

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

Writ Petition (Civil) No 493 of 2022

Subhash Desai

... Petitioner

Versus

Principal Secretary, Governor of Maharashtra and Ors

... Respondents

WITH

Writ Petition (Civil) No 469 of 2022

WITH

Writ Petition (Civil) No 468 of 2022

WITH

Writ Petition (Civil) No 479 of 2022

WITH

Writ Petition (Civil) No 470 of 2022

AND WITH

Writ Petition (Civil) No 538 of 2022

ORDER

1 During the course of the hearing, a preliminary submission has been made before the Court to the effect that the decision in **Nabam Rebia and Bamang Felix Vs Deputy Speaker, Arunachal Pradesh Legislative Assembly**¹, requires reconsideration by a Bench of seven Judges.

2 Mr Kapil Sibal, Dr Abhishek Manu Singhvi and Mr Devadatt Kamat, learned Senior Counsel seek a reference to a larger Bench. The submission has been opposed by Mr Harish Salve, Mr Neeraj Kishan Kaul, Mr Mahesh Jethmalani, Mr Maninder Singh and Mr Siddharth Bhatnagar, learned Senior Counsel appearing for the other side. Mr Tushar Mehta, learned Solicitor General, appeared on behalf of the Governor of the State of Maharashtra.

3 Arguments have been concluded on the issue as to whether a reference should be made on the correctness of the decision in **Nabam Rebia (supra)** to a Bench of seven Judges.

4 In **Nabam Rebia (supra)**, three judgments were delivered for the Constitution Bench, by Justice J S Khehar, Justice Dipak Misra (as the learned Chief Justices then were) and by Justice Madan B Lokur.

5 The opinions of Justice J S Khehar and Justice Dipak Misra hold that the Speaker should desist from considering a petition for disqualification under the Tenth Schedule to the Constitution when a notice indicating an intent to remove him has been moved. This principle is formulated in the following observations in the decision of Justice J S Khehar:

1 (2016) 8 SCC 1

“194...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.”

6 A similar view has been expressed by Justice Dipak Misra in the following extract:

“238...When there is an expression of intention to move the resolution to remove him, it is requisite that he should stand the test and then proceed. That is the intendment of Article 179(c) and the said interpretation serves the litmus test of sustained democracy founded on Rule of Law; and the Founding Fathers had so intended and the constitutional value, trust and morality unequivocally so suggest. It would be an anathema to the concept of constitutional adjudication, if the Speaker is allowed to initiate proceeding under the Tenth Schedule of the Constitution after intention to remove him from his Office is moved...”

7 However, Justice Madan B Lokur, in the course of his judgment, held that:

“401.In the view that I have taken, I am of the 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.”

8 The issue of whether a reference to a Bench of seven Judges should be made cannot be considered in the abstract; isolated or divorced from the facts of the case. Whether, the above principle which has been formulated in **Nabam Rebia (supra)** has an impact upon the factual position in the present case, needs deliberation.

- 9 In the above backdrop, the issue whether a reference of the decision in **Nabam Rebia (supra)** to a larger Bench is warranted, would be determined together with the merits of the case.
- 10 Consequently, the batch of cases is set down for hearing on merits on Tuesday, 21 February 2023 at 10.30 am.

.....CJI.
[Dr Dhananjaya Y Chandrachud]

.....J.
[M R Shah]

.....J.
[Krishna Murari]

.....J.
[Hima Kohli]

.....J.
[Pamidighantam Sri Narasimha]

New Delhi;
February 17, 2023

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition (Civil) No.493/2022

SUBHASH DESAI

Petitioner(s)

VERSUS

PRINCIPAL SECRETARY, GOVERNOR OF
MAHARASHTRA & ORS.

