualification of the Respondents.

116. Allowing the disqualification petitions to be decided by a person who has been appointed as Speaker with the active support of the Respondents, and who has conducted himself in a biased and *mala fide* manner, would result in incentivising the constitutional

sin of defection, and would be against the spirit and intent behind the Tenth Schedule. The same would be in the teeth of Constitutional morality. Thus, the principle of purposive interpretation demands that the present Speaker not be entrusted with the task of deciding the disqualification petitions.

117. A Constitution bench of this Hon'ble Court in ***Rajendra Singh Rana v. Swami Prasad Maurya,*** **(2007) 4 SCC 270** [**Pg 821 – 856, CCJ-I]** took up the extraordinary task of deciding the issue of disqualification itself, in order to uphold Constitutional values and the principles of democracy. The concerns expressed by this Hon'ble Court in ***Rana's*** case apply with much more vigour in the present case. In para 45 of ***Rana's*** case this Hon'ble Court held as under:

> **44. Normally, this Court might not proceed to take a decision for the first time when the authority concerned has not taken a decision in the eye of the law and this Court would normally remit the matter to the authority for taking a proper decision in accordance with law and the decision this Court itself takes on the relevant aspects.** What is urged on behalf of the Bahujan Samaj Party is that these 37 MLAs except a few have all been made Ministers and **if they are guilty of defection with reference to the date of defection, they have been holding office without authority, in defiance of democratic principles and in such a situation, this Court must take a decision on the question of disqualification immediately. It is also submitted that the term of the Assembly is coming to an end and an expeditious decision by this Court is warranted for protection of the constitutional scheme and constitutional values. We find considerable force in this submission**.
>
> **45…** Considering that if the 13 members are found to be disqualified, their continuance in the Assembly even for a day would be illegal and unconstitutional and their holding office as Ministers would also be illegal at least after the expiry of six months from the date of their taking charge of the offices of Ministers, **we think that as a court is bound to protect the Constitution and its values and the principles of democracy which is a basic feature of the Constitution, this Court has to take a decision one way or the other on the question of disqualification of the 13 MLAs based on their action on 27-8-2003 and on the materials available.**"
>
> [**see Pg 852 – 853, CCJ-I]**

118. It is respectfully submitted that the circumstances after passing of the interim order on 27.06.2022, namely, the swearing in of Sh. Eknath Shinde as the Chief Minister with the support of the BJP on 30.06.2022, sudden fixing of the election of Speaker on 03.07.2022

despite the post having been vacant for over a year, the biased late-night decision by the Speaker on 03.07.2022 [**Pg 367 – 370, CCC-II]** to cancel the recognition of the leader and the Chief Whip earlier appointed and recognizing the illegally appointed fresh Leader and Chief Whip, amount to creation of a scenario where the MLAs who have incurred disqualification under the Tenth Schedule have succeeded in securing appointment of a biased person as Speaker, who has demonstrated himself to be incapable of taking a fair and impartial decision on the issue of disqualification. In these circumstances only an independent and unbiased arbiter, namely this Hon'ble Court, can decide the issue of disqualification in a fair and constitutional matter.

119. Thus, the acts of defection by the Respondents and consequential disqualification petitions under the Tenth Schedule first need to be decided in a fair, impartial and Constitutional manner. This exercise cannot be undertaken by a Speaker who has been appointed on 03.07.2022 with the support of the very MLAs whose disqualification is in question. Therefore, the exercise ought to be carried out by this Hon'ble Court in terms of law laid down in ***Rajendra Singh Rana's*** case. Only after such determination can the subsequent election of Speaker, and a floor test be conducted in a Constitutional manner.

120. Any other outcome would allow the menace of defection to fester and go unpunished, which would severely corrode the health of our democracy.

121. It is further respectfully submitted that the issue of disqualification ought to be decided by this Hon'ble Court itself in the peculiar facts and circumstances in the present batch of matters, because the basis for disqualification proceedings initiated by the Respondents against 15 MLAs in the petitioners' group is dependent upon whose whip is valid in law, i.e., Sunil Prabhu or Bharat Gogawale?

122. The Speaker has taken a decision on 03.07.2022 de-recognizing Sh. Sunil Prabhu and recognizing Sh. Gogawale as the Chief Whip of the Shiv Sena. It is imperative that before the disqualification under para 2(1) (b) is considered, the validity of the decision dated 03.07.2022 is decided. That can only be done by this Hon'ble Court and not by the Speaker since the decision dated 03.07.2022 is of the Speaker himself.

123. Therefore, it is respectfully submitted that the present is a fit case for this Hon'ble Court to step-in to protect Constitutional values and principles of democracy by adjudicating

the aspect of disqualification on the basis of undisputed materials on record. The Disqualification Petitions filed do not raise issues of complicated/disputed questions of facts and the Disqualification Petitions can be disposed off on the admitted facts presented by the parties.

124. Alternatively, this Hon'ble Court may direct the Deputy Speaker, who was performing the functions of Speaker prior to 03.07.2022, to decide the issue of disqualification. This would be in accord with the real intent and purpose behind the interim order dated 27.06.2022 passed by this Hon'ble Court, which was only intended to provide an adequate opportunity to the Respondents to reply to the disqualification petitions, and was not intended to permit the respondents to appoint their own person to decide the petitions against them.

ON "DEEMED" DISQUALIFICATION ABSENT A DECISION BY THE SPEAKER

125. As regards question (c), namely, can a Court hold that a member is "deemed" to be disqualified, by virtue of his / her actions, absent a decision by the Speaker, it is respectfully submitted that the Constitutionally sound approach would be to ensure that the issue of disqualification is decided at the earliest, so that a person who is disentitled from continuing as a Member of the House does not occupy that position even for a day.

126. The same principle has been reiterated by this Hon'ble Court in ***Mohd. Akbar* v. *Ashok Sahu*, (2015) 14 SCC 519** [**Pg 956 – 959, CCJ-I]** where this Hon'ble Court in para *11 (i)* held as follows:

> **11. (i)** Membership of the legislative bodies under the scheme of our Constitution is a sacred responsibility. The continuance of any member in such bodies who secured his election to such a body by legally impermissible means even for a day is most undesirable. Such continuance affords an opportunity to such a member to take part in the law-making process affecting the destinies of the people."
>
> [**see Pg 958, CCJ-I]**

127. In ***Brudaban Nayak* v. *Election Commission of India*, (1965) 3 SCR 53 [Pg 43 – 49, CCJ-I],** a Constitution Bench of this Hon'ble Court emphasised the importance of a quick decision in matters of disqualification (the issue of disqualification arose in terms

of Section 7 of the Representation of the People Act, 1951), since the whole object of democratic elections is to constitute legislative chambers composed of members who are entitled to that status, and if any member forfeits that status by reason of a subsequent disqualification, it is in public interest that the matter is decided. This principle was reiterated with approval in ***Kashinath G. Jalmi (Dr)*** **v.** ***The Speaker,*** **(1993) 2 SCC 703, (para 19)** [**Pg 165 – 187, CCJ-I]**

128. In circumstances like the present case, where the delinquent MLAs have been able to usurp public office by their tactics of avoidance of the Tenth Schedule, it would be imperative for the Court to first consider and decide the issue of disqualification itself. A decision by this Court that the respondents are indeed disqualified, absent any such determination by the Speaker, would not amount to a "deemed" disqualification. It would be disqualification as determined by the ultimate custodian of Constitution values – the Supreme Court of India. The Speaker, as submitted above, has disabled himself from deciding the issue of disqualification on account of the circumstances of his appointment and his biased and *mala fide* conduct.

129. Thus, it is respectfully submitted that in the present case, a decision by this Hon'ble Court on the issue of disqualification is warranted at the earliest. A decision by this Hon'ble Court, absent a determination by the Speaker, would not amount to "deemed" disqualification. It would be the only fair, just and Constitutionally valid determination of the disqualification issue in the facts and circumstances of the present case.

SUBMISSIONS REGARDING DISQUALIFICATION INCURRED BY THE RESPONDENTS ON THE BASIS OF UNDISPUTED FACTS

Respondents have incurred disqualification under para 2(1) (a) of the Tenth Schedule.

130. It is submitted that the Petitioners had filed disqualification petitions under para 2(1) (a) of the Tenth Schedule on 23.06.2022 in respect of 16 MLAs [**Pg 59 – 211, CCC-II]**. The said 16 MLA are Respondent No.4, 8 to 22 in Writ Petition No 493 of 2022. In respect of 16 other MLAs and independent MLAs, separate disqualification petitions were filed on 25.06.2022 and 27.06.2022 respectively [**Pg 269 – 273 & 296 – 312, CCC-II]**. A further Application to place additional facts and documents was filed in the

disqualification Petitions on 25.06.2022 [**Pg 261 – 267, CCC-II].** The Petitioners have contended in the said disqualification petition that the following actions of the Respondents singularly and collectively constitute an act of 'voluntary giving up membership of the party'. In the disqualification petitions, the following facts have been averred:

a. That the BJP in conspiracy with MLAs from Shiv Sena had orchestrated cross-voting in the MLC elections held on 20.06.2022 where despite having the requisite number of MLAs on its side, the MVA alliance led by the Shiv Sena lost a seat to the BJP. [**Para 7 @ Pg 61, CCC-II]**.

b. To allay the apprehensions that were arising in the party, post the MLC elections, an urgent meeting of the SSLP was called 21.06.2022. [**Para 9 @ Pg 61 – 62, CCC-II].** The direction to attend the meeting is on **Pg 6** of **CCC-II**. It is an admitted fact that the Respondents did not attend the meeting. [**Para vii @ Pg 494, CCC-I**].

c. In the said meeting held on 21.06.2022, Respondent No. 4 (Mr Eknath Shinde) was removed from the post of Group Leader and was replaced by Ajay Chaudhary [**Pg 18 – 19, CCC-II]** and the same was duly communicated to the Deputy Speaker on 21.06.2022. [**Pg 20 – 21, CCC-II].**

d. Since the Respondents had not attended the meeting of 21.06.2022 and since urgent issues relating to the party had to be addressed another meeting was called by Shri Sunil Prabhu *vide* direction dated 22.06.2022 at 5.00 pm on the same day. [**Para 13 @ Pg 71 r/w 24 – 25, CCC-II]** It is an admitted position that the Respondents received the aforesaid notice but did not attend the said meeting. The fact of receipt of the said notice is evident from the communications of the Respondents. Vide communication dated 22.06.2022 [**Pg 37 – 38, CCC-II]** the Respondents in reply to the notice of Mr Sunil Prabhu stated that Shri Sunil Prabhu himself was removed from the post of Chief Whip and Mr Bharat Gogawale (*Respondent No. 8)* was appointed. This communication is by itself an act which attracts para 2(1)(a) of the Tenth Schedule.

e. The resolution dated 22.06.2022 purportedly passed by the Respondents while at Guwahati [**Pg 42 – 48, CCC-II]** itself amounts to conduct inviting the wrath of para 2(1)(a) of the Tenth Schedule. The averments made in the Resolution and the replacement made to the Chief Whip by itself constitute a violation of the provision of the Tenth Schedule under para 2(1)(a).

f. It was further categorically averred in **para 18** of the disqualification petition as follows:

> "18. It is further submitted that conduct of the Respondent along with other delinquent MLAs is totally in concert with the main opposition party in the State i.e. Bhartiya Janta Party (BJP), and this is evident from the fact that they remained in hiding in the State of Gujarat first and subsequently flew away to the state of Assam, both states being ruled by the BJP dispensation. It is interesting to note that MLAs of Maharashtra are passing 'resolutions' sitting in Assam, which has the effect of destabilising the government in Maharashtra."

[**see Para 18 @ Pg 63, CCC-II]**

g. In the Application for Additional facts and documents filed on 25.06.2022 **[Pg 261 – 267, CCC-II]**, it was stated that the statements of the Respondents that a national political party was helping them in their endeavours clearly point out the fact that the Respondents were conspiring with the BJP to topple the Shiv Sena Government, this was further corroborated with the fact that the Respondents were lodged in Hotels in BJP ruled States in Gujarat and Assam from 21.06.2022 which clearly leads to an undeniable inference that the Respondents have voluntarily given up the membership of the party.

h. Further, in the Application for Additional facts, it was categorically averred that the meeting of the National Executive of the party was held on 25.06.2022 and none of the Respondents attended the said meeting. [**Pg 261 – 267, CCC-II].** All these actions individually and cumulatively give rise to the inference that Respondents have voluntarily given up the membership of the party under para 2(1)(a) of the Tenth Schedule.

i. It is submitted that the subsequent events after the filing of the Disqualification Petition also corroborate and buttress that the Respondents have voluntarily left the membership of the party. In this regard, the attention of this Hon'ble Court is invited to the action of the Respondent No. 4 going and meeting the Governor along with Respondent No. 5 (Shri Devendra Fadnavis) is clearly an action which attracts para 2(1)(a) of the Tenth Schedule. This fact cannot be denied and is in the public domain that on 30.06.2022 Respondent No. 4 and Respondent No. 5 together went to Raj Bhavan and staked claim to form the Government. **[see Pg 331 – 332, CCC-II]**

j. It is further submitted that the very action of the Respondents in supporting Respondent No.4 to hold the post of Chief Minister, the factum of Respondent No.4 staking claim to be the Chief Minister, and the purported alliance of 40 members of the legislature party (the Respondents) with the BJP, contrary to the wishes/directions of the Political Party itself amounts to a brazen action of voluntarily giving up membership of the Political Party attracting disqualification under para 2(1)(a).

131. In substance,

A. The MLAs belonging to Eknath Shinde group incurred disqualification in terms of Para 2(1)(a) of the Tenth Schedule by:

(i) Deliberately absenting themselves from SSLP meetings held on 21.06.2022 and 22.06.2022;

(ii) Passing unlawful resolutions on 22.06.2022 whilst in Assam, re-appointing Sh. Shinde as leader of SSLP, and Sh. Gogawale as Chief Whip.

(iii) Hobnobbing with the BJP to destabilise the MVA government in Maharashtra.

(iv) The Hon'ble Governor, based on a late-night meeting on 28.06.2022 with leaders of the BJP and the Shinde group, decided to call for a floor test on 30.06.2022.

(v) On 30.06.2022, Sh. Shinde took oath as CM with BJP support.

132. It is submitted that in identical circumstances, this Hon'ble Court has held that para 2(1)(a) of the Tenth Schedule was clearly attracted. In **Ravi S. Naik v. Union of India, 1994 Supp (2) SCC 641 [Pg 188 – 211, CCJ-I]** this Hon'ble Court while elucidating the meaning of voluntarily giving up membership of a party observed in para 11 as follows:

> ***"11.*** *This appeal has been filed by Bandekar and Chopdekar who were elected to the Goa Legislative Assembly under the ticket of MGP. They have been disqualified from membership of the Assembly under order of the Speaker dated December 13, 1992 on the ground of defection under paragraph 2(1)(a) and 2(1)(b) of the Tenth Schedule. From the judgment of the High Court it appears that disqualification on the ground of paragraph 2(1)(b) was not pressed on behalf of the contesting respondent and disqualification was sought on the ground of paragraph 2(1)(a) only. The said paragraph provides for disqualification of a member of a House belonging to a political party "if he has voluntarily given up his membership of such political party". The words "voluntarily given up his membership" are not synonymous with "resignation" and have a wider connotation.* ***A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs."***

[see Pg 196, CCJ-I]

133. In the said judgment it was observed that the disqualification Petition had stated that the Respondent MLA had accompanied Dr Luis Proto Barbosa to the Governor and had told the Governor that he does not support the MGP any longer,

this by itself was held to be constituting conduct warranting the attraction of para 2(1)(a) of the Tenth Schedule.

134. In **G. Viswanathan v. T.N. Legislative Assembly, (1996) 2 SCC 353** [**Pg 212A – 212K, CCJ-I]** it was held that the act of voluntarily giving up may be express or implied.

135. In **Rajendra Singh Rana v. Swami Prasad Maurya, (2007) 4 SCC 270** [**Pg 821 – 856, CCJ-I]** the act of giving a letter requesting the governor to call upon the leader of the other side to form a Government was held to be the conduct constituting attraction of para 2(1)(a) of the Tenth Schedule. The attention of this Hon'ble Court is invited to para 48 and 53 which reads as follows:

> ***48.*** *The act of giving a letter requesting the Governor to call upon the leader of the other side to form a Government, itself would amount to an act of voluntarily giving up the membership of the party on whose ticket the said members had got elected. Be it noted that on 26-8-2003, the leader of their party had recommended to the Governor, a dissolution of the Assembly. The first eight were accompanied by Shivpal Singh Yadav, the General Secretary of the Samajwadi Party. In Ravi Naik [1994 Supp (2) SCC 641 : (1994) 1 SCR 754] this Court observed : (SCC p. 649, para 11)*
>
> > *"A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs."*
>
> ***53****. In view of our conclusion that it is necessary not only to show that 37 MLAs had separated but it is also necessary to show that there was a split in the originalpolitical party, the above finding necessarily leads to the conclusion that the 13 MLAs sought to be disqualified had not established a defence or answer to the charge of defection under paragraph 2 on the basis of paragraph 3 of the Tenth Schedule. The 13 MLAs, therefore, stand disqualified with effect from 27.8.2003. The very giving of a letter to the Governor requesting him to call the leader of the opposition party to form a Government by them itself would amount to their voluntarily giving up the membership of their original political party within the meaning of paragraph 2 of the Tenth Schedule.*
>
> [**see Pg 854, 856, CCJ-I]**

136. In **Shrimanth Balasaheb Patil v. Karnataka Legislative Assembly, (2020) 2 SCC 595** this Hon'ble Court upheld the decision of the Speaker which had disqualified the delinquent MLAs therein on the ground that they had not attended the CLP meetings. In the disqualification order passed by the Speaker dated 28.07.2019, the Hon'ble Speaker had noted as follows:

> *"The Petitioners have also submitted that the respondents have deliberately abstained themselves from the Congress Legislature Party meeting held on 09.07.2019, and from the Sessions from 12.07.2019 to 23.07.2019, In spite of the Whip issued by the Petitioners. The respondents have abstained from the meetings of the party as well as the sittings of the Assembly Sessions."*

[see Pg 1217, CCJ-I]

137. This Hon'ble Court while affirming the finding of the Speaker in this regard in **para 173 and 174** held that the factum of non-attending of the party meeting was an indicator of legislators having voluntarily given up the membership of the party. In **para 174** in particular this Hon'ble Court observed as follows:

> ***"174.*** *The Speaker in the impugned order has taken note of the surrounding circumstances, including the conduct of the petitioners from February 2019 onwards. It ought to be noted that sufficient opportunity of hearing was accorded to the petitioners herein who had also filed their responses. It ought to be noted that, vide notice dated 16-1-2019, a meeting of the INC legislative party was called for 18-1-2019. The notice stated that the members must compulsorily attend the meeting otherwise action would be taken against them under the Tenth Schedule. The petitioners did not attend the party meeting on 18-1-2019. Admittedly, the petitioners also refrained from attending the subsequent general body meeting dated 6-2-2019 as well as Assembly Sessions from 6-2-2019. The resignations were submitted by the petitioners nearly four months after the disqualification petition had already been filed."*

[see Pg 1294 – 1295, CCJ-I]

138. In these circumstances, it is respectfully submitted that Respondents by their actions individually and cumulatively have voluntarily given up the membership of Shiv Sena and as such are liable to be disqualified under para 2(1)(a) of the Tenth Schedule.

