

BEFORE THE HON'BLE SPEAKER

MAHARASHTRA LEGISLATIVE ASSEMBLY

VIDHAN BHAVAN AT MUMBAI

PETITION NO. 17 OF 2022

SHRI. SUNIL PRABHU

PETITIONER

VERSUS

SHRI. NARENDRA BHOJRAJ BHONDEKAR & ORS

RESPONDENTS

APPEARANCES:

For the Petitioner: Sr. Adv. Devadatt Kamat along with Adv. Rohit Sharma, Adv. Sunny Jain, & Adv. Harsh Pandey for the Respondents

For the Respondents:

Sr. Adv. Nikhil Sakhardande along with Adv. Utsav Trivedi for the Respondent No. 01 & 02.

Adv. Pravin Tembekhar for the Respondent No. 03

CORAM: Hon'ble Speaker Adv. Rahul Narvekar

Reserved on: 20th December 2023

Delivered on: 10th January 2024

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(I) FACTUAL BACKGROUND

1. Respondent No. 01 contested the election as an independent candidate and was elected as a Member of the Maharashtra Legislative Assembly.
2. Respondent No. 02 contested the election as an independent candidate and was elected as a Member of the Maharashtra Legislative Assembly.



3. Respondent No. 03 contested the elections on the platform of Prahar Janshakti Party and was elected as a Member of the Maharashtra Legislative Assembly.
4. On 21st June 2022, there arose a split in the Shiv Sena and as a result, both the factions of Shiv Sena passed separate resolutions indicating support to respective leaders. On the said day, Shiv Sena Legislature Party passed a resolution re-affirming their commitment to the legislature party leader Shri Eknath Shinde. In the said resolution, the three respondents herein had also signed. The Petitioner, forming part of the other faction of the Shiv Sena, filed the present Disqualification Petition against the Respondents No. 01 and 02, under Paragraph 2 (2) and against Respondent No. 03, under Paragraph 2 (1) (a) of the Tenth Schedule to the Constitution of India.

(II) SUMMARY OF THE PARTIES' RESPECTIVE CASES AND RELIEFS SOUGHT

5. It is the Petitioner's case that, Respondents No. 01 & 02 by affirming their signatures to the communication, addressed to the then Deputy Speaker, dated 22nd June 2022 on the letter head of the Shiv Sena Legislature Party have given their independent status. Petitioner further submitted that '*by signing the resolution and supporting the leadership of Shri Eknath Shinde in the SSLP as well as removing Shri Sunil Prabhu (Petitioner) as the Whip of SSLP and appointing Shri Bharat Gogawale instead*' the Respondents No. 01 & 02 are liable to be disqualified under Paragraph 2 (2) of Tenth Schedule.

6. Further, Petitioner submitted that Respondent No. 3 who was originally elected on the platform of the PJP by his conduct



and admission, has actively participated in the appointment/removal of important posts in the SSLP, and hence is liable to be disqualified under Paragraph 2 (1) (a) Tenth Schedule to the Constitution.

7. Respondents No. 01 & 02 answered the Petition by pleading the following:

- (a) They have never given up their independent status in the legislative assembly.
- (b) Respondents No. 01 & 02 had always supported the Shiv Sena under leadership of Shri. Eknath Shinde in the legislative assembly. Hence, their support to Shri Eknath Shinde cannot be construed as them joining any party and as an independent member they can extend support to any party.
- (c) Respondents did not sign any letter dated 22nd June 2022 as is claimed by the Petitioner.
- (d) Respondents have only signed the resolution dated 21st June 2022 and it was only by way of extending support to the Shiv Sena in legislative assembly and it does not mean they joined the party.
- (e) Respondents decided to withdraw their respective support from the MVA Government, which the decision was taken by maintaining their independent status. Their participation in the meeting was neither as an existing member of Shiv Sena Political Party nor with an intent to join Shiv Sena political party in future.



(f) The ratio of the Judgment cited by the Petitioner is not applicable as in that case some congress MLAs had signed a joint memorandum along with the BJP expressing their distrust in the government of their own party.

8. Respondent No. 03 answered the Petitioner by pleading the following:

(a) The Respondent has not given up the membership of his original political party.

(b) By signing the resolution dated 21st June 2022, Respondent No. 03 had only reposed faith in the leader of the Shiv Sena, with whom he and his party had allied. The only thing which can be discerned from the signing of the resolution is that he had withdrawn his support from the MVA government in consultation with his original political party.