Respondent(s)

(With IA No.92215/2022-STAY APPLICATION and IA No.92217/2022-EXEMPTION FROM FILING O.T. and IA No.92216/2022-PERMISSION TO FILE LENGTHY LIST OF DATES, IA No.101777/2022 - APPROPRIATE ORDERS/DIRECTIONS, IA No.100297/2022 - APPROPRIATE ORDERS/DIRECTIONS, IA No.108739/2022 - EXEMPTION FROM FILING O.T., IA No. 92217/2022 - EXEMPTION FROM FILING O.T., IA No.101776/2022 - INTERVENTION/IMPLEADMENT, IA No.92216/2022 - PERMISSION TO FILE LENGTHY LIST OF DATES and IA No.92215/2022 - STAY APPLICATION)

WITH W.P.(C) No.469/2022 (X)

(With IA No.88601/2022-STAY APPLICATION and IA No.88602/2022-EXEMPTION FROM FILING O.T. and IA No.88964/2022-APPROPRIATE ORDERS/DIRECTIONS, IA No.88964/2022 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 88602/2022 - EXEMPTION FROM FILING O.T., IA No. 89960/2022 - INTERVENTION APPLICATION and IA No. 88601/2022 - STAY APPLICATION)

W.P.(C) No.468/2022 (X)

(With IA No.88604/2022 - EXEMPTION FROM FILING O.T. and IA No.88603/2022 - STAY APPLICATION)

W.P.(C) No.479/2022 (X)

(With IA No.90188/2022 - EX-PARTE STAY and IA No.90189/2022 - EXEMPTION FROM FILING O.T.)

W.P.(C) No.470/2022 (X)

(With IA No.88697/2022 - EX-PARTE STAY)

W.P.(C) No.538/2022 (X)

(With IA No.100285/2022 - APPROPRIATE ORDERS/DIRECTIONS, IA No.98578/2022 - EXEMPTION FROM FILING O.T. and IA No.98577/2022 - STAY APPLICATION)

Date : 17-02-2023 These matters were called on for pronouncement of Order today.

For Petitioner(s) Mr. Kapil Sibal, Sr. Adv.
Mr. Abhishek Manu Singhvi, Sr. Adv.
Mr. Devdatt Kamat, Sr. Adv.
Mr. Amit Anand Tiwari, Adv.
Mr. Rohit Sharma, Adv.
Mr. Rajesh Inamdar, Adv.
Mr. Javedur Rahman, Adv.
Mr. Nizam Pasha, Adv.
Mr. Anish R. Shah, AOR
Mr. Harsh Pandey, Adv.
Mr. Revanta Solanki, Adv.
Mr. Amit Bhandari, Adv.
Mr. Sunny Jain, Adv.
Mr. Nishant Patil, Adv.
Ms. Devyani Gupta, Adv.
Ms. Tanvi Anand, Adv.
Ms. Aparajita Jamwal, Adv.

WPC 469/2022

Mr. Harish Salve, Sr. Adv.
Mr. Mahesh Jethmalani, Sr. Adv.
Mr. Neeraj Kishan Kaul, Sr. Adv.
Mr. Maninder Singh, Sr. Adv.
Mr. Siddharth Bhatnagar, Sr. Adv.
Ms. Malvika Trivedi, Sr. Adv.
Mr. Chirag J Shah, Adv.
Mr. Utsav Trivedi, Adv.
Mr. Ravi Sharma, Adv.
Mr. Nihar Thackeray, Adv.
Mr. Himanshu Sachdeva, Adv.
Ms. Manini Roy, Adv.
Ms. Shivani Bhushan, Adv.
Ms. Mugdha Pande, Adv.
Mr. Ajay Awasthi, Adv.
Mr. Piyush Tiwari, Adv.
Ms. Srishti Kumar, Adv.
Mr. Kumar Sumit, Adv.
Ms. Kanjani Sharma, Adv.
Ms. Chaitali, Adv.
Mr. Wedo Khalo, Adv.
Mr. Aditya Sidhra, Adv.
Ms. Prachita Kar, Adv.
Mr. Nadeem Afroz, Adv.
Mr. Prabhash Bajaj, Adv.
Mr. Navneet R., Adv.
Ms. Sujal Gupta, Adv.
M/s. TAS Law

WPC 468/2022

Mr. Neeraj Kishan Kaul, Sr. Adv.
Mr. Maninder Singh, Sr. Adv.
Mr. Siddharth Bhatnagar, Sr. Adv.
Mr. Abhikalp Pratap Singh, AOR
Mr. Abhay Anturkar, Adv.
Mr. Prbhas Bajaj, Adv.
Mr. Dhruv Sharma, Adv.
Ms. Ira Mahajan, Adv.
Mr. Ramchandra Madan, Adv.
Mr. Toshiv Goyal, Adv.
Mr. Raghav Agrawal, Adv.
Ms. Shreya Saxena, Adv.
Ms. Yamini Singh, Adv.
Ms. Pritha Suri, Adv.
Ms. Vijetha Ravi, Adv.
Mr. Ajay Sabharwal, Adv.
Mr. Rangasaran Mohan, Adv.