Respondents have incurred disqualification under para 2(1) (B) of the Tenth Schedule.

139. It is submitted that the Petitioner has filed a disqualification Petition on 03.07.2022 **[Pg 345 – 365, CCC-II]** for violation of the whip on 03.07.2022 and another set of disqualification Petition on 05.07.2022 **[Pg 372 – 387, CCC-II]** for violation of the whip in the confidence vote held on 04.07.2022. In regard to the above the following material facts may be noted:

a. Mr Sunil Prabhu has been the Chief Whip of the Shiv Sena since 2019 and there is no dispute in this regard. The appointment of Mr. Sunil Prabhu was also validated and recognised by the then Speaker in 2019 itself.

b. By purported resolution dated 22.06.2022 **[Pg 42 – 48, CCC-II]** passed by the Respondent MLAs, Mr Sunil Prabhu was sought to be removed.

c. However, this action of the Respondent and the resolution dated 22.06.222 was not accepted by the Deputy Speaker and even the appointment of Mr Eknath Shinde as the leader of the House was not accepted by the Deputy Speaker as is evident from the communication of the Assembly Secretariat dated 22.06.2022 itself. **[Pg 22 – 23, CCC-II]**

d. On 02.07.2022 Whip was issued regarding the election of Speaker by Sunil Prabhu. [**Pg 339 – 340, CCC-II].** In the election of the Speaker, the Shiv Sena had put up a Shiv Sena MLA itself namely, Mr Rajan Salvi. The Respondents however were supporting the candidate of the BJP MLA namely Rahul Narwekar.

e. It is an admitted fact that on 03.07.2022 in the election of Speaker the Respondents voted contrary to the Whip issued by Shri Sunil Prabhu and voted in favour of BJP MLA Mr Rahul Narvekar. The voting was carried out in the division and 40 MLAs voted in favour of Rahul Narvekar which is evident from a video recording of the

assembly itself. Further, there is no denial of this fact of cross-voting and the same has been admitted by the Respondents.

f. From the records of the Assembly, the Deputy Speaker who was in the chair for the conduct of the Speaker elections has also recorded that 40 MLAs have voted against the Whip. This fact also can be verified from the records of the Assembly itself.

g. On the night of 03.07.2022 immediately after his election, the Speaker unilaterally changed the recognition of the Chief Whip and the Leader of the House. [**Pg 367 – 370, CCC-II]**.

h. Thus, in any event, there is no dispute that the Respondents have cross-voted and violated the whip of Mr Sunil Prabhu which Whip was duly recognised by Speaker/Deputy Speaker till the night of 03.07.2022. It, therefore, follows that the violation of the Whip in the Speaker's election clearly attracts para 2(1)(b) of the Tenth Schedule and the Respondents stand disqualified.

i. Further, even in the confidence vote held on 04.07.2022, the Respondents voted against the Whip issued by Mr Sunil Prabhu which is also evident from a bare perusal of the records of the Assembly and is also admitted fact in the pleadings of the Respondents and on this count as well the Respondents are liable to be disqualified for violation of Whip issued by Mr Sunil Prabhu.

140. It is submitted that actions of cross voting and defiance of the whip *ex facie* constitute violation of para 2(1)(b) of the Tenth Schedule.

141. Therefore, it is respectfully submitted that the Respondents may be held to be disqualified from the Maharashtra Legislative Assembly.

CHAPTER 5
STATUS OF INTERVENING PROCEEDINGS AND EVENTS IN THE HOUSE PENDING DETERMINATION OF THE QUESTION OF DISQUALIFICATION

QUESTIONS (D) AND (E): WHAT IS THE STATUS OF PROCEEDINGS IN THE HOUSE DURING THE PENDENCY OF DISQUALIFICATION PETITIONS AGAINST THE MEMBERS? AND IF THE DECISION OF A SPEAKER THAT A MEMBER HAS INCURRED DISQUALIFICATION UNDER THE TENTH SCHEDULE RELATES BACK TO THE DATE OF THE ACTION COMPLAINED OF, THEN WHAT IS THE STATUS OF PROCEEDINGS THAT TOOK PLACE DURING THE PENDENCY OF A DISQUALIFICATION PETITION?

142. The petitioners respectfully submit that disqualification under the Tenth Schedule relates back to the date, when the act constituting disqualification was committed. This has two implications:

One, the defence to the plea of disqualification must have arisen at the time when the acts constituting disqualification were committed.

Second, the validity of proceedings / events in the intervening period, whose outcome is dependent on participation of members who have incurred disqualification, would have to be subject to the ultimate decision on the issue of disqualification. In case the members are held to be disqualified, the proceedings whose outcome depended on the participation of disqualified members would be vitiated.

IMPLICATION OF RELATING BACK ON PERMISSIBLE DEFENCES TO DISQUALIFICATION

143. It is respectfully submitted that since disqualification under the Tenth Schedule relates back to the date when the act constituting disqualification was committed, the defence to the plea of disqualification cannot be a subsequent defence, and must have arisen at the time when the acts constituting disqualification were committed.
144. In ***Rajendra Singh Rana* v. *Swami Prasad Maurya*, (2007) 4 SCC 270 [Pg 821 – 856, CCJ-I]**, this Hon'ble Court rejected an argument that the defence of split to the initial defection by 13 MLAs was made out by virtue of the 37 MLAs who subsequently

followed the original 13 MLAs, taking the total number to beyond 1/3rd of the legislators, as required by Para 3 of the Tenth Schedule as it then existed. The Court held that disqualification occurs on the date when the acts attracting disqualification are committed, and therefore, the question of disqualification and whether there had been a split had to be determined with reference to the initial date, and not the subsequent date when 37 MLAs claimed a split:

> **34.** As we see it, the act of disqualification occurs on a member voluntarily giving up his membership of a political party or at the point of defiance of the whip issued to him. Therefore, the act that constitutes disqualification in terms of para 2 of the Tenth Schedule is the act of giving up or defiance of the whip. The fact that a decision in that regard may be taken in the case of voluntary giving up, by the Speaker at a subsequent point of time cannot and does not postpone the incurring of disqualification by the act of the legislator. Similarly, the fact that the party could condone the defiance of a whip within 15 days or that the Speaker takes the decision only thereafter in those cases, cannot also pitch the time of disqualification as anything other than the point at which the whip is defied. **Therefore in the background of the object sought to be achieved by the Fifty-second Amendment of the Constitution and on a true understanding of para 2 of the Tenth Schedule, with reference to the other paragraphs of the Tenth Schedule, the position that emerges is that the Speaker has to decide the question of disqualification with reference to the date on which the member voluntarily gives up his membership or defies the whip.** It is really a decision ex post facto. The fact that in terms of para 6 a decision on the question has to be taken by the Speaker or the Chairman, cannot lead to a conclusion that the question has to be determined only with reference to the date of the decision of the Speaker. An interpretation of that nature would leave the disqualification to an indeterminate point of time and to the whims of the decision-making authority. The same would defeat the very object of enacting the law. Such an interpretation should be avoided to the extent possible. We are, therefore, of the view that the contention that (*sic*it is) only on a decision of the Speaker that the disqualification is incurred, cannot be accepted. This would mean that what the learned Chief Justice has called the snowballing effect, will also have to be ignored and the question will have to be decided with reference to the date on which the membership of the legislature party is alleged to have been voluntarily given up.
>
> **35.** In the case on hand, the question would, therefore be whether on 27-3-2003[1] the 13 members who met the Governor with the request to invite the leader of the Samajwadi Party to form the Government had defected on 27-8-2003 and whether they have established their claim that on 26-8-2003 there had been a split in the Bahujan Samaj Party and one-third of the members of the legislature of that party had come out of that party. It may be noted that the clear and repeated plea in the counter-affidavit to the writ petition is that a split had occurred on 26-8-2003. This was also the stand of the petitioner before the Speaker for recognition of a split. **The position as on 6-9-2003 when the 37 MLAs presented themselves before the Speaker would not have relevance**

[1] The month "3" is a typo. The date should be 27.08.2003, since the date 27.03.2003 has no relevance or other reference in the case.

on the question of disqualification which had allegedly been incurred on 27-8-2003.

[see Pg 847 – 848, CCJ-I]

145. In the present case, the respondents have incurred disqualification in terms of Para 2(1)(a) from 20th June, 2022 onwards, until 30th June, 2022 when Sh. Eknath Shinde took oath as CM of Maharashtra with the support of the BJP. Further, they have incurred disqualification on 3rd and 4th July, 2022 in terms of Para 2(1)(b).

146. The only defence of the respondents in their pleadings is that they, in fact, are the real Shiv Sena. The respondents cannot claim a split, as Para 3 stands omitted from the Tenth Schedule. Further, the respondents have not claimed a merger with any other political party, and therefore, their case does not fall under Para 4 either.

147. The sole defence of the respondents to the plea of their disqualification, namely, that they are the real Shiv Sena, is no defence in the eyes of law. Sh. Eknath Shinde has filed a petition under Para 15 of the Symbols Order before the Election Commission only on 19.07.2022 [**Pg 670 – 697, CCC-II**]. Thus, even if it is assumed without conceding that Sh. Eknath Shinde will be successful in the petition under Para 15, the same would be with effect from the date when the Election Commission decides in his favour, or at best from 19.07.2022 when the petition was filed. Since disqualification has been incurred much prior to 19.07.2022, it is respectfully submitted that following the law laid down in ***Rajendra Singh Rana's*** case, the said defence is no defence in the eyes of law, and the respondents must be held to be disqualified.

IMPLICATION OF EVENTUAL DISQUALIFICATION ON INTERVENING EVENTS WHILE THE QUESTION OF DISQUALIFICATION IS PENDING

148. The second implication of the position that disqualification relates back to the date when the acts constituting disqualification were committed is that the validity of proceedings / events in the intervening period, whose outcome is dependent on participation of members who have incurred disqualification, would have to be subject to the ultimate decision on the issue of disqualification. In case the members are held to be disqualified, the proceedings whose outcome depended on the participation of disqualified members would be vitiated.

149. It is respectfully submitted that in the present case, this Hon'ble Court has in any case clarified that the subsequent proceedings in the Assembly are subject to the outcome of these petitions. The Governor of Maharashtra had issued directions on 28.06.2022, convening a Special Session of the Maharashtra Vidhan Sabha on 30.06.2022, for holding of a trust vote against the Government. These directions were challenged by the petitioners before this Hon'ble Court by way of W.P. (Civil) No. 470 / 2022 [**Pg 348 – 377, CCC– I**]. By its order dated 29.06.2022, this Hon'ble Court declined to stay the directions of the Governor, however, it was *inter alia* directed that the proceedings of the trust vote shall be "subject to the final outcome" of the writ petition.

150. Therefore, it is respectfully submitted that the issue of disqualification needs to be determined at the outset, so that the constitutional cloud over the present Government in Maharashtra is taken to its logical conclusion.

CHAPTER 6
EFFECT OF DELETION OF PARA 3 OF THE TENTH SCHEDULE

QUESTION (F): WHAT IS THE IMPACT OF THE REMOVAL OF PARAGRAPH 3 OF THE TENTH SCHEDULE?

151. The petitioners respectfully submit that the omission of Paragraph 3 from the Tenth Schedule implies that a split from the original political party, by at least 1/3rd of elected legislators of that party, cannot be a defence to disqualification incurred under Paragraph 2 of the Tenth Schedule. Thus, the only defence available is if the defectors merge themselves into another political party. The members who have split from the original political party cannot raise a defence that they are the original political party.

THE DEFENCE THAT 2/3 LEGISLATORS ASSERT THAT 'THEY CONSTITUTE THE POLITICAL PARTY' IS *EX FACIE* NOT SANCTIONED UNDER THE PROVISIONS OF THE TENTH SCHEDULE

152. It is the case of the Respondents that they have not incurred any disqualification under para 2(1)(a) or 2(1)(b) as the Respondents constitute 2/3rd of the members of the Legislature Party and, as a consequence, they are the Political Party. It is further contended in the counter affidavit that the disqualification petitions in the instant proceedings reflect the 'minority tyranny' [**Para 5 of Common Reply by R-4 (Eknath Shinde) @ Pg 468 – 469, CCC-I**]. In paragraph 23, it is stated that 'the Petitioner wants the majority of Shiv Sena Legislature Party (40 MLAs) to be disqualified instead of their 14 members, who are in fact, the real defectors'. It is further averred in paragraph 24 that the underlying basis for testing the validity of any action is 'numbers'. And, in paragraph 25, it is stated that any decision taken democratically by a thumping majority of the legislature party is not to be interfered with by the Courts. It has also been averred that the question as to who the Political Party is to be decided by the Election Commission and not by this Hon'ble Court.

153. In sum and substance, the aforesaid averments in the Common Reply filed by Respondent No.4 point out that, in essence, the argument is that the Respondents have 2/3rd numbers in the House and, therefore, they are the Political Party itself. It is submitted that the contentions raised are *ex-facie* in the teeth of the provisions of the

Tenth Schedule and is a clever ruse to avoid the inevitable result of disqualification. The defences so raised as pointed out hereinabove are nothing but 'dressing up' the factum of split by stating that the Respondents constitute Political Party by themselves.

154. The actions of the Respondents as pointed out herein above right from 20.06.2022 and till date, clearly and unequivocally point out the factum of a split. The actions of the Respondents in constituting a separate group and taking decisions thereon, and asserting that they represent the political party is nothing but in substance a split. Verbal acrobatics couched in the name of 'I am the Political Party' or 'I constitute the Political Party' is nothing but a disguise for hiding the factum of split from this Hon'ble Court.

155. Split was defined in paragraph 3 of the Tenth Schedule, which read 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 direction issued by such party or by any person or authority authorised 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 or abstention; and
>
> (b) from the time of such split, such faction shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this paragraph."

[**Pg 48, CCS**]

156. The jurisprudence under paragraph 3 as laid down by this Hon'ble Court clearly held that the defence of split was available only when there was not only a split in the Legislature Party but also a split in the Political Party. In ***Jagjit Singh v. State of Haryana,*** **(2006) 11 SCC 1,** this Hon'ble Court held that paragraph 3 had intended to protect against the rigours of disqualification, a larger group formed as a result of a split in a Political Party at least constituting 1/3rd Legislature members along with the split in the Political Party. The exact observation of this Hon'ble Court is produced as under:

> ***"79.*** *The object of the Tenth Schedule is to discourage defection. Para 3 intended to protect a larger group which, as a result of split in a political party which had set up the candidates, walks off from that party and does not treat it as defection for the purposes of para 2 of the Tenth Schedule. The intention of Parliament was to curb defection by a small number of Members. That intention is clear from para 3 which does not protect a single-member legislature party. It may be noted that by the Constitution (Ninety-first Amendment) Act, 2003, para 3 has been omitted from the Tenth Schedule."*
>
> **[see Pg 819, CCJ-I]**

157. Further, in ***Rajendra Singh Rana v. Swami Prasad Maurya*****, (2007) 4 SCC 270 [Pg 821 – 856, CCJ-I],** it was clearly held that the split recognised by paragraph 3 of the Tenth Schedule is not a split of only 1/3rd legislature members but also necessarily have to have the ingredient of a split in the original Political Party. In this regard, the following observations of this Hon'ble Court in para 37, 38, 52, and 53 may be noted:

> ***"37.*** *Thus, in the above decision, it has been clarified that it is not enough that a claim is made of a split in the original party, in addition to showing that one-third of the members of the legislature party have come out of the party, but it is necessary to prove it at least prima facie. Those who have left the party, will have, prima facie, to show by relevant materials that there has been a split in the original party. The argument, therefore, that all that the 37 MLAs were required to do was to make a claim before the Speaker that there has been a split in the original party and to show that one-third of the members of the legislature party have come out and that they need not produce any material in support of the split in the original political party, cannot be accepted. The argument that the ratio of the decision in Jagjit Singh [(2006) 11 SCC 1 : (2006) 13 Scale 335] requires to be reconsidered does not appeal to us. Even going by Ravi S. Naik [1994 Supp (2) SCC 641 : (1994) 1 SCR 754] it could not be said that the learned Judges have held*

that a mere claim in that behalf is enough. As pointed out in Jagjit Singh [(2006) 11 SCC 1 : (2006) 13 Scale 335] the sentence in para 37 in Ravi S. Naik case [1994 Supp (2) SCC 641 : (1994) 1 SCR 754] cannot be read in isolation and it has to be read along with the relevant sentence in para 38 of SCC quoted in Jagjit Singh [(2006) 11 SCC 1 : (2006) 13 Scale 335] .

