

# BEFORE THE HON'BLE SPEAKER

MAHARASHTRA LEGISLATIVE ASSEMBLY  
VIDHAN BHAVAN AT MUMBAI  
PETITION NO. 01, 03 & 04 OF 2023

SHRI. JAYANT PATIL

PETITIONER

VERSUS

SHRI. AJIT ANANTRAO PAWAR & ORS RESPONDENTS

APPEARANCES:

**For the Petitioner:** Sr. Adv. Sharan Jagtiani, Adv. Pranjal Agarwal, Adv. Muhammad Ali Khan, Adv. Omar Hoda, Adv. Uday Bhatia, Adv. Priyank Kapadia, Adv. Shreenandini Mukhopadhyay and Adv. Tamanna Naik for the Petitioner.

**For the Respondents:**

Sr. Adv. Virendra Tulzapurkar, Sr. Adv. Pradeep Sancheti, Adv. Siddharth Dharmadhikari, Adv. Abhikalp Pratap Singh, Adv. Shrirang Verma, Adv. Aditya Krishna, Adv. Yamini Singh, Adv. Varad Kilor, Adv. Abhishek karnik, Adv. Kartikey, Adv. Pulkit Sharma, Adv. Mandar Soman, Adv. Yadnyeshwar Patil for Respondents

Adv. Hasnain Kazi, Adv. Abhijit Hartalkar, Adv. Shraddha Vavhal, Adv. Zeeshan Khan, Adv. Athar Qureshi, Adv. Raeed Kazi, Adv. Hafizuddin Kazi for Respondent No. 04 in Petition No. 04 of 2023



Reserved on: 31<sup>st</sup> January 2024

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## **(I) FACTUAL BACKGROUND & PROCEDURAL HISTORY**

### ***Factual background***

1. The elections to the 14<sup>th</sup> 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 Shri Uddhav Thackeray was sworn in as the Chief Minister.
2. The MVA continued to govern the State of Maharashtra until June 2022. On 29<sup>th</sup> June 2022 Shri Uddhav Thackeray resigned as the Chief Minister. On 30<sup>th</sup> June 2022, the Hon'ble Governor administered oath of office to Shri Eknath Shinde and Shri Devednra Fadnavis and they assumed the roles of Chief Minister and Deputy Chief Minister of Maharashtra respectively.





3. In the month of June 2023 and early July 2023, there emerged two factions within the NCP. One faction supported Shri Sharad Pawar and the other faction supported Shri Ajit Pawar. Both the factions claim that their leader was the legitimately elected National President of the Party and thus reflected the will of the political party. NCP faction supporting Shri Sharad Pawar is hereinafter referred to as the "Sharad Pawar faction" and the faction supporting Shri Ajit Pawar is hereinafter referred to as the "Ajit Pawar faction".
4. On 02<sup>nd</sup> July 2023, Shri Ajit Pawar along with eight (08) other MLAs of NCP took oath as Ministers in the government led by Shri Eknath Shinde. Pursuant thereto, both factions filed disqualification petitions against each other's MLAs alleging that they have incurred disqualification under Paragraph 2 (1) (a) of the Tenth Schedule of the Constitution of India.

### ***Procedural history***

5. On 03<sup>rd</sup> July 2023, Disqualification Petition No. 01 of 2023 came to be filed by the Sharad Pawar faction through Shri Jayant Patil against Shri Ajit Pawar and eight other MLAs of the Ajit Pawar faction praying for their disqualification under Paragraph 2 (1) (a) of the Tenth Schedule of the Constitution of India, herein after referred to as '*the Tenth Schedule*' for brevity.



6. On 03<sup>rd</sup> July 2023 Disqualification Petition No. 02 of 2023 also came to be filed by the Ajit Pawar faction through Shri Anil Bhaidas Patil against Shri Jayant Patil and Shri Jitendra Awhad of the Sharad Pawar faction praying for their disqualification under Paragraph 2 (1) (a) of the Tenth Schedule.
7. On 06<sup>th</sup> September 2023, Disqualification Petition No. 03 of 2023 came to be filed by the Sharad Pawarv faction again through Shri Jayant Patil against Shri Narhari Zhirwal and 19 other MLAs of the Ajit Pawar faction praying for their disqualification under Paragraph 2 (1) (a) of the Tenth Schedule.
8. On 08<sup>th</sup> September 2023, Disqualification Petition No. 04 of 2023 came to be filed by the Sharad Pawar faction through Shri Jitendra Awhad against Shri Chetan Tupe and 11 other MLAs of the Ajit Pawar faction praying for their disqualification under Paragraph 2 (1) (a) of the Tenth Schedule.
9. On 21<sup>st</sup> September 2023, Disqualification Petition No. 05 of 2023 came to be filed by the Ajit Pawar faction through Shri Anil Bhaidas Patil against Shri Anil Deshmukh and 07 other MLAs of the Sharad Pawar faction praying for their disqualification under Paragraph 2 (1) (a) of the Tenth Schedule.
10. On 05<sup>th</sup> October 2023, Notices came to be issued in Disqualification Petitions No. 01 and 03 of 2023.



11. On 23<sup>rd</sup> October 2023, Notices came to be issued in Disqualification Petitions No. 02, 04 and 05 of 2023.
12. On 27<sup>th</sup> October 2023, Respondents in Disqualification Petition No. 01, 03 and 04 of 2023 sought extension of four weeks to file replies.
13. On 07<sup>th</sup> November 2023, Respondents' (*in Disqualification Petition No. 01, 03 and 04*) request for extension of time was allowed and time was granted till 23<sup>rd</sup> November 2023 for these Respondents to file replies.
14. Further, on 07<sup>th</sup> November 2023, Respondents in Disqualification Petitions No. 02 and 05, filed their replies.
15. Similarly, Respondents in Disqualification Petitions No. 01, 03 and 04, filed their replies on 23<sup>rd</sup> November 2023.
16. On 02<sup>nd</sup> January 2024, Notice for Preliminary hearing was issued to all the parties in Disqualification Petitions No. 01 to 05 of 2023.
17. Procedural directions and time schedule for hearing were set out *vide* Order dated 04<sup>th</sup> January 2024. Parties were directed to exchange pleadings by 06<sup>th</sup> January 2024. Rejoinders were directed to be filed by 08<sup>th</sup> January 2024. Further, parties were given an opportunity to file additional documents, if any, by





09<sup>th</sup> January 2024. Parties were also directed to finish inspection of documents by 12<sup>th</sup> January 2024 and file Statement of Admission and Denial by 14<sup>th</sup> January 2024. Petitions were adjourned to 16<sup>th</sup> January 2024 for framing of Issues after hearing parties.

