IN THE SUPREME COURT OF INDIA
CIVIL ORDINARY JURISDICTION
WRIT PETITION (CIVIL) NO. 468, 469,470, 479, 493 & 538 of 2022

IN THE MATTER OF:
SUBHASH DESAI **...PETITIONER**

VS.

PRINCIPAL SECRETARY, **... RESPONDENTS**
GOVERNOR OF MAHARASHTRA & ORS

WRITTEN SUBMISSIONS ON BEHALF OF
RESPONDENT NO. 4 – EKNATHRAO SAMBHAJI SHINDE

I. INTRODUCTION:

1. The present written submissions are being filed on behalf of the Respondent No. 4, i.e. Mr. Eknathrao Sambhaji Shinde, in compliance with the directions contained in the order dated 01.11.2022 passed by this Hon'ble Court in the captioned batch of Petitions.

2. The Respondent, in the present Written Submissions has made averments/submissions according to the questions framed by this Hon'ble Court in the reference order dated 23.08.2022.

II. FACTUAL MATRIX:

3. However, before adverting to the submissions on the questions framed in the reference order dated 23.08.2022, the Respondent herein seeks to place on record the entire conspectus of facts, which are pertinent for deciding the present batch of Writ Petitions:

   a) Before the elections to the 14th Maharashtra State Legislative Assembly in 2019, there was a pre-poll alliance between the Shiv Sena party and the Bhartiya Janta Party (“**BJP**”). On account of the same, the general public of the State of Maharashtra cast their

valuable votes in favour of the Shiv Sena-BJP alliance. Elections to the 14th Maharashtra Legislative Assembly were held on 21.10.2019 for 288 seats in the Assembly;

b) Results to the Fourteenth Maharashtra Legislative Assembly were declared on 24.10.2019, wherein BJP got the largest number of seats in the Assembly i.e., 105 seats, after BJP, Shiv Sena secured the second largest seats in the Assembly i.e., 56 seats, followed by NCP with 54 seats and INC got 44 seats in the Assembly. Pursuant to the election results, the Shiv Sena-BJP alliance were set to form the Government. However, the said pre poll alliance was broken, and Shiv Sena formed the government with parties of opposite ideology, to form a government, comprising of Shiv Sena, INC and NCP, the said alliance of these three political parties were then called Maha Vikas Aghadi ("**MVA**");

c) On 31.10.2019, the Respondent No. 4 was elected as leader of Shiv Sena Legislature Party, by the members of Shiv Sena Legislature Party (hereinafter referred to as ("**SSLP**"). It is also pertinent to mention that Sh. Sunil Prabhu was elected as Chief Whip of SSLP, by the members of SSLP, on the same date;

d) However, after almost two and a half year of unnatural alliance of the MVA government, the Respondent No. 4 along with several other members of the Shiv Sena Party sensed that the principles of the Shiv Sena, which is a Hindu Marathi Regional Political Party is being compromised due to unruly coalition of political parties in which MLAs of Shiv Sena were suffering the most. During the time period of last two and half years, the Party and its leadership have compromised party principles with different ideology that of INC and NCP. The ideology of Late Mr. Balasaheb Thackeray was to give

clean and honest Government for the People of Maharashtra and also without compromising on principle of National Interest, which also formed part of the Constitution of Shiv Sena, however was being compromised by the then leadership of the Shiv Sena;

e) The Respondent No. 4 along with other MLAs of the Shiv Sena were constantly facing lot of humiliation on account of their support to leaders of those parties against whom we had contested Elections;

f) In view of the above-mentioned facts and circumstances, the Respondent No. 4 along with several other members of the Shiv Sena party requested to then Chief Minister of the State of Maharashtra to change his way of working in the present political scenario and take steps to align his ideologies with the ideologies of the Balasaheb Thackeray. However, no such requests were entertained by the then Hon'ble Chief Minister, on contrary, he started defending the coalition partners of MVA government at the expense of the members of SSLP;

g) On 21.06.2022, it came to the knowledge of Respondent No. 4 and others members of SSLP that a minority faction of SSLP i.e. only 24 out of 55 MLAs attended an unauthorized meeting and passed a resolution to remove Respondent No. 4 as the leader of SSLP and appointing Mr. Ajay Choudhary as the group leader of SSLP;

h) On the same date, i.e., 21.06.2022, 34 MLAs of the SSLP passed a resolution reaffirming that the Respondent No. 4 who was appointed as group leader of Shiv Sena Legislature Party on 31.10.2019, continues to be the 'Leader' of SSLP. The Resolution clearly stated that appointment of Mr. Ajay Choudhary was illegal, void and inoperative. Further, vide the said resolution Mr. Bharat

Gogawale was elected and appointed as the Chief Whip of the SSLP and appointment of Mr. Sunil Prabhu was resolved to be cancelled with immediate effect;

i) Thereafter, 30 members of the SSLP wrote a letter dated 21.06.2022 to the Hon'ble Deputy Speaker informing him that the majority have reaffirmed the appointment of the Respondent No. 4 as the group leader of the Shiv Sena Legislature Party therefore not to recognise Mr. Ajay Choudhary as the leader of the SSLP for the 14th Maharashtra Legislative Assembly;

j) On 21.06.2022, 34 members of the Maharashtra Legislative Assembly issued notice under Rule 11 of the Maharashtra Assembly Rules read with Article 179(c) of the Constitution, to the Deputy Speaker, Mr. Narhari Zirwal, to move the motion for his removal from the office of Deputy Speaker and requested him to refrain from discharging the functions of Speaker/Deputy Speaker of the Assembly from immediate effect;

k) On 24.06.2022, the Respondent No. 4 came to know through media reports that the Secretary, Maharashtra Legislative Secretariat vide letter dated 21.06.2022 communicated to the Secretary SSLP, that request made by the Petitioner to recognise Mr. Ajay Choudhary as group leader of the SSLP has been recognized by the Hon'ble Deputy Speaker;

l) That on 22.06.2022, Mr. Sunil Prabhu, claiming to be group leader of the SSLP issued a notice dated 22.06.2022 to the Respondent No. 4 and a few other MLAs to attend meeting at 5 pm on 22.06.2022;

m) The Respondent No. 4 vide letter dated 22.06.2022 responded to Mr. Sunil Prabhu's letter/notice clearly stating that Mr. Prabhu has no authority to call the meeting of the Shiv Sena Legislature Party as the authority vests with the group leader i.e., the Respondent No. 4 and Mr. Bharat Gogawale, the Chief Whip and therefore the meeting called by unauthorised persons is not in accordance with the procedure established under law and consequently the notice is invalid;

n) In meeting dated 22.06.2022 of the SSLP, which was attended by 14 out of 55 MLAs of the SSLP, held at Varsha Bunglow Mumbai resolved those members who did not attend the meeting should be disqualified;

o) Accordingly, on 23.06.2022 Mr. Sunil Prabhu filed a Petition under Rule 6 of Maharashtra Legislative Assembly (Disqualification on ground of Defection) Rules, 1986 r/w Tenth Schedule of the Constitution of India against the Respondent No. 4 and a few other MLAs for not attending the meeting held on 22.06.2022 on the ground contained under Paragraph 2(1)(a) of the Tenth Schedule to the Constitution of India i.e., voluntary giving up membership of the party;