38. *Acceptance of the argument that the legislators are wearing two hats, one as members of the original political party and the other as members of the legislature and it would be sufficient to show that one-third of the legislators have formed a separate group to infer a split or to postulate a split in the original party, would militate against the specific terms of para 3. That paragraph speaks of two requirements, one, a split in the original party and two, a group comprising of one-third of the legislators separating from the legislature party. By acceding to the two hat theory one of the limbs of para 3 would be made redundant or otiose. An interpretation of that nature has to be avoided to the extent possible. Such an interpretation is not warranted by the context. It is also not permissible to assume that Parliament has used words that are redundant or meaningless. We, therefore, overrule the plea that a split in the original political party need not separately be established if a split in the legislature party is shown.*

[see Pg 849 – 850, CCJ-I]

52. *As we have indicated, nothing is produced to show that there was a split in the original political party on 26-8-2003 as belatedly put forward or put forward at a later point of time. But still, the plea was of a split on 26-8-2003. On the materials, the only possible inference in the circumstances of the case, is that it has not been proved, even prima facie, by the MLAs sought to be disqualified that there was any split in the original political party on 26-8-2003 as claimed by them. The necessary consequence would be that the 24 members, who later joined the 13, could not also establish a split in the original political party as having taken place on 26-8-2003. In fact even a split involving 37 MLAs on 26-8-2003 is not established. That was also the inference rightly drawn by the learned Chief Justice in the judgment appealed against.*

53. *In view of our conclusion that it is necessary not only to show that 37 MLAs had separated but it is also necessary to show that there was a split in the original political party, the above finding necessarily leads to the conclusion that the 13 MLAs sought to be*

disqualified had not established a defence or answer to the charge of defection under para 2 on the basis of para 3 of the Tenth Schedule. The 13 MLAs, therefore, stand disqualified with effect from 27-8-2003. The very giving of a letter to the Governor requesting him to call the leader of the opposition party to form a Government by them itself would amount to their voluntarily giving up the membership of their original political party within the meaning of para 2 of the Tenth Schedule. If so, the conclusion is irresistible that the 13 members of BSP who met the Governor on 27-8-2003 who are Respondents 2, 3, 4, 5, 6, 9, 10, 14, 16, 19, 20, 21 and 37, in the writ petition filed by Maurya, stand disqualified in terms of Article 191(2) of the Constitution read with para 2 of the Tenth Schedule thereof, with effect from 27-8-2003. If so, the appeal filed by the writ petitioner has to be allowed even while dismissing the appeals filed by the 37 MLAs, by modifying the decision of the majority of the Division Bench. Hence the writ petition filed in the High Court, will stand allowed with a declaration that the 13 members who met the Governor on 27-8-2003, being Respondents 2, 3, 4, 5, 6, 9, 10, 14, 16, 19, 20, 21 and 37 in the writ petition, stand disqualified from the Uttar Pradesh Legislative Assembly with effect from 27-8-2003."

[see Pg 856, CCJ-I]

158. In the facts of the present case, by the acts of the Respondents themselves, it is clear that the Respondents are asserting a split. In fact, the averments made in the petition before the Election Commission under the Symbols order clearly affirm the factum of Split.

159. Thus, the Respondents by their unequivocal actions are, in substance, claiming that there is a split and they represent the Political Party. Such a defence is not at all sanctioned under the Tenth Schedule after Constitution (Ninety-first Amendment) Act, 2003.

160. The **170th report of the Law Commission of India** noted the menace of defections and the need to strengthen the provisions of the Tenth Schedule [**Pg 65 – 70, CCS]**. In this regard, the contents of paragraph 3.4.1.1 of the Law Commission Report are important, which read as follows:

"3.4.1.1. We are of the opinion that the objections raised by Shri Jaipal Reddy are really without any substance. By banning the splits, the ongoing political process, or the pluralism in the society is not being arrested. As we had made clear in our working paper, once the Parliament is dissolved, there can be splits,

mergers, formation of new parties and so on. Moreover, even during the life of a Lok Sabha or State Legislative Assembly, as the case may be, political process can go on. ***There can be mergers, splits and formation of new political parties but they shall not be reflected in the House. So far as the House is concerned, there shall be no splits in a political party and if any member violated paragraph 2 of the Tenth Schedule, he will stand disqualified.*** *Indeed, the Tenth Schedule deals with and governs only the membership of the House and the splits and mergers among the members of the political parties in the House. It does not purport to govern or regulate the political processes outside the House. So far as the internal democracy and internal structures of a party are concerned, we agree that they should be strengthened. It is for this very reason that we have recommended in Chapter one of Part three insertion of a Chapter in the Act governing and regulating the functioning of the political parties. Those provisions must also be implemented along with the changes in the Tenth Schedule.*

[**see Pg 68, CCS**]

161. **In the Report of the National Commission to Review the Working of the Constitution [Pg 71 – 78, CCS],** it was categorically observed that the Split provision should be deleted and, in paragraph 4.18.2, it was recommended as follows:

4.18.2 ***The Commission recommends that the provisions of the Tenth Schedule of the Constitution should be amended specifically to provide that all persons defecting - whether individually or in groups - from the party or the alliance of parties, on whose ticket they had been elected, must resign from their parliamentary or assembly seats and must contest fresh elections. In other words, they should lose their membership and the protection under the provision of split, etc. should be scrapped****. The defectors should also be debarred to hold any public office of a minister or any other remunerative political post for at least the duration of the remaining term of the existing legislature or until, the next fresh elections whichever is earlier. The vote cast by a defector to topple a government should be treated as invalid. The Commission further recommends that the power to decide on questions as to disqualification on ground of defection should vest in the Election Commission instead of in the Chairman or Speaker of the House concerned.*

[**see page 78, CCS**]

162. In **the Statement of Objects and Reasons of the Constitution (Ninety-first Amendment) Act, 2003 [Pg 49 – 54, CCS]**, it was observed:

> *"Demands have been made from time to time in certain quarters for strengthening and amending the Anti-defection Law as contained in the Tenth Schedule to the Constitution of India, on the ground that these provisions have not been able to achieve the desired goal of checking defections. The Tenth Schedule has also been criticised on the ground that it allows bulk defections while declaring individual defections as illegal. The provisions for exemption from disqualification in case of splits as provided in paragraph 3 of the Tenth Schedule to the Constitution of India has, in particular, come under severe criticism on account of its destablilising effect on the Government.*
>
> *2. The Committee on Electoral Reforms (Dinesh Goswami Committee) in its report of May, 1990, the Law Commission of India in its 170th Report on "Reform of Electoral Laws" (1999) and the National Commission to Review the Working of the Constitution (NCRWC) in its report of March 31, 2002 have, inter alia, recommended omission of said paragraph 3 of the Tenth Schedule to the Constitution of India pertaining to exemption from disqualification in case of splits. The NCRWC is also of the view that a defector should be penalised for his action by debarring him from holding any public office as a Minister or any other remunerative political post for at least the duration of the remaining term of the existing Legislature or until, the next fresh elections whichever is earlier. It is proposed to accept these suggestions.*
>
> [**see Pg 52, CCS**]

163. Accordingly, the 91st Constitutional Amendment deleted the provision of the split. The net effect of the deletion of the provision of the split was that the defence available under paragraph 3 cannot be taken from 26.04.2003. It is submitted that the Respondents by their very actions, in substance, are asserting a split in the Political Party as defense to the disqualification which is not available. It is submitted that what is to be looked at is the substance of the defense and not the form in which it is pleaded.

164. The substance of the defense of the Respondents is nothing but a split which has been couched in flowery language as 'minority tyranny' and that they represent

the Political Party. All the actions of the Respondents and the pleadings before this Hon'ble Court in Writ Petition (Civil) 469/468 of 2022, the correspondences sent by the Respondents themselves, and the Petition filed before the Election Commission clearly reflect, in substance, the assertion of a split in the Political Party. Thus, this Hon'ble Court ought to look at the substance of the defense and not the mere form. [see **Guru Gobinda Basu v. Sankari Prasad Ghosal, (1964) 4 SCR 311 (para 12) [Pg 36 – 42, CCJ-I]; Bachhaj Nahar v. Nilima Mandal, (2008) 17 SCC 491 (para 17) [Pg 891 – 901, CCJ-I]; Ram Sarup Gupta v. Bishun Narain Inter College, (1987) 2 SCC 555 (para 6) [Pg 53 – 70, CCJ-I]; Hardesh Ores (P) Ltd. v. Hede and Co., (2007) 5 SCC 614 (para 25) [Pg 857 – 876, CCJ-I]**]

165. It is submitted that the matter can be looked at from another angle, the defense taken by the Respondents that they represent the Political Party is an indirect way of setting up the defense of split which is impermissible. It is a well-settled principle that what cannot be done directly, cannot be allowed to be done indirectly. [**Delhi Admn. v. Gurdip Singh Uban, (2000) 7 SCC 296**, **(Para 17) [Pg 287 – 314, CCJ-I]**; **Taxi Owners United Transport v. State Transport Authority (Orissa), (1983) 4 SCC 34, (Para 6) [Pg 50 – 52, CCJ-I]**.

DEFENCE OF MERGER NOT MADE OUT

166. It is submitted that the Respondents cannot take the benefit of para 4 of the Tenth Schedule. Para 4 of the Tenth Schedule is extracted hereunder for sake of convenience:

> **4. Disqualification on ground of defection not to apply in case of merger**.—(1) A member of a House shall not be disqualified under sub-paragraph (1) of paragraph 2 where his original political party merges with another political party and he claims that he and any other members of his original political party—
>
> (*a*) have become members of such other political party or, as the case may be, of a new political party formed by such merger; or
>
> (*b*) have not accepted the merger and opted to function as a separate group,
>
> and from the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph

(1) of paragraph 2 and to be his original political party for the purposes of this sub-paragraph.

(2) For the purposes of sub-paragraph (1) of this paragraph, the merger of the original political party of a member of a House shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the legislature party concerned have agreed to such merger.

167. The *sine qua non* for attracting the defence of merger is the requirement of merger in another political party or a new political party formed by such merger. Admittedly the Respondents have neither merged in another political party nor formed a new political party. In these circumstances, it is submitted that merely claiming that the Respondents represent 2/3 of the Legislative Party cannot satisfy the ingredients of para 4 of Tenth Schedule and as such no defence under para 4 of the Tenth Schedule is made out in the facts and circumstances of the case.

168. Therefore, it is respectfully submitted that the pleadings of the Respondents in response to the present petitions do not disclose any defence within the contours of the Tenth Schedule, and therefore, the Respondents must be held to be disqualified.

CHAPTER 7
ON WHIPS AND THE ROLE OF POLITICAL PARTIES

QUESTION (G): WHAT IS THE SCOPE OF THE POWER OF THE SPEAKER TO DETERMINE THE WHIP AND THE LEADER OF THE HOUSE LEGISLATURE PARTY? WHAT IS THE INTERPLAY OF THE SAME WITH RESPECT TO THE PROVISIONS OF THE TENTH SCHEDULE?

169. The petitioners respectfully submit that the leadership of the original political party is exclusively empowered to determine which member of the house shall be the Whip, and also the leader of the House Legislature Party. The Speaker is bound to recognise the persons who are communicated by the leadership of the original political party to be its Whip and Leader of the House Legislature Party. The Speaker's role in this regard is merely administrative in nature. The Speaker cannot abuse this role to defeat the spirit and intent behind the provisions of the Tenth Schedule.

WHIP IS ISSUED BY THE POLITICAL PARTY AND NOT BY LEGISLATURE PARTY MEMBERS.

170. It is submitted that the Respondents' case is hinged on a legal misconception that the Whip under para 2(1)(b) of the Tenth Schedule can be issued/changed by a majority of the members of the Legislative Party. This defence is in the teeth of the plain reading of para 2(1)(b) of the Tenth Schedule.

> **"2. Disqualification on ground of defection**.—(1) Subject to the provisions of paragraphs [884]{* * *} 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House—
>
> (*a*) …
>
> (*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."

171. A bare reading of the aforesaid provision would show that the framers of the Tenth Schedule were conscious that the disqualification was to be incurred for violation of the Whip issued by the Political party or any person or authority authorised by the Political party. There is no reference at all to the Legislature Party in para 2 (1)(b) of the Tenth

Schedule. This distinction between Political party and Legislature Party is also borne out from a reading of para 1(b) and para 1 (c) of the Tenth Schedule which brings out the difference between the meaning ascribed to the Legislature party and the original Political party.

172. The Respondents in defence have sought to intermingle the definition of Political party with that of the Legislature Party and have sought to extrapolate the Legislature Party in the place of Political Party in para 2(1)(b) of the Tenth Schedule which is impermissible.

173. It is further submitted that para 1 of the Tenth Schedule makes a clear distinction between the term "legislature party" and "original political party". The term "legislature party" is defined as 'the group consisting of all the members of that House for the time being belonging to that political party' and the term "original political party" is precisely defined as 'the political party to which a member belongs'. Further, the definition makes it clear that the said term is specifically defined for the purposes of para 2(1) of the Tenth Schedule. In this regard attention of this Hon'ble Court is invited to ***Kuldip Nayar v. Union of India,*** **(2006) 7 SCC 1 [Pg 620 – 779, CCJ-I],** wherein this Hon'ble Court while interpreting the Constitutional provisions, relied upon the rule of 'literal construction' and observed as follows:

> ***"201.*** *Before proceeding further, we would like to refer to certain observations of a Constitution Bench of this Court in G. Narayanaswami v. G. Pannerselvam [(1972) 3 SCC 717] appearing in para 4 which read as under: (SCC pp. 720-21)*
>
> > *"4. Authorities are certainly not wanting which indicate that courts should interpret in a broad and generous spirit the document which contains the fundamental law of the land or the basic principles of its Government. Nevertheless, the rule of 'plain meaning' or 'literal' interpretation, described in Maxwell's Interpretation of Statutes as 'the primary rule', could not be altogether abandoned today in interpreting any document. Indeed, we find Lord Evershed, M.R., saying: 'The length and detail of modern legislation, has undoubtedly reinforced the claim of literal construction as the only safe rule'. (See Maxwell on Interpretation of Statutes, 12th Edn., p. 28.) It may be that the great mass of modern legislation, a large part of which consists of*

> *statutory rules, makes some departure from the literal rule of interpretation more easily justifiable today than it was in the past. But, the object of interpretation and of 'construction' (which may be broader than 'interpretation') is to discover the intention of the law-makers in every case (see Crawford on Statutory Construction, 1940 Edn., para 157, pp. 240-42). This object can, obviously, be best achieved by first looking at the language used in the relevant provisions. Other methods of extracting the meaning can be resorted to only if the language used is contradictory, ambiguous, or leads really to absurd results. This is an elementary and basic rule of interpretation as well as of construction processes which, from the point of view of principles applied, coalesce and converge towards the common purpose of both which is to get at the real sense and meaning, so far as it may be reasonably possible to do this, of what is found laid down. The provisions whose meaning is under consideration have, therefore, to be examined before applying any method of construction at all."*
>
> ***We endorse and reiterate the view taken in the abovequoted paragraph of the judgment. It may be desirable to give a broad and generous construction to the constitutional provisions, but while doing so the rule of "plain meaning" or "literal" interpretation, which remains "the primary rule", has also to be kept in mind. In fact the rule of "literal construction" is the safe rule unless the language used is contradictory, ambiguous, or leads really to absurd results.***
>
> *(Emphasis Supplied)*
>
> **[see Pg 706 – 707, CCJ-I]**

174. It is submitted that the Parliament, in its wisdom, has used the term 'Political Party' under the provisions of Para 2(1)(b) of the Tenth Schedule, wherein a member attracts the disqualification for going against the wishes or directions of its Political Party. The Respondents, in substance, are asking this Hon'ble Court to read the term 'Political Party' as 'Legislature Party', which has a completely different meaning altogether, as pointed out hereinabove. In this regard, it is well settled that when the language of a statute is amply clear, as also, the words used are self-explanatory, the Court ought not to read any other interpretation into the language of the statute.

175. It is further submitted that the question of whether the term 'Political Party' under the provisions of Para 2(1)(b) of the Tenth Schedule refers to the 'Legislature Party' was considered by Srinivasan J. in his separate opinion in ***Mayawati v. Markandeya Chand,* (1998) 7 SCC 517 [Pg 2523 – 2575, Common Compilation of Judgments and Orders Part-II** *hereinafter referred to as* ("**CCJ-II**")**]**. Denying the contention of reading 'Political Party' as the 'Legislature Party', Srinivasan J. observed as follows:

> "***70.*** *The argument of the appellant is that the expression "political party" in sub-para (b) means "political party in the House", in other words, the "legislature party". This argument runs counter to the definition contained in Para 1(c). According to that definition, "original political party" in relation to a member of a House, means the political party to which he belongs for the purposes of sub-para (1) of Para 2. The expression "original political party" is used in Para 3 only. Para 2 does not at all use the expression "original political party". The said expression in Para 3 is equated to the expression "political party" in Para 2(1). The definition clause in Para 1(c) does not make any distinction between sub-para (a) and sub-para (b) of Para 2. But the appellant's counsel wants to make such a distinction. According to him "political party" in sub-para (a) would refer to "original political party" but the same expression in sub-para (b) would refer only to the "legislature party". The term "legislature party" having been defined in Para 1(b) could well have been used in Para 2(1)(b) instead of the term "political party" if the intention of Parliament was to refer only to the legislature party.*
>
> ***71.*** *There is another feature in Para 3(b) which negatives the appellant's argument. According to Para 3(b), from the time of the split in the original political party such as the one referred to in the first part of the para, the faction referred to therein shall be deemed to be the political party to which the member concerned belongs for the purposes of sub-para (1) of Para 2 and to be his original political party for the purposes of Para 3. The entire sub-para (1) of Para 2 is referred to therein meaning thereby both clauses (a) and (b) of sub-para (1) and no distinction is made between the two clauses. Hence for the purposes of clause (a) as well as clause (b), the faction referred to in the first part of Para 3 shall be deemed to be the "political party" mentioned in the sub-para and the same faction shall be deemed to be the original "political party" mentioned in Para 3. It is thus clear that "political party" in clause (b) of sub-para (1) of Para 2 is none other than "original political party" mentioned in Para 3.*

72. *The argument that the context in Para 2(1)(b) requires to equate "political party" with "legislature party" even though the definition clause reads differently is not acceptable. A reading of sub-para (b) and the explanation in Para 2(1) places the matter beyond doubt that the "political party" in sub-para (b) refers to the "original political party" only and not to the legislature party. According to the explanation, for the purpose of the entire sub-para, an elected member of the 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. Certainly, the legislature party could not have set up the member concerned as a candidate for election.*

73. *According to learned counsel for the appellant, the legislature party may have to take decisions on urgent matters in the House and as it represents the original political party in the House, whatever direction is issued by the leader of such legislature party must be regarded as a direction issued by the political party. There is no merit in this contention. When the provision in the Constitution has taken care to make a distinction between the legislature party and the original political party and prescribe that the direction should be one issued by the political party or by any person or authority authorised in this behalf, there is no meaning in saying that whatever the leader of the legislature party directs must be regarded as that of the original political party.*

74. *The reason is not far to seek. Disqualification of a member elected by the people is a very serious action and before that extreme step is taken, it should be proved that he acted contrary to the direction issued by the party which set him up as a candidate for election.*

75. *In Hollohan [1992 Supp (2) SCC 651] the majority dealt with the expression "any direction" in Para 2(1)(b) and held that the objects and purposes of the Tenth Schedule define and limit the contours of the meaning of the said expression. It is advantageous to extract para 122 of the judgment which reads as follows: (SCC p. 716)*

> *"122. While construing Paragraph 2(1)(b) it cannot be ignored that under the Constitution, Members of Parliament as well as of the State Legislature enjoy freedom of speech in the House though this freedom is subject to the provisions of the Constitution and the rules and standing orders regulating the Procedure of the House [Article 105(1) and Article*

194(1)]. The disqualification imposed by Paragraph 2(1)(b) must be so construed as not to unduly impinge on the said freedom of speech of a Member. This would be possible if Paragraph 2(1)(b) is confined in its scope by keeping in view the object underlying the amendments contained in the Tenth Schedule, namely, to curb the evil or mischief of political defections motivated by the lure of office or other similar considerations. The said object would be achieved if the disqualification incurred on the ground of voting or abstaining from voting by a Member is confined to cases where a change of government is likely to be brought about or is prevented, as the case may be, as a result of such voting or abstinence or when such voting or abstinence is on a matter which was a major policy and programme on which the political party to which the Member belongs went to the polls. For this purpose the direction given by the political party to a Member belonging to it, the violation of which may entail disqualification under Paragraph 2(1)(b), would have to be limited to a vote on a motion of confidence or no confidence in the government or where the motion under consideration relates to a matter which was an integral policy and programme of the political party on the basis of which it approached the electorate. The voting or abstinence from voting by a Member against the direction by the political party on such a motion would amount to disapproval of the programme on the basis of which he went before the electorate and got himself elected and such voting or abstinence would amount to a breach of the trust reposed in him by the electorate."