18. On 16<sup>th</sup> January 2024, Parties were heard and Issues settled. Parties were given time till 18<sup>th</sup> January 2024 to file their List of Witnesses and Affidavits in lieu of Examinations in Chief. Petitions were kept to 20<sup>th</sup> January 2024 for cross examination of Petitioners' witnesses.

19. Petitions were listed on 20<sup>th</sup> January 2024 for Cross Examination of Petitioner's witnesses. However, the Respondents, *vide* Application dated 19<sup>th</sup> January 2024, sought additional time to prepare for cross examinations citing difficulty in preparing for cross examinations of four witnesses within a day. Petitioner objected to the same by filing a 'Response' on 19<sup>th</sup> January 2024. Since the Respondents had only a day in hand to prepare for cross examinations of four witnesses, Respondents were granted additional time to prepare for cross examinations. In view of the same, time schedule was revised with consent of both the parties. Respondents were given two days, i.e., 23<sup>rd</sup> January 2024 and 24<sup>th</sup> January 2024, to conduct and finish cross examinations of Petitioner's witnesses. Petitioner was directed to





conduct and finish cross examinations Respondents' witnesses on 25<sup>th</sup> January 2024.

20. Thereafter, Petitions were listed on 23<sup>rd</sup> January 2024 for Cross Examination of Petitioner's witnesses. Cross examinations of Shri Jitendra Awhad (PW-1) and Shri Hemant Takle (PW-2) was conducted and concluded. Cross examinations, began at around 12 PM and continued till 6 PM, with a 45-minute break in between. Petitions were adjourned to the next day for continuation of cross examinations of Petitioner's witnesses.

21. On 24<sup>th</sup> January 2024, Cross examinations of Shri Jayant Patil (PW-3) and Shri Amol Kolhe (PW-4) were conducted and concluded. Cross examinations, began at around 11:30 AM and continued till 8 PM, with a 45-minute break in between. Thus, cross examinations of Petitioner's witnesses were concluded, and evidence closed. Petitions were adjourned for cross examinations of Respondents' witnesses, on 25.01.2024.

22. On 25<sup>th</sup> January 2024, Cross examination of Shri Sunil Tatkare (RW-1) was conducted and concluded. Cross examinations, began at around 12 noon and continued till 6:30 PM, with a 45-minute break in between. As per the schedule fixed *vide* Order dated 20<sup>th</sup> January 2024, cross examinations of Respondents' witnesses were to conclude on the said day. However, these could not be completed and thus by consent of both the parties the schedule was once again revised giving Petitioners one



more day, i.e. 29<sup>th</sup> January 2024, to finish cross examinations of Respondents' witnesses. By consent of parties, final hearings were scheduled on 30<sup>th</sup> and 31<sup>st</sup> January 2024.

**23.**On 29<sup>th</sup> January 2024, cross examination of Shri Anil Bhaidas Patil (RW-2) was concluded. Cross examinations, began at around 12 noon and continued till 6:00 PM, with a 45-minute break in between. With that, cross examinations of Respondent's witnesses were concluded, and evidence closed.

**24.**On 30<sup>th</sup> January 2024, Petitions were listed for commencement of Final Hearings. Ld. Sr. Adv. Sharan Jagtiani advanced and completed submissions for and on behalf of the Petitioner's in Group 01 Petitions and Respondents in Group 02 Petitions. Petitions were adjourned to 31<sup>st</sup> January 2024 for continuation of Final Hearings.

**25.**On 31<sup>st</sup> January 2024, Ld. Sr. Adv. Virendra Tulzapurkar and Ld. Sr. Adv. Pradeep Sancheti, advanced and completed submissions for and on behalf of the Respondents in Group 01 Petitions and Petitioner in Group 02 Petitions. With that, Petitions were closed and reserved for final orders. Parties were given liberty to file Written Notes of Arguments by 02<sup>nd</sup> February 2024.



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

26. Disqualification Petitions No 01, 03 and 04 of 2023 have been filed by the Sharad Pawar faction through Shri Jayant Patil and Shri Jitendra Awhad, against Shri. Ajit Anantrao Pawar and 40 other members of the Ajit Pawar faction under Paragraph 2 (1) (a) of the Tenth Schedule of the Constitution *inter-alia* on the following grounds:

- (a) On 02<sup>nd</sup> July 2023, without any intimation to the official leadership of the NCP, and without taking permission of the NCP-Working Committee or of the Party President Shri Sharad Pawar, the Respondents No. 01 to 09 in Petition No. 01 of 2023 have unlawfully joined hands with the government led by Shri Eknath Shinde.
- (b) The official leadership of the NCP has not authorised the actions of the Respondents. The Respondents' act of joining hands with the Shri Eknath Shinde led government, and taking oath as ministers in the government on 02<sup>nd</sup> July 2023 are against the NCP Party position, which is in opposition to the said government.
- (c) Respondents No. 01 to 09 in Petition No. 01 of 2023, without the consent and/or approval of the NCP Political





Party have joined hands with the Shiv Sena (Eknath Shinde) and the BJP.

- (d) The actions of joining the government as Deputy CM and as Ministers by Respondent No. 01 and Respondents No. 02 to 09 respectively (in Petition No. 01 of 2023) on 02<sup>nd</sup> July 2023, per se amounts to voluntarily giving up membership of the NCP Political Party.
- (e) The actions of the Respondents (in Petition No. 03 & 04 of 2023) in joining hands with former members of the NCP (Respondents in Petition No. 01 of 2023) amounts to defection by voluntarily giving up membership of the Maharashtra Legislative Assembly.
- (f) The actions of the Respondents (in Petition No. 03 & 04 of 2023) in tendering their affidavits dated 30<sup>th</sup> June 2023 in favour of Shri Ajit Pawar without seeking permission of the Party President Shri Sharad Pawar, amounts to voluntarily giving up membership of the NCP.
- (g) Respondents' conduct of (i) altering the organisational structure of the NCP to favour Shri Ajit Pawar, (ii) attempting to inaugurate new party offices of the NCP without requisite authorisation, (iii) unlawfully calling for NCP Party meetings and conventions in parallel to Shri Sharad Pawar's calls for meetings, and (iv) issuing of





Press Releases and Press Conferences undermining NCP's ties with its Political alliances, amounts to voluntarily giving up membership of the NCP.

