

BEFORE THE HON'BLE SPEAKER

MAHARASHTRA LEGISLATIVE ASSEMBLY
VIDHAN BHAVAN AT MUMBAI
PETITION NO. 20 & 22-34 OF 2022

SHRI. BHARAT GOGAWALE

PETITIONER

VERSUS

SHRI. NITIN CHANDRAKANT DESHMUKH & ORS

RESPONDENTS

APPEARANCES:

For the Petitioner: Sr. Adv. Mahesh Jethmalani along with Adv. Chirag Shah & Adv. Mugda Pande for the Petitioner

For the Respondents:

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

CORAM: Hon'ble Speaker Adv. Rahul Narvekar

Reserved on: 20th December 2023

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**(I) FACTUAL BACKGROUND & PROCEDURAL HISTORY
OF DISQUALIFICATION PETITIONS CONCERNING
SHIVSENA**

Factual background

1. The elections to the 14th Legislative Assembly of Maharashtra were held in October 2019. Of a total of two hundred and eighty-eight seats, the Bharatiya Janata Party (*BJP for short*) returned candidates in one hundred and six seats, the Shiv Sena in fifty-six seats, the Nationalist Congress Party (*NCP for short*) in fifty-three seats, and the Indian National Congress (*INC for short*) in forty-four seats. Independent candidates were returned in thirteen constituencies and the remaining constituencies returned candidates from various other parties. In November 2019, the Shiv Sena, the NCP, and the INC formed a post-poll alliance which came to be known as the Maha Vikas Aghadi (*MVA for short*). The MVA successfully staked a claim to form the government in Maharashtra and Mr. Uddhav Thackeray was sworn in as the Chief Minister. On 25th November 2019, pursuant to a meeting dated 30th October 2019 of the Shiv Sena Legislature Party (*SSLP for short*) chaired by Mr. Uddhav Thackeray, all fifty-six MLAs of the Shiv Sena issued a communication to the Speaker of the Maharashtra Legislative Assembly intimating him that Mr. Eknath Shinde was appointed as the Group Leader of the



SSLP, and that Mr. Sunil Prabhu was appointed as the Chief Whip of the SSLP.

2. On 21st June 2022, the Chief Whip of the Shiv Sena, Mr. Sunil Prabhu, issued a whip directing all MLAs of the Shiv Sena to attend a meeting at Mr. Thackeray's residence on the same day. Many MLAs, including the Group Leader Mr. Eknath Shinde, (allegedly) did not attend this meeting. The MLAs who were in attendance (allegedly) passed a resolution removing Mr. Eknath Shinde from the position of the Group Leader of the SSLP and appointing one Mr. Ajay Choudhari in his place. The decisions taken by way of this resolution were communicated to the Deputy Speaker on the same day, i.e., 21st June 2022. Also on the same day, the Deputy Speaker communicated his recognition of the change in the Group Leader of the SSLP.
3. Concurrently, thirty-one MLAs of the Shiv Sena organized a separate meeting and passed a resolution reaffirming that Mr. Eknath Shinde "*continues to be*" the Group Leader of the SSLP. It was further resolved that the appointment of Mr. Sunil Prabhu as the Chief Whip was cancelled, and that Mr. Bharat Gogawale was appointed in his place. Respondents claims that this resolution was received by the Deputy Speaker only on 22nd June 2022 while the Petitioner claims that it was sent on 21st June 2022. The record available with the Legislature



secretariate indicates that the resolution is dated 21st June 2022 but received by the office of the then Deputy Speaker on 22nd June 2022.

4. On 22nd June 2022, Mr. Sunil Prabhu issued individual communications to all MLAs of the Shiv Sena, calling upon them to attend a meeting of the SSLP scheduled to take place that evening at Mr. Thackeray's residence. The meeting on 22nd June 2022, too, was not (allegedly) attended by many MLAs of the Shiv Sena including Mr. Eknath Shinde.
5. Mr. Eknath Shinde addressed a letter to Mr. Sunil Prabhu on 22nd June 2022 accusing him of misusing the letterhead of the SSLP. The letter stated that:
 - (a) A meeting of forty-five MLAs of the Shiv Sena was held under the chairmanship of Mr. Eknath Shinde.
 - (b) Mr. Sunil Prabhu was removed from the position of Chief Whip of the Shiv Sena.
 - (c) Mr. Bharat Gogawale (Petitioner) was appointed as the Chief Whip of the Shiv Sena in place of Mr. Sunil Prabhu; and
 - (d) Mr. Sunil Prabhu did not have the authority to sign the communication dated 22nd June 2022 (issued by him to all MLAs of the Shiv Sena). It was therefore not binding



upon Mr. Eknath Shinde to attend the meeting scheduled to take place at Mr. Thackeray's residence.