76. *If the direction referred to in Para 2(1)(b) is to be restricted to the two kinds referred to in the said passage, there is no doubt that "political party" in Para 2(1)(b) refers only to the "original political party" as it is only such party which could issue such directions. In such matters, the members of the House would certainly be given sufficient notice in advance and the original political party would have sufficient time to take decisions and issue directions.*"

[see Pg 2552 – 2554, CCJ-II]

176. It is humbly submitted that if the interpretation sought by the Respondents is accepted, the same would result in far reaching consequences and would destabilize the framework of the Party system by taking away the powers assigned to a Political Party to prevent the defections within. The sought reading would negate the meaning ascribed to para 2(1)(b) of the Tenth Schedule as well as defeat the entire purpose of insertion of the Tenth Schedule i.e., to curb the menace of defection.

177. The entire edifice of our parliamentary democracy is based on party system. A candidate is chosen by the electorate on the symbol of the Political party. The Legislator or the Legislature party is only a product of the Political party. The Legislature party is the species and the Political party is the genus. There is an umbilical cord which links the Political Party and Legislature party. The actions of the umbilical cannot be out of line with the objective of the Political Party. In ***Kihoto Hollohan*** this Hon'ble Court emphasised the importance of Political Party and held in para 44 as follows:

> ***"44.*** *But a political party functions on the strength of shared beliefs. Its own political stability and social utility depends on such shared beliefs and concerted action of its Members in furtherance of those commonly held principles. Any freedom of its Members to vote as they please independently of the political party's declared policies will not only embarrass its public image and popularity but also undermine public confidence in it which, in the ultimate analysis, is its source of sustenance — nay, indeed, its very survival. Intra-party debates are of course a different thing. But a public image of disparate stands by Members of the same political party is not looked upon, in political tradition, as a desirable state of things. Griffith and Ryle on Parliament Functions, Practice and Procedure (1989 edn., p. 119) say:*
>
> > *"Loyalty to party is the norm, being based on shared beliefs. A divided party is looked on with suspicion by the electorate. It is natural for Members to accept the opinion of their Leaders and Spokesmen on the wide variety of matters on which those Members have no specialist knowledge. Generally Members will accept majority decisions in the party even when they disagree. It is understandable therefore that a Member who rejects the party whip even on a single occasion will attract attention and more criticism than sympathy. To abstain from voting when required by party to vote is to suggest a degree of unreliability. To vote against party is disloyalty. To join with others in abstention or voting with the other side smacks of conspiracy."*

(emphasis supplied)

> *Clause (b) of sub-para (1) of Paragraph 2 of the Tenth Schedule gives effect to this principle and sentiment by imposing a disqualification on a Member who votes or abstains from voting contrary to "any directions" issued by the political party. The provision, however, recognises two exceptions: one when the Member obtains **from the political party** prior permission to vote or abstain from voting and the other when the Member has voted without obtaining such permission but his action has been condoned **by the political party**. This provision itself accommodates the possibility that there may be occasions when a Member may vote or abstain from voting contrary to the direction **of the party to which he belongs**. This, in itself again, may provide a clue to the proper understanding and construction of the expression "any direction" in clause (b) of Paragraph 2(1) — whether really all directions or whips from the party entail the statutory consequences or whether having regard to the extraordinary nature and sweep of the power and the very serious consequences that flow including the extreme penalty of disqualification the expression should be given a meaning confining its operation to the contexts indicated by the objects and purposes of the Tenth Schedule. We shall deal with this aspect separately."*

[see Pg 102 – 103, CCJ-I]

178. It is thus submitted that it is the political party which appoints the Chief Whip and not the Legislative Party. The Political party is headed by the leadership and this factum of leadership is not in dispute. Organisational elections to Shiv Sena were held on 27.02.2018 and the Leadership structure of the party was intimated to ECI wherein it is clearly stated that Uddhav Thackeray is the Paksha Pramukh. **[Pg 1 – 4, CCC-II].**

179. It may not be out of place that under the Maharashtra Legislature Members (Removal of Disqualification) Act, 1956, the definition of the "Chief Whip" or "Whip", in relation to the Maharashtra Legislative Assembly, means a 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 recognized 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 members of the House and recognized as such by the Speaker.

180. Thus, it is clear that the Whips are the directions issued by the Political Party and not by the members of the Legislature party or the leaders of the Legislature party.

181. **Erskine May, Parliamentary Practice, 25th Edition –** while outlining duties of Whips in para 4.9 states that the Whip serves as '*intermediates between the leaders and parliamentary membership of their parties in order to keep each informed of the views of the other'*. [**see Pg 136, CCS**]

182. **Kaul and Shakdher, Practice and Procedure of Parliament, 7th Edition rely upon 'Parliament, Its History, Constitution and Practice, London, 1948'** [**See footnote 190 @Pg 61, CCS**]. The learned authors trace the historical origins of the word Whip and state as follows:

> *190. The metaphor is borrowed from the hunting field, and its parliamentary application can be traced to Burke who, in a debate in the House of Commons, described how the King's Ministers had made great efforts to bring their followers together, how they had sent for their friends to the north and to Paris, whipping them in. The phrase adopted by Burke caught the public fancy and soon became popular- Ilbert: Parliament, Its History, Constitution and Practice, London, 1948, p. 135.*

183. The learned authors while elucidating the duties and functions of the Whip, observe as follows:

> *The Whips have to know their men. This involves a close contact with all members and knowledge of their interests, special aptitudes, qualities and potentialities. The Whips take these aspects into account while sending the list of speakers to the Chair in the interest of quality of debate and deliberation or suggesting names of members of their parties for nomination on parliamentary committees. They keep members supplied with information about the business of the House and enforce party discipline. Being constantly in touch with the members in the lobbies, etc., of the House, the Whips, acting as intermediaries between the leaders and the rank and file of their parties, keep the former in touch with the currents of opinion not only within their own party and thereby nip the incipient revolt in the bud but also to some extent with other movements of opinion inside the House. And it is through the Whips that members of a party come to know about their leader's views and the plans into which the leader thinks it necessary or expedient to initiate them. The Whips are the active agents within the parties—a channel of communication whereby one party negotiates*

with another concerning topics for debates or conduct of business in the House.

(Emphasis Supplied)
[**see Pg 62, CCS**]

184. In the **Handbook on the Working of the Ministry of Parliamentary Affairs**, the background of the origin of the Whips is noted. In this regard, it is stated that the 'Whips, who are drawn from various political parties, are vital links in the internal organisation of parties inside the Legislature'. It is further stated that:

> *The expression "Whips" is derived from the term 'Whipper-in' employed by a hunt to look after the hounds and keep them together in the field. The term 'Whipper-in' was originally used in Parliament as in the hunting field for a Member who discharged this duty for his party, but, in due course of time, it became reduced to 'Whip'. In this sense the Oxford Dictionary defines a 'Whip' as a member of a particular party in Parliament whose duty is to secure the attendance of members of that party on the occasion of an important division. Later, the term was applied to the call or appeal made by such a person, and is defined by the dictionary as "the written appeal issued by a Parliament 'Whip' to summon the members of his party".*

[**see Pg 55, CCS**]

185. The **House of Commons Library, The Whip's Office** while explaining the origin of the term 'whip' observes as follows:

> ***1.1 Origin of the term 'whip'***
> *The expression 'whip' in the parliamentary context has its origins in hunting terminology. The term 'whipper-in' is defined by the Oxford Dictionary as 'a huntsman's assistant who keeps the hounds from straying by driving them back with the whip into the main body of the pack'. According to the Dictionary the first recorded use of the term 'whipper-in' in the parliamentary sense occurs in the annual Register of 1772: 'he was first a whipper-in to the Premier, and then became Premier himself'. However in his The House of Commons in the Eighteenth Century P.D.G. Thomas cites two examples of the use of the term that pre-date 1772:*
>
> > *It was within the context of such summonses to members out of town that the first known Parliamentary instance of the use of the term 'whip' occurred. In the debate of 8 May 1769 on a petition from some Middlesex freeholders against the seating of Henry Luttrell instead of John Wilkes, Edmund Burke mentioned that the ministry had sent for their friends to the north and to Paris, 'whipping them in, than which, he said, there could not be a better phrase'. Although Burke's*

particular emphasis on the expression implied its comparative novelty, the hunting term had been used in this political context for at least a generation: on 18 November 1742 Heneage Finch remarked in a letter to Lord Malton that 'the Whigs for once in their lives have whipped in better than the Tories'.

[see Pg 80, CCS]

186. Further, elucidating the duties of the whip, it is stated as follows:

2.1 Securing the Government's majority

The primary role of the Chief Whip is to get the Government's business through Parliament, and in particular to secure the Government's majority in votes on its legislative and policy programs.

The duties of Whips include:

- *keeping MPs and peers informed of forthcoming parliamentary business.*
- *maintaining the party's voting strength by ensuring members attend important debates and support their party in parliamentary divisions.*
- *passing on to the party leadership the opinions of backbench members.*

[see Pg 82, CCS]

187. The note also relies upon Rogers and Walters (2004) How Parliament Works Fifth Edition, (Longman; London) and observes:

"An essential mechanism for ensuring that backbenchers attend and go through the correct division lobbies at important votes is a document known as 'the Whip', according to Rogers and Walters:

This is circulated weekly by the whips of each party to their own members and lists the business for the following week, together with the party's expectations as to when its MPs will vote. The importance of the business is reflected by the number of times it is underlined, hence the phrase 'a three line whip' for something seen as an unbreakable commitment."

[see Pg 82, CCS]

188. The **Law Commission in its 170th Report**, recognised the importance of the Whip necessarily for abiding by the Whip and observed in para 3.4.4 as follows:

"3.4.4 Necessity for abiding by the whip - In such a case, the endeavour should be to strengthen the political parties by providing for internal democracy and internal structures rather than to weaken them. Inasmuch as we are recommending in

this report insertion of a new chapter governing the political parties(including the provisions ensuring internal democracy, internal structures and transparency in the conduct of its affairs), there should be no objection to strengthening of the political parties so that they will of majority prevails in a political party. Freedom of speech is undoubtedly precious ***but when a person becomes a member of the political party, accepts its ticket and fights and succeeds on that ticket, he renders himself subject to the discipline and control of the party. It should also be noticed that when a person applies for the ticket of a political party, he knows, and is expected to know, about the leadership, internal working, policies and programmes of the party. He must also reckon with the fact that in future, the leadership may change, policies and programmes may change and so on. If he, with his eyes open, applies for and obtains the ticket and contests and wins on that basis, he cannot plead later that he does not agree with the leadership or policies of the party. Any difference of opinion, he must ventilate and fight within the party. The membership of House does not become his private property nor can he trade in it. It is a trust and he is in the members of a trustee. He cannot also say that he will take advantage of the name and facilities of a political party, fight the election on the ticket of that party and succeed, but he will not be subject to the discipline of the political party. This is simply unthinkable besides being unethical and immoral. He has to abide by the party discipline within the House. He may fight within the party to have his point of view or policies adopted by the party but once the party takes a decision one way or the other and issues the whip, he shall have to abide by it or resign and go out.*** *It would equally be unethical and immoral for him to vote against the whip and then resign."*

[see Pg 69, CCS]

189. In practice, the connection between the political party and its elected legislators is maintained by the office of the "Chief Whip", who is in essence the representative of the political party amongst the legislators.

190. In ***Perumal M.C.*** **V.** ***State of Karnataka,*** **(1978) 2 Kant LJ 214 [Pg 2512 – 2522, CCJ-II]**, the Hon'ble Karnataka High Court had occasion to dilate on the nature of the office of Chief Whip, in the following words:

12. *The position of the "Government Chief Whip" in the House of People and the Rajya Sabha or in the Legislative Assembly or in the Legislative Council in India is exactly of the same nature as in England. In their Book 'Practice and Procedure of Parliament', Kaul and Shakdher state as follows at pages 122 to 124:*

> *"The main function of the Whips is, as stated above, to keep members of their party within sound of the division bell whenever any important business is under consideration in the House. Whips are responsible for the attendance of the members at the time of important divisions. During sessions the Whips of the different parties send to their supporters periodic notices, also sometimes called 'whips', warning them when important divisions are expected, telling them the hour when a Vote will probably take place, and requesting them to be in attendance at that time. The importance of the division is indicated by underscoring the notice by a number of lines, or a couple of very thick lines.*
>
> *The Whips have to know their men. This involves a close contact with all members and knowledge of their interests, special aptitudes, qualities ant potentialities. The Whips take these aspects into account while sending list of speakers to the Chair in the interest of quality of debate and deliberation. They keep members supplied with information about the business of the House and enforce party discipline. Being constantly in touch with the members in the lobbies etc., of the House, the Whips acting as intermediaries between the leaders and the rank and file of their parties, keep the former in touch with the currents of opinion not only within their own party and thereby nip the incipient revolt in the bud but also to some extent with other movements of opinion inside the House.* ***And it is through the Whips that members of a party come to know abut their leader's views and the plans into which the leader thinks it necessary or expedient to initiate them****. The Whips are the active agents within the parties—a channel of communication whereby one party negotiates with another concerning topics for debates or conduct of business in the House.*
>
> *It has been aptly said that the Whips are not only shock-absorbers, but also indicators of the party; they are not only advisers to the leader, but also the binding-force in the party; they are not only barometers of the different regions and opinions but also the counsellors of members.*

Government Chief Whip.—The Chief Whip of the Government Party in Lok Sabha is the Minister of Parliamentary Affairs. The Chief Whip is directly responsible to the Leader of the House. It is a part of his duties to advise the Government on Parliamentary business and to maintain a close liaison with the Ministers in regard to parliamentary business affecting their Departments.

***13. <u>The Chief Whip is the eyes and ears of the leader of the Party so far as the members are concerned. He conveys the wishes of the leader to the members of the Party and keeps the Leader informed of the current opinion in the Party as also the moods and inclinations of individual members when these deserve special notices</u>**. During sessions, in his capacity as adviser to the leader, he normally meets the Prime Minister not only for one set interview daily but also several times in the course of the day for brief consultations.*

***15.** Apart from making the House and keeping essential for transaction, of business, the Chief Whip has the whip hand in shaping the course, tone and tenor of debate on special occasions for he selects the speakers from his party and hands over a list to the Speaker for facilitating the process of 'catching his eyes.' **<u>The responsibility of keeping every body at his post and keeping his party united, strong and well-knit falls on him</u>**. He selects members for select committees and other parliamentary and Govt. assignments keeping in view the background, experience, aptitude qualifications, etc., of members of his party. This gives him quite a wide power of patronage which comes handy in keeping the party members amenable to his influence.*

[see Pg 2517 – 2519, CCJ-II]

191. It is thus clear from a reading of the aforesaid that the Whip forms an important link, an umbilical cord between the Political Party and the legislators. The Whip enforces the directions of the Political Party in the legislature.

THE TERM 'POLITICAL PARTY' IS THE BODY RECOGNISED IN TERMS OF REPRESENTATION OF PEOPLES ACT AND THE SAID TERM IS NOT CO TERMINUS WITH 'LEGISLATURE PARTY'

192. That the Political party is registered in terms of Section 29A of Representation of the People Act, 1951, and the details of the organisation have to be communicated to the ECI. The political party is the body which is thus registered with and recognised by the

Election Commission of India. The leadership of the political party is also recognised and intimated to the Election Commission. The decisions of the political party are taken by the recognized leadership of the political party and not by the legislature party of the political party or even a majority of members thereof. The organisational structure of Shiv Sena is headed by Shri Uddhav Thackeray. This fact has been intimated from time to time to the ECI. In this regard, the phrase direction of Political Party occurring in para 2(1)(b) of the Tenth Schedule can only refer to the decision made by the leadership of the Political party i.e. Shri Uddhav Thackeray and not any sub-ordinate.

193. The Tenth Schedule recognises the importance of Political Parties in our Parliamentary democracy, delegitimises violation of directions of the Political Party by legislators by prescribing severe punishment of disqualification itself from the membership of the house. The very basis of para 2(1)(a) and (b) was to uphold and preserve the paramount interests of the Political Party inside the legislature. The Political Party and its leadership are responsible to the electorate and, therefore, the Political Party has to ensure that the agenda and/or the plans and programs of the Political Party have to be effected through its legislators in the legislature.

194. The Parliament has considered a 'political party' as a distinct entity from the 'legislature party'. The Tenth Schedule (*which came into force in 1985*) consciously defined the 'legislature party' as a group consisting of members of 'political party' who are members of the House for the time being.

195. 'Political party' is not defined in the Constitution in any place. 'Political party' was not defined in any election statute till 1989. However, 'political party' was defined in the Foreign Contribution Regulation Act 1976 as follows:

> *"2(n) A political party means an association or body of individual citizens of India, which is or is deemed to be registered with the Election Commission of India as a political party under the Election Symbols Reservation Allotment Order, 1968 as in force for the time being."*

196. Prior to 1989, an association or body of individual citizens calling itself a 'political party' was required to be registered under Para 3 of Symbols Order. The relevant provision of Para 3 of the Symbols Order, prior to its deletion, read as follows:

"3. Registration with the Commission of associations and bodies as political parties for the purposes of this Order - (1) Any association or body of individual citizens of India calling itself a political party and intending to avail itself of the provisions of this Order shall make an application to the Commission for its registration as a political party for the purposes of this Order.…"

[see Pg 48, CCS]

197. As the need was felt to define 'political party', an amendment was brought in the Representation of the People Act, 1951, by way of Representation of the People (Amendment) Act, 1988, and Section 2(f) defining political party and Section 29A was inserted into the 1951 Act. Section 2(f) defines a political party as follows:

"Political party" means an association or a body of individual citizens of India registered with the Election Commission as a political party under section 29A.