WPC 479/2022,
WPC 470/2022 &
WPC 538/2022

Mr. Kapil Sibal, Sr. Adv.
Mr. Abhishek Manu Singhvi, Sr. Adv.
Mr. Devadatt Kamat, Sr. Adv.
Mr. Rohit Sharma, Adv.
Mr. Amit Anand Tiwari, Adv.
Mr. Javedur Rahman, AOR
Mr. Rajesh Inamdar, Adv.
Mr. Sunny Jain, Adv.
Mr. Amit Bhandari, Adv.
Mr. Nizam Pasha, Adv.
Mr. Harsh Pandey, Adv.
Mr. Revanta Solanki, Adv.
Ms. Aparajita Jamwal, Adv.
Mr. Nikhil Purohit, Adv.
Mr. Ashok Kumar, Adv.
Ms. Devyani Gupta, Adv.
Ms. Tanvi Anand, Adv.
Mr. Siddharth Seem, Adv.
Mr. L. Nidhiram Sharma, Adv.
Mr. Aman Sharma, Adv.
Mr. Ashima Chauhan Singh, Adv.
Mr. Mudassir, Adv.

For Respondent(s)

Mr. Tushar Mehta, SG
Mr. Kanu Agrawal, Adv.
Mr. Padmesh Mishra, Adv.
Mr. Digvijay Dam, Adv.
Mr. Madhav Sinhal, Adv.

Mr. Arvind Kumar Sharma, Adv.
Mr. Kartikay Aggarwal, Adv.

Mr. Aaditya Aniruddha Pande, AOR
Mr. Siddharth Dharmadhikari, Adv.
Mr. Bharat Bagla, Adv.
Mr. Sourav Singh, Adv.

WPC 493/2022

Mr. Harish Salve, Sr. Adv.
Mr. Mahesh Jethmalani, Sr. Adv.
Mr. Neeraj Kishan Kaul, Sr. Adv.
Mr. Maninder Singh, Sr. Adv.
Mr. Siddharth Bhatnagar, Sr. Adv.
Ms. Malvika Trivedi, Sr. Adv.
Mr. Chirag J Shah, Adv.
Mr. Utsav Trivedi, Adv.
Mr. Ravi Sharma, Adv.
Mr. Himanshu Sachdeva, Adv.
Ms. Manini Roy, Adv.
Mr. Nihar Thackeray, Adv.
Ms. Shivani Bhushan, Adv.
Mr. Piyush Tiwari, Adv.
Ms. Mugdha Pande, Adv.
Mr. Ajay Awasthi, Adv.
Ms. Srishti Kumar, Adv.
Mr. Kumar Sumit, Adv.
Ms. Kanjani Sharma, Adv.
Ms. Chaitali Jugran, Adv.
Mr. Prabhas Bajaj, Adv.
Mr. Navneet R, Adv.
Ms. Ira Mahajan, Adv.
Mr. Dhruv Sharma, Adv.
Mr. Wedo Khalo, Adv.
Mr. Anjani Kumar Rai, Adv.
Mr. Adita Sidhra, Adv.
Ms. Prachita Kar, Adv.
Mr. Nadeem Afroz, Adv.
Ms. Sujal Gupta, Adv.
Mr. Biswaksen Panda, Adv.
M/s. TAS Law

WPC 493/2022

Mr. Ankit Yadav, AOR
Ms. Prakriti Rastogi, Adv.

WPC 493/2022,
WPC 479/2022 &
WPC 538/2022

Mr. Neeraj Kishan Kaul, Sr. Adv.
Mr. Maninder Singh, Sr. Adv.
Mr. Siddharth Bhatnagar, Adv.