p) The Respondent No. 4 along with a few other MLAs received notice/summons dated 25.06.2022 by Principal Secretary, Maharashtra Legislative Assembly for disqualification Petition under Rule 6 of Maharashtra Legislative Assembly (Disqualification on ground of Defection) Rules, 1986 r/w Tenth Schedule of the Constitution of India, for not attending the unathorized meeting dated 22.06.2022, whereby the Respondent No. 4 and other MLAs

were directed to file their reply to Disqualification Petition on or before 27.06.2022 by 5:30 PM;

q) On 26.07.2022 the Respondent No. 4 and other MLAs filed separate Writ Petitions under Article 32 of Constitution of India [*W.P (C) 468 and 469 of 2022*] challenging the summons issued by Hon'ble Deputy Speaker in Disqualification Petition filed by Sh. Sunil Prabhu;

r) That vide order dated 27.06.2022 this Hon'ble Court while issuing notice in the aforementioned Writ Petitions filed by the Respondent No. 4 and other MLAs, granted time to the Respondents till 11.07.2022 to file their reply. Thereafter, Sh. Sunil Prabhu filed another set of Disqualification Petitions claiming violations under paragraph 2(1)(a) of the Tenth Schedule to the Constitution of India against 22 MLAs of SSLP;

s) On 28.06.2022, the Hon'ble Governor, on account of the political scenario in the State of Maharashtra, issued a letter to Sh. Uddhav Thackeray, the then Chief Minister of Maharashtra to prove his majority on the floor of the house by holding a trust vote on or before 5.00 PM on 30.06.2022;

t) On the same date i.e., 28.06.2022, the Hon'ble Governor issued another letter to the Secretary, Maharashtra Legislative Assembly for convening a special session of the Maharashtra Legislative Assembly on 30.06.2022 with the only agenda of a trust vote against the then Chief Minister;

u) On 29.06.2022, Mr. Sunil Prabhu, the illegally appointed Chief Whip by the minority fraction of the SSLP, approached this Hon'ble Court seeking stay of the Hon'ble Governor's letter dated 28.06.2022 vide

Writ Petition (C) 470 of 2022. This Hon'ble Court vide order dated 29.06.2022 refused to grant stay of the floor test and directed that it should proceed as per the Governor's communication dated 29.06.2022;

v) Thereafter, within few minutes of the pronouncement of the order by this Hon'ble Court on 29.06.2022, Mr. Uddhav Thackeray resigned from the post of the Chief Minister of the State of Maharashtra;

w) Since, Mr. Uddhav Thackeray had resigned as Chief Minister and there was no government in place, the Respondent No. 4, on account of having the support of the requisite number of MLA's, was invited by the Hon'ble Governor to stake his claim for forming the Government;

x) On 30.06.2022, the Respondent No. 4 submitted a letter to the Hon'ble Speaker showing support of overwhelming majority, by the members of SSLP, which supported his candidature as the Chief Minister. The Respondent No. 4 took oath as the 20th Chief Minister of the State of Maharashtra;

y) Thereafter, on 30.06.2022, the Hon'ble Governor of Maharashtra directed the Respondent No. 4 to prove his majority on the floor of Assembly on or before 04.07.2022;

z) The post of the Speaker of the Maharashtra Legislative Assembly was deliberately kept vacant by the then Government from February 2021 to July 2022, on account of the resignation by the former Speaker Shri Nana Patole on 05.02.2021. On 02.07.2022, the Principal Secretary of Legislative Assembly, Maharashtra circulated

working order for conducting election for the office of Hon'ble Speaker on 03.07.2022. On 02.07.2022, Sh. Sunil Prabhu, the illegally appointed Chief Whip of SSLP, issued a whip directing the members of SSLP to vote for, Sh. Rajan Salvi, for post of Hon'ble Speaker;

aa) A separate whip dated 02.07.2022 was also issued by Sh. Sunil Prabhu, the illegally appointed Chief Whip of SSLP directing the members of SSLP to vote against the confidence motion which was supposed to be held on 04.07.2022;

bb) On 03.07.2022, Sh. Ajay Choudhary i.e., illegally appointed leader of SSLP issued a letter to Hon'ble Deputy Speaker of Legislative Assembly, Maharashtra requesting him not to consider the votes casted by the members against whom disqualification Petition was pending;

cc) Election for post of Hon'ble Speaker held wherein Sh. Rahul Narwekar was elected as Hon'ble Speaker by majority members of Legislative Assembly i.e., by 164 votes in his favour on 03.07.2022 at 12:01 PM;

dd) Thereafter, merely a minute after being elected as the Speaker of the Legislative Assembly, on 03.07.2022 at 12:02 PM, certain MLAs of the Maharashtra Legislative Assembly issued a notice to Principal Secretary for putting to vote a motion to pass a resolution for removal of Sh. Rahul Narwekar as Hon'ble Speaker. On 03.07.2022, the Hon'ble Speaker issued a communication recognizing the Respondent No. 4 as leader of SSLP and Sh. Baharat Gogawale as Chief Whip;

ee) On 04.07.2022, Sh. Sunil Prabhu filed another Writ Petition [*W.P 479 of 2022*] under Article 32 of Constitution of India challenging the communication of Speaker dated 03.07.2022 recognizing the Respondent No. 4 as Leader and Bharat Gogawale as Chief Whip of the SSLP;

ff) Thereafter, on 04.07.2022, certain members of the Maharashtra Legislative Assembly 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 of India read with Rule 11 of the Maharashtra Legislative Assembly Rules;

gg) A fresh Disqualification Petition dated 03.07.2022 was filed by Sunil Prabhu, the illegally appointed Chief Whip, against the MLAs who voted in favour of Sh. Rahul Narwekar for the post of Hon'ble Speaker in the elections held on 03.07.2022;

hh) The Chief Whip of SSLP, i.e. Mr. Bharat Gogawale, issued a whip to all the members of SSLP to vote and support Sh. Eknathrao Sambhaji Shinde for the post of Hon'ble Chief Minister of Maharashtra as well as the leader of SSLP, during the trust vote scheduled on 04.06.2022. The said whip was followed by more than two third majority of SSLP. However, the associates of the Sh. Uddhav Thackrey voted against the Respondent No. 4 and thereby voted contrary to the Whip issued by the legally appointed Chief Whip of SSLP, i.e., Bharat Gogawale;

ii) Since several MLAs of SSLP intentionally defied the whip dated 04.07.2022, issued by the Chief Whip of SSLP and voted against the cabinet of the State of Maharashtra, the Chief Whip herein was

constrained to file Petition under Rule-6 of the Members of Maharashtra Legislative Assembly (Disqualification on ground of Defection) Rules, 1986, seeking disqualification of the MLAs in terms of the provisions of Para-2(1)(a) and Para-2(1)(b) of the Tenth Schedule to the Constitution of India, 1950 against said MLAs;

jj) On 07.07.2022, Sh. Uddhav Thackrey issued a letter to Hon'ble Speaker *inter alia* objecting to the illegal recognition of Sh. Bharat Gogawale as Chief Whip of SSLP;