- (h) Respondents have (i) voluntarily given up membership on 02<sup>nd</sup> July 2023, (ii) continued to engage in anti-party activities, (iii) concerted with former NCP members (Respondents 01 to 09 in Petition No. 01 of 2023), (iv) acted in violation of the party constitution and the rules framed thereunder, (v) acted against the instructions and directions of the National President of the NCP, and (vi) indirectly given their tacit approval to the activities of former NCP members (Respondents No. 01 to 09 in Petition No. 01 of 2023).

27. Petitioners pleaded the following facts in support of these grounds:

- (a) The Nationalist Congress Party (NCP) was a political party duly recognised and registered with the Election Commission of India. The Working Committee of the NCP ('NCP-WC' for short) was the highest executive authority of the Party, and was headed by the Party President Shri Sharad Pawar. The National President was re-elected unopposed during the National Executive Meeting held on 10<sup>th</sup> September 2022 and its results including the leadership of Shri Sharad Pawar, was made



public and communicated to the Election Commission of India.

- (b) Elections to the 14<sup>th</sup> Legislative Assembly of Maharashtra were conducted in the month of October 2019. The NCP emerged successful in 54 Assembly constituencies. The NCP legislature party was formed comprising 54 elected MLAs, who had contested and emerged successful in the election on the NCP ticket.
- (c) In the year 2019, the NCP entered into a post-poll alliance with the Shiv Sena and the Indian National Congress and formed the government in the State of Maharashtra.
- (d) In June 2022, Shiv Sena led by Shri Eknath Shinde joined hands with the BJP, and staked claim to form the Government in Maharashtra. Since then, the MVA alliance, of which the NCP is an integral part, is in the opposition.
- (e) On 10-11 September 2022, the National Convention of the Nationalist Congress Party was held, where Shri Pawar was unanimously elected as the Party President for the period of three years, i.e., till 2025. Further, the delegates comprising the National Convention authorised Shri Sharad Pawar to name and appoint the National office bearers of the party, the working committee members,



etc. No dispute whatsoever was ever raised by the Respondent MLAs questioning the unanimous election of Shri Sharad Pawar as the President of the NCP.

- (f) On 02<sup>nd</sup> May 2023, Shri Sharad Pawar announced his intention to step down as President of the NCP. Immediately thereafter, a committee comprising senior NCP leaders including Shri Ajit Pawar and Praful Patel was constituted to consider the situation. Thereafter on 05<sup>th</sup> May 2023, the committee unanimously rejected the resignation of Shri Sharad Pawar and decided to request Shri Sharad Pawar to continue as the President of the NCP. Consequently, and in view of the overwhelming support of his party's rank and file.
- (g) On 02<sup>nd</sup> July 2023, without any intimation to the official leadership of the NCP, and without taking permission of the NCP-Working Committee or of the Party President Shri Sharad Pawar, the Respondents No. 01 to 09 in Petition No. 01 of 2023 have unlawfully joined hands with the government led by Shri Eknath Shinde. Other Respondents supported the said Respondents No. 01 to 09 in Petition No. 01 of 2023 by tendering their affidavits in support.
- (h) On 02<sup>nd</sup> July 2023, the Maharashtra State Discipline Committee (NCP) passed a resolution, resolving to take



appropriate action against the MLAs. Subsequently, on 02<sup>nd</sup> July 2023, in view of the illegal and unlawful conduct of the 09 MLAs, the Disqualification Petition No. 01 of 2023 was filed.

- (i) Vide communication dated 04<sup>th</sup> July 2023, a meeting of the National Working Committee of the NCP was called on 06<sup>th</sup> July 2023 at the residence of Shri. Sharad Pawar, National President, NCP in New Delhi. At this meeting the National Working Committee, the highest executive body of the party, expressed its unwavering and unanimous support to Shri Sharad Pawar, and also expressed its approval for the formal removal of Shri Praful Patel, Shri Sunil Tatkare, and the MLAs from the NCP in view of anti-party activities amounting to voluntarily giving up membership of the party.
- (j) On 25<sup>th</sup> July 2023, Shri Sharad Pawar received a petition which had been filed by the Ajit Pawar faction as an Election Petition under Paragraph 15 of the Election Symbol (Reservation and Allotment) Order 1968 bearing Diary No. 277671 of 2023 before the Election Commission of India. The Petition filed against Shri Sharad Pawar sought right over the NCP's party Symbol and Party name.





(k) In order to assert Shri Ajit Pawar's support of MLAs, numerous affidavits of MLAs claiming to support Shri Ajit Pawar were filed in the said Election Petition. There were sworn affidavits of Respondents dated 30<sup>th</sup> June 2023, wherein they claimed to be supporting Shri Ajit Pawar. These affidavits tendered by Respondent MLAs in support of Shri Ajit Pawar are sufficient evidence to attract the offence of disqualification under the Tenth Schedule of the Constitution of India.

28. Based on the above facts, circumstances and grounds, Petitioner contended that the conduct of the Respondents lead to a conclusion that the Respondents had 'voluntarily given up membership' of the NCP Political Party and the provisions of Paragraph 2 (1) (a) of the Tenth Schedule of the Constitution were attracted so as to disqualify Respondents. Consequently, Petitioner prayed that the Respondents be declared to have voluntarily given up their memberships of the NCP Political Party and therefore be declared as disqualified in terms of Paragraph 2 (1) (a) of the Tenth Schedule of the Constitution.

29. Respondents answered the Petitioner by pleading the following:

(a) Despite the existence of a written constitution which was intended to govern the working of the NCP, Shri Sharad Pawar and his select coterie of appointed individuals had



been administering the affairs of the Party at Shri. Sharad Pawar's whims and fancies.

- (b) Given the widespread and mounting dissent within the NCP Political Party and having tried to ventilate their grievances through various intra-party challenges, the overwhelming majority of members of the legislative wing and also within the wider Political Party decided to repose their faith in Shri Ajit Pawar as the National President of the Party on 30<sup>th</sup> June 2023.
- (c) On 30<sup>th</sup> June 2023, a Resolution was signed by leaders of the party electing Shri Ajit Pawar as the National President of the NCP Political Party. On the same day Shri Ajit Pawar was elected as the leader of the NCP Legislature Party in the Maharashtra Legislative Assembly.
- (d) On 30<sup>th</sup> June 2023 a petition under Paragraph 15 of the Election Symbols (Reservation and Allotment) Order 1968 was filed *vide* Dispute Case No. 02 of 2023 before the Election Commission of India. Therefore, the organisational structure/leadership structure led by Shri Ajit Pawar was the relevant leadership structure for the purpose of determining the 'real NCP Political Party' for the purpose of these disqualification petitions.