6. On 23rd June 2022, Shri Sunil Prabhu filed petitions under Paragraph 2(1)(a) of the Tenth Schedule to the Constitution for the disqualification of Mr. Eknath Shinde and fifteen other MLAs of the Shiv Sena. The Deputy Speaker issued notices in these disqualification petitions on 25th June 2022. [Disqualification Petitions No. 01 to 16 of 2022]
7. On 26th June 2022 Respondents (in the aforementioned disqualification petitions) approached the Hon'ble Supreme Court of India *inter-alia* challenging the letter/order dated 21st June 2022 passed by the then Deputy Speaker accepting appointment of Shri. Ajay Choudhari as the Leader of the Shiv Sena Legislature Party and prayed for consequential concomitant reliefs.¹
8. On 27th June 2022 Shri. Sunil Prabhu filed another Disqualification Petition [Disqualification Petition No. 17 of 2022], under Paragraph 2 (2) and 2 (1) (a) of the Tenth Schedule of the Constitution of India against 3 MLAs. 2 Independent MLAs and 1 MLA from Prahar Janshakti Party. On the same day, i.e., on 27th June 2022, Shri. Sunil Prabhu filed yet another Disqualification Petition [Disqualification



¹ Writ Petition (Civil) 468 and 469 of 2022 filed before the Supreme Court of India.

Petition No. 18 of 2022] under Paragraph 2 (1) (a) of the Tenth Schedule of the Constitution of India, against 22 MLAs of Shiv Sena.

9. On 28th June 2022, the then Leader of Opposition Mr. Devendra Fadnavis addressed a letter to the Governor *inter alia* conveying that he believed that the then Chief Minister, Mr. Thackeray, did not enjoy a majority on the floor of the House. He called upon the Governor to direct Mr. Thackeray to prove his majority on the floor of the House. Seven MLAs who were elected as independent candidates penned a similar letter to the Governor on the same day. They too requested the Governor to direct Mr. Thackeray to prove his majority on the floor of the House.
10. Consequently, the Hon'ble Governor of Maharashtra issued a letter to the then Chief Minister, Mr. Uddhav Thackeray on 28th June 2022, calling upon him to face a floor test on 30th June 2022.
11. On the very next day, i.e., 29th June 2022, Mr. Sunil Prabhu instituted a Writ Petition² before the Hon'ble Supreme Court of India for setting aside the communications dated 28th June 2022 issued by the Hon'ble Governor to the then Chief Minister on the ground that disqualification petitions against



² Writ Petition (Civil) No. 470 of 2022 filed before the Hon'ble Supreme Court of India.

thirty-eight MLAs of the Shiv Sena were pending consideration before the Deputy Speaker. The Hon'ble Supreme Court declined to grant any stay to the trust vote.

12. On 29th June 2022 the then Chief Minister Shri. Uddhav Thackeray resigned from the post of the Chief Minister.

13. On 30th June 2022, Mr. Shinde submitted a letter to the Governor along with a resolution by thirty-nine MLAs from the SSLP unanimously resolving to authorise Mr. Shinde to initiate proceedings to form the government in the State. In the said letter, Mr. Shinde claimed the support of one hundred and six BJP MLAs and seventeen independent and other MLAs. Moreover, Mr. Shinde claimed that he had the support of the majority and requested the Governor to invite him to take oath as the Chief Minister. On 30th June 2022, sixteen MLAs who were independent candidates or belonged to parties other than the Shiv Sena, BJP, INC, and NCP wrote to the Governor expressing their support for a government led by Mr. Shinde. On the same day, the Governor issued a communication to Mr. Shinde inviting him to take oath as the Chief Minister and directing him to prove that he enjoyed the confidence of the Assembly within a period of seven days of taking over as the Chief Minister.