kk) On 08.07.2022, Hon'ble Speaker of Maharashtra Legislative Assembly issued notice against the 14 members of the SSLP who had defied the Whip dated 03.07.2022 issued by the chief Whip on the disqualification petition filed by Shri Bharat Gogawale. Thereafter, Mr. Subhash Desai, filed a Writ Petition [W.P. 493 of 2022] under Article 32 of Constitution of India *inter alia* challenging the decision dated 30.06.2022 of the Hon'ble Governor to invite the Respondent No. 4 to take oath as Chief Minister of Maharashtra;

ll) On 15.07.2022, Sh. Sunil Prabhu filed another Writ Petition [WP 538 of 2022] seeking quashing of summons dated 08.07.2022 issued by the Hon'ble Speaker for the disqualification Petition filed by Sh. Bharat Gogawale against the 14 members of SSLP for defying whip dated 03.07.2022;

mm) On 18.07.2022, a resolution was passed by 12 out of 18 MPs (now 13 MPs) whereby they extended unconditional support to the Respondent No. 4 as the Senior Leader and Shivsena Mukhya Neta (Main Leader of Shiv Sena);

nn) Further, a meeting of the Pratinidhi Sabha was convened on 18.07.2022, whereby the Respondent No. 4 was appointed as the Senior Leader and Shivsena Mukhya Neta (Main Leader). A meeting of the Rashtriya Karyakarini was also convened whereby the Rashtriya Karyakarini affirmed the election of the Respondent No. 4 as the Shivsena's Senior Leader and Shivsena Mukhya Neta (Main Leader);

oo) The Respondent No. 4 on 19.07.2022 filed a Petition under Paragraph 15 of the Election Symbols (Reservation and Allotment) Order, 1968 registered as Dispute Case No. 1 of 2022, inter *alia* seeking to declare the group lead by the Respondent No. 4 as real Shiv Sena Political Party and for claiming the election symbol of Shiv Sena, i.e., Bow and Arrow;

pp) The Election Commission of India vide notice dated 22.07.2022 directed both the Parties to submit the documents and fixed the next date of hearing on 08.08.2022;

qq) Thereafter, on 25.07.2022, an Application for Directions being I.A. 101776 and 101777 of 2022, was filed by Mr. Subash Desai before this Hon'ble Court seeking impleadment of ECI and stay on the proceedings pending before the Election Commission of India, respectively;

rr) On 04.08.2022 this Hon'ble Court after hearing the parties and also the ECI passed an order dated 04.08.2022 recording the statement of the Counsel on behalf of ECI that no orders may be passed interdicting proceedings before ECI and in light of this statement, this Hon'ble Court granted liberty to the Petitioner group to seek time before ECI;

ss) On 08.08.2022 the group led by Respondent No. 4, in compliance of notice dated 22.07.2022 by the ECI filed more than 31291 Affidavits/Documents of Primary Members of "SSPP" in support of the Respondent group before ECI;

tt) However, on 10.08.2022, the group led by the Sh. Uddhav Thackeray pursuant to the abovementioned order dated 04.08.2022, filed an application seeking 4 week time to file their documents before ECI. The ECI extended the date of filing of the documents for the petitioner group to 23.08.2022;

uu) This Hon'ble Court vide order dated 23.08.2022 framed 9 issues for the consideration by a Constitution Bench and further directed the Registry to list the matter on 25.08.2022 only on the issue that whether the ECI should proceed or not. Further, it is also pertinent to mention that on the same date the group led by the Respondent No. 4 filed 120192 Documents/Affidavits of Primary Members of "SSPP" in support of the Respondent No. 4 before ECI;

vv) On 26.08.2022 the group led by the Petitioner again filed application seeking more time to file their documents and affidavits in their support before ECI and the ECI again granted them 4 week time to file the same;

ww) Thereafter, on 22.09.2022, yet another application for adjournment was filed by the group led by Petitioner before ECI, seeking 2 week time to file documents in their support;

xx) On 23.09.2022, the group led by the Respondent No. 4 filed Affidavits for 11 Rajya Prabhari/Chief of State, showing their support in favor of the Respondent No. 4;

yy) That on 27.09.2022, after hearing the submissions on behalf of both the parties, this Hon'ble Court dismissed the application bearing I.A. No. 101777 of 2022 which sought stay proceedings before the ECI;

zz) The group led by the Petitioner herein filed another letter on 28.09.2022, before ECI seeking more time to file documents to show support in favour of Sh. Uddhav Thackeray on his clam over the symbol of Shiv Sena;

aaa) On 29.09.2022, the ECI issued a communication to both the parties to furnish their respective documents to show support in their claim over the symbol of SSPP, by or before 07.10.2022;

bbb) However, on 03.10.2022 the ECI issued a press note stating the schedule for Bye-Election in the Assembly Constituencies of Maharashtra, Bihar, Haryana, Telangana, Uttar Pradesh and Odisha;

ccc) In view of the aforementioned press note scheduling Bye-Elections in State of Maharashtra, on 04.10.2022 the counsel for Respondent No. 4 herein filed an Application under paragraph 18 of the Election Symbols (Reservation and Allotment) And Allotment Order, 1968 to urgently hear, dispose and allow the petition filed by the Petitioner under paragraph 15 of the Symbols Order;

ddd) Thereafter, on 06.10.2022, the group led by the Respondent No. 4 filed another Affidavits of 9385 Primary members of SSPP running

into seven bundles showing their support in favour of Respondent No. 4 over his claim as president of SSPP;

eee) On 07.10.2022, counsel for Sh. Uddhav Thackeray filed the reply to Application under Paragraph 15 of Symbols Order along with an Application for directions seeking oral hearing in the Petition filed by the Respondent 4 under Paragraph 15 of Symbols order.

fff) On 08.10.2022, the group led by the Sh. Uddhav Thackkeray filed reply to the Petition under Paragraph 18 of Symbols Order *inter-alia* requesting to maintain *status quo* and reject the Application under Paragraph 18 of Symbols Order;

ggg) Further, on 08.10.2022, the ECI issued an Interim Order in Dispute Case No. 1 of 2022, *inter alia* restrict both the parties from simplicitor using the symbol of "Bow and Arrow" and name of "Shiv Sena", till final adjudication of Petition under Paragraph 15 of Symbols Orders. Further, the ECI also directed both the parties to submit alternative names and symbols, from the list of free symbols, for their groups by or before 10.10.2022;

hhh) Accordingly, the group led by Sh. Uddhav Thackeray filed the letter dated 08.10.2022 before ECI suggesting 3 alternative names and symbols for recognition of the group led by Sh. Uddhav Thackeray. It is pertinent to note that the symbols suggested by the group led by Sh. Uddhav Thackeray were out from the list of free symbols issued by ECI;

iii) That on 10.10.2022, pursuant to order dated 08.10.2022 issued by ECI, the group led by the Respondent No. 4 also filed proposed three alternative names and symbols for recognition of their group

till final adjudication of the Petition under Paragraph 15 of Symbols order;

jjj) In view of the letter issued by both the Parties suggesting alternative names to be recognized, the ECI issued separate communication dated 10.10.2022 to both the parties, wherein the ECI accepted the name ShivSena (Balasaheb Thackeray) and symbol of “Mashaal” for the group led by Sh. Uddhav Thackeray. Further, the ECI accepted the name ShivSena (Balasahebanchi) for the group led by Respondent No. 4, however, directed the Respondent No. 4 to furnish fresh symbols before 11.10.2022;