- (e) On 02<sup>nd</sup> July 2023 the majority of the NCP Political Party met and decided to join the ruling Shiv Sena-BJP government in Maharashtra. Thereafter, Shri Ajit Pawar took oath as the Deputy Chief Minister of the State of Maharashtra and 08 other MLAs of the NCP took oath as Ministers in the government of Maharashtra.
- (f) Shri Ajit Pawar led faction of the NCP was the real political party since 30<sup>th</sup> June 2022 and hence the Disqualification Petitions initiated by the other faction led by Shri Sharad Pawar on 02<sup>nd</sup> July 2023 was liable to be dismissed.

30. Based on the above, Respondents contended that Disqualification Petitions were devoid of any merits and deserved to be dismissed.

### **(III) EVIDENCE LED BY THE PARTIES**

31. The Petitioner of the 'Sharad Pawar faction' filed Affidavits in lieu of Examination in Chief of four witnesses; (i) Shri Jitendra Awhad (PW-1), (ii) Shri Hemant Takle (PW-2), (iii) Shri Jayant Patil (PW-3), and (iv) Shri Amol Kolhe (PW-4).

32. Shri. Jitendra Awhad (PW-1) in his *Affidavit in lieu of Examination in Chief* deposed *inter alia* as under:



- (a) Disqualification Petitions have been filed against Respondents for (i) acting in contravention of the NCP Party Constitution (and the rules made thereunder); (ii) violating the directives issued by the National Party President of the NCP, Shri Sharad Pawar; and (iii) supporting NCP members, who had voluntarily given up their membership by indulging in anti-party activities and were facing disqualification on grounds of defection under Paragraph 2 (1) (a) of the Tenth Schedule of the Constitution of India.
- (b) Respondents in Disqualification Petitions 01, 03 and 04 (Respondents) have not only acted against the basic principles of the Party Constitution (and the rules made thereunder) but have acted without the consent or approval of the NCP and extended support to former members of NCP, who are guilty of indulging in anti-party activities and acting in violation of the NCP's Constitution (and the rules framed thereunder).
- (c) That the very action of the Respondents extending support to the former members of NCP viz., Shri Ajit Pawar and acting in contravention to the directions of the NCP's leaders, including the National President, *per se* amounts to voluntarily giving up membership of the





NCP Political Party, thereby incurring disqualification under Paragraph 2 (1) (a) of the Tenth Schedule.

- (d) On 01<sup>st</sup> September 2022, Shri Sharad Pawar, was re-elected unopposed as the National Party President for the NCP. The nomination form of Shri Sharad Pawar, as a contestant for the National Party President, had the signatures of Shri Ajit Pawar, Shri Praful Patel, Shri Chagan Bhujbal, Shri Sunil Tatkare and other MLAs of NCP. These signatures were proof of the fact that the said MLAs were standing as nominee for Shri Sharad Pawar contesting the election for the post of National Party President.
- (e) On 01<sup>st</sup> September 2022, there was no other candidate who stood against Shri Sharad Pawar in the contest for the National Party President of NCP. Thus the election results were announced immediately, and Shri Sharad Pawar was declared victorious. No objection or grievance was raised by any MLA, MLC, MP or member of the NCP against the said election.
- (f) On 11<sup>th</sup> September 2022, the National Convention of the Nationalist Congress Party was held, where a resolution was passed in favour of Shri Sharad Pawar being unanimously elected as the Party President for a period of three years, i.e., till 2025. In the said Resolution, all the



NCP leaders had further resolved to authorise the National Party President to appoint important National Office bearers of NCP. Consequently, a list of National Office bearers was prepared and duly approved by the National Party President as well as the Party Leadership.

- (g) On 15<sup>th</sup> September 2022, the organisational results of NCP, specifically the election of Shri Sharad Pawar as the National Party President, were duly communicated to the Election Commission by Shri T.P. Peethambaran, Member of NCP. Till date, all relevant documentation regarding the NCP and its organisation, has been submitted with the Election Commission.
- (h) Shri Praful Patel, through NCP's official notification dated 15<sup>th</sup> September 2022, published the names of the office bearers, spokespersons, working committee members, state presidents, frontal organisations, departments, observers and co-ordinators, etc. It was *vide* the said letter that the names of the office bearers of the NCP were announced including that of Shri Jayant Patil as the Maharashtra State President, Shri Praful Patel as the National Vice President of the NCP, and Shri Jitendra Awhad as the National General Secretary who was also made a part of the National Working Committee (as a permanent invitee).



- (i) With the submissions of Shri T.P. Peethambaran Master dated 15<sup>th</sup> September 2022 to the Election Commission and the notification being issued by Shri Praful Patel, Shri Jitendra Awhad as the National General Secretary and Permanent Invitee to the National Working Committee of NCP, was made part of the decision making process for the NCP. As part of the National Working Committee, Shri Awhad asserted that Shri Ajit Pawar never raised any grievance against but at all times accepted the leadership of Shri Sharad Pawar and had never informed the Committee of his intention to be elected as the National Party President of NCP.
- (j) On 02<sup>nd</sup> May 2023, during the launch of his biography at the Yashwantrao Chavan Centre, Nariman Point, Mumbai, Shri Sharad Pawar formally announced that he was taking a backseat in active politics and was consequently resigning from the post of the National Party President of the NCP. After making the announcement, Shri Praful Patel, Shri Sunil Tatkare, Shri K.K. Sharma, Shri P.C. Chacko, Shri Ajit Pawar, Shri Jayant Patil, Smt. Supriya Sule, Shri Chhagan Bhujbal, Shri Dilip Walse-Patil, Shri Anil Deshmukh, Shri Rajesh Tope, Shri Hasan Mushrif, Shri Dhananjay Munde, Shri Jaydev Gaikwad, Shri Dheeraj Sharma, Smt. Sonia





Doohan, Smt. Fauzia Khan, Smt. Vandana Chavan and Shri Jitendra Awhad, as a committee, were assigned the task to decide the way forward for the NCP.