Mr. Siddharth Bhatnagar, Sr. Adv.
Mr. Abhikalp Pratap Singh, AOR
Mr. Abhay Anturkar, Adv.
Mr. Prabhas Bajaj, Adv.
Mr. Dhruv Sharma, Adv.
Ms. Ira Mahajan, Adv.
Mr. Ramchandra Madan, Adv.
Mr. Toshiv Goyal, Adv.
Mr. Raghav Agrawal, Adv.
Ms. Shreya Saxena, Adv.
Ms. Yamini Singh, Adv.
Ms. Pritha Suri, Adv.
Ms. Vijetha Ravi, Adv.
Mr. Ajay Sabharwal, Adv.
Mr. Rangasaran Mohan, Adv.

WPC 493/2022,
WPC 469/2022 &
WPC 468/2022

Mr. Pai Amit, AOR
Mr. Abhiyudaya Vats, Adv.
Ms. Pankhuri Bhardwaj, Adv.
Ms. Bhavana Duhoon, Adv.
Ms. Ranu Purohit, Adv.

WPC 469/2022

Ms. Rukhmini Bobde, Adv.
Ms. Astha Prasad, AOR
Ms. Trishala Trivedi, Adv.
Mr. Ajit Pravin Wagh, Adv.
Mr. Ankit Ambasta, Adv.
Ms. Prachi Thakur, Adv.
Ms. Neeta Sanjay Savale, Adv.

WPC 469/2022 &
WPC 468/2022

Mr. Javedur Rahman, AOR

WPC 469/2022

Mr. Kailash Prashad Pandey, AOR
Mr. Mahendra Kawchale, Adv.
Mr. Vijay Pal, Adv.
Mr. Pramod Kumar Singh, Adv.
Mr. Kundal Lal, Adv.
Mr. Anil Kumar, Adv.
Mr. Umang Tripathi, Adv.
Mr. Deepankar, Adv.
Mr. Vinay Kumar Aherodiya, Adv.
Ms. Kajal Kumari, Adv.
Mr. Mahendra Kumar, Adv.
Ms. Sundri, Adv.
Mr. Om Prakash, Adv.
Mr. Shiv Kumar Golwalkar, Adv.

WPC 469/2022

Mr. Asim Sarode, Adv.
Ms. Shriya Awale, Adv.
Mr. Pradeep Kumar Gupta, Adv.
Mr. Ashok Kumar Gupta Ii, AOR
Ms. Smita Singalkar, Adv.

WPC 479/2022

Dr. A.P. Singh, Adv.
Mr. V.P. Singh, Adv.
Ms. Richa Singh, Adv.
Ms. Geeta Chauhan, Adv.
Ms. Pratima Rani, Adv.
Mr. Sharwan Kumar Goyal, Adv.
Mr. Sadashiv, AOR

WPC 470/2022

Mr. T.R. B. Sivakumar, AOR

WPC 470/2022

Mr. Raj Singh Rana, AOR
Dr. Gunratan Sadavate, Adv.
Mr. Pankaj Kumar Singh, Adv.
Mr. Pawan Kumar Shukla, Adv.
Mr. S.C. Tripathi, Adv.
Mr. Gaurav Belsare, Adv.

**UPON hearing the counsel the Court made the following
O R D E R**

- 1 Hon'ble Dr Justice Dhananjaya Y Chandrachud, the Chief Justice of India pronounced the order of the Bench comprising Hon'ble Mr Justice M R Shah, Hon'ble Mr Justice Krishna Murari, Hon'ble Ms Justice Hima Kohli and Hon'ble Mr Justice Pamidighantam Sri Narasimha.
- 2 In terms of the signed order, the issue whether a reference of the decision in ***Nabam Rebia and Bamang Felix vs Deputy Speaker, Arunachal Pradesh Legislative Assembly*** [(2016) 8 SCC 1] to a larger Bench is warranted, would be determined together with the merits of the case.
- 3 Consequently, the batch of cases is set down for hearing on merits on 21 February 2023 at 10.30 am.

(CHETAN KUMAR)
A.R.-cum-P.S.

(Signed order is placed on the file)

(SAROJ KUMARI GAUR)
Assistant Registrar