kkk) Accordingly, the Respondent No. 4 herein suggested three fresh symbols to ECI and the ECI vide order dated 11.10.2022 accepted the symbol of “Dhal Talwar” suggested by the Respondent No. 4. It is pertinent to note that the ECI accepted the symbols out of the symbols from free list issued by ECI, for both the parties;

lll) Thereafter, aggrieved by the interim order dated 08.10.2022 passed by the ECI, on 10.10.2022 the group led by Sh. Uddhav Thackeray approached the Hon’ble High Court of Delhi vide Writ Petition (C) 15616/2022 *inter alia* assailing the order dated 08.10.2022 passed by the Hon’ble High Court of Delhi and seeking transfer of all the records from ECI to Hon’ble High Court of Delhi;

mmm) However, when the said Writ Petition was first listed before the Hon’ble High Court of Delhi on 14.11.2022 and 15.11.2022, the Hon’ble High Court of Delhi after hearing the submissions made by both the parties, dismissed the Petition filed by Sh. Uddhav Thackeray challenging the order dated 08.10.2022 passed by the ECI.

III. SUBMISSIONS ON QUESTIONS FRAMED IN REFERENCE ORDER DATED 23.08.2022:

A. Whether notice for removal of a Speaker restricts him from continuing with disqualification proceedings under the Tenth Schedule of the Constitution, as held by this Court in *Nabam Rebia*?

4. It is 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 Speaker, is pending.

5. The Tenth Schedule to the Constitution of India was inserted by the Constitution (Seventy-Third Amendment) Act 1992, with effect from 24.04.1993.

6. Article 179 of the Constitution of India enumerates the procedure for removal of Speaker and Deputy Speaker from the office. Therefore, before divulging into the issue at hand, it is imperative to discuss Article 179 of the Constitution of India.

> *"179. Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker. — A member holding office as Speaker or Deputy Speaker of an Assembly—*
>
> *(a) shall vacate his office if he ceases to be a member of the Assembly;*
>
> *(b) may at any time by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office; and*
>
> ***(c) may be removed from his office by a resolution of the Assembly passed by a majority of all the then members of the Assembly:***
>
> > *Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution:*

> *Provided further that, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.”*

7. It is apposite to ascertain the desired intent of the framers of the Constitution, from the Constituent Assembly Debates clearly shows that the words “all the then members of the Assembly” used in Art. 179(c) means members who would participate in the motion, for removal of the Speaker**.** There is a constitutional prohibition upon the Speaker to proceed with the pending disqualification proceedings as that would negate the effect of the words “all the then members of the Assembly” after one or more disqualification of MLAs from the Assembly. Any change in the strength and composition of the Assembly, by disqualification would be direct conflict with the express mandate of Art. 179(c), requiring “all the then members” to determine the right of the Speaker/Deputy Speaker to continue.

8. The framers of the Constitution debated on the point “*all the then members of the Assembly*”, wherein, they chose to retain the said words and declined to substitute those words with “*the members of the Assembly present and voting*”. The acceptance of one set of words and rejection of the suggested substitution renders a constitutional answer to the present issue.

9. The Speaker can adjudicate upon the disqualification petitions only after he survives his own removal resolution. For instance, there would be no prejudice to anyone when the Speaker proves the confidence of the Assembly in his office and then adjudicate the disqualification petitions, however, there would a great prejudice when he disqualifies the members of the Assembly and then face his own removal resolution as the same

would take away the right of the then members to vote in the resolution for removal of the Speaker.

10. Therefore, to preserve constitutional purpose and harmony, the Speaker should refrain from adjudication of disqualification petition under the Tenth Schedule while his own position as a Speaker is under challenge. In this regard, reliance is place on a 5 judge bench judgment of this Hon'ble Court in *Nabam Rebia & Bamang Felix v. Dy. Speaker, Arunachal Pradesh Legislative Assembly,* reported in (2016) 8 SCC 1, which is extracted herein below for ready reference:

> *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.*

190. Just like the other provisions of the Constitution (interpreted by us hereinabove), it would be apposite to ascertain the desired intent of the Framers of the Constitution, emerging from the Constituent Assembly Debates, with reference to Article 179(c). In the Draft Constitution, the present Article 179 was numbered as draft Article 158. One of the issues debated, with reference to draft Article 158(c) was, with reference to the words "all the then Members of the Assembly", used therein. The above words were used to define, those who would participate in the motion, for the removal of the Speaker. Needless to mention, that the said words were retained in the final draft, in Article 179(c). One of the members of the Constituent Assembly had suggested substitution of the above words, by the words, "the Members of the Assembly present and voting", as under: (CAD Vol. 8, p. 561)

"Mr Mohd. Tahir.—Sir, I beg to move:

'That in clause (c) of Article 158, for the words "all the then Members of the Assembly" the words "the Members of the Assembly present and voting" be substituted.'

Clause (c) runs as follows:

'(c) may be removed from his Office for incapacity or want of confidence by a resolution of the Assembly passed by a majority of all the then Members of the Assembly.'

Sir, so far as I can understand the meaning of the wording, "all the then Members of the Assembly", it includes all the Members of the Assembly. Supposing a House is composed of 300 Members, then, it will mean all the Members of the Assembly, that is, 300. Supposing fifty Members of the House are not present in the House, then, those Members will not have the right to give their votes so far as this question is concerned. Therefore, I think that it would be better that this matter should be considered by only those Members who are present in the Assembly and who can vote in the matter. If this phrase "all the then Members of the Assembly" means the Members who are present in the Assembly, then, I have no objection. If it means all the Members of which the House is composed, I think it is not desirable to keep the clause as it stands.

With these few words, I move my amendment."

(emphasis supplied)

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 as under: (CAD Vol. 8, p. 562)

"Mr President.—The question is:

'That in clause (c) of Article 158, for words "all the then Members of the Assembly" the words "the Members of the Assembly present and voting" be substituted.'

The amendment was negatived."

(emphasis supplied)

It is apparent, that the Constituent Assembly chose to retain the words, "all the then Members of the Assembly", and declined to substitute them with the words, "the Members of the Assembly present and voting". We are of the view, that the acceptance of one set of words, and the rejection of the suggested substitution, would effectively render a constitutional answer to the issue in hand.

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.

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.