- (k) On 05<sup>th</sup> May 2023, after a meeting of the Committee, it was unanimously resolved that Shri Sharad Pawar was to continue as the National President of the NCP and consequently Shri Sharad Pawar was made to withdraw his resignation as National Party President of NCP. The said committee comprised Respondents including Shri Ajit Pawar and it was this very committee that unanimously came to the conclusion that Shri Sharad Pawar was to continue as the National Party President.
- (l) On 30<sup>th</sup> June 2023, no NCP members or none of the Respondents, especially Shri Ajit Pawar, had notified the members of the party of any significant event (as the Respondents subsequently claimed as being the alleged election of Shri Ajit Pawar as the Party President for which they have relied upon a document that is fabricated and undated) being held on 30<sup>th</sup> June 2023. No one in the organisation had been even remotely aware of any event that had occurred on 30<sup>th</sup> June 2023 or the intention to join the BJP-Shiv Sena led State Government.
- (m) On 02<sup>nd</sup> July 2023, there were some media reports about a possible meeting at Shri Ajit Pawar's residence in





Mumbai and that an important decision would be taken at this meeting. There were certain other reports that Shri Ajit Pawar along with other MLAs of NCP were planning to join BJP or BJP led alliance. In this background, Shri Sharad Pawar held a press conference at Pune on 02<sup>nd</sup> July 2023 and officially clarified that the NCP had no plans of joining the BJP led alliance and would be performing its role as the principal opposition party in the Maharashtra Legislative Assembly. However, within few hours on 02<sup>nd</sup> July 2023 itself 09 MLAs took oath as Ministers in the Maharashtra State Government.

- (n) On 02<sup>nd</sup> July 2023, Shri Anil Deshmukh, NCP MLA, sent a representation to the National Party President of NCP complaining against the anti-party activities of 09 MLAs of NCP. As per representation, which was copied to the Chairperson, State Disciplinary Committee, NCP, Shri Anil Deshmukh had requested for immediate action against 09 MLAs for contravening the Party Constitution (and the rules framed thereunder) and for furthering their own personal ambitions rather than the political parties. On the basis of Shri Anil Deshmukh's representation dated 02<sup>nd</sup> July 2023, on the very same day, the NCP's State Discipline Committee led by its Chairperson Shri Jaiprakash Dandegaonkar, took up the issue of the 09 MLAs and passes orders against them. As per the Order



dated 02<sup>nd</sup> July 2023, it was resolved that appropriate actions should be taken in accordance with the NCP constitution. In view of the resolution passed by the State Disciplinary Committee and the illegal and unlawful conduct of the aforementioned 09 MLAs joining the government, Shri Jayant Patil, was constrained to file Disqualification Petition against the 09 MLAs.

- (o) Actions of the MLAs on 02<sup>nd</sup> July 2023, did not have the sanction or approval of either the organisational wing of NCP or the National Party President of the NCP, Shri Sharad Pawar. Hence, the MLAs had become a part of the State Government despite being part of the principal opposition party by shifting their allegiance to a Government led by Political Parties which are ideologically different in their political aims and objectives (to NCP).
- (p) On 25<sup>th</sup> July 2023, the Election Commission sent an Email to Shri Sharad Pawar, wherein certain documents filed by Shri Ajit Pawar, had been attached for Shri Sharad Pawar's comments and replies. One of these documents contained an undated resolution of 44 Members of NCP's legislative wing (including 39 MLAs, 3 MLCs, and 2 MPs) wherein the members had resolved to elect Shri Ajit Pawar as the National Party President. Further scrutiny



of the said resolution revealed that Shri Ajit Pawar had claimed to have had this resolution passed on 30<sup>th</sup> June 2023 and thereupon had been elected as the National Party President of the NCP on 30<sup>th</sup> June 2023 itself. This is evidently fabricated document. There was no election of Ajit Pawar as Party President by following any process, much less a process prescribed by the Party Constitution. No one in the party was notified about the holding of such an election. No notice of the same was ever sent.

- (q) The claim that Shri Ajit Pawar was elected as the National Party President on 30<sup>th</sup> June 2023 on the basis of a Resolution passed by members of legislative wing, is completely contrary to the provisions of the NCP Constitution. The said resolution was a clear evidence that Respondents committed anti-party activities and thereby voluntarily giving up NCP membership.
- (r) The alleged Resolution dated 30<sup>th</sup> June 2023 by no means constituted an overwhelming majority in favour of Shri Ajit Pawar. To the contrary, it was evidence of the fact that Shri Sharad Pawar, as the National Party President enjoyed unambiguous majority.
- (s) Article 21 of the Party Constitution of the NCP recognised the National Working Committee as the primary and the highest executive authority of NCP. As per the admitted





document of Shri Praful Patel dated 15<sup>th</sup> September 2022 which provides the entire structure of the party organisation, the Working Committee consisted of 28 individuals out of which 16 support Shri Sharad Pawar and which included 08 of Respondents in Disqualification Petitions No. 01, 03 and 04 of 2023. Therefore, as on 30<sup>th</sup> June 2023 and even after 30<sup>th</sup> June 2023, it was amply evident that the NCP was under the categorical and admitted leadership of Shri Sharad Pawar and functioned through the National Working Committee.

- (t) NCP, as recognised by the Election Commission continues to be the Party led by Shri Sharad Pawar. Therefore, by expressing their support to the former NCP members, the Respondents MLAs have (i) voluntarily given up their membership, (ii) continued to engage in anti-party activities, (iii) consorted with former NCP members who have disqualification petitions pending against them, (iv) acted in violation of the Party Constitution, (v) acted against the instructions and directions of the National President of the NCP, and (vi) indirectly given their tacit approval to the activities of the former NCP members, and by this conduct have given up their party membership by their conduct.





- (u) Respondents in Disqualification Petitions No. 01, 03 and 04 and Petitioners in Disqualification Petitions No. 02 and 05 have wrongly denied various documents. Given his role as the National General Secretary of the party and long association with the party, Shri Avhad asserted that he was familiar with the signatures of various persons appearing on various of those documents that had been wrongly denied.

**33. Shri. Hemant Takle (PW-2)** in his *Affidavit in lieu of Examination in Chief* deposed *inter alia* that:

- (a) He was a member of the NCP, a political party duly recognized and registered with the Election Commission, since its foundation on 10<sup>th</sup> June 1999 under the aegis and leadership of Shri Sharad Pawar. He had the privilege of serving the party as the State Secretary-NCP Maharashtra Pradesh since 1999 and as the treasurer of NCP-Maharashtra since 2004, and as a National Secretary since 2015 while continuing as the treasurer of NCP-Maharashtra.
- (b) In his capacity as the National Secretary, since 2015 and Maharashtra State Treasurer since 2004, he had been regularly receiving correspondences from various senior position holders and leaders of the party, and therefore he was well versed with their signatures. He was familiar



with their signatures through correspondences received and even otherwise having interacted with several of the Respondents over the several years in relation to party matters.