14. Consequently, on 30th June 2022, the Governor administered the oath of office to Mr. Shinde and Mr. Fadnavis, and they assumed the roles of Chief Minister and Deputy Chief Minister of Maharashtra, respectively. On the same day, Mr. Thackeray issued a letter to Mr. Shinde stating that he had been removed from the post of 'Shiv Sena Leader' in the organisational structure of the party. Mr. Thackeray similarly (purportedly) removed other MLAs of the Shiv Sena from their roles as office-bearers of the party.

15. Later that week, the Principal Secretary of the Maharashtra Legislature Secretariat circulated the 'Order of the day' for the session which was scheduled to take place on 3rd July 2022. The fifth item on the agenda was the election for the post of the Speaker. I, Rahul Narvekar, was nominated for this position while an MLA of the NCP nominated Mr. Rajan Salvi. Further, a motion of confidence for the '*Council of Ministers*' headed by the Chief Minister, Mr. Shinde, was scheduled to be moved in a session of the Assembly on 4th July 2022.

16. On 02nd July 2022, Shri. Sunil Prabhu (allegedly) issued two whips. The first whip directed all MLAs of the Shiv Sena to attend the session of the Maharashtra Legislative Assembly on 4th July 2022 and vote against the motion of confidence for the Council of Ministers headed by the Chief Minister, Mr. Shinde. The second whip directed all MLAs of the Shiv Sena



to attend the session of the Maharashtra Legislative Assembly on 3rd July 2022 and vote for Shri. Rajan Salvi, in the election for the post of the Speaker.

17. On 3rd July 2022, I proceeded to recognise Mr. Eknath Shinde as the Leader of the SLP in place of Shri Ajay Choudhari and Shri. Bharat Gogawale as the Chief Whip of the Shiv Sena in place of Shri Sunil Prabhu. These decisions were recorded in a communication dated 03rd July 2022 issued by the Deputy Secretary of the Maharashtra Legislature Secretariat. I may mention here that the Hon'ble Supreme Court was pleased to quash this decision and direct to take a fresh decision after an inquiry into whether the resolutions, based on which the recognition was accorded, reflected the will of the Shiv Sena Political Party.³

18. On 04th July 2022, Shri. Sunil Prabhu filed a fresh Disqualification Petition [Disqualification Petition No. 19 of 2022], under Paragraph 2 (1) (b) of the Tenth Schedule of the Constitution of India, against Shri. Eknath Shinde and 38 other MLAs of Shiv Sena for alleged violation of Whip dated 02nd July 2022 regarding the Election of Speaker.

19. On 05th July 2022, Shri. Bharat Gogawale filed the present set of 14 Disqualification Petitions [Disqualification Petitions No.



³ Writ Petition (Civil) No. 479 of 2022.

20 and 22 to 34 of 2022], under Paragraph 2 (1) (a) & 2 (1) (b) of the Tenth Schedule of the Constitution of India, against Shri. Sunil Prabhu and 13 other MLAs of Shiv Sena for alleged violation of Whip dated 03rd July 2023 regarding the Motion of Confidence in Council of Ministers.

20. On 06th July 2022, Shri. Sunil Prabhu filed another Disqualification Petition [Disqualification Petition No. 21 of 2022], under Paragraph 2 (1) (a) & 2 (1) (b) of the Tenth Schedule of the Constitution, against Shri. Eknath Shinde and 38 other MLAs of Shiv Sena for alleged violation of Whip dated 02nd July 2023 regarding the Motion of Confidence in Council of Ministers.

21. On 08th July 2022, the Respondents, *vide* Writ Petition (Civil) No. 538 of 2022, sought quashing of Notices issued in pursuance of the Disqualification Petitions filed by Shri. Bharat Gogawale before the Hon'ble Supreme Court of India.⁴

22. On 12th July 2022, a Letter came to be received from the Advocate on Record of Shri. Sunil Prabhu intimating the Oral direction of the Hon'ble Supreme Court of India to defer hearings in Disqualification Petitions till the final hearing and judgment in Writ Petition (Civil) No. 493 of 2022 and other



⁴ Writ Petition (Civil) No. 538 of 2022.

connected petitions, which were referred to a Constitution Bench of the Apex Court.