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***

<u>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.</u> *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.* ***<u>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.</u>*** *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. ***<u>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</u>****.*

[Emphasis Supplied]

11. In the present facts and circumstances, it is an admitted fact that the notice dated 21.06.2022 for motion to remove the Deputy Speaker was issued by 34 MLAs of Shiv Sena Legislature Party (including few independent MLAs supporting them) under Rule 11 of the Maharashtra Assembly Rules read with Article 179 of the Constitution. It is again an admitted position that the disqualification petition was filed on 23.06.2022 and without following the mandate of Article 179(c) of the Constitution,

the Deputy Speaker proceeded with the disqualification petition and issued summons dated 25.06.2022 to the Respondent to reply to the said petition within 2 days i.e., by 27.06.2022, which was in contravention to Rule 7(3)(b) of the Disqualification Rules. ***[Page No. 243-244 of the Common Convenience Compilation Volume II]***

12. Thus, when more than 29 members of the Maharashtra Legislative Assembly had issued the notice showing no confidence in the Deputy Speaker, it would have been constitutionally impermissible for him to continue to decide the disqualification petitions, against the very same members as per Rule 11 of Maharashtra Legislative Assembly Rules. Rule 11 of Maharashtra Legislative Assembly Rules is reproduced herein below for ready reference:

> *"11. A motion to remove the Speaker from office of which fourteen days' notice, as required under Article 179 of the Constitution, has been given shall, as soon as may be, after the expiry of the notice period, be read to the Assembly by the Speaker who shall then request the members who are in favour of leave being granted to move the motion to rise in their seats, and if not less than 29 members rise accordingly, the speaker shall intimate that leave is granted and that the motion will be taken on such day, not being more than 7 days from the day on which leave is granted as he may appoint. If less than 29 members rise, the Speaker shall inform the member who may have given the notice that he has not the leave of the Assembly to move it."*

13. *Allowing a Deputy Speaker to entertain disqualification petitions pending their own removal can permit them to significantly alter the composition of the Legislative House.*

14. *The language of Article 179(c) contemplating removal of the Deputy Speaker "by a majority of all the then Members of the Assembly"* is *to ensure that all the existing members are allowed to vote on the disqualification of the Speaker/Deputy Speaker and the composition of the Assembly is not changed.*

15. *In contrast, if the Deputy Speaker were to entertain Disqualification Petitions against Existing Members during pendency of a notice for their removal then the Deputy Speaker would be able to disqualify and oust such members who are inclined to vote against him and thereby ensure his own continuation in power and that of a minority government.*

B. Whether a petition under Article 226 or Article 32 lies, inviting a decision on a disqualification by the High Court or the Supreme Court, as the case may be?

16. Para 6 of the Tenth Schedule to the Constitution of India give sole powers to the Hon'ble Speaker to adjudicate upon the issue regarding disqualification, of any member of the Legislative Assembly, under the Tenth Schedule to the Constitution. Further, Article 212(1) provides that the validity of any proceedings of the State Legislature cannot be called into question before courts on the ground of any alleged irregularity of procedure.

17. However, the Petitioner under the garb of present Petition is trying to surpass the powers given to the Hon'ble Speaker under the Constitution of India to adjudicate upon the disqualification petition against the members of the Legislative Assembly.

18. The Petitioner is seeking transfer of Disqualification Petition under Tenth Schedule to the Constitution of India, for disqualification of the Respondents which is pending before the Hon'ble Speaker, despite itself filing the Disqualification Petition before the Speaker. While the Speaker was seized of the matter and promptly issued notice to the Respondents, the Petitioner themselves have derailed those proceedings by seeking a stay. Thus, this is not a case manifesting any substantial violation of principles of natural justice for the Hon'ble Court to supplant and interfere

with the powers of the Hon'ble Speaker (***Raja Ram Pal v. Hon'ble Speaker, Lok Sabha & Ors. (2007) 3 SCC 184, Para 360, 398, 431 @Page No. 2033 of Common Compilation of Judgements and Orders Part II) ; Ashish Shelar & Ors v Maharashtra Legislative Assembly & Anr. 2022* SCC OnLine SC 105, *Paras 41, 43, 46, 47, 63-66, 98-100 @ Page No. 1414-1446 of Common Compilation of Judgements and Orders Part I***)

19. Therefore, in such facts, the Speaker cannot be held to be ineligible to decide on the disqualification petitions and transfer of those proceedings cannot be sought to this Hon'ble Court.

20. That when Petitioners want the majority of SSLP (i.e. 40 MLAs) to be disqualified instead of their 14 members who are in fact the real defectors – which is evident from the following short chronology of facts:

a) Sh. Uddhav Thackeray, on 29.07.2022, resigned as the Chief Minister as he had lost the confidence and support of his own party;

b) The majority members of the SSLP (i.e. 39 out of 54), having faith in the leadership of Sh. Eknathrao Sambhaji Shinde – the Leader of the SSLP, proposed his name as the Chief Minister;

c) Since Sh. Uddhav Thackeray had already resigned, the members of SSLP were issued whip to vote for Sh. Eknathrao Sambhaji Shinde in the floor test as conducted on 04.07.2022 to ensure that the democratically elected nominee is able to prove his majority;

d) The earlier members of the coalition, i.e. NCP and INC, not being agreeable with Sh. Eknathrao Sambhaji Shinde as the choice of Chief Minister from Shiv Sena, withdrew their support from the Government;

e) However, 15 members defied the Whip and tried to sabotage a Chief Minister of their own party. Since, Sh. Uddhav Thackeray had already resigned, there appears to be no reason but that these 15 were acting on the 'Whip' of NCP and INC.

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?

21. That the concept of deemed disqualification comes under the Tenth Schedule to the Constitution of India only operates on an adjudication by the authority empowered to do such adjudication and such adjudication is quasi-judicial in nature and has to be arrived by a procedure established by law.

22. In the case of disqualification under the Tenth Schedule, the procedure for adjudication of disqualification petitions is that which has been prescribed by rules, which may be framed under clause 8 of the Tenth Schedule, these rules have been framed under Maharashtra Assembly Members (Disqualification due to defection) Rules, 1986.

23. As apparent from the facts narrated above, in the instant case, the disqualification proceedings were illegal from the very inception as even prior to the very initiation of the proceedings, a notice by 34 MLAs dated 21.06.2022 had been sent to and received by the Deputy Speaker, informing him that he seizes to enjoy the of majority of the members of the Legislative Assembly. On receipt of such notice by him, the law laid down in *Nabam Rebia* and the provisions of Article 179 of the Constitution of India came into operation and the then Deputy Speaker who initiated the proceedings seized to have any jurisdiction to deal with the question of disqualification any further unless he established by a floor test that he enjoyed the support the majority of the House to occupy that position.

Moreover, there were no further progress in the matter on the question of disqualification initiated by the said Deputy Speaker in view of the directions of the Two Judge Bench of this Hon'ble Court not to proceed with the disqualification proceedings before him unless he complied with the mandatory rules with respect to the timeline to file a reply to the notice and other principles of the natural justice.

24. The issue of disqualification never reached the stage of the pleadings/hearings and the decision. The concept of deemed disqualification canvassed by the Petitioner inherently is premised on a flawed and starkling premise that the outcome of the disqualification proceedings initiated by the Deputy Speaker would follow a predetermined part of inevitable disqualification.

25. In other words, the Speaker would be lacking in partiality and any pleadings/hearing before him will be idle formality. This both undermines the legislative wisdom and the letter and spirit of the Tenth Schedule which prescribes a mandatory procedure to decide a question of disqualification.

26. In any event, on the voluntary resignation of the then Chief Minister on 29.06.2022, the question of disqualification seized to have any relevance, thereafter, as the mantle then fell on the governor to constitute the new government with stable majority without any reference to disqualification of any members.

D. What is the status of proceedings in the House during the pendency of disqualification petitions against the members?

27. The Hon'ble Supreme Court has previously, in the context of pending resignations of MLAs, held that until such resignations are accepted, the Members who have resigned continue to be reflected in the strength of

the House. ***[Shivraj Singh Chouhan v. M.P. Legislative Assembly, (2020) 17 SCC 1, Para 80 @ Page No. 1377 of Common Compilation of Judgements and Orders Part I]***

28. Accordingly, until the adjudication of disqualification proceedings of the MLAs, they continue to remain members of the House and continue to be reflected in the strength of the House.