(c) Respondent did not sign any letter dated 22nd June 2022 as is claimed by the Petitioner.

(d) Respondent has only signed the resolution dated 21st June 2022, with the consent of his original political party, and it was only by way of extending support to the Shiv Sena in legislative assembly and it does not mean they joined the party.

(e) The ratio of the Judgment cited by the Petitioner is not applicable as in that case some congress MLAs had signed a joint memorandum along with the BJP expressing their distrust in the government of their own party. In the case of the Respondent, the support



extended to Shri Eknath Shinde was with the consent of his original political party.

(III) EVIDENCE LED BY THE PARTIES

9. Petitioner filed common *Affidavit in lieu of Examination in Chief* in all the 34 Petitions (Petitions No. 1-34 of 2022). However, he has not led any evidence in respect of this matter. Respondents No. 01 & 02 has not led evidence. Respondent No. 03 filed an *Affidavit in lieu of Examination in Chief*. However, he did not remain present on the last date of the cross examinations and sought for time. In view of the directions of the Hon'ble Supreme Court to conclude these proceedings in a time bound manner, the request for time was rejected and thus the evidence struck off.

(IV) ISSUES FOR DETERMINATION

A. Whether Respondents No. 01 & 02 have incurred disqualification in terms of Paragraph 2 (2) of the Tenth Schedule of the Constitution of India on account of their (alleged) acts, omissions and/or conduct?

B. Whether Respondent No. 03 has incurred disqualification in terms of Paragraph 2 (1) (a) of the Tenth Schedule of the Constitution of India on account of their (alleged) acts, omissions and/or conduct?

(V) ANALYSIS, OBSERVATIONS AND FINDINGS

A. *Whether Respondents No. 01 & 02 have incurred disqualification in terms of Paragraph 2 (2) of the Tenth Schedule of*



the Constitution of India on account of their (alleged) acts, omissions and/or conduct?

10. Para 2(2) of the Tenth Schedule reads as “(2) An elected member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election.”

11. Basis the conduct attributed to Respondent No. 1 and 2, Petitioner states that Paragraph 2(2) of the Tenth Schedule is attracted to the case of Respondent No. 1 and 2 ‘by their unimpeachable conduct and admission have also participated in the appointment/removal of important posts in the SSLP.’

12. Petitioner’s contention is that the Respondent No. 1 and 2 have incurred disqualification under Para 2(2) of the Tenth Schedule. An independent member (that is to say, a member who has been elected as such otherwise than as a candidate set up by any political party) is disqualified under Para 2(2) if he joins any political party after such election.

13. In Jagjit Singh vs State of Haryana, AIR 2007 SC 590, it was held by the Hon’ble Apex Court that when an independent Member is alleged to have joined a political party, the test to be applied is whether the member has given up his independent character on which he was elected by the electorate and that this has to be determined on appreciation of material on record and conduct of the members by the Speaker, and that no hard and fast rule can be laid down when the answer is dependent on facts of each case. The



substance and spirit of anti-defection provisions are the guiding factors.

14. Petition does not aver that Respondent No. 1 or 2 have joined the Shiv Sena Political Party, or any other political party for that matter. The cause of action is derived basis Respondent No. 1 and 2 being signatory to a communication dated 22.06.2022 which is alleged to have been annexed to the Petition, but not so annexed. Annexure P-1 to the Petition is a resolution dated 21.06.2022 to which the Petition makes no reference.
15. Be that as it may, I shall proceed to examine whether Respondent No. 1 and 2 have incurred disqualification by virtue of Respondent No. 1 and 2 being signatory thereto.
16. It is not the Petitioner's case that by virtue of signing the resolution dated 21.06.2022 the Respondent No. 1 and 2 have joined any political party. Respondent No. 1 and 2 on the other hand aver that they had signed the resolution dated 21.06.2022 as independent members of the Maharashtra Legislative Assembly and they have not, either by the reason of such signature or otherwise joined any political party.
17. It must be noted that Petitioner alleges Respondent No. 1 and 2 to have 'relinquished' their independent status. Respondent No. 1 and 2 both have stated that they had signed the resolution dated 21.06.2022 in pursuance of their decision to withdraw their support from the MVA Government and while maintaining their independent status. They have also averred that their participation in the meeting was neither as an existing member of Shiv Sena Political Party nor with an intent to join Shiv Sena political party in future.



18. It was held in the *Jagjit Singh* (supra) that giving of outside support by an independent elected member is not the same thing as joining any political party after election. Petitioner has not averred as to how Respondent No. 1 and 2 could not have signed the resolution dated 21.06.2022 as an act of rendering outside support or that the said act of signing necessarily imply relinquishment of their status as independent members.