23. Hon'ble Supreme Court was pleased to club all the Petitions filed by both the factions of Shiv Sena and refer them to a Constitution Bench of the Hon'ble Supreme Court. On 23rd August 2022 the Hon'ble Supreme Court framed nine issues for consideration by the Constitution Bench of the Apex Court. Subsequently, the Constitution Bench of the Hon'ble Supreme Court of India passed its Judgment dated 11th May 2023 in Writ Petition (Civil) No. 493 of 2022 and other connected petitions [Subash Desai Vs. Governor of Maharashtra, 2023 SCC Online SC 607]⁵.

24. By the aforementioned judgement dated 11th May 2023 the Hon'ble Supreme Court was pleased to conclude that the Apex Court cannot ordinarily adjudicate petitions for disqualification under the Tenth Schedule in the first instance and there are no extraordinary circumstances which warranted the exercise of jurisdiction of the Apex Court to adjudicate the Disqualification Petitions concerning Shiv Sena. Consequently, the Hon'ble Apex Court relegated the parties to their remedies under the Tenth Schedule of the Constitution and directed this Forum to decide the aforementioned disqualification petitions.



⁵ Subash Desai Vs. Governor of Maharashtra, 2023 SCC Online SC 607

Procedural history

25. On 07th June 2023, as per my directions, the Secretary (1) (I/C) sought certified copies of the Constitution of Shiv Sena from the Election Commission of India. On 26th June 2023 Election Commission of India replied to the said Letter thereby providing a copy of the Constitution of Shiv Sena as was submitted to the Election Commission of India and a copy of the Judgment dated 17th February 2023 passed by the Election Commission in Dispute Case No. 01 of 2022.
26. Consequent to the judgment dated 11th May 2023 passed by the Hon'ble Supreme Court in *Subash Desai (Supra)*, Notices were re-issued in all Disqualification Petitions, except for Petition No. 17 of 2022, on 07th July 2023, thereby directing to file replies within 7 days from the date of receipt of the Notice.
27. On 16th July 2023 a Letter came to be received from Respondents in Disqualification Petitions 01 to 16, 17, 18, 19 and 21 of 2022 seeking extension of time to Reply in Disqualification Petitions.
28. On 17th July 2023 Monsoon session of the Maharashtra Assembly commenced.



29. On 18th July 2023 Replies from Respondents [Shiv Sena (UBT) faction] in the present set of Disqualification Petitions No. 20 & 22 to 34 of 2022 came to be filed.
30. On 24th July 2023, Respondents' [in Disqualification Petitions 01 to 16, 17, 18, 19 and 21 of 2022] request for extension of time to file replies were granted and Respondents were directed to file replies within two weeks immediately after the proroguing of 2023 Monsoon Session of the Assembly.
31. On 27th July 2023, Notices were issued in Disqualification Petition No. 17 of 2022, thereby directing to file reply within 7 days from the date of receipt of the Notice.
32. On 04th August 2023, Monsoon session of the Maharashtra Assembly of the year 2023 ended.
33. On 17th August 2023 Respondents filed their replies to Disqualification Petitions No. 01 to 16, 18, 19 & 21 of 2022.
34. On 18th August 2023 replies from Respondents No. 01 and 02 in Petition No. 17 of 2022 came to be filed.
35. On 05th September 2023 Respondent No. 03 in Petition No. 17 of 2022 filed his reply.



36. On 06th September 2023 Notices were issued in Disqualification Petitions intimating the preliminary hearing scheduled on 14th September 2023.
37. On the first date of hearing, i.e., on 14th September 2023, Parties were directed to complete service of Petitions/Replies. On the said date, Shri. Sunil Prabhu [Petitioner in Disqualification Petitions 01 to 16, 17, 18, 19 and 21 of 2022] filed an application seeking consolidation of all 34 Petitions.
38. On 18th September 2023, Shri. Sunil Prabhu [Petitioner in Disqualification Petitions 01 to 16, 17, 18, 19 and 21 of 2022] filed an Application seeking permission to place on record additional documents.
39. On 18th September 2023 the Hon'ble Supreme Court directed the disqualification petitions to be listed within a period of one week to set out procedural directions and time schedule for hearing of petitions. Accordingly, all petitions were listed on 25th September 2023 and time schedule was set out.
40. On 25th September 2023, Shri Sunil Prabhu [Petitioner in Disqualification Petitions 01 to 16, 17, 18, 19 and 21 of 2022] sought to bring on record an Additional Affidavit to bring on record subsequent events. Respondents objected to the same being taken on record without hearing them.