29. Pending their resignation or disqualification, the MLAs facing disqualification proceedings still retain the rights to participate in the proceedings in the House and vote on any resolutions passed.

30. Further, the Hon'ble Supreme Court in both, ***Pratap Gouda Patil v. State of Karnataka, (2019) 7 SCC 463 [Para 7 @ Page No. 2446 of Common Compilation of Judgements and Orders Part II]*** held and ***Speaker, Haryana Vidhan Sabha v. Kuldeep Bishnoi, (2015) 12 SCC 381 [Paras 46 and 47 @2409-2410 of Common Compilation of Judgements and Orders Part II]*** has observed that pending disqualifications such Members ought not to be compelled to participate or not participate in the proceedings of the House and that estopping them from effectively functioning as Members must be set aside.

31. If the mere pendency of disqualification were to amount to removal of the MLAs from the Strength of the House, then the government in power by merely initiating proceedings under the Tenth Schedule would bring down the Strength of the House.

32. It is for this reason that Members, pending their disqualification, must retain the right to participate in the proceedings of the House including, the right to enter, participate and vote on the floor of the House.

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?

33. Mere pendency of Disqualification Petitions against rival Members belonging to the Shiv Sena Legislature Party cannot be grounds to stall their participation in the floor of the House.

34. The Hon'ble Court's observations in ***Rajendra Singh Rana v. Swami Prasad Maurya, (2007) 4 SCC 270 @ Page No. 821 of Common Compilation of Judgements and Orders Part I*** were in the context that the Speaker must not consider any facts that arise subsequent to the time when the Members allegedly invited disqualification.

35. In *Rajendra Singh Rana*, at the time of writing to Governor by the Members, there was no evidence to indicate a 1/3rd split in the party under Para 3 of the Tenth Schedule. Such split occurred subsequent to the acts resulting in disqualification, therefore, the Hon'ble Supreme Court held that the said Members stood disqualified.

36. Therefore, ex post facto disqualification means that the Hon'ble Speaker while adjudication Disqualification Petitions must look at the facts as they existed on the date on which alleged Disqualification occurred. This in no way implies that the MLAs stand disqualified from such date.

F. What is the impact of the removal of Paragraph 3 of the Tenth Schedule?

37. The deletion of paragraph 3 from the tenth schedule cannot be read as to evidence any dilution of the powers of the ECI in deciding intra party disputes. On the contrary, deletion of paragraph 3, which dealt with a split in a political party, clearly demonstrates that any doubt which would have

been there regarding speaker exercising jurisdiction over split in the political party has now been put to rest and the ECI is the sole authority to decide the same. ***[Paragraph 3 omitted by the Constitution, the 91st Amendment Act, 2003 @ Page No. 48 of the COMMON COMPILATION OF STATUTES, RULES AND RESEARCH MATERIAL]***

38. The Tenth Schedule, in contrast, provides Speaker with limited power to disqualify individual MLAs, for (1) voluntarily leaving the party; and (2) disobedience of the whip.

39. Thus, under the Tenth Schedule, the Hon'ble Speaker's power is limited to the fate of individual/multiple MLAs, with respect to their membership of the Legislative Assembly. The Hon'ble Speaker has not been vested general powers to determine recognition, or allotment of Symbol to the Political Party.

40. In contrast to the Tenth Schedule, under the Election Symbols (Reservation and Allotment) Order, 1968 the ECI can determine, in cases of disputes between rival claims, to decide which faction constitutes the "recognized political party" and thus which faction may claim the Symbol. Thus, the ECI decides the larger question as to the fate of political party itself.

41. Even prior to the omission of Para 3 from the Xth Schedule, the Speaker's enquiry as to the existence of a split was limited to a *prima facie* determination for the purposes of deciding the disqualification from membership of the House.

42. The question of the recognition of political parties and the allotment of Symbols continued to lie with the Election Commission.

43. The omission of Para 3 resulted in the exception in cases of a split being done away with. Therefore, the very power under the Xth Schedule provided to the Speaker to even *prima facie* determine a Split in the Political Party stood deleted.

44. Therefore, the Tenth Schedule and Symbols Orders operate in completely distinct realms, with the former focusing on Legislative Party and the latter on Political Parties.

45. This is evident from the fact that this Hon'ble Court, even in decisions post the aforementioned two events, i.e. introduction of Xth Schedule in 1985 and deletion of paragraph 3 in 2003, has recognised the ECI's powers, which are as follows:

a) *Kanhiya Lal Omar v. R.K. Trivedi and Others* [1985(4) SCC 628] *[Paragraph 10 to 17 @ Page No. 1672 of COMMON COMPILATION OF JUDGMENTS AND ORDERS PART - II];*

b) *Edapaddi P. Palaniswami (supra)* [Paragraphs 37, 39 and 40 @ Page No. 2418 of *COMMON COMPILATION OF JUDGMENTS AND ORDERS PART - II]*

c) Rajendra Singh Rana v. Swami Prasad Maurya, (2007) 4 SCC 270 [Para 3 and Para 25-26 @ Page No. 821 *COMMON COMPILATION OF JUDGMENTS AND ORDERS PART – I]*

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?

46. The Leader and Chief Whip of the Legislature Party are to be elected by the members of Legislature Party itself. The democratically elected Leader and Chief Whip of the Legislature Party cannot be challenged by the minority members merely because a competing candidate could not attain

the majority to be elected as the Leader and Chief Whip in the Legislative Assembly.

47. In parliamentary form of democracy, the voice of majority plays an important role. The majority members of the SSLP have already elected the Respondent No. 4 and Respondent No. 8 as their Leader and Chief Whip, respectively. The challenge to the election of Respondent No. 4 and Respondent No. 8 as Leader and Chief Whip, respectively, of the Legislature Party, by the Petitioner through the present Petition is merely to thwart the stable majority of the present government in State of Maharashtra.

48. The Speaker being responsible for conducting the affairs on the floor of the House is duty bound to recognize the Leader and Chief Whip so that the Legislature Party speaks in one voice.

49. The majority of legislators of a 'Legislature Party' have the right to change/appoint the 'Leader' and 'Whip' of the Legislature Party and such change has to be mandatorily, without discretion, notified by the Hon'ble Speaker.

50. The power to appoint the leader of 'Legislature Party' lies with the members of such Legislature Party is also clear from the definition of "Leader" as given under the Members of Maharashtra Legislative Assembly (Disqualification on ground of Defection) Rules, 1968. The Definition clearly states that members of Legislature Party shall only choose their leader. The definition of the 'Leader' is reiterated herein for ready referral of this Hon'ble Court:

> *"2 (f) "Leader" in relation to a Legislature party, **<u>means a member of the party chosen by it</u>** as its leader and includes any other member of the party authorised by the party to act in the absence of the leader as, or discharge the functions of the leader of the party for the purposes of these rules."*

(emphasis supplied)

51. The Speaker having no such discretionary power, cannot delay or prevaricate on non-existent disputes, such as the signatures of the legislators etc. and the only principle to be applied is whether the legislators have, by majority, made such a request and have not denied their assertion even thereafter. Pertinently, the absolute right of a majority of the 'Legislature Party' to choose its 'Leader' gives them a consequential right to choose it's Chief Minister.