(c) On 31<sup>st</sup> August 2022, he nominated Shri Sharad Pawar by applying his signature to a nomination form for election to the post of the President of the NCP. He applied my signatures to two separate nominations forms marked as Document 12 in the list of additional documents filed and his signature to the form annexed at page 39 was at Sr. No. 06, and on form annexed at page 40 was also at Sr. No. 06. The said two forms were also signed by Shri Praful Patel, Shri Jayant Patil, Shri Ajit Pawar, Smt. Supriya Sule, Shri Sunil Tatkare, Shri Shivajirao Garje, Shri Narendra Rane, etc., He was familiar with the signatures of all these persons and able to identify the same.

(d) On 01<sup>st</sup> September 2022, there was no other candidates who stood against Shri Sharad Pawar in the contest for the National Party President of NCP. Hence, the election results were announced immediately by the Central Returning Officer, Mr. T.P. Peethambaran Master, and Shri Sharad Pawar was declared victorious. The proceedings of the Central Returning Officer-NCP were



published *vide* a Notification dated 01<sup>st</sup> September 2022. The said document was marked as document 12 in the list of additional documents filed. He identifies the signature of Shri T.P. Peethambaran Master on the bottom right of the said document at Page 30 of the additional documents filed. No objections or grievances were raised by any MLA, MLC, MP, or member of the NCP against the said election.

- (e) On 15<sup>th</sup> September 2022, in his capacity as the National Secretary, he received a letter from Shri Praful Patel, the then National Vice President of the party. The said letter contained the list of persons duly appointed as the National Office bearers, National Secretaries, Spokespersons, Working Committee members including permanent invitees to the working committee, State/UT Presidents/Convenors, frontal organizations, departments, observers and coordinators and allocation of works to the General Secretaries of NCP, by way of a decision taken during the National Convention held on 10-11 September 2022 in New Delhi which was duly approved by the National President of the NCP Shri Sharad Pawar.

**34. Shri. Jayant Patil (PW-3)** in his Affidavit in lieu of Examination in Chief deposed *inter alia* that:





- (a) Being a part of the NCP since its inception, he could attest to the fact that from the year 2002 onwards Shri Sharad Pawar had been unanimously elected as the National Party President of NCP for consecutive terms.
- (b) Being a senior member of the NCP, during the 2019 Maharashtra Legislative Assembly elections, he was authorized on behalf of the NCP, to issue 'Form A/Form AA' to all the candidates contesting the Assembly elections on the NCP election symbol. He was the one who issued such forms to respondents as well. At the time of issuing the requisite forms to the candidates, the National Party President of the NCP was Shri Sharad Pawar.
- (c) He, i.e. Shri. Jayant Patil was appointed as the Leader of the NCP's Legislature Party in the Maharashtra Legislative Assembly since 23<sup>rd</sup> November 2019 with unanimous approval of the MLAs and the directions of the National Party President, Shri Sharad Pawar. On 30<sup>th</sup> June 2023, he remained the Leader of the NCP's Legislature Party and no communication regarding any change in his appointment was informed to him.
- (d) He filed the disqualification petitions in pursuance to the events that transpired in July 2023 and the acts of Respondents. In summary, he stated that he filed the





disqualification petition in view of the Respondents MLAs (i) acting in contravention of the NCP Party Constitution (and the rules made thereunder), (ii) violating the directives issued by the National Party President of the National Congress Party, Shri Sharad Pawar, (iii) supporting NCP members, who had voluntarily given up their membership by indulging in anti-party activities and were facing disqualification on ground of defection under paragraph 2 (1) (a) of the Tenth Schedule of the Constitution.

- (e) On 30.07.2022, Shri T.P. Peethambaran Master addressed a letter intimating Shri. Jayant Patil of the appointment of Shri Jayaprakash Dandegaonkar as the State Returning Officer for the purpose of conducting organizational elections of the Maharashtra State Unit of the NCP. As a part of the election to the post of the National Party President, Chief Returning Officer Shri T.P. Peethambaran Master, through his State Returning Officers, directed the State Presidents of all participating State Units of NCP to submit their respective nomination forms, giving the name of their nominees supported by at least 10 members. In the case of Maharashtra State Unit, he, i.e. Shri. Jayant Patil, being the State Party President prepared 2 sets of Nomination Forms, nominating Shri Sharad Pawar as the National Party President.



- (f) On 01.09.2022, Shri Sharad Pawar, was re-elected unopposed as the National Party President for the NCP. The nomination form of Shri Sharad Pawar, as a contestant for the National Party President, had the signatures of Shri Ajit Pawar, Shri Praful Patel, Shri Chagan Bhujbal and other MLAs of NCP. These signatures were proof of the fact that the said MLAs stood as nominee for Shri Sharad Pawar contesting the elections to the National Party President.
- (g) On 11.09.2022, the National Convention of the Nationalist Congress Party was held, where a resolution was passed in favour of Shri Sharad Pawar as having been unanimously elected as the Party President for a period of three years, i.e., till 2025. In the said resolution, all the NCP Leaders further resolved to authorize the National Party President to appoint important National Office Bearers of NCP. Consequently, a list of National Officer Bearers was prepared and duly approved by the National Party President as well as the Party Leadership.
- (h) On 15.09.2022, the organizational results of NCP, specifically the election of Shri Sharad Pawar as the National Party President, were duly communicated to the Hon'ble Election Commission vide letter dated 15.09.2022 issued by Shri T.P. Peethambaran, Member of NCP. Till



date, all relevant documentation regarding the NCP and its organization, had been submitted to the Hon'ble Election Commission of India.

(i) On 02.05.2023, during the launch of his biography, Shri Sharad Pawar formally announced that he was taking a backseat in active politics and was consequently resigning from the post of the National Party President of the NCP. After making the announcement, Shri Sharad Pawar constituted a committee comprising Shri Praful Patel, Shri Sunil Takare, Shri K.K. Sharma, Shri P.C. Chacko, Shri Ajit Pawar, Smt. Supriya Sule, Shri. Chhagan Bhujbal, Shri. Dilip Walse-Patil, Shri. Anil Deshmukh, Shri. Rajesh Tope, Shri. Hasan Mushrif, Shri. Dhananjay Munde, Shri. Jaydev Gaikwad, Shri. Dheeraj Sharma, Smt. Sonia Doohan, Smt. Fauzia Khan, Smt. Vandana Chavan, Shri. Jitendra Awhad and himself i.e. Jayant Patil. The committee was assigned the task to decide the way forward for the NCP.

(j) On 05.05.2023, after a meeting of the Committee, it was unanimously resolved that Shri. Sharad Pawar was to continue as the National President of the NCP and consequently Shri. Sharad Pawar was made to withdraw his resignation as National Party President of NCP. The said Committee comprised the Answering Respondents including Shri Ajit Pawar and other Respondent MLAs. It





was this very faction that unanimously concluded that Shri. Sharad Pawar was to continue as the National Party President.