41. On 12th October 2023, parties were heard on Petitioner's [Shri. Sunil Prabhu] two Applications [Application to consolidate all petitions and Application seeking liberty to place additional documents on record] and the Additional Affidavit to bring on record additional facts. The orders in the said Applications were reserved for orders and petitions were adjourned to 20th October 2023.

42. On 17th October 2023, the Hon'ble Supreme Court indicated that it is not satisfied with the schedule set out on 25th September 2023 and directed to prescribe a fresh time schedule for hearing and disposal of disqualification petitions.

43. On 20th October 2023, Orders were passed in Shri Sunil Prabhu's Applications (i) seeking consolidation of all Petitions, (ii) seeking permission to produce additional documents on record and Shri Sunil Prabhu's (iii) Additional Affidavit seeking additional facts to be brought on record.

44. Disqualification Petitions (34 Petitions) were grouped into 6 groups according to causes of actions. Since, Shri. Sunil Prabhu's Application for bringing additional documents was partially allowed and Shri. Sunil Prabhu's Additional Affidavit to bring on record additional facts were allowed to be taken on record, Respondents in disqualification petitions



01-16, 18, 19 & 21 were given time till 25th October 2023 to file Additional Reply. On the said date of hearing, Shri Sunil Prabhu filed yet another Application for Discovery and/or Production. Certain Respondents (in Petitions 01-16, 18, 19 & 21) also filed Applications seeking permission to lead evidence by way of affidavit. Parties were directed to file replies in respective Applications and both the Applications were kept for arguments on 26th October 2023 along with hearing on draft issues directed to be submitted by 25th October 2023.

45. On 25th October 2023, replies were in the aforementioned Applications and on 26th October 2023, the hearing commenced at 4 PM and heard both the sides till almost 8:30 PM on the Applications filed on 20th October 2023. However, arguments could not be concluded. Hence, the matter was adjourned to 2nd November 2023, by consent of both parties, for resuming arguments on Applications filed on 20th October 2023 and to settle issues.

46. On 30th October 2023, the Hon'ble Supreme Court was pleased to direct that all hearings should be concluded, and final orders passed in all disqualification petitions concerning Shiv Sena, on or before 31st December 2023.

47. On 02.11.2023 Disqualification Petitions were listed for hearing on (i) application dated 20th October 2023 filed by the



Respondent in Disqualification Petition No. 7 of 2022 and (ii) for framing of issues. Even though Respondents initially took a stand that parties need not lead evidence in disqualifications petitions, however, during the course of hearing on said application, the counsel for the Respondents submitted that the Respondents would also like to lead evidence in the matter. Thus, by consent of both the parties, the application dated 20th October 2023 was disposed of by giving opportunity, to both the Petitioner and the Respondents, to lead evidence in all the Disqualification Petitions. Further, issues were framed after hearing both the parties.

48. Further, the convenience compilations filed before the Hon'ble Apex Court in Writ Petition (Civil) No. 468, 469, 470, 479, 493 and 538 of 2022 were taken on record of all the Disqualification Petitions and as per the directions of the Hon'ble Apex Court, parties were granted time till 6th November 2023 to exchange and file their respective statement of admission and denial. Further, parties were directed to file and exchange list of witnesses and Affidavit/s in lieu of Examination in Chief on or before 18th November 2023. Consequently, Disqualification Petitions No. 1 to 34 were directed to be listed on 21st November 2023 for commencement of cross examinations of Respondents' witnesses.



49. On 06th November 2023 parties filed Statement of Admission and Denial.

50. On 18th November 2023 Respondents filed list of witnesses and Affidavits in lieu of Chief Examinations.

51. On 21st November 2023, Cross examinations of Respondents' witnesses commenced. On the said date, the hearing commenced at around 10:30 AM and went on till 05:00 PM with a 1 (one) hour recess in between. Cross examination of Respondents' witnesses continued on a day-to-day basis till 23rd November 2023 with the same time schedule. The petitions were not listed on 24th November 2023 owing to the request received from Shri Sunil Prabhu citing medical reasons.

52. On 28th November 2023, Petitions were listed for continuation of cross examination of Respondents' witnesses on 28th November 2023 with the same time schedule and it continued on a day-to-day basis.