198. Symbol Order also defines 'political party' in Section 2(h) as follows:

"political party" means an association or body of individual citizens of India registered with the Commission as a political party under Section 29A of the Representation of the People Act, 1951;"

[see Pg 91, CCS]

199. The Statements of Objects and Reasons of the Representation of the People (Amendment) Act, 1988 clearly note that there was no definition of the political party in Election Law. The relevant portion of the said Statements of Objects and Reasons was noted by the Hon'ble Supreme Court in **Indian National Congress (I) v. Institute of Social Welfare & Ors. (2002) 5 SCC 685 [Pg 321 – 341, CCJ-I]** at para 13, which is reproduced here for ready reference:

13. By the Representation of the People (Amendment) Act, 1988 (1 of 1989), Section 29A was inserted in the Act. The Statement of Objects and Reasons appended to the Bill which was introduced in the Parliament and subsequently was converted into an Act, runs as under:

"At present, there is no statutory definition of political party in the Election Law. The recognition of a political party and the allotment of symbols for each party are presently regulated under the Election Symbols (Reservation and Allotment) Order, 1968. It is

> *felt that the Election Law should define political party and lay down procedure for its registration. It is also felt that the political parties should be required to include a specific provision in the memorandum or rules and regulations governing their functioning that they would fully be committed to and abide by the principles enshrined in the preamble to the Constitution."*
>
> **[see Pg 329 – 330, CCJ-I]**

200. Therefore, while defining 'legislature party', the Parliament was aware of the distinction between a political party and members of the political party elected to the House.

201. Therefore, the expression in para 2(1)(b) that "any direction issued by the political party or any person or authority authorized by it on this behalf" means that a whip has to be appointed by the political party to issue directions and the legislature party of a political party cannot arrogate to itself the authority to appoint any such person. Further, in case of conflict between nomination of an authorized person – one authorized by the political party and another authorized by the legislature party – the direction issued by the person authorized by the political party only has to be considered.

202. It is clear that the 'political party' is distinct and different from 'legislature party', even as understood by the Parliament. The use of the phrase 'political party' instead of 'legislature party' in para 2 of the Tenth Schedule is therefore intentional, and treating 'legislature party' to mean the same as 'political party' would render the definition clause in the Tenth Schedule otiose. Under Para 2(1)(b), the direction is referred to must be issued by the 'political party' (being distinct from the 'legislature party'), or by any person or authority authorized by it, i.e. by the 'political party'. The direction for voting must therefore derive its origin from the person authorized by the 'political party' to issue such diktats, and not by any person authorized by the 'legislature party'. When in relation to the same subject matter, different words are used in the same statute, there is a presumption that they are not used in the same sense. **[Ref: (2003) 5 SCC 622 [Pg 342 – 360, CCJ-I]; (1999) 9 SCC 700 [Pg 213 – 286, CCJ-I]; (2001) 3 SCC 609 [Pg 315 – 320, CCJ-I]]**

IMPORTANCE AND SIGNIFICANCE OF POLITICAL PARTIES IN THE DEMOCRATIC STRUCTURE OF THE COUNTRY

203. It is respectfully submitted that political parties are inherent to the Cabinet system of Government established by the Constitution. Political parties perform a crucial role in the overall health of a democracy. In ***Kanhiya Lal Omar* v. *R.K. Trivedi*, (1985) 4 SCC 628 [Pg 1672 – 1685, CCJ-II]**, this Hon'ble Court explained the importance of political parties in the working of a democracy as follows:

> ***10.*** *It is true that till recently the Constitution did not expressly refer to the existence of political parties. But their existence is implicit in the nature of democratic form of Government which our country has adopted. The use of a symbol, be it a donkey or an elephant, does give rise to a unifying effect amongst the people with a common political and economic programme and ultimately helps in the establishment of a Westminster type of democracy which we have adopted with a Cabinet responsible to the elected representatives of the people who constitute the Lower House.* ***The political parties have to be there if the present system of Government should succeed and the chasm dividing the political parties should be so profound that a change of administration would in fact be a revolution disguised under a constitutional procedure. It is no doubt a paradox that while the country as a whole yields to no other in its corporate sense of unity and continuity, the working parts of its political system are so organised on party basis — in other words, "on systematized differences and unresolved conflicts". That is the essence of our system and it facilitates the setting up of a Government by the majority****...*
>
> **[see Pg 1679 – 1680, CCJ-II]**

204. The introduction of Tenth Schedule was the first instance of express recognition of political parties under the Constitution. In ***Kihoto Hollohan's*** case, this Hon'ble Court explained the underlying rationale of Paras 2(1)(a) and 2(1)(b) of the Tenth Schedule by referring to the important relationship between a political party and its elected candidates:

> ***13.*** ***These provisions in the Tenth Schedule give recognition to the role of political parties in the political process****. A political party goes before the electorate with a particular programme and it sets up candidates at the election on the basis of such programme. A person who gets elected as a candidate set up by a political party is so elected on the basis of the programme of that political party.* ***The provisions of Paragraph 2(1)(a) proceed on the premise that political propriety and morality demand that if such a person, after the election, changes his affiliation and leaves the political party which had set him up as a candidate at the election, then he should give up his membership of the legislature and go back before the electorate.*** *The same yardstick is applied to a person who is elected as an Independent candidate and wishes to join a political party after the election.*
>
> **[see Pg 91, CCJ-I]**

44. *But a political party functions on the strength of shared beliefs.* ***Its own political stability and social utility depends on such shared beliefs and concerted action of its Members in furtherance of those commonly held principles. Any freedom of its Members to vote as they please independently of the political party's declared policies will not only embarrass its public image and popularity but also undermine public confidence in it which, in the ultimate analysis, is its source of sustenance — nay, indeed, its very survival****. Intra-party debates are of course a different thing. But a public image of disparate stands by Members of the same political party is not looked upon, in political tradition, as a desirable state of things. Griffith and Ryle on Parliament Functions, Practice and Procedure (1989 edn., p. 119) say:*

> *"Loyalty to party is the norm, being based on shared beliefs. A divided party is looked on with suspicion by the electorate. It is natural for Members to accept the opinion of their Leaders and Spokesmen on the wide variety of matters on which those Members have no specialist knowledge. Generally Members will accept majority decisions in the party even when they disagree. It is understandable therefore that a Member who rejects the party whip even on a single occasion will attract attention and more criticism than sympathy. To abstain from voting when required by party to vote is to suggest a degree of unreliability. To vote against party is disloyalty. To join with others in abstention or voting with the other side smacks of conspiracy."*
>
> *(emphasis supplied)*

Clause (b) of sub-para (1) of Paragraph 2 of the Tenth Schedule gives effect to this principle and sentiment *by imposing a disqualification on a Member who votes or abstains from voting contrary to "any directions" issued by the political party…*

[see Pg 102 – 103, CCJ-I]

205. In ***Kuldip Nayar v. Union of India,*** **(2006) 7 SCC 1**, this Hon'ble Court again emphasised the importance of the Political Parties in the democratic setup and held as follows:

> **"382.** The Tenth Schedule of the Constitution recognises the importance of the political parties in our democratic set-up, especially when dealing with Members of the Houses of Parliament and the Legislative Assemblies or Councils. The validity of the Tenth Schedule was challenged on various grounds, inter alia, that a political party is not a democratic entity and the imposition of whips on Members of Parliament was not in accordance with the constitutional scheme. Rejecting this argument, this Court held that it was open for Parliament to provide that its members, who have

been elected on a party ticket, act according to the decisions made by the party and not against it."

[**see Pg 746, CCJ-I]**

206. Thus, it is respectfully submitted that there is a close connection between the political party, and its elected legislators. The political party is the genus, while its elected legislators are the species. The latter cannot snap itself from the former. This snapping of the connection between the political party and its elected legislators is defection, which is recognized to be a grave political and social evil.

PURPORTED RESOLUTION DATED 21.06.22 PASSED BY RESPONDENTS CHANGING THE CHIEF WHIP COMPLETELY UNCONSTITUTIONAL AND RIGHTLY NOT RECOGNISED BY THE DEPUTY SPEAKER

207. The Respondent's entire case in defence of the disqualification proceedings under para 2(1)(a) and also 2(1)(b) is a purported resolution dated 21.06.2022 passed by certain members of the Legislature Party, seeking to replace the Chief Whip of the ShivSena Political Party. [**Pg 54 – 55, CCC-II**]. It is submitted that such a resolution passed by even by a majority of the members of the legislature party is totally unconstitutional as the prerogative of appointment of the whip is that of the political party and not the legislature party as has been submitted hereinabove.

208. It is submitted that the said resolution was in the teeth of the provisions of para 2(1)(b) itself and the settled legal position in this regard and the Hon'ble Deputy Speaker rightly had not recognised Shri Bharat Gogawale as the Whip as stated in the resolution. This *status quo* had continued till the night of 03.07.2022 when the newly appointed Speaker thereafter recognised Bharat Gogawale as the Chief Whip. Thus, admittedly there was a clear violation of the Whip issued on 03.07.2022 by the Respondents and for this reason alone the Respondents stand disqualified.

209. It is also relevant to point out that the action of the Hon'ble Deputy Speaker on 21/22.06.2022 in not recognising or giving effect to the resolution in so far as the resolution of the Respondents purporting to appoint Bharat Gogawale was not challenged in Writ Petition No. 469/468 of 2022, filed by the Respondents. The Respondents by way of the said Writ Petition had only challenged the operation of the

letter dated 21.06.2022 recognising Shri Ajay Choudhari as the leader of the Shiv Sena Legislature Party. There was not even a semblance of a challenge to the appointment/continuance of Shri Sunil Prabhu as the Chief Whip of the Party in the Writ Petitions filed by the Respondents. In these circumstances, there is absolutely no justification for the Respondents not to obey the Whip issued by Shri Sunil Prabhu on 03.07.2022.

210. It is well settled that every action by an authority having legal consequences cannot be disregarded by a party claiming that such order or action is illegal or null & void. Any order or action taken by an authority has to be challenged in a manner known to law (***Nagar Parishad, Ratnagiri v. Gangaram Narayan Ambekar,* (2020) 7 SCC 275**, #26) [**Pg 1382 – 1407, CCJ-I]**

211. It is therefore submitted that in the absence of any challenge, the Respondents cannot wish away the recognition of Sunil Prabhu as the Chief Whip given by the Speaker which was existing till the night of 03.07.2022. Further, it is clear from the records of the Assembly that there was a clear noting from the Hon'ble Deputy Speaker who was in the chair that the Respondents had violated the whip issued by Sunil Prabhu and had voted in favour of the BJP candidate Shri Rahul Narwekar. In light of this overwhelming evidence, the Respondents are liable to be disqualified on this ground alone.

THE DECISION DATED 03.07.2022 OF THE SPEAKER IS *EX-FACIE* ILLEGAL, UNCONSTITUTIONAL AND NULL & VOID.

212. The Speaker by a decision taken on late night of 03.07.2022 [**Pg 367 – 370, CCC-II**], accorded recognition to Shri Eknath Shinde as the Leader and Shri Bharat Gogawale as the Chief Whip. This decision of the Speaker has been specifically challenged in Writ Petition (Civil) No. 479 of 2022. [**Pg 378 – 408, CCC-I**] As submitted hereinabove, the Legislature Party does not decide the Whip and it is the direction of the Political Party. Detailed submissions have been made herein above in paragraphs 57 to 77 that the Chief Whip is appointed by or under the direction of the Political Party under the provisions of para 2(1)(b). In these circumstances, the purported resolution dated 21.06.2022 by members of the Legislature Party, could not have been acted upon at all.

213. Furthermore, the disqualification proceedings against the Respondents were already underway under para 2(1)(a) from 25.06.2022 and under para 2(1)(b) from 03.07.2022 forenoon itself. In these circumstances, to accord recognition to the actions of these Respondents when the disqualification proceedings were pending, itself is a *mala fide* and unconstitutional exercise.

214. The decision dated 03.07.2022 also cannot be countenanced for the reason that the Speaker had not given any opportunity to the Political Party or asked for an explanation regarding the appointment of the Chief Whip which is the prerogative of the Political Party alone under the scheme of our Constitution. On this ground of failure to adhere to the Principles of Natural Justice as well, the decision of the Speaker dated 03.07.2022 is to be faulted.

215. It is submitted that the decision of the Speaker dated 03.07.2022 is not in the realm of procedural irregularity but is substantive illegality, as the decision to recognise a Whip based on a resolution passed by Legislature Party is *ex-facie* in the teeth of the Constitutional mandate of the Tenth Schedule which only prescribes that a Political Party has the right to appoint a Whip. In. these circumstances, the Respondents cannot validate the decision of the Speaker dated 03.07.2022 by relying upon Article 212 of the Constitution. In this regard, the attention of this Hon'ble Court is invited to the latest decision of this Hon'ble Court in ***Ashish Shelar v. Maharashtra Legislative Assembly,*** **2022 SCC OnLine SC 105 [Pg 1414 – 1446, CCJ-I]**, wherein this Hon'ble Court relied upon the earlier decision of the Constitutional Bench of this Hon'ble Court *in* ***Raja Ram Pal v. Hon'ble Speaker, Lok Sabha,*** **(2007) 3 SCC 184,** and held that the proceedings which may be tainted on account of substantive or gross illegality, are not protected from judicial scrutiny. Relying upon the dictum of ***Raja Ram Pal*** in paragraph 431, elucidating the principle of judicial review in relation to the exercise of parliamentary provisions, in paragraph 31 of the judgment, the relevant portion of the ***Raja Ram Pal*** is quoted, which reads as follows:

> ***"31.*** *The moot question is about the maintainability of the challenge in respect of the stated resolution adopted by the Legislative Assembly. The scope of interference by the Court has been well-delineated in successive decisions of the Constitution Bench of this Court. This Court has consistently expounded that the judicial scrutiny regarding the exercise of legislative privileges (including power to punish for contempt of the House) is*

constricted and cannot be stricto sensu on the touchstone of judicial review as generally understood in other situations. In that, there is complete immunity from judicial review in matters of irregularity of procedure. The Constitution Bench of this Court in Raja Ram Pal30 delineated the principles on the basis of catena of decisions noted in the said decision as follows:

Summary of the principles relating to parameters of judicial review in relation to exercise of parliamentary provisions

431. *We may summarise the principles that can be culled out from the above discussion. They are:*

(a) Parliament is a coordinate organ and its views do deserve deference even while its acts are amenable to judicial scrutiny;

(b) The constitutional system of government abhors absolutism and it being the cardinal principle of our Constitution that no one, howsoever lofty, can claim to be the sole judge of the power given under the Constitution, mere coordinate constitutional status, or even the status of an exalted constitutional functionaries, does not disentitle this Court from exercising its jurisdiction of judicial review of actions which partake the character of judicial or quasi-judicial decision;

(c) The expediency and necessity of exercise of power or privilege by the legislature are for the determination of the legislative authority and not for determination by the courts;

(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 scrutinising 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;

(j) If a citizen, whether a non-Member or a Member of the legislature, complains that his fundamental rights under Article 20 or 21 had been contravened, it is the duty of this Court to examine the merits of the said contention, especially when the impugned action entails civil consequences;

(k) There is no basis to the claim of bar of exclusive cognizance or absolute immunity to the parliamentary proceedings in Article 105(3) of the Constitution;

(l) The manner of enforcement of privilege by the legislature can result in judicial scrutiny, though subject to the restrictions contained in the other constitutional provisions, for example Article 122 or 212;

(m) Article 122(1) and Article 212(1) displace the broad doctrine of exclusive cognizance of the legislature in England of exclusive cognizance of internal proceedings of the House rendering irrelevant the case-law that emanated from courts in that jurisdiction; inasmuch as the same has no application to the system of governance provided by the Constitution of India;

(n 6) Article 122(1) and Article 212(1) prohibit the validity of any proceedings in legislature from being called in question in a court merely on the ground of irregularity of procedure;

(o) The truth or correctness of the material will not be questioned by the court nor will it go into the adequacy of the material or substitute its opinion for that of the legislature;

(p) Ordinarily, the legislature, as a body, cannot be accused of having acted for an extraneous purpose or being actuated by caprice or mala fide intention, and the court will not lightly presume abuse or misuse, giving allowance for the fact that the legislature is the best judge of such matters, but if in a given case, the allegations to such effect are made, the court may examine the validity of the said contention, the onus on the person alleging being extremely heavy;

(q) The rules which the legislature has to make for regulating its procedure and the conduct of its business have to be subject to the provisions of the Constitution;

(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;

(t) Even if some of the material on which the action is taken is found to be irrelevant, the court would still not interfere so long as there is some relevant material sustaining the action;

(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, mala fides, non-compliance with rules of natural justice and perversity.*"*

[**see Pg 1423 – 1424, CCJ-I**]

216. Further, relying upon the judgment in ***Sub-Committee on Judicial Accountability v. Union of India*, (1991) 4 SCC 699,** in paragraph 33 of the judgment, this Hon'ble Court held as follows:

33. To the same end, dictum of the Constitution Bench in Sub-Committee on Judicial Accountability v. Union of India may be apposite. In paragraph 61 of the reported decision, the Court observed thus:

61. *But where, as in this country and unlike in England, there is a written Constitution which constitutes the fundamental and in that sense a "higher law" and acts as a limitation upon the legislature and other organs of the State as grantees under the Constitution, the usual incidents of parliamentary sovereignty do not obtain and the concept is one of 'limited government'. Judicial review is, indeed, an incident of and flows from this concept of the fundamental and the higher law being the touchstone of the limits of the powers of the various organs of the State which derive power and authority under the Constitution and that the judicial wing is the interpreter of the Constitution and, therefore, of the limits of authority of the different organs of the State. It is to be noted that the British Parliament with the Crown is supreme and its powers are unlimited and courts have no power of judicial review of legislation.*

[**See Page 1425 – 1426, CCJ-I]**

217. Para 37 of the judgment brings out the summary of the legal position and holds as under:

> ***"37.*** *From the exposition in these successive Constitution Bench decisions referred to above, it is not possible to countenance the submission of the learned counsel for the respondent-State that the enquiry must be limited to one of the parameters specified in Raja Ram Pal39 and, in this case, only clause (s) - "The proceedings which may be tainted on account of substantive or gross illegality or unconstitutionality are not protected from judicial scrutiny". On the other hand, we lean in favour of taking the view that each of the parameters is significant and permissible area of judicial review in relation to exercise of parliamentary privileges including clauses (f), (g), (s) and (u). In one sense, clause (u) is a comprehensive parameter articulated by the Constitution Bench in Raja Ram Pal40, as it predicates that "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, mala fides, non-compliance with rules of natural justice and perversity".*
>
> [**See Page 1427, CCJ-I**]

218. It is thus submitted that the decision of the Speaker dated 03.07.2022 cannot be covered under the cloak of procedural infirmity under Article 212 as it clearly falls in the paradigm of substantive illegality which ought to be interfered with by this Hon'ble Court in the exercise of judicial review.