19. Petitioner has led no further evidence on record of these proceedings to refute this contention of Respondent No. 1 and 2 of their acts being otherwise than as independent members of the Maharashtra Legislative Assembly or which would signify their relinquishment of their independent character. It is also to be noted that the Petitioner did not even argue the matter.

20. In view of the facts and circumstances, it would not be appropriate to disqualify any member of the legislative assembly based on a mere unqualified and unsubstantiated allegation. Thus, I find no merit in the petition qua Respondent No. 01 and 02.

21. I therefore answer the first issue negatively, that is, Respondents 01 & 02 cannot be said to be disqualified under Paragraph 2(2) thereof.

B. *Whether Respondent No. 03 has incurred disqualification in terms of Paragraph 2 (1) (a) of the Tenth Schedule of the Constitution of India on account of their (alleged) acts, omissions and/or conduct?*



22. As regards Respondent No. 3, Petitioner's case is in the same vein and based on the same ground that the Respondent No. 3 is disqualified under Para 2(1)(a) of the Tenth Schedule by virtue of him being a signatory to a communication dated 22.06.2022 addressed to the Hon'ble Speaker.
23. Petition does not aver that Respondent No. 3 has joined the Shiv Sena Political Party, or any other political party for that matter. The cause of action is derived basis Respondent No.3 being signatory to a communication dated 22.06.2022 which is alleged to have been annexed to the Petition, but not so annexed. Annexure P-1 to the Petition is a resolution dated 21.06.2022 to which the Petition makes no reference.
24. It is not the Petitioner's case that by virtue of signing the resolution dated 21.06.2022 the Respondent No. 3 has joined any political party. Respondent No. 3 on the other hand avers that it had signed the resolution dated 21.06.2022 as member of supporting party i.e. PJP as president thereof and it has not, either by the reason of such signature or otherwise joined any political party.
25. It must be noted that Petitioner alleges Respondent No. 3 to have 'relinquished' its membership of PJP. Respondent No. 3 has averred that its participation in the meeting was neither as an existing member of Shiv Sena Political Party nor with an intent to join Shiv Sena political party in future. Thus, an act of giving outside support is not the same thing as joining any political party after the election. Petitioner has not averred as to how Respondent No. 3 could not have signed the resolution dated 21.06.2022 as an act of rendering outside support as president/member of a supporting political party or that the



said act of signing necessarily imply relinquishment of its membership of PJP.

26. The petitioner has led no further evidence on record of these proceedings to refute this contention of Respondent No. 3 of its acts being otherwise than as members of PJP or which would signify their relinquishment of such membership.

27. I also note Petitioner's reliance on the judgment of Hon'ble Uttarakhand High Court in Subodh Uniyal vs Speaker, Legislative Assembly, 2016 SCC OnLine Utt. 590 and Respondents' averment regarding non applicability of this judgment to facts in present petition. In the said judgment Hon'ble Uttarakhand High Court was pleased to hold that certain INC MLAs were signatories to a joint memorandum submitted by BJP expressing distrust against government and the chief minister belonging to their own party i.e. INC and hence their conduct would amount to voluntary relinquishment of their membership with INC. It is not the Petitioner's case that any of the Respondents have expressed distrust.

28. Further, there is no allegation made by any person whatsoever from the PJP that the Respondent No. 3 has *voluntarily given up the membership of his political party*.

29. Petitioner has led no evidence to refute this contention of Respondent No. 3 of its acts being otherwise than as member of PJP or which may indicate that he has relinquished the membership of his political party.

30. Hon'ble Apex court has clearly held in myriad cases that disqualifying a member cannot be done in a causal manner



and it is a serious affair. Thus, in view of the same, the petition cannot simply be accepted on the basis of mere allegations.


31.I therefore answer the second issue negatively, that is, Respondent No. 3 cannot be said to be disqualified under Para 2(1)(a) thereof.

32.I therefore answer both the issues in negative, that is, Respondents No. 1 and 2 cannot be said to be disqualified from the membership of the Maharashtra Legislative Assembly in terms of Para-2(2) of the Tenth Schedule, nor can Respondent No. 3 be said to be disqualified under Para 2(1)(a) thereof.

V ORDER

33.In view of my conclusions and findings recorded hereinabove, Petition No. 17 of 2022 is hereby dismissed.




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(Speaker)
(Maharashtra Legislative Assembly)