53. The questions were being asked in English. The RW-1 (Mr. Sunil Prabhu) had requested translation of the same to Marathi. The same was provided. His answers were recorded in Marathi and on the request of parties the said Marathi



answer was translated immediately to English and incorporated below the answer in Marathi.

54. Cross Examinations of Respondents' witnesses were supposed to be concluded on 1st December 2023. However, it could not be done due to an application filed by Shri Sunil Prabhu on 1st December 2023 and submissions advanced by both the sides on the said application. Hence, Petitions were further directed to be listed on 2nd December 2023 for continuation and conclusion of cross examination of Respondents' witnesses.

55. On 2nd December 2023, Respondents' evidence was closed and by consent of both the Parties, Petitions were directed to be listed on 7th December 2023 for commencement of Petitioner's witnesses' cross examinations.

56. The Petitions were not listed on 3rd, 4th, 5th, and/or 6th December 2023 owing to the need of shifting the record and proceedings to Nagpur, Maharashtra where the Winter Session of the Maharashtra Legislative Assembly is held. Hence, on 4th, 5th, and 6th December 2023, the Legislature Secretariat moved the record and proceedings from Mumbai to Nagpur and made necessary arrangements at the Vidhan Bhavan, Nagpur for continuation of the hearing.



57. On the first day of hearing at Nagpur i.e., on 7th December 2023, the Disqualification Petitions were heard from 2:30 PM till 8:00 PM. On 8th December 2023, the first session of the hearing commenced at 8:30 AM and continued till 10:45 AM. The second session on that day started at 2:30 PM and continued till 7:00 PM. On 9th December 2023, the hearing commenced at 8:30 AM and continued till 12:00 PM. It needs to be stated at this juncture that, the Petitions could not be listed on the second session of 9th December and on 10th December 2023 owing to the request made by the Respondents seeking time to prepare for cross examination in view of an additional chief examination advanced by the PW-3. Hence, the Petitions were adjourned to 11th December 2023 for continuation of Petitioner's witnesses' cross examination.

58. Disqualification Petitions No. 1 to 34 were listed for continuation of cross examination of Petitioner's witnesses. It was conducted from 8:30 AM till 10:45 AM and thereafter from 2:30 PM till 7:15 PM.

59. On 12th December 2023, Cross Examinations of Petitioner's witnesses stood concluded, and evidence closed. On 12th December 2023, Petitioner's witnesses' cross examinations started in the morning at 08:30 AM and continued till 10:45 AM and the second session started at around 01:45 PM and continued till 08:30 PM.



60. Consequent to the conclusion of evidence, Parties sought a period of 2-3 days between the date of conclusion of cross examinations/evidence, and the commencement of final hearing so as to prepare "written notes of arguments and convenience compilations." Thus, the final hearing of Petitions was kept on 18th December 2023.

61. Final hearing of all 34 petitions commenced on 18th December 2023 and concluded on 20th December 2023. Thus, on 20th December 2023, hearing was concluded, and Petitions were reserved for final orders.

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

62. Disqualification Petitions No 20 & 22-34 of 2022 has been filed by the Petitioner, Shri. Bharat Gogawale, against Shri. Nitin Chandrakant Deshmukh and 13 other members of 14th Maharashtra Legislative Assembly under Paragraph 2 (1) (a) and Paragraph 2 (1) (b) of the Tenth Schedule of the Constitution *inter-alia* on the following grounds that (a) Respondents have by their conduct voluntarily given up their membership of the SSLP and (ii) Respondents have voted against the Whip issued on 03rd July 2022 wherein all members of the SSLP were issued direction to vote in favour of the 'confidence motion held on 04th July 2022'.



63. Leading up to the aforementioned grounds Petitioner pleaded the following facts:

- (a) On 21st June 2022 it came to the knowledge of the Petitioner that 24 out of 55 MLAs of SSLP attended an unauthorised meeting and passed a resolution to remove Shri Eknath Shinde as the Leader of the SSLP and appointed Shri Ajay Choudhary as the leader of the SSLP.
- (b) On 21st June 2022, the Petitioner was appointed as the Whip by the Resolution dated 21st June 2022 passed by the 'Shinde faction'.
- (c) On 03rd July 2022, the appointment of the Petitioner was recognised by the Speaker. Thereafter, the Petitioner issued a Whip to all the members of the SSLP to vote and support the 'confidence motion' held on 04th July 2023.
- (d) In violation of the Whip issued by the Petitioner, Respondents voted against the 'confidence motion' and thus have incurred disqualification under paragraph 2 (1) (b) of the Tenth Schedule.