LEADER OF THE HOUSE LEGISLATURE PARTY IS APPOINTED BY THE POLITICAL PARTY

219. It is submitted that similar to the Party Whip, the Leader of the House Legislature Party is also appointed as per the decision of the Political Party, irrespective of whether the formal intimation of the appointment is given by the Legislature party or not. This is because as explained above, political parties play a crucial role in our democratic setup. The elected members of the legislature owe their election to the platform that the party provides.

220. Therefore, the elected legislators cannot contradict the party leadership and appoint their own leader after committing the unconstitutional act of defection. Permitting a majority of the legislature party leaders to select a different leader than the one approved by the

political party would give a flavour of legitimacy to the unconstitutional acts of such members.

THE SUMMONS DATED 08.07.2022 ISSUED BY THE SPEAKER ARE *EX FACIE* ILLEGAL

221. The Petitioners in Writ Petition (Civil) No. 538 of 2022 have challenged the issuance of summons dated 08.07.2022 to 14 MLAs of the ShivSena, allegedly for the violation of the Whip issued by Bharat Gogawale on 04.07.2022 [**Pg 409 – 460, CCC-I]**. It is submitted that in view of the submissions made hereinabove that the whips are issued by the Political Party and not by Legislature Party, the purported Whip issued on 04.07.2022 by Bharat Gogawale is itself unconstitutional and illegal.

222. More importantly, the decision dated 03.07.2022 of the Speaker recognising Bharat Gogawale as the Chief Whip is specifically impugned and challenged in Writ Petition (Civil) No. 479 of 2022, and the detail submissions regarding the illegality of the said decision have already been adverted to above. If the Petitioner is successful in the challenge to the Speaker's decision dated 03.07.2022, inevitably, as a sequitor, the purported Whip issued by Bharat Gogawale does not stand, and therefore the disqualification proceedings have to inevitably fail.

CHAPTER 8
SCOPE OF JUDICIAL REVIEW OF INTRA-PARTY DECISIONS

QUESTION (H): ARE INTRA-PARTY DECISIONS AMENABLE TO JUDICIAL REVIEW? WHAT IS THE SCOPE OF THE SAME?

223. The petitioners respectfully submit that in exceptional circumstances, intra-party decisions, which have a bearing on constitutional validity of acts committed by members of the House, are amenable to judicial review. The scope of the Constitutional Court's interference in intra-party decisions is extremely limited and confined to upholding of Constitutional provisions and values.

224. However, in the facts of the present case, it is respectfully submitted that the dispute between the petitioners and the respondents is not an intra-party dispute. This is despite the fact that Sh. Eknath Shinde has filed a petition under Para 15 of the Symbols Order claiming that his group is the real Shiv Sena.

225. Under **Paragraph 15** of the **Symbols Order [Pg 89 – 108, CCS]**, the Election Commission has been conferred with the power to decide which splinter group or rival section ***of*** a recognized political party is entitled to call itself that political party. Paragraph 15 reads as under:

> ***15. Power of Commission in relation to splinter groups or rival sections of a recognised political party.****—When the Commission is satisfied on information in its possession that there are rival sections or groups* ***of a recognised political party*** *each of whom claims to be that party the Commission may, after taking into account all the available facts and circumstances of the case and hearing such representatives of the sections or groups and other persons as desire to be heard decide that one such rival section or group or none of such rival sections or groups is that recognised political party and the decision of the Commission shall be binding on all such rival sections or groups.*
>
> **[see Pg 101, CCS]**

226. At the time when the Symbols Order was enacted in the year 1968, there was no Tenth Schedule in the Constitution.

227. As per Para 2(1)(a) of the Tenth Schedule, the acts of omission or commission of a member of a House, that have been judicially recognized as amounting to voluntarily giving up of membership of the political party, result in disqualification of such member(s) from the House.

228. Thus, what is needed to attract Para 2(1)(a) is not the formal giving up of membership of the political party, but the commission of acts that amount to giving up membership of the political party.

229. The determination under Para 2(1)(a) as to whether the membership of the political party has been given up is of the Speaker under Para 6, or of the Constitutional Court in case it takes up the issue itself as in the *Rajendra Singh Rana* case.

230. It is respectfully submitted that such determination would be binding not only for the purpose of determining whether the person is disqualified from membership of the House, but would also be binding for other purposes and on other authorities. For instance, the determination would be binding on the Election Commission while deciding the claim under Para 15 if the person who is found to have given up membership of his political party makes the absurd claim that he is the political party.

231. It is respectfully submitted that a harmonious construction of Paragraph 15 of the Symbols Order with Paragraph 2(1)(a) of the Tenth Schedule would necessarily imply that a splinter group or rival faction of a political party, which has voluntarily given up membership of the political party and thereby incurred disqualification in terms of para 2(1)(a), cannot be permitted to stake a claim to be that political party.

232. In other words, if acts of defiance by a group of members of the House qua the directions of their political party are constitutionally treated as voluntary giving up of membership of the political party under paragraph 2(1)(a), such defiance cannot be rewarded by a declaration under Paragraph 15 of the Symbols Order that the disqualified group of members are that political party.

233. Therefore, a group of legislators, who have incurred disqualification under Para 2(1)(a) of the Tenth Schedule, have no locus to maintain a claim under Paragraph 15 of the Symbols Order claiming to be the political party, of which they are Constitutionally deemed to have given up membership.

234. Therefore, if members of the Eknath Shinde group are constitutionally deemed to have given up their membership of the ShivSena political party, they have no locus to maintain a claim to be the ShivSena under Paragraph 15 of the Symbols Order.

CHAPTER 9
POWER OF THE GOVERNOR TO INVITE A PERSON/ PARTY TO FORM THE GOVERNMENT

QUESTION (I): WHAT IS THE EXTENT OF DISCRETION AND POWER OF THE GOVERNOR TO INVITE A PERSON TO FORM THE GOVERNMENT, AND WHETHER THE SAME IS AMENABLE TO JUDICIAL REVIEW?

235. It is respectfully submitted that the exercise of discretion by the Governor in inviting a person to form the government must be in accordance with Constitutional provisions and values. While democracy and rule by majority is part of the Constitutional scheme, the prohibition on defection is equally a Constitutional mandate. Hence, while according respect to the principle of rule by majority as envisaged in a democracy, the Governor must have regard to the Constitutional prohibition on defection. Consequently, the Governor is duty-bound to refuse to recognize a majority that has been secured through unconstitutional means. The scope of judicial review of the exercise of discretion by the Governor would necessarily extend to ensuring that the discretion was not exercised in a manner that disregarded the Constitutional methods of securing the right to govern.

THE ACTION OF THE GOVERNOR IN SWEARING-IN RESPONDENT NO. 4 AS CHIEF MINISTER IS *EX-FACIE* UNCONSTITUTIONAL.

236. Admittedly, in the facts of the present case, there is no merger as envisaged under para 4 of the Tenth Schedule. These rebel MLAs have not merged in any other political party or formed a new political party, therefore even if it is assumed they formed 2/3rd strength of the Legislature party, para 4 of the Tenth Schedule is not at all attracted.

237. The President of the Shiv Sena (Shri Uddhav Thackeray) had publicly and admittedly not aligned/supported the BJP. In these circumstances, the satisfaction of the Governor for the purpose of calling upon Respondent No. 4 to be the Chief Minister as the head of 39 rebel MLAs of Shiv Sena (which is not endorsed by the Shiv Sena Political Party) is by itself ex facie unconstitutional.

238. The Constitution prohibits recognition of rebel MLAs of a political party under Tenth Schedule, and the action of the Governor legitimises what is expressly prohibited by the

Constitution. The Governor has sought to recognise what the Constitution prohibits. The Governor is also not empowered under law to recognise "Who is the Shiv Sena"? That is the domain of the Election Commission. Admittedly, recognition of the Shiv Sena and its leadership by Uddhav Thackeray has been endorsed by the Election Commission and there was no dispute whatsoever or challenge before the appropriate authority as on 30.06.2022.

239. In these circumstances, the Governor in his *ipsi dixit* guided by his political masters acted *mala fide* and in the teeth of the provisions of the Constitution granted de-facto recognition to the 39 rebel MLAs by inviting Respondent No. 4 to be the Chief Minister.

240. It is submitted that the Governor cannot recognise the rebel MLAs and of political parties as that would ring a death knell on the working of a multi-party democracy. The Sarkaria Commission's recommendations approved by this Hon'ble Court in ***Rameshwar Prasad & Ors. v. Union of India & Anr,*** **(2006) 2 SCC 1 [Pg 380 – 619, CCJ-I]** also categorically emphasise the importance of 'sanctity' of the party system and states that the Governor in arriving at a satisfaction to invite a Chief Minister can only recognize 'alliance of parties' and not an alliance of a party (in this case the BJP) and rebel MLAs of another party. In this regard para 65 of *Rameshwar Prasad* reads as follows:

> *"65. Para 4.11.04 of the Sarkaria Commission Report specifically deals with the situation where no single party obtains absolute majority and provides the order of preference the Governor should follow in selecting a Chief Minister. The order of preference suggested is:*
>
> 1. *An alliance of parties that was formed prior to the elections.*
>
> 2. *The largest single party staking a claim to form the Government with the support of others, including "independents".*
>
> 3. *A post-electoral coalition of parties, with all the partners in the coalition joining the Government.*
>
> 4. *A post-electoral alliance of parties, with some of the parties in the alliance forming a Government and the remaining parties, including "Independents" supporting the Government from outside."*

241. The discretion vested by the Constitution in the Governor for the purposes of Government formation or inviting a person as Chief Minister is not an untrammelled discretion, it has to be exercised based on relevant material. The relevant material cannot take into account illegally cobbled up numbers which are not sanctioned by the Constitution and which derails the very system of party democracy which forms the bedrock of our constitutional democracy and is protected by the Tenth Schedule. The actions of the Governor are amenable to judicial review.

THE APPOINTMENT OF RESPONDENT NO.4 IS HIT BY THE BAR OF ARTICLE 164(1-B)

242. It is most respectfully submitted that the entire basis of the Tenth Schedule to the Constitution to prevent defections and horse-trading are being rendered otiose as the defectors are being rewarded for committing the constitutional sin of defection. Article 164(1-B) of the Constitution was included which reads as under:

> "Article 164. Other provisions as to Ministers. – (1)…
> (1-B) A member of the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council, as the case may be, before the expiry of such period, till the date on which he is declared elected, whichever is earlier."

243. It is submitted that the actions of the Hon'ble Governor impugned herein are in the teeth of Article 164(1-B).

244. The passing of a formal order of disqualification does not carry the date of disqualification to the passing of the order of disqualification. It is an ex post facto recognition of the factum of disqualification. It is submitted that the Respondent No.4 was already under a disqualification on 30.06.2022. This relevant factor could not have been ignored/brushed aside by the Governor when he took a decision to invite

Respondent No.4 to form the Government. Attention of this Hon'ble Court is invited to ***Rajendra Singh Rana & Ors. V. Swami Prasad Maurya & Ors.*, (2007) 4 SCC 270**, para 34 which reads as follows:

> *"34. As we see it, the act of disqualification occurs on a member voluntarily giving up his membership of a political party or at the point of defiance of the whip issued to him. Therefore, the act that constitutes disqualification in terms of para 2 of the Tenth Schedule is the act of giving up or defiance of the whip. The fact that a decision in that regard may be taken in the case of voluntary giving up, by the Speaker at a subsequent point of time cannot and does not postpone the incurring of disqualification by the act of the legislator. Similarly, the fact that the party could condone the defiance of a whip within 15 days or that the Speaker takes the decision only thereafter in those cases, cannot also pitch the time of disqualification as anything other than the point at which the whip is defied. Therefore in the background of the object sought to be achieved by the Fifty-second Amendment of the Constitution and on a true understanding of para 2 of the Tenth Schedule, with reference to the other paragraphs of the Tenth Schedule, the position that emerges is that the Speaker has to decide the question of disqualification with reference to the date on which the member voluntarily gives up his membership or defies the whip. It is really a decision ex post facto. The fact that in terms of para 6 a decision on the question has to be taken by the Speaker or the Chairman, cannot lead to a conclusion that the question has to be determined only with reference to the date of the decision of the Speaker. An interpretation of that nature would leave the disqualification to an indeterminate point of time and to the whims of the decision-making authority. The same would defeat the very object of enacting the law. Such an interpretation should be avoided to the extent possible. We are, therefore, of the view that the contention that (sic it is) only on a decision of the Speaker that the disqualification is incurred, cannot be accepted. This would mean that what the learned Chief Justice has called the snowballing effect, will also have to be ignored and the question will have to be decided with reference to the date on which the membership of the legislature party is alleged to have been voluntarily given up.*
>
> **[see Pg 847 – 848, CCJ-I]**
>
> *…*
>
> *48. The act of giving a letter requesting the Governor to call upon the leader of the other side to form a Government, itself would amount to an act of voluntarily giving up the membership of the party on whose ticket the said members had got elected. Be it noted that on 26-08-2003, the leader of their party had recommended to the Governor, a dissolution of the Assembly. The first eight were accompanied by Shivpal Singh Yadav, the General Secretary of the Samajwadi Party. In Ravi Naik this Court observed: (SCC p. 649, para 11)*

> *"A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which the belongs."*

49. Clearly, from the conduct of meeting the Governor *accompanied by the General Secretary of the Samajwadi Party, the party in opposition and the submission party to form a Government as against the advice of the Chief Minister belonging to their original party to dissolve the assembly, an irresistible inference arises that the 13 members have clearly given up their membership of the BSP. No further evidence or enquiry is needed to find that their action comes within para 2(1)(a) of the Tenth Schedule. Then the only question is whether they had shown at least prima facie that a split had occurred in the original political party on 26-8-2003 and they had separated from it along with at least 24 others, so as to make up one-third of the legislature party."*

[see Pg 854, CCJ-I]

245. Therefore, it is respectfully submitted that the appointment of Sh. Eknath Shinde as Chief Minister of Maharashtra is unconstitutional and liable to be set aside.

CHAPTER 10
SCOPE OF ELECTION COMMISSION'S POWER TO DETERMINE A SPLIT WITHIN A PARTY

QUESTION (J): WHAT IS THE SCOPE OF THE POWERS OF THE ELECTION COMMISSION OF INDIA WITH RESPECT TO DETERMINATION OF A SPLIT WITHIN A PARTY?

246. The petitioners respectfully submit that the Election Commission of India is empowered under the Symbols Order of 1968 to determine the question as to which faction is entitled to the symbol of a political party, when there is a split within the political party. However, the Election Commission has no power to determine the ingredients of the constitutional sin of disqualification under the Tenth Schedule. Hence, as per settled principles of harmonious construction, the Election Commission while exercising its powers under the Symbols Order cannot proceed on the basis that a faction or group of MLAs belong to a political party, when that faction or group of MLAs have committed acts that amount to "voluntarily giving up membership" of the political party in terms of Para 2(1)(a) of the Tenth Schedule. Hence, in a case where a split in a political party has been occasioned by acts which constitute Disqualification under the Tenth Schedule, the Election Commission would have to respect and follow the decision taken by the competent authority on the aspect of disqualification.

247. As submitted in Chapter 8, under **Paragraph 15** of the **Symbols Order**, the Election Commission has been conferred with the power to decide which splinter group or rival section ***of*** a recognized political party is entitled to call itself that political party. Paragraph 15 reads as under:

> ***15. Power of Commission in relation to splinter groups or rival sections of a recognised political party.***—*When the Commission is satisfied on information in its possession that there are rival sections or groups* ***of a recognised political party*** *each of whom claims to be that party the Commission may, after taking into account all the available facts and circumstances of the case and hearing such representatives of the sections or groups and other persons as desire to be heard decide that one such rival section or group or none of such rival sections or groups is that recognised political party and the decision of the Commission shall be binding on all such rival sections or groups.*
>
> **[see Pg 101, CCS]**

248. At the time when the Symbols Order was enacted in the year 1968, there was no Tenth Schedule in the Constitution.

249. As per Para 2(1)(a) of the Tenth Schedule, the acts of omission or commission of a member of a House, that have been judicially recognized as amounting to voluntarily giving up of membership of the political party, result in disqualification of such member(s) from the House.

250. Thus, what is needed to attract Para 2(1)(a) is not the formal giving up of membership of the political party, but the commission of acts that amount to giving up membership of the political party.

251. The determination under Para 2(1)(a) as to whether the membership of the political party has been given up is of the Speaker under Para 6, or of the Constitutional Court in case it takes up the issue itself as in the *Rajendra Singh Rana* (Supra) case.

252. It is respectfully submitted that such determination would be binding not only for the purpose of determining whether the person is disqualified from membership of the House, but would also be binding on the Election Commission while deciding the claim under Para 15 if the person who is found to have given up membership of his political party makes the absurd claim that he is the political party.

253. It is respectfully submitted that a harmonious construction of Paragraph 15 of the Symbols Order with Paragraph 2(1)(a) of the Tenth Schedule would necessarily imply that a splinter group or rival faction of a political party, which has voluntarily given up membership of the political party and thereby incurred disqualification in terms of para 2(1)(a), cannot be permitted to stake a claim to be that political party.

254. In other words, if acts of defiance by a group of members of the House qua the directions of their political party are constitutionally treated as voluntary giving up of membership of the political party under paragraph 2(1)(a), such defiance cannot be rewarded by a declaration under Paragraph 15 of the Symbols Order that the disqualified group of members are that political party.

255. A group of legislators, who have incurred disqualification under Para 2(1)(a) of the Tenth Schedule, have no locus to maintain a claim under Paragraph 15 of the Symbols

Order claiming to be the political party, of which they are Constitutionally deemed to have given up membership.