52. In this regard, reliance is placed on Article 212(2) of the Constitution of India which sets out the immunity enjoyed by the officer of the house from judicial intervention. Article 212 is set out herein below:

> *"212. Courts not to inquire into proceedings of the Legislature*
>
> *(1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.*
>
> *(2) No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution **for regulating procedure or the conduct of business, or for maintaining order**, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers"*

[Emphasis Supplied]

53. To bolster the aforementioned argument, reliance is placed on ***Raja Ram Pal v. Hon'ble Speaker, Lok Sabha & Ors. reported in (2007) 3 SCC 184 (Pp. 2033-2313 of judgment compilation Part. II); In re Powers, Privileges and Immunities of State Legislatures, reported in (1965) 1 SCR 413 (Pp. 1453-1528 of judgment compilation Part. II); and Ashish Shelar vs. Maharashtra Legislative Assembly reported in (2022) SCCOnline SC 105 (Pp. 1414-1446 of judgment compilation Part I).***

54. Further, the said question came up before the Hon'ble Delhi High Court in the matter of ***Chirag Paswan & Anr. vs. Lok Sabha Secretary & Ors. reported in 2021 SCC OnLine Del 3673***, wherein after analysing various precedents in the matter, the Hon'ble Delhi High Court came to a conclusion that '*the power to regulate the internal affairs of the House is the prerogative of the Hon'ble Speaker who shall exercise this power as he finds fit*'. Reliance is placed on ***paragraphs 14-19 @ Pgs. 2475-2478 of Judgment Compilation Vol. II.***

H. Are intra-party decisions amenable to judicial review? What is the scope of the same?

55. In a parliamentary form of democracy, the underlying basis for testing the validity/invalidity of any action is 'numbers'. A group of 15, cannot call a group of 39 as rebels/delinquent. It is in fact the other way around.

56. Any decision taken democratically and approved by a thumping majority of a Legislature Party is not to be interfered with by Courts. The Petitioner, through the present Petitions is trying to challenge the democratic decisions taken by the members of a democratic party out of their own free will.

57. The thumping majority in favour of Respondent No. 4 i.e. Sh. Eknathrao Sambhaji Shinde itself shows that his candidature as the Chief Minister has been supported by his own party [39 out of 54 Members of Shiv Sena Legislature Party ("SSLP")].

58. Being conscious of the lack of numbers within the Legislature Party, the Petitioner is seeking to now agitate the issue regarding who is the real Shiv Sena Party.

59. Such internal dispute between rival factions of the Shiv Sena over control of the Political Party is outside the purview of the Xth Schedule.

60. The said issue is rightly sub judice before the Election Commission of India, which has the exclusive jurisdiction to decide the same. In the absence of a verdict by the ECI, deciding which splinter group is the real Shiv Sena Party, the Petitioner has no case whatsoever.

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?

61. The order dated 29.06.2022 passed by this Hon'ble Court declining to injunct the undertaking of the Floor Test in the Assembly, is strictly in accordance with the principles of law laid down by orders of this Hon'ble Court interpreting the constitutional scheme.

62. Before the Floor Test, the then Hon'ble Chief Minister had resigned on 29.06.2022. The confidence motion had stood carried out on 04.07.2022, which also resulted in expression of confidence in the Speaker – who, in the meanwhile - had stood elected for occupying the vacant office of the Speaker, in accordance with the constitutional provisions.

63. The decision of the Hon'ble Governor calling for the conduct of the Floor Test and non-grant of injunction against the Floor Test by this Hon'ble Court, in the most humble submission of the Respondent, is strictly in accordance with the Constitution of India as interpreted by this Hon'ble Court.

64. After the resignation of a Chief Minister, the Governor is under a Constitutional duty to look for another person who could stake claim to form a Government.

65. It is most respectfully submitted that it is the constitutional duty of the Hon'ble Governor to call upon a person who commanded the majority in the House to form a government of the State, particularly in view of the settled law that it is the constitutional duty of the Hon'ble Governor that on the fall of an incumbent government, the Hon'ble Governor must find a stable majority in the House.

66. It It is settled law that in exercise of the constitutional duty to find a stable majority, the Governor is prohibited from taking into consideration, the fact that some members supporting the new government may, by such support, potentially invite proceedings for disqualification under the Tenth Schedule to the Constitution of India.

67. The appointment of a Chief Minister by the Hon'ble Governor, who subsequently proved his majority through a completely valid floor test on the floor of the House, cannot be called into question before any Court.

68. Further, Article 164 gives sole discretionary powers to the Hon'ble Governor to appoint the Chief Minister. The immunity of the Hon'ble Governor is absolute and beyond the writ jurisdiction of this Hon'ble Court. Therefore, appointment of Chief Minister by the Hon'ble Governor cannot be questioned before this Hon'ble Court through a Petition under Article 32 of the Constitution of India. This power, is subject to the Chief Minister proving his majority on the floor of the house, which admittedly the Respondent No. 4 has already proved through a completely valid floor test.

69. Furthermore, the sum and substance of all the contentions made by the Petitioner is that whether the Hon'ble Governor has acted as per his subjective satisfaction based on the objective materials available to him, however, this contention may also be rejected by this Hon'ble Court since the Respondent No. 4 has already proved his majority on floor of the House by winning a trust vote by thumping majority.

70. The above contention that it is the duty and discretionary powers of the Governor to call for appointment of a new Chief Minister when the former Chief Minister has resigned and/or lost the confidence motion in the Assembly has been upheld by a five-judge bench of this Hon'ble Court in *Rameshwar Prasad & Ors (VI) v. Union of India*, (2006) 2 SCC 1. The relevant para of the said judgment is reproduce herein for ready referral of this Hon'ble Court:

> *"**64.** Expounding in detail on the exercise of **discretionary powers by the Governor**, the Sarkaria Commission has mainly recommended the following:*
> ***Appointment of the Chief Minister.—It is clear that the leader of the party which has an absolute majority in the Legislative Assembly should invariably be called upon by the Governor to form a Government**. However, if there is a fractured mandate, then the Commission recommends an elaborate step-by-step approach and has further emphasised that*
>
> > *"the Governor, while going through the process of selection as described, should select a leader who, in his (Governor's) judgment, is most likely to command a majority in the Assembly. The Governor's subjective judgment will play an important role." Upon being faced by several contesting claims, the Commission suggests that the most prudent measure on the part of the Governor would be to test the claims on the floor of the House…"*
>
> …
>
> ***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.*

...

149.** The contention that the installation of the Government is different than removal of an existing Government as a consequence of dissolution as was the factual situation before the nine-Judge Bench in Bommai case [S.R. Bommai v. Union of India, (1994) 3 SCC 1] and, therefore, the same parameters cannot be applied in these different situations, has already been dealt with hereinbefore. Further, **it is to be remembered that a political party prima facie having majority has to be permitted to continue with the Government or permitted to form the Government, as the case may be. In both categories, ultimately the majority shall have to be proved on the floor of the House**. The contention also overlooks the basic issue. It being that a party even, prima facie, having a majority can be prevented to continue to run the Government or claim to form the Government, declined on the purported assumption of the said majority having been obtained by illegal means. **There is no question of such basic issues allegedly falling in the category of "political thicket" and being closed on the ground that there are many imponderables for which there are no judicially manageable standards and, thus, outside the scope of judicial review

...