64. Based on the above facts, circumstances and grounds, Petitioner contended that the conduct of the Respondents leads to a conclusion that the Respondents have 'voluntarily given up membership' of the SSLP and the provisions of Paragraph 2 (1) (a) and 2 (1) (b) of the Tenth Schedule of the Constitution are attracted to disqualify Respondents. Consequently, Petitioner prayed that the Respondents be declared to have voluntarily given up their memberships of the Shiv Sena Legislature Party under Paragraph 2 (1) (a) and further by voting against the confidence motion have incurred disqualification under Paragraph 2 (1) (b).

65. Respondents answered the Petitioner by pleading the following:

- (a) The present petition is filed on a completely misconceived ground that Shri. Bharat Gogawale is the Whip of the SSLP. It is settled law that the Chief Whip can only be appointed by Political party and not the Legislature Party. Admittedly, Shri. Sunil Prabhu is duly appointed Chief Whip of Shiv Sena since 2019 and his appointment was duly approved by party president Sh. Uddhav Thackeray on behalf of political party and supported by all newly elected MLAs.



(b) Petitioner has also failed to prove due service of whip on the Respondents in these petitions. The alleged WhatsApp messages relied upon produced by Sh. Bharat Gogawale cannot be relied upon because (i) the alleged messages were produced only at the last day of recording of evidence despite adequate opportunity having existed at an earlier stage, (ii) It fails to prove that the mobile numbers mentioned in the alleged messages belong to the Respondents and (iii) Even the phone number from which they were sent does not belong to Sh. Bharat Gogawale.

66. Based on the above facts, circumstances and grounds, Respondents contended that Disqualification Petitions are devoid of any merits and deserves to be dismissed.

(III) EVIDENCE LED BY THE PARTIES

67. Even though, initially, Respondents maintained the stand that they do not require an opportunity to lead evidence and urged that the hearing be held without there being the need of allowing parties to lead evidence, on 02nd November 2023⁶, the Ld. Counsel for the Respondents, stated that the Respondents would also like to lead evidence in the matter. Thus, by



⁶ Order dated 02nd November 2023

consent of both the parties opportunity was accorded to both the Petitioner and the Respondents to lead evidence.

68. Petitioner filed *Affidavits in lieu of Chief Examination* and deposed inter-alia that “Respondents in Petition No. 20 & 22-34 have acted against the interest of the party and voted against the Shiv Sena party in confidence motion on 04.07.2022”. Shri. Sunil Prabhu filed common *Affidavits in lieu of Chief Examination* as PW-1 in Groups No. 01 to 04 & 06 and as the RW-1 in the present Petition.

(IV) ISSUES FOR DETERMINATION

69. The Hon’ble Supreme Court, in *Subash Desai Vs. Governor of Maharashtra*,⁷ (hereinafter referred to as ‘*Subash Desai*’), was pleased to direct that “the Speaker should *prima facie* determine ‘who the real political party is’ for the purpose of adjudicating disqualification petitions, if two or more factions claim to be that political party” and accordingly “shall recognise the Whip and the Leader who were duly authorised by the Shiv Sena Political Party” keeping with the principles discussed in the said judgement.⁸

70. Hence, keeping in view the factual matrix and the directions of the Hon’ble Supreme Court, a preliminary issue that arises for my consideration, before delving into the merits of



⁷ 2023 SCC Online SC 607

⁸ Paragraph 206 (d) & (g) of *Subash Desai*

disqualification petitions under the Tenth Schedule, is *“Which among the two factions was the “real” Shiv Sena Political party and consequently who was the duly authorised Leader and/or the Whip of the Shiv Sena Political Party for the purpose of deciding the present disqualification petitions?”*.

71. The second issue framed for my consideration, in this Group of Disqualification Petitions i.e., Group 05, is *“Whether the Respondents have 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?”* The last issue framed for my consideration, in this Group of Disqualification Petitions i.e., Group 05, is *“Whether the Respondents have incurred disqualification in terms of Paragraph 2 (1) (b) 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. Which among the two factions is the “real” Shiv Sena Political Party for the purpose of deciding the present disqualification petitions?