- (k) On 10.06.2023, under the leadership of Shri Sharad Pawar as the National Party President of NCP, Shri Praful Patel along with Smt. Supriya Sule was appointed as the National Working President of the NCP. These appointments were acknowledged by all the members and supporters of NCP, including Shri. Praful Patel himself, who publicly thanked Shri Sharad Pawar in his capacity as the National Party President.
- (l) On 02<sup>nd</sup> July 2023, there were some media reports about a possible meeting at Shri. Ajit Pawar's residence in Mumbai and that an important decision would be taken at this meeting. There were certain other reports that Shri. Ajit Pawar along with other MLAs of NCP were planning to join BJP or BJP led alliance. In this background, Shri Sharad Pawar held a press conference at Pune on 02<sup>nd</sup> July 2023 and officially clarified that the NCP had no plans of joining the BJP led alliance and would be performing its role as the principal opposition party in the Maharashtra Legislative Assembly. However, within few hours on 02<sup>nd</sup> July 2023 itself, 09 MLAs took oath as Ministers in the Maharashtra State Government.





(m) On 02<sup>nd</sup> July 2023, Shri. Anil Deshmukh, NCP MLA, sent a representation to the National Party President of NCP complaining against the anti-party activities of 09 MLAs of NCP. By this representation, which was copied to the Chairperson, State Disciplinary Committee, NCP, Shri. Anil Deshmukh had requested for immediate action against 09 MLAs for contravening the Party Constitution (and the rules framed thereunder) and for furthering their own personal ambitions rather than those of the political party. On the basis of Shri. Anil Deshmukh's representation dated 02<sup>nd</sup> July 2023, on the very same day, the NCP's State Discipline Committee led by its Chairperson Shri. Jaiprakash Dandegaonkar, took up the issue of the 09 MLAs and passes orders against them. As per the Order dated 02<sup>nd</sup> July 2023, it was resolved that appropriate action be taken in accordance with the NCP constitution. In view of the resolution passed by the State Disciplinary Committee and the illegal and unlawful conduct of the aforementioned 09 MLAs, Shri Jayant Patil, was constrained to file Disqualification Petition against the 09 MLAs.

(n) Actions of the MLAs on 02<sup>nd</sup> July 2023, did not have the sanction or approval of either the organisational wing of NCP or the National Party President of the NCP, Shri Sharad Pawar. Hence, the MLAs had become a part of the



State Government despite being part of the principal opposition party thereby shifting their allegiance to a Government led by Political parties which are ideologically different in their political aims and objectives (to NCP).

- (o) On 25<sup>th</sup> July 2023, the Election Commission sent an Email to Shri. Sharad Pawar, attaching certain documents filed by Shri Ajit Pawar, calling for Shri. Sharad Pawar's comments and replies. One of these documents contained an undated resolution of 44 Members of NCP's legislative wing (including 39 MLAs, 3 MLCs, and 2 MPs) wherein the members had resolved to elect Shri. Ajit Pawar as the National Party President. Further scrutiny of the said resolution revealed that Shri. Ajit Pawar had claimed to have had this resolution passed on 30<sup>th</sup> June 2023 and thereupon had been elected as the National Party President of the NCP on 30<sup>th</sup> June 2023 itself.
- (p) Shri. Ajit Pawar's election on 30.06.2023 supported by the purported undated letter/resolution was the first and the foremost act or conduct of the Respondents that amounted to voluntarily giving up membership of the party as per Para 2(1)(a).
- (q) All actions after 30.06.2023 were of no consequence and only contributed to the further committal of anti-party



activities of the Respondents. To this, the purported National Convention held on 05.07.2023 upon which reliance had been placed to ratify Shri. Ajit Pawar's election/selection on 30.06.2023 bore evidence of the fact that the entire process was illegal. The purported election of Shri. Ajit Pawar as the National President on 30.06.2023 was incapable of any ratification, and the subsequent National Convention held on 05.07.2023 was an admission that the 30.06.2023 election/selection was insufficient.

**35. Shri. Amol Kolhe (PW-4)** in his Affidavit in lieu of Examination in Chief deposed *inter alia* that:

- (a) On 30.06.2023, the National Party President of the NCP was Shri. Sharad Pawar and that he, i.e. Shri. Amol Kolhe, along with all the other members of the NCP were bound by the directions of Shri Sharad Pawar. As on 30.06.2023, he and everyone that he knows in the NCP, recognized only Shri Sharad Pawar as the National Party President. They had no reason to think that anybody other than Shri Sharad Pawar was National Party President. He, nor any NCP party members that he knows did not receive any notice regarding Shri. Ajit Pawar's purported election on 30.06.2023.





(b) On 02<sup>nd</sup> July 2023, he went to the official residence of Shri Ajti Pawar (Devgiri) as instructed by Shri. Sunil Tatkare by a phone call on 01<sup>st</sup> July 2023. At Devgiri, he was made to sign affidavits in support of Shri. Ajit Pawar. He signed those affidavits believing that this was done as per the directions of Shri. Sharad Pawar. Thereafter, he was taken to the Raj Bhavan for the oath ceremony which was not disclosed before taking me there. Consequent thereupon, and from the media reports, he learned that neither the National Party President nor the NCP leadership had consented to joining the government. In view of this, he spoke to Shri. Sharad Pawar and clarified his stand and support to him. Pursuance to this, he executed to an Affidavit dated 01<sup>st</sup> August 2023 and clarified his allegiance to the leadership of Shri Sharad Pawar.

36. Deposing for the Ajit Pawar faction, the Respondents filed two Affidavits in lieu of Examination in Chief viz. (i) Shri. Sunil Tatkare (RW-1) and (ii) Shri Anil Bhaidas Patil (RW-2).

37. **Shri. Sunil Tatkare (RW-1)** in his Affidavit in lieu of Examination in Chief deposed *inter alia* that:

(a) NCP was established in 1999 by framing an elaborate Constitution and Rules. It provided for a pyramidal structure, which consisted of various committees at different levels, i.e., Block and Constituency committees,



District committees, State committees, a National Committee, and a Working committee. NCP Working Committee is the highest executive authority within the party. Members of all the committees were to be elected by way of an elaborate election process, where the committees at the bottom of the pyramid acted as the feeder cadre for the committees at the higher levels.