CONCLUSION

256. In view of the above submissions, it is imperative for this Hon'ble Court *as the sentinel on the qui vive* and the ultimate guardian of the Constitution of India to itself consider and decide the question of disqualification of the Respondents under Paras 2(1)(a) and 2(1)(b) of the Tenth Schedule. As a corollary to the Respondents' disqualification, the subsequent events, which are a direct outcome of the Respondents' illegal acts, are vitiated and liable to be set aside, namely:

(i) the Hon'ble Governor's directions dated 28.06.2022 for holding of a floor test;
(ii) the swearing in of Sh. Eknath Shinde as Chief Minister on 30.06.2022;,
(iii) the appointment of Hon'ble Speaker on 03.07.2022;
(iv) the floor test held on 04.07.2022, and
(v) the claim filed by the Eknath Shinde group/Respondents before the Election Commission under Para 15 of the Symbols order;

257. It is respectfully submitted that restoration of *status quo ante* is warranted in the facts and circumstances of the present case.

ANNEXURE A

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 469, 468, 470, 479, 493 & 538 OF 2022

IN THE MATTER OF: [LEAD MATTER WP(C) No. 493 of 2022]

SUBHASH DESAI … PETITIONER

VERSUS

PRINCIPAL SECRETARY,
GOVERNOR OF MAHARASHTRA & ORS. … RESPONDENTS

LIST OF DATES AND MATERIAL EVENTS

Sl. No.	Date	Particulars
1.	19.06.1966	The Shiv Sena was founded by Late Shri Balasaheb Thackeray to espouse the ideology and legacy of the Maratha King Chhatrapati Shivaji Maharaj and has been recognized as a State Political party by the Election Commission. Late Shri. Balasaheb Thackeray was the President (ShivsenaPramukh) of the Shiv Sena from its very inception and continued in that role till his demise on 17th November 2012. After the demise of Late Shri Balasaheb Thackeray, Shri Uddhav Thackeray was unanimously elected to be the President (ShivSena Paksha Pramukh) of the Shiv Sena Political Party and has continued to hold the position. At present, Shri. Uddhav Thackeray unequivocally continues to be the Paksha Pramukh of the Shiv Sena i.e. President of ShivSena, which is the highest position as provided in the Constitution of ShivSena. Copy of the Constitution is annexed at **[Page 109 – 132 of Common Compilation of Statue/Rules/Research Material (***hereinafter referred to as* **"CCS")]**
2.	1985	In view of the repeated defections of elected MLAs/MPs, and with a view to curb horse-trading of an elected representative, the Constitution was amended to include the Tenth Schedule by virtue of the 52nd Amendment to the Constitution, with the following Statement of Objects and Reasons:

<table>
<tr><td></td><td></td><td>" The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundation of our democracy and the principles which sustain it. With this object, an assurance was given in the Address by the President to Parliament that the Government intended to introduce in the current session of Parliament an anti-defection Bill. This Bill is meant for outlawing defection and fulfilling the above assurance." [Page 145 of CCS]</td></tr>
<tr><td>3.</td><td>07.04.2004</td><td>The Tenth Schedule to the Constitution was amended vide the 92nd Amendment and Paragraph 3 thereof, which permitted 1/3rd members of a legislature party to split, was omitted. Split is no longer available as a defense against disqualification under the Tenth Schedule. [Page 49 – 54 of CCS]</td></tr>
<tr><td>4.</td><td>23.01.2018</td><td>Organizational elections of the ShivSena Political Party for the term 2018 – 2023 were held, wherein Shri Uddhav Thackeray was elected as its President. The results were duly communicated in the prescribed format to the Election Commission on 27.02.2018.[Page 1 – 4 of Common Convenience Compilation Vol-II (hereinafter referred to as "CCC-II")]</td></tr>
<tr><td>5.</td><td>Oct 2019</td><td>The elections to the 14th Legislative Assembly of Maharashtra were held. The seat distribution in the said election, inter se political parties, was/is as follows:
<table>
<tr><th>SL. NO.</th><th>NAME OF THE POLITICAL PARTY</th><th>NUMBER OF SEATS</th><th>STRENGTH AS ON 01.06.2022</th></tr>
<tr><td>1.</td><td>Shiv Sena</td><td>56</td><td>55</td></tr>
<tr><td>2.</td><td>NCP</td><td>53</td><td>53</td></tr>
<tr><td>3.</td><td>INC</td><td>44</td><td>44</td></tr>
<tr><td>4.</td><td>BJP</td><td>106</td><td>106</td></tr>
<tr><td>5.</td><td>BVA</td><td>3</td><td>3</td></tr>
<tr><td>6.</td><td>AIMIM</td><td>2</td><td>2</td></tr>
<tr><td>7.</td><td>SP</td><td>2</td><td>2</td></tr>
<tr><td>8.</td><td>PJP</td><td>2</td><td>2</td></tr>
<tr><td>9</td><td>CPI(M)</td><td>1</td><td>1</td></tr>
</table></td></tr>
</table>

		<table><tr><td>10</td><td>MNS</td><td>1</td><td>1</td></tr><tr><td>11.</td><td>PWP</td><td>1</td><td>1</td></tr><tr><td>12.</td><td>Swabhimani Paksha</td><td>1</td><td>1</td></tr><tr><td>13.</td><td>Jan Suraj</td><td>1</td><td>1</td></tr><tr><td>14.</td><td>Rashtriya Samaj Paksha</td><td>1</td><td>1</td></tr><tr><td>15.</td><td>KSP</td><td>1</td><td>1</td></tr><tr><td>16.</td><td>Independents</td><td>13</td><td>13</td></tr><tr><td colspan="2">Total</td><td>288</td><td>287</td></tr></table>
6.	Nov 2019	A post-poll alliance was formed between the Shiv Sena, the NCP as well as the INC called Maha Vikas Agadhi (MVA) to form a stable government in the State of Maharashtra, with the President of the Shiv Sena i.e., Shri Uddhav Thackeray, being sworn in as the Chief Minister.
7.	23.11.2019	Prior to the swearing-in of Shri Thackeray, the Hon'ble Governor had hastily sworn in Shri Devendra Fadnavis early in the morning as the Chief Minister of Maharashtra. [**Note:** This Hon'ble Court in *Shiv Sena v Union of India,* (2019) 10 SCC 809, directed an immediate Floor Test and Shri Devendra Fadnavis resigned before facing the floor of the house.]
8.	25.11.2019	Shri Sunil Prabhu was appointed as the Chief Whip of the SSLP, with the blessings of Shri Uddhav Thackrey, the President of the ShivSena Political Party and the same was duly notified to the Speaker of the Maharashtra Legislative Assembly. [**Page 710 – 718 of CCC-II]**
9.	April - May 2020	The Hon'ble Governor has been at loggerheads with the MVA government and has almost created a political crisis. The Governor was sitting on Sri Uddhav Thackeray's recommendation for nomination to the Maharashtra Legislative Council, despite the period of 6 months as an unelected member was about to expire on 27.05.2020. Further, the Governor had blocked holding of Speaker's election.
10.	20.06.2022	The BJP has been attempting to create divisions within the Shiv Sena. In the recently conducted MLC elections, wherein despite

		having the requisite number of MLAs on its side, the MVA alliance led by the Shiv Sena lost a seat to the BJP. This was because of cross-voting within the MVA, and particularly within the Shiv Sena at the behest of BJP.
11.		It was widely reported in the media that Shri Eknath Shinde, who was then a Cabinet Minister of Urban Development and Public Works (Public Undertakings) has along with certain other delinquent MLAs of the ShivSena, gone into hiding in the BJP ruled neighbouring State of Gujarat.
12.	21.06.2022	To contain and allay the apprehensions that were arising in the party, post the MLC elections, an urgent meeting of the Shiv Sena Legislature Party was called for on 21.06.2022. [**Page 5 – 6 of CCC-II**]
13.	21.06.2022	Shri Eknath Shinde along with certain other delinquent MLAs did not attend the above-mentioned meeting dated 21.06.2022.[**Page 7 – 17 of CCC-II**] The party resolved in the said meeting to remove Shri Eknath Shinde from the position of the leader of the Shiv Sena Legislature Party (SSLP) and appoint Shri Ajay Choudhari instead.[**Page 18 – 19 of CCC-II**]
14.	21.06.2022	The decision to remove Eknath Shinde was communicated by Shri Uddhav Thackeray to the Hon'ble Deputy Speaker. [**Page 20 – 21 of CCC-II**] After due verification, **the Hon'ble Deputy Speaker accepted the change of leadership of ShivSena in the House**.[**Page 22 – 23 of CCC-II**]
15.	22.06.2022	In the larger interests of the party, it was thought fit to call for another Legislature Party meeting to give one more opportunity to the MLAs who were absent in the meeting dated 21.06.2022, to show their loyalty and support to their original political party. Hence, another meeting of the SSLP was called. Individual notices were issued to all MLAs of the Shiv Sena and it was made adequately clear that "*failure to participate in the meeting without providing valid and adequate reasons in writing, communicated in advance to the undersigned, will result in consequential action against you under the relevant provisions of the Constitution of India."* [**Page 24 – 27 of CCC-II**]

16.	22.06.2022	Despite the importance of the meeting called for on 22.06.2022, aimed at consolidating the SSLP's strength and to contain any possible horse-trading, several dissident MLAs did not attend the meeting.[**Page 28 – 36 of CCC-II**] Instead, the delinquent MLAs sitting in BJP ruled States sent communications rejecting the holding of the meeting as illegal which itself shows that those MLAs had been working contrary to the diktats of the original political party. [**Page 37 – 40 of CCC-II**]
17.	22.06.2022	Shri Sunil Prabhu, in the capacity of the Chief Whip, responded to the communication dated 22.06.2022 of the delinquent MLAs rejecting the reasons given for their absence from the SSLP meeting as an afterthought, frivolous, backdated, and proof of them acting contrary to the interests of the original political party. [**Page 41 of CCC-II**]
18.	22.06.2022	The delinquent MLAs of ShivSena allegedly passed a 'resolution' dated 21.06.2022 whilst in Guwahati purporting to appoint Eknath Shinde as the leader of the SSLP and Bharat Gogawale as the Chief Whip. [**Page 42 – 48 of CCC-II**] and the same was sent to the Deputy Speaker's office on 22.06.2022
19.	22.06.2022	Shri Eknath Shinde wrote to the Deputy Speaker communicating about his appointment as leader of SSLP. [**Page 54 – 55 of CCC-II**]
20.	22.06.2022	Simultaneously, a purported notice for removal of the Deputy Speaker Mr. Narhari Zirwal under Rule 11 of the Maharashtra Assembly Rules read with Article 179 of the Constitution was received at the Legislature Secretariat, expressing no confidence in the Deputy Speaker. This notice was hand delivered by an unknown courier and not by any MLA. It is also relevant to note that none of the purported signatory of the notice had personally delivered any such notice nor it was sent through the registered email address of any of them. [**Page 49 – 53 of CCC-II**]
21.	22.06.2022	The SSLP in its meeting took note of Shri Eknath Shinde and rebel MLAs and the fact that they had indulged in anti-party activities and were trying to destabilize the MVA government. In view of this, it was resolved in the SSLP meeting at the then CM's

		residence that necessary legal action shall be taken under the Tenth Schedule against errant MLAs. [**Page 56 – 57 of CCC-II**]
22.	23.06.2022	Shri Sunil Prabhu, filed disqualification petitions under para 2(1)(a) of Tenth Schedule seeking disqualification of Shri Eknath Shinde, and 15 other delinquent MLAs of ShivSena. [**Page 59 – 211 of CCC-II**]
23.	24.06.2022	It was widely published in the news reports that the rebel MLAs led by Shri Eknath Shinde were acting in collusion with the BJP and their entire logistical arrangement in Guwahati was made by the BJP leaders. [**Page 214 - 222 of CCC-II**] [**Page 232 – 233 of CCC-II**]
24.	24.06.2022	The Secretary of Maharashtra Legislative Assembly received an e-mail from an Advocate named Vishal Acharya attaching notice for removal of speaker dated 21.06.2022. On the same day, the Secretary of the Assembly communicated the decision of the Dy. Speaker to the e-mail of Vishal Acharya refusing to take on record the communication dated 22.06.2022 until the genuineness and veracity of any such communication and its signatories was ascertained. [**Page 223 of CCC-II**]
25.	25.06.2022	One of the dissident MLA Mr. Deepak Kesarkar in a live interview declared that the dissident MLAs had formed a new group and named it 'Shiv SenaBalasaheb' and had also announced that they will have a separate leader, whip, office and everything else just like a party has. [**Page 234 – 239 of CCC-II**]
26.	25.06.2022	The Hon'ble Deputy Speaker, after due verification, was pleased to issue notices to the delinquent MLAs under Rule 6 of Maharashtra Legislative Assembly (Disqualification on ground of Defection) Rules, 1986 read with Tenth Schedule of the Constitution of India, asking the delinquent MLAs to file their replies by 5.30 pm on 27.06.2022.[**Page 243 – 246 of CCC-II**]
27.	25.06.2022	A National Executive Meeting of the Shiv Sena was held. The said meeting was attended by over 163 representatives of the National Executive and the leadership of Shri. Uddhav Thackeray as the President of Shiv Sena was unanimously and unequivocally accepted by the National Executive.[**Page 247 – 260 of CCC-II**]

28.	25.06.2022	Shri Sunil Prabhu filed an additional affidavit in the disqualification proceedings *inter alia* containing the media reports that showed the hobnobbing of the delinquent MLAs with the BJP leaders.[**Page 261 – 267 of CCC-II**]
29.	25.06.2022	The Secretary, ShivSena wrote a letter to the Election Commission of India objecting to any party being created in the name of or using the names 'ShivSena' or 'Balasaheb'. [**Page 268 of CCC-II**]
30.	25.06.2022	Shri Sunil Prabhu filed disqualification petitions against 2 independent MLAs and one MLA belonging to Prahar Janshakti Party. The petition against the independent MLAs were filed on the ground that they gave up their independent status by taking part in the resolution dated 21.06.2022 passed by the rebel MLAs and signing the said resolution on the letter head of SSLP. Also, the ground taken against the PJP MLA was that the said MLA voluntarily gave up the membership of his original party by taking part in the said resolution dated 21.06.2022 and by signing the same on the SSLP letter head.[**Page 269 – 273 of CCC-II**]
31.	27.06.2022	The issuance of notice dated 25.06.2022 by the Hon'ble Deputy Speaker came to be challenged by the 16 MLAs, including Shri Eknath Shinde, who filed a writ petition under Article 32 of the Constitution. This Hon'ble Court, vide interim Order dated 27.06.2022 in W.P. (Civil) No. 469 of 2022 [Diary No. 19161 of 2022] and W.P. (Civil) No. 468 of 2022 [Diary No. 19162 of 2022] was pleased to, in the interim, direct thus: *"Meanwhile as an interim measure, the time granted by the Deputy Speaker of the Assembly to the petitioners or other similarly placed Members of the Legislative Assembly to submit their written submissions upto today 5.30 P.M., is extended till 12.07.2022."* [**Page 1 – 4 of Orders Compilation]**
32.	27.06.2022	As several other members of the SSLP had also openly indulged in anti-party activities, Shri Sunil Prabhu, filed a fresh disqualification petition seeking disqualification of 22 other delinquent MLAs, who by their conduct had voluntarily given up the membership of the ShivSena Political Party. [**Page 296 – 312 of CCC-II**]

33.	28.06.2022	Late in the evening, the leader of opposition in the State of Maharashtra i.e., Shri Devendra Fadnavis, went to meet the Hon'ble Governor, and requested him to hold a floor test.
34.	28.06.2022	Immediately after meeting Devendra Fadnavis and with utmost haste, the Hon'ble Governor sent a communication dated 28.06.2022, though received in the early hours of 29.06.2022 to the then Chief Minister directing him to face a floor test in the House on the very next day, 30.06.2022. It is relevant to note that the Hon'ble Governor did not even attempt to ascertain from the then Chief Minister whether he enjoyed the majority of the House. [**Page 313 – 317 of CCC-II]**
35.	28.06.2022	The Hon'ble Governor by way of a separate communication dated 28.06.2022, which was received in the early hours of 29.06.2022 by the Secretary, Maharashtra Legislative Assembly, directed the latter to forthwith i.e., on 30.06.2022 to the convene the Assembly and hold the floor test. [**Page 318 – 320 of CCC-II**]
36.	29.06.2022	Shri Sunil Prabhu, filed a writ petition before this Hon'ble Court seeking a stay on the directions of the Floor Test, in view of the fact that the disqualification petition of 42 MLAs under the Tenth Schedule was pending consideration of the Hon'ble Deputy Speaker. By Order dated 29.06.2022 in Writ Petition (Civil) No. 470 of 2022, this Hon'ble Court was pleased to direct as follows: *"8. Having given our thoughtful consideration to the rival submissions:* *(i) We do not find any ground to stay convening of the Special Session of the Maharashtra Vidhan Sabha on 30-6-2022, i.e. tomorrow at 11.00 a.m. with the only agenda of a trust vote;* *(ii) The proceedings of the trust vote to be convened on 30-6-2022 shall be subject to the final outcome of the instant Writ Petition as well the Writ Petitions referred to above;* (iii) *the Special Session of the Maharashtra Vidhan Sabha shall be conducted in accordance with the directions as contained in the communication dated 28-6-2022 of the Governor of Maharashtra."* [**Page 5 – 8 of Orders Compilation]**

37.	29.06.2022	The then Chief Minister of Maharashtra, Shri. Uddhav Thackeray, resigned.
38.	30.06.2022	At around 3 P.M., Shri Eknath Shinde and Shri Devendra Fadnavis, met the Hon'ble Governor and staked claim to form the Government. [**Page 322 – 332 of CCC-II**]
39.	30.06.2022	The Governor without taking into account the fact that the membership of Shri Eknath Shinde itself was in dispute in the imminent disqualification petition pending against him, swore Shri Eknath Shinde in as the Chief Minister and Shri Devendra Fadnavis as the Deputy Chief Minister of the Maharashtra. The Hon'ble Governor thereafter directed Shri Eknath Shinde to prove his majority on the floor of the House by 04.07.2022. [**Page 322 – 332 of CCC-II**]
40.	30.06.2022	Due to their anti-party activities which unquestionably amounted to relinquishing membership of the ShivSena Political Party, Shri Eknath Shinde, Tanaji Sawant, Uday Samant, and Gulabrao Patil were removed from their positions in the organizational set-up of the party by the undisputed President of the Shiv Sena, Shri. Uddhav Thackeray. [**Page 321 of CCC-II**]
41.	01.07.2022	The ShivSena Secretary sent a letter to the Election Commission of India intimating the Authority regarding the removal of Shri Eknath Shinde from the positions of ShivSena and change in the organisational set-up of ShivSena thereto. [**Page 333 of CCC-II**] Also, vide a separate letter, the ShivSena Secretary intimated the ECI regarding the removal of Tanaji Sawant and Uday Samant from the organizational positions of ShivSena. [**Page 334 of CCC-II**] Similarly, the ShivSena Secretary sent another letter to the Election Commission of India intimating the Authority regarding the removal of Gulabrao Patil from the organizational position of ShivSena. [**Page 335 of CCC-II**]
42.	01.07.2022	An application for directions being IA No. 88964 of 2022 was filed by Mr Sunil Prabhu in the present Writ Petition, seeking an interim order suspending the delinquent MLAs against whom the disqualification Petitions have been filed, till the final adjudication of the Tenth Schedule proceedings. The said application was mentioned before this Hon'ble Court for urgent listing wherein this