72. The issue as to ‘which faction was the real political party when the rival factions emerged and who was the duly authorized Whip and the Leader, has been



extensively discussed and decided in Disqualification Petitions No. 01 to 16 (Group No. 01). Since the genesis of both this group and the said group is the same the preliminary issue is common. Thus, the said decision on *preliminary issue* decided in Disqualification Petitions No. 01 to 16 of 2022 be read as the decision hereunder.

B. Have the Respondents incurred disqualification in terms of Paragraph 2 (1) (a) of the Tenth Schedule of the Constitution on account of their acts, omissions, and conduct?

73. Petitioner has contended that the Respondents are liable to be disqualified under Paragraph 2 (1) (a) of the Tenth Schedule. This submission cannot be accepted, and the Respondents cannot be held to be disqualified on this ground for the reason that this ground is a mere allegation and, apart from a mere assertion that the Respondents have voluntarily given up membership of the SSLP, the Petitioner has not put forth any evidence or material to substantiate it. A mere unsubstantiated statement that the legislators have voluntarily given up the membership cannot be a ground to attract disqualification under Paragraph 2 (1) (a) of the Tenth Schedule.



C. Have the Respondents incurred disqualification in terms of Paragraph 2 (1) (a) of the Tenth Schedule of the Constitution on account of their acts, omissions, and conduct?

74. I have perused my records as well as a copy of the Whip issued by the Petitioner, which is signed by the Petitioner as Chief Whip and Shri. Eknath Shinde as the Leader of the Legislative Party. Though the Petitioner tried to show that the said Whip was served and delivered on the Respondents, the Petitioner has failed to prove the service of the Whip on each and every MLAs of Shiv Sena. I have also examined in detail the cross examination of the Petitioner, Shri Bharat Gogawale and have found major inconsistency in his answers regarding physical service of the Whip and therefore this evidence cannot be accepted. Insofar as the delivery by *Whatsapp* is concerned, the same also was produced on the last day of evidence, despite ample opportunity for the same. Even the pleadings filed by the Petitioner are silent on the issue of service. In these circumstances, it will not be justiciable for me to take on record a document, purporting to be screenshots of *Whatsapp* messages, which were admittedly sent through a third persons mobile number, i.e. one Mr. Santosh Kadam, who also did not step into the witness box. Thus, Petitioner's plea to disqualify Respondents cannot be accepted.



75. The Hon'ble Supreme Court in *Kihoto Hollohan Vs. Zachillhu & Ors*⁹ at Paragraph 123 (SCC Page number) has held that *"keeping in view the consequences of the disqualification, i.e., termination of the membership of a House; it would be appropriate that the direction or Whip which results in such disqualification under Paragraph 2 (1) (b) is so worded as to clearly indicate that voting or abstaining from voting contrary to the said direction would result in incurring the disqualification under Paragraph 2 (1) (b) of the Tenth Schedule so that the member concerned has fore-knowledge of the consequences flowing from his conduct in voting or abstaining from voting contrary to such a direction"*. A perusal of the Whip dated 03rd July 2022 shows that it does not contain any words which would indicate that the said Whip, if not followed, would result in disqualification. Thus, on this count as well the Petitioner's case that the Respondents are liable to be disqualified for violation of the Whip dated 03rd July 2022 must be rejected.

76. Rule 3 (5) of the Members of Maharashtra Legislative Assembly (Disqualification on Grounds of Defection) Rules, 1986 provides that *"where a member belonging to any political party votes or abstains from voting in the Assembly, contrary to any directions issued by such political party or by any person or authority authorized by it in this behalf, without obtaining in either*



⁹ 1992 SCC Suppl. (2) 651

case, the prior permission of such political party, person or authority, the leader of the legislative party concerned.....shall as soon as maybe thereafter and in any case within thirty (30) days from the date of such voting or abstention inform the Speaker as in Form-II whether such voting or abstention has or has not been condoned by such political party, person or authority". From the records of the Legislature Secretariat, it is seen that the Petitioner has not complied with this Rule. Thus, on this ground also Petitioner's case that the Respondents were liable to be disqualified for violation of the Whip dated 02nd July 2022 must be rejected.

VII. ORDER

77. In view of my conclusions and findings recorded hereinabove, Petitions No. 20 & 22 to 34 of 2022 are hereby dismissed.



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(Speaker)
(Maharashtra Legislative Assembly)