***163.** There cannot be any doubt that the oath prescribed under **Article 159 requires the Governor to faithfully perform the duties** of his office and to the best of his ability preserve, protect and defend the Constitution and the laws. **The Governor cannot, in the exercise of his discretion or otherwise, do anything what is prohibited to be done. The Constitution enjoins upon the Governor that after the conclusion of elections, every possible attempt is made for formation of a popular Government representing the will of the people expressed through the electoral process. If the Governor acts to the contrary by creating a situation whereby a party is prevented even to stake a claim and recommends dissolution to achieve that object, the only inescapable inference to be drawn is that the exercise of jurisdiction is wholly illegal and unconstitutional**. ... This shows that the approach was to stall JD(U)*

from staking a claim to form the Government. At that stage, such a view cannot be said to be consistent with the provisions of the Tenth Schedule. In fact, the provisions of the said Schedule at that stage had no relevance. It is not a case of "assumption", or "perception" as to the provisions of the Constitution by the Governor. ***It is a clear case where attempt was to somehow or the other prevent the formation of a Government by a political party—an area wholly prohibited insofar as the functions, duties and obligations of the Governor are concerned****. It was thus a wholly unconstitutional act.*

...

165. ***If a political party with the support of other political party or other MLAs stakes claim to form a Government and satisfies the Governor about its majority to form a stable Government, the Governor cannot refuse formation of the Government and override the majority claim because of his subjective assessment that the majority was cobbled by illegal and unethical means. No such power has been vested with the Governor. Such a power would be against the democratic principles of majority rule. The Governor is not an autocratic political ombudsman. If such a power is vested in the Governor and/or the President, the consequences can be horrendous****. The ground of maladministration by a State Government enjoying majority is not available for invoking power under Article 356. The remedy for corruption or similar ills and evils lies elsewhere and not in Article 356(1).* ***In the same vein, it has to be held that the power under the Tenth Schedule for defection lies with the Speaker of the House and not with the Governor. The power exercised by the Speaker under the Tenth Schedule is of judicial nature. Dealing with the question whether power of disqualification of members of the House vests exclusively with the House to the exclusion of the judiciary*** *which in Britain was based on certain practices of the British Legislature, as far as India is concerned, it was said in Kihoto case [(1965) 3 SCR 53 at 60] that…*

...

166. The Governor cannot assume to himself the aforesaid judicial power, and based on that assumption come to the conclusion that there would be violation of the Tenth Schedule and use it as a reason for recommending dissolution of the Assembly*."*

[Emphasis Supplied]

71. Reliance is also placed on the constitution bench judgment of this Hon'ble Court in ***S.R. Bommai v. Union of India, reported in (1994) 3 SCC 1 (Pp. 1686-1984 of judgment compilation part II***).

72. The appointment of a Chief Minister by the Governor, who subsequently proved his majority on the floor of the house through a completely valid floor test, cannot be called into question before Courts.

J. **What is the scope of the powers of the Election Commission of India with respect to determination of a split within a party?**

73. ECI, under Article 324 of the Constitution of India, is the exclusive constitutional body responsible for superintendence, direction and control of elections to be conducted in India.

74. The Election Symbols (Reservation and Allotment) Order, 1968 was enacted by the ECI made in exercise of the powers conferred upon it under Article 324 of the Constitution read with section 29A of the Representation of the People Act, 1951 and rules 5 and 10 of the Conduct of Election Rules, 1961. **[Page No. 82 of the *COMMON COMPILATION OF JUDGMENTS AND ORDERS PART - II*].**

75. The plenary powers of the ECI under Para 15 of Election Symbols (Reservation and Allotment) Order, 1968, to adjudicate upon intra-party dispute have been recognized by the Hon'ble Supreme Court in:

a) *Shri. Sadiq Ali & Anr v The Election Commission of India & Ors [1972] 4 SCC 664* ***[Paragraphs 20, 22 @ Page No. 1539-1540 of the Common Judgment Compilation Volume II and 34 @Page No. 1544 of Common Judgment Compilation Volume II];***

b) *All Party Hill Leaders Conference v. Captain WA Sangma, [(1977) 4 SCC 161]*. [Paragraphs 37, 38 @ Page No. 1582-1583, Para 42 and 43 @ Page No. 1585 of ***Common Judgment Compilation Volume II***];

c) *Mohinder Singh Gill vs. Chief Election Commissioner* [(1978) 1 SCC 405] [Paragraphs 39 and 40 @ Page No. 1617-1618 of ***Common Judgment Compilation Volume II]***

d) *Edapaddi P. Palaniswami v. TTV Dinakaran, [(2019) 18 SCC 219]* [Paragraphs 39 and 40 @ Page No. 2441-2443 of ***Common Judgment Compilation Volume II]***

76. The constitutionality of Para 15 of Election Symbols (Reservation and Allotment) Order, 1968 was challenged before the Hon'ble Supreme Court of India in the year 1970 in the matter of *Sadiq Ali (supra)* and wherein the Hon'ble Supreme Court repelled the said challenge and the powers of the ECI were upheld by the Hon'ble Supreme Court**. [*Sadiq Ali* (supra) Paragraph 40 @ Page No. 1546-1547 of the *Common Judgment Compilation Volume II]***

77. The introduction of Tenth Schedule to the Constitution of India, in 1985 and the subsequent deletion of Para 3 of Tenth Schedule to the Constitution of India, in 2004, has no impact whatsoever on the powers of the ECI to decide intra-party disputes.

78. Further, the closest authority with powers to adjudicate the intra party disputes is the Speaker of house, however, the scheme of the Tenth Schedule or rules made thereunder, does not contemplate the Speaker to embark upon an independent enquiry with respect to whether there is a split or a merger in a Political Party since the Speaker can only see the Split or Merger, as the case may be, only through the lens of a 'Legislature Party' and not the 'Original Political Party'.

79. In fact, the Hon'ble Supreme Court has continued to recognise that the ECI is the competent constitutional authority to examine and adjudicate upon

the issue of intra-party disputes even subsequent to the introduction of the Tenth Schedule.

a) *Kanhiya Lal Omar v. R.K. Trivedi and Others* [1985(4) SCC 628] [Paragraph 10 to 17 @ Page No. 1679-1685 of ***Common Judgment Compilation Volume II]***

b) *Edapaddi P. Palaniswami (supra) [*Paragraphs 37, 39 and 40 @ Page No. 2441-2442 of ***Common Judgment Compilation Volume II]***

c) Rajendra Singh Rana v. Swami Prasad Maurya, (2007) 4 SCC 270 [Para 3 @ Page No. 833 and Para 25-26 @ Page No. 842-843 of ***Common Judgment Compilation Volume I]***

80. In view of the above, the respondent No. 4 most respectfully submits that the Writ Petitions filed by the Petitioner group, bearing W.P. (C) Nos. 470, 479, 493 and 538 of 2022 are liable to be dismissed.

Place: New Delhi

Date: 28.11.2022

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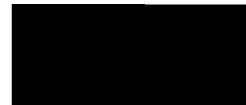

M/s. TAS LAW

Advocates on Record for the Respondent No. 4