		Hon'ble Court directed to list the application along with the Writ Petition on 11.07.2022. [**Page 9 of Orders Compilation]**
43.	02.07.2022	The Principal Secretary, Maharashtra Legislative Assembly circulated working order for conducting election to the Office of the Speaker on 03.07.2022. The said agenda show that the name of Mr. Rahul Narwekar was proposed by a BJP MLA, and name of Mr. Rajan Prabhar Salvi was proposed by a ShivSena MLA. [**Page 336 of CCC-II**]
44.	02.07.2022	Mr Sunil Prabhu, acting as the Chief Whip of SSLP issued Whip to the members of the SSLP regarding the election of the Speaker scheduled on 03.07.2022. All the party members were asked to remain present in the Assembly and vote for the Shiv Sena candidate Shri Rajan Salvi. [**Page 339 – 340 of CCC-II**] Mr Sunil Prabhu, issued a further Whip to the members of the SSLP regarding the confidence motion scheduled on 04.07.2022. All the party members were asked to remain present in the Assembly at 11:00 am till the end of the session and vote against the confidence motion. [**Page 337 – 338 of CCC-II**]
45.	03.07.2022	Shri Ajay Choudhari, acting as the Leader of the SSLP, submitted a letter to the Deputy Speaker requesting him to conduct the election of the Speaker of Legislative Assembly by Division of Votes method. [**Page 341 – 342 of CCC-II**]
46.	03.07.2022	Shri Ajay Choudhari submitted a letter to the Deputy Speaker requesting that the votes cast by the members of the Legislative Assembly who have incurred disqualification should not be considered during the election of the Speaker. [**Page 343 – 344 of CCC-II**]
47.	03.07.2022	The election for the Office of the Speaker of Maharashtra Legislative Assembly was held. Mr. Rahul Narwekar, the candidate of the Bhartiya Janta Party, was unconstitutionally elected as the Speaker of the Maharashtra Legislative Assembly after getting a total of 164 votes. During the elections, it was recorded by the Deputy Speaker that 39 delinquent MLAs of ShivSena Legislature Party led by Shri Eknath Shinde, had voted against the Party Whip.
48.	03.07.2022	As the delinquent MLAs of SSLP voted against the party Whip dated 02.07.2022 issued regarding the election of the office of the

		Speaker, fresh disqualification proceedings were initiated against the delinquent MLAs as per the provisions of para-2(1)(b) of the Tenth Schedule [**Page 345 – 365 of CCC-II**]
49.	03.07.2022	As the election of the Speaker was held in complete violation of the provisions of the Constitution, certain MLAs submitted a letter/notice to the Principal Secretary, Maharashtra Legislative Assembly to move a resolution for removal of Mr. Rahul Narwekar from the office of the Speaker under Article 179(c) of the Constitution read with Rule 11 of the Maharashtra Legislative Assembly Rules. [**Page 366 of CCC-II**]
50.	03.07.2022	Just after being elected as the Speaker of the House, Mr. Rahul Narwekar entered the political thicket and issued a communication late in the evening of 03.07.2022, illegally recognising Shri Bharat Gogawale as the Chief Whip and Shri Eknath Shinde as the leader of the ShivSena Legislature Party. [**Page 367 – 370 of CCC-II**]
51.	04.07.2022	The aforesaid communication of the Speaker dated 03.07.2022 was challenged by Shri Sunil Prahbu before this Hon'ble Court wherein this Hon'ble Court vide order dated 04.07.2022 in Writ Petition (Civil) No. 479 of 2022 directed to list the Writ Petition along with the other connected Writ Petitions on 11.07.2022. **[Page 10 of Orders Compilation]**
52.	04.07.2022	As the Speaker has misconducted himself by entering into the political thicket and attempted to recognize Shri Bharat Gogawale as the Chief Whip of ShivSena, certain MLAs submitted a notice to the Principal Secretary, Maharashtra Legislative Assembly to move a resolution for removal of Mr. Rahul Narwekar from the office of the Speaker under Article 179(c) of the Constitution read with Rule 11 of the Maharashtra Legislative Assembly Rules. [**Page 371 of CCC-II**]
53.	04.07.2022	A Confidence Motion was called for on the floor of the Maharashtra Legislative Assembly by Shri Eknath Shinde on 04.07.2022. The Confidence Motion was carried out in favour of Shri Eknath Shinde. Again, several MLAs of the Shiv Sena voted contrary to the Whip issued by the official Chief Whip of the Shiv Sena, Shri. Sunil Prabhu.

54.	04.07.2022	Shri Bharat Gogawale also filed disqualification petitions against 14 MLAs under the Tenth Schedule, for the alleged breach of the Whip issued by him. It is submitted that Shri Bharat Gogawale has not been authorised by the Shivsena Political Party to issue whips on behalf of the Shiv Sena. [**Page 388 - 581 of CCC-II**]
55.	05.07.2022	Since the delinquent MLAs of the SSLP had openly defied the Whip dated 02.07.2022 in the floor test/confidence motion held on 04.07.2022, Shri Sunil Prabhu has filed fresh disqualification petitions against 39 delinquent MLAs seeking their disqualification under para-2(1)(b) of the Tenth Schedule of the Constitution of India. [**Page 372 - 387 of CCC-II**]
56.	07.07.2022	Shri. Uddhav Thackeray in his capacity as the President of the ShivSena wrote a letter to the Speaker objecting to the illegal recognition of the Bharat Gogawale as the Whip of the Shiv Sena, and reiterated the decision of the Shiv Sena Political Party to recognise Sunil Prabhu as the Whip of the SSLP. [**Page 610 - 611 of CCC-II**]
57.	08.07.2022	The newly elected Speaker in an illegal, arbitrary and a blatant display of malafide and bias issued notices to the 14 MLAs seeking their response to the Disqualification Petitions filed by Shri Bharat Gogawale. [**Page 612 - 666 of CCC-II**] NOTE: The Speaker is still sitting tight on the Disqualification Petitions filed by Sunil Prabhu and has not issued notices in them despite those disqualification petitions being filed much earlier.
58.	08.07.2022	The decision of the Governor to invite Shri Eknath Shinde to take oath as the Chief Minister and to form the Government, has been challenged by Shri Subash Desai in Writ Petition (Civil) No. 493 of 2022, wherein this Hon'ble Court vide order dated 08.07.2022 in Writ Petition (Civil) No. 493 of 2022 directed to list the Writ Petition along with the other connected Writ Petitions on 11.07.2022. **[Page 11 of Orders Compilation]**
59.	18.07.2022	The notice issued by the Speaker in the disqualification petitions filed by Shri Bharat Gogawale against 14 ShivSena MLAs including Shri Sunil Prabhu was challenged by Shri Sunil Prabhu in Writ Petition (Civil) No. 538 of 2022, wherein this Hon'ble Court vide order dated 08.07.2022 in Writ Petition (Civil) No. 538

		of 2022 directed to tag the Writ Petition along with the other connected Writ Petitions. [**Page 12 of Orders Compilation]**
60.	19.07.2022	Despite the fact that this Hon'ble Court is seized of the issues regarding the disqualification of Shri Eknath Shinde under Tenth Schedule of the Constitution, Shri Shinde filed a petition before the Election Commission of India (ECI) under paragraph 15 of the Election Symbols (Reservation and Allotment) Order, 1968 to declare the splinter group lead by him as ShivSena. [**Page 670 - 697 of CCC-II]**
61.	20.07.2022	Vide order dated 20.07.2022 in WP (C) No. 469 of 2022 & other connected petitions, this Hon'ble Court issued notice in WP (C) No. 493/2022, 538/2022 and 479/2022. It was directed by this Hon'ble Court that the WP (C) No. 493 shall be treated as the lead matter. [**Page 13 – 16 of Orders Compilation]**
62.	20.07.2022	Pursuant to the order of this Hon'ble Court dated 20.07.2022, Shri Subash Desai made a representation to the ECI vide representation requesting the ECI to not proceed with any petition related to Shivsena, as substantially similar matters and issues are pending before this Hon'ble Court and to not take any precipitative action. [**Page 667 – 669 of CCC-II**]
63.	21.07.2022	An application being IA No. 100285 of 2022 was preferred by Shri Sunil Prabhu in WP (C) No. 538 of 2022 seeking direction to Speaker, Maharashtra Legislative Assembly to produce the following records: [**Page 461 – 466 of Common Convenience Compilation Vol-I (***hereinafter referred to as* **"CCC-I")**] a. All proceedings relating to disqualification of Rebel Shiv Sena MLA filed by Shri Sunil Prabhu, Chief Whip of the Shiv Sena. b. All proceeding relating to the disqualification filed by Shri. Bharat Gogawale. c. All proceedings of the Speaker and Deputy Speaker in relation to recognition of the Leader of the house and Chief Whip of the Shiv Sena. d. The proceedings of the House on 3rd July 2022 and 4th July 2022.

64.	22.07.2022	Without deference to the proceedings pending before this Hon'ble Court as well as without considering that no adjudication can take place till the disqualification petitions pending against the delinquent MLAs are decided, the Election Commission of India issued notice to Shri Uddhav Thackeray on the Petition filed by Shri Eknath Shinde. [**Page 698 - 702 of CCC-II**]
65.	25.07.2022	Aggrieved by the issuance of notice by the Election Commission of India in Shri Eknath Shinde's Petition, Shri Subash Desai has filed two application being I.A. No. 101776 & 101777 of 2022 seeking impleadment of Election Commission of India as Respondent No. 51 in WP (C) No. 493 of 2022 and seeking stay of proceedings initiated by the Election Commission of India on 22.07.2022 till the final adjudication of the present writ petitions. [**Page 109 – 126 of CCC-I**]
66.	04.08.2022	This Hon'ble Court after hearing the Election Commission and the parties, recorded the submission of the Election Commission that '*no orders may need to be passed by this Court interdicting proceedings before the Election Commission*.' Liberty was granted to the Petitioner to file an application before the Election Commission for seeking time. [**Page 21 – 25 of Orders Compilation]**
67.	06.08.2022	Accordingly, the Petitioner in terms of the order dated 04.08.2022, filed an application with a prayer to Defer/Adjourn the proceedings in Dispute No. 1/2022 for 4 weeks and extend the time for filing of a response by a period of 4 weeks.
68.	10.08.2022	The Election Commission communicated to the Petitioner extending the time to furnish reply/filing of documents to 23.08.2022.
69.	23.08.2022	This Hon'ble Court vide its order held that the present batch of petitions raise important constitutional questions relating to interpretation of the Constitution and framed 10 questions for consideration by a Constitution Bench. The said questions are reproduced herein for convenience of this Hon'ble Court: *a. Whether notice for removal of a Speaker restricts him from continuing with disqualification proceedings under Tenth Schedule of the Constitution, as held by this Court in Nebam Rebia (supra)?*

		b. Whether a petition under Article 226 or Article 32 lies, inviting a decision on a disqualification petition by the High Courts or the Supreme Court, as the case may be? *c. Can a Court hold that a member is "deemed" to be disqualified, by virtue of his/her actions, absent a decision by the Speaker?* *d. What is the status of proceedings in the House during the pendency of disqualification petitions against the members?* *e. If the decision of a Speaker that a member has incurred disqualification under the Tenth Schedule relates back to the date of the action complained of, then what is the status of proceedings that took place during the pendency of a disqualification petition?* *f. What is the impact of the removal of Paragraph 3 of the Tenth Schedule?* *g. What is the scope of the power of the Speaker to determine the Whip and the leader of the house legislature party? What is the interplay of the same with respect to the provisions of the Tenth Schedule?* *h. Are intra-party decisions amenable to judicial review? What is the scope of the same?* *i. What is the extent of discretion and power of the Governor to invite a person to form the Government, and whether the same is amenable to judicial review?* *j. What is the scope of the powers of the Election Commission of India with respect to determination of a split within a party?* Further, it was observed by this Hon'ble Court that: '*The Registry is directed to place the matters before the Constitution Bench on 25-8-2022 and the issue whether the proceedings before the Election Commission of India should go on or not or can be taken up by the said Bench which is going to hear the matters on the said date.*' **[Page 26 – 30 & 31 - 34 of Orders Compilation]**
70.	23.08.2022	The Petitioner made a request on the very same date to the Election Commission for deferment of proceedings.

71.	26.08.2022	The Election Commission extended the time to furnish reply and/or for filing of documents by four weeks.
72.	07.09.2022	A Constitution Bench of this Hon'ble Court directed the listing of I.A. No. 101776 and 101777 of 2022 for consideration on 27.09.2022. [**Page 35 – 38 of Orders Compilation]**
73.	22.09.2022	A further request was made by the Petitioner to the Election Commission for deferment of the proceedings by two weeks or till this Hon'ble Court decides the question as to whether the proceedings before the Election Commission of India should go on or not.
74.	27.09.2022	This Hon'ble Court *vide* its order allowed an application bearing I.A. No. 101776 of 2022 seeking impleadment of Election Commission of India as Respondent No.51 in WP (C) No. 493 of 2022. However, the Hon'ble Court dismissed the application bearing I.A. No. 101777 of 2022 which sought a stay of proceedings before Election Commission till this matter is finally decided by this Hon'ble Court. [**Page 39 – 44 of Orders Compilation]**
75.	04.10.2022	Shri Eknath Shinde filed an application before the Election Commission under paragraph 18 of the election symbols (reservation and allotment) and allotment order, 1968 to urgently hear, dispose and allow the petition filed by Shri Shinde under paragraph 15. [**Page 13 – 29 of Common Convenience Compilation Vol-III (***hereinafter referred to as* **"CCC-III")]**
76.	07.10.2022	Shri Uddhav Thackeray filed a preliminary reply to the application of Shri Shinde under paragraph 15 of the symbols (reservation and allotment) order, 1968 with a prayer requesting the Election Commission not to pass any order without affording an opportunity of oral hearing to Shri Thackeray. [**Page 30 – 33 of CCC-III]**
77.	08.10.2022	Shri Uddhav Thackeray filed a reply to the application of Shri Shinde under paragraph 18 of the symbols (reservation and allotment) order, 1968. [**Page 34 – 54 of CCC-III]**
78.	08.10.2022	Election Commission on India, without hearing either of the parties and merely hours after the reply of Shri Uddhav Thackeray was filed, passed an order in Dispute Case No.1 of 2022 *inter alia* freezing the symbol "bow and arrow". Also, the Election

		Commission directed Shri Uddhav Thackeray and Shri Eknath Shinde to furnish their preferences for interim party names and interim symbols. [**Page 55 – 57 of CCC-III]**
79.	08.10.2022	Shri Uddhav Thackeray under protest and without prejudice to his right to challenge the Impugned order freezing the symbol "Bow and Arrow" proposed three interim names and interim symbols of his own choice in the order of preference. [**Page 68 – 71 of CCC-III]**
80.	10.10.2022	Shri Eknath Shinde proposed his preferences of symbols out of which first two were identical to the interim symbols proposed by Shri Uddhav Thackeray. The first interim name proposed by Shri Shinde was also identical to the first interim party name proposed by Shri Thackeray. [**Page 72 – 73 of CCC-III]**
81.	10.10.2022	Election Commission rejected the first two interim symbols proposed by Shri Thackeray on the basis that Shri Shinde had also proposed the identical symbols. Due to the same reason, Shri Uddhav Thackeray was denied the interim name "ShivSena (Balasaheb Thackeray)". [**Page 76 – 77 of CCC-III]**
82.	10.10.2022	Aggrieved by the arbitrary freezing of symbol without affording an opportunity of oral hearing *vide* order dated 08.10.2022 passed by the Election Commission of India in Dispute Case No.1 of 2022, Shri Uddhav Thackeray filed a Writ Petition being Writ Petition (C) No. 15616 of 2022 before Hon'ble High Court of Delhi, seeking *inter alia*, to quash the aforesaid order. [**Page 83 – 525 of CCC-III]**
83.	10.10.2022	Election Commission allotted the interim name "Balasahebanchi ShivSena" to Shri Eknath Shinde and requested Shri Shinde to furnish a fresh preference list of 3 symbols. [**Page 74 – 75 of CCC-III]**
84.	11.10.2022	Shri Eknath Shinde submitted a fresh list of preferred symbols to the Election Commission. [**Page 78 – 79 of CCC-III]**
85.	11.10.2022	Election Commission allotted the symbol "Do Talwarein aur Ek Dhal (Two Swords & Shield)" to Shri Eknath Shinde. [**Page 80 – 82 of CCC-III]**

86.	01.11.2022	The present batch of matters was list before a Constitution Bench of this Hon'ble Court for 'Directions', wherein this Hon'ble Court passed the following directions: (i) The parties shall file joint compilations consisting of written submissions; precedents; and any other documentary material on which reliance will be placed at the time of hearing; (ii) A common index shall be prepared in three separate volumes of the above compilations; and (iii) Mr Javedur Rahman, counsel assisting Mr Kapil Sibal and Mr Chirag Shah, counsel assisting Mr Neeraj Kishan Kaul shall act as the nodal counsel to ensure that soft copies of the compilations are prepared and circulated to the Bench and to the counsel appearing on behalf of the contesting parties. The soft copies of the compilations shall also be emailed to [redacted] The abovesaid exercise was to be conducted within a period of four weeks. [**Page 45 – 50 of Orders Compilation]**
87.	12.11.2022	Election Commission of India addressed a letter to Shri Uddhav Thackeray and Shri Eknath Shinde asking to submit all the details/particulars/documents pertaining to Dispute Case No.1 of 2022 to the Commission latest by 23.11.2022. [**Page 526 of CCC-III]**
88.	15.11.2022	The Hon'ble High Court of Delhi *vide* its order erroneously dismissed Writ Petition (C) No. 15616 of 2022 filed by Shri Uddhav Thackeray. [**Page 527 – 544 of CCC-III]**