- (b) NCP Working Committee was to consist of a total of 25 members, namely the President of the Party, the Leader of the Party in Parliament and 23 other members (12 elected by the National Committee and 11 appointed by the National President).
- (c) No elections to any of the committees were held since the year 2015. As a result, no delegates existed for the purpose of National Convention or for the nomination of the National Party President. Thus, the claim of Shri Sharad Pawar to the post of the National Party President was based on an alleged election which was never conducted. The alleged organizational elections held in 2018 and 2022 were also in fact never held.
- (d) The President could only nominate 11 members to the Working Committee as per the Constitution. Instead, the whole Working Committee was arbitrarily appointed by Shri. Sharad Pawar at his whims and fancies, appointing



28 members, as opposed to the maximum permitted number of 25 members. Thus, the highest body of the NCP, i.e., the Working Committee itself was constituted in violation of and contrary to the party constitution.

- (e) Because of the mounting discontent within the NCP, the party leadership at various levels including the MLAs, MPs, and MLCs, decided to meet Shri Ajit Pawar on 30.06.2023, for redressal of their grievances and to decide on the course of action of the party. Shri. Sunil Tatkare was personally present at the said meeting dated 30.06.2023, and a decision was taken by the members of the NCP Political Party to support Shri. Ajit Pawar to lead the NCP Political Party and a resolution was passed to that effect to affirm Shri. Ajit Pawar as the National President of the NCP Political Party by the leaders present in the said meeting.
- (f) In the said meeting dated 30.06.2023, it was also decided to file a Petition under paragraph 15 of the Election Symbols (Reservation and Allotment) Order, 1968, before the Election Commission of India. The said subject was discussed, and all the MPs, MLAs, and MLCs present gave their affidavits in favor of Shri Ajit Pawar evidencing their unconditional support to the leadership





of Shri Ajit Pawar. Dispute Case No. 2 of 2023 before the ECI was filed on the same day i.e. 30.06.2023.

- (g) On 30.06.2023, Shri Ajit Pawar was also elected as the leader in the Maharashtra Legislative Assembly for the NCP Legislature Party. The Resolution to that effect was signed by MLAs and MLCs. The said fact was also duly communicated to the Hon'ble Speaker vide communication of the same date.
- (h) An Open National Convention of the NCP Political Party was convened and scheduled on 05.07.2023 wherein the whole leadership at all levels were invited to participate. On 05.07.2023, the Open National Convention took place at Maharashtra Educational Trust, Bandra, Mumbai, wherein all the party leaders were present and NCP Political Party passed a resolution ratifying the appointments of Shri. Ajit Pawar as the NCP National President, Shri. Praful Patel as the National Working President of the NCP, and of himself, i.e. Shri. Sunil Tatkare as the Maharashtra State President of the NCP.

**38. Shri. Anil Bhaidas Patil (RW-2)** in his Affidavit in lieu of Examination in Chief deposed *inter alia* that:



- (a) NCP was established in 1999 by framing an elaborate Constitution and Rules. The Constitution provided for a

pyramidal structure, consisting of various committees at different levels, i.e., Block and Constituency committees, District committees, State committees, National committee, and Working committee. NCP Working Committee is the highest executive authority within the party. Members of all the committees were to be elected by an elaborate election process, where the committees at the bottom of the pyramid acted as the feeder cadre for the committees at the higher levels.

- (b) No elections to any of the committees were held since the year 2015. As a result no delegates existed for the purpose of National Convention or for the nomination of the National Party President. Therefore, the claim of Shri. Sharad Pawar to the post of the National Party President was based on an alleged election that was never conducted.
- (c) Shri. Sharad Pawar was administering the party without consulting the members and leaders of the party. A select group of people were appointed to various committees including the NCP Working Committee. The primary members had no opportunity to contest and become a part of the various committees within the organizational structure within the party. Even State Presidents were arbitrarily appointed instead of being elected by a



democratic process. Shri. Jayant Patil, the Petitioner in the Group 1 Petitions, was holding the post of State President of NCP for Maharashtra for almost 6 years without any valid election. Because of such arbitrary administration of the party, without consulting a majority of the leaders and members of the party, there was a discord amongst the party leaders, as nobody in the organization had a say in the running of the party. Under these circumstances, it was Shri. Ajit Pawar who led the party from the front. He was available to various members of the party, and had been responsible for growth of the party's organization in various parts of the State as well as country.

- (d) Because of the mounting discontent within the NCP, the party leadership at various levels including the MLAs, MPs, and MLCs, met Shri. Ajit Pawar on 30.06.2023, for redressal of their grievances and to decide the course of action of the party. Shri. Anil Bhaidas Patil was personally present at the said meeting dated 30.06.2023 where a decision was taken by the members of the NCP Political Party to support Shri. Ajit Pawar to lead the NCP Political Party. A resolution was passed to that effect to affirm Shri. Ajit Pawar as the National President of the NCP Political Party by the leaders present in the said meeting.





- (e) In the said meeting dated 30.06.2023, it was also decided to file a Petition under paragraph 15 of the Election Symbols (Reservation and Allotment) Order, 1968 before the Election Commission of India. The said subject was discussed, and all the members gave their affidavits in favor of Shri Ajit Pawar. On the said date, MPs, MLAs, and MLCs present at the meeting signed affidavits in favor of Shri Ajit Pawar, evidencing their unconditional support to his leadership. Dispute Case No. 2 of 2023 before the ECI was filed on the same day i.e. 30.06.2023.
- (f) On 30.06.2023, Shri Ajit Pawar was also elected as the leader in the Maharashtra Legislative Assembly for the NCP Legislature Party. The Resolution to that effect was signed by MLAs and MLCs. The said fact was also duly communicated to the Hon'ble Speaker vide communication of the same date. It was also communicated to the Hon'ble Speaker that he, i.e. Shri. Anil Bhaidas Patil would be continued as the Chief Whip of the Party.
- (g) Shri. Jayant Patil allegedly issued a letter dated 01.07.2023 (annexed at page 86 of the joint reply to Disqualification Petition No. 2 of 2023) which was received by the Principal Secretary, Maharashtra Legislative Assembly on 02.07.2023. By this letter, Shri. Jayant Patil sought to



appoint Shri. Jitendra Awhad as the Chief Whip of the Nationalist Congress Party with effect from 01.07.2023. Shri. Jayant Patil had no authority to change the whip of the Party and the alleged appointment of Shri. Jitendra Awhad was therefore *ex-facie* illegal.

- (h) The Open National Convention of the NCP Political Party was convened and scheduled on 05.07.2023 wherein the party's leadership at all levels were invited to participate. On 05.07.2023, the Open National Convention took place at Maharashtra Educational Trust, Bandra, Mumbai, wherein all the party leaders were present and NCP Political Party passed a resolution ratifying the appointments of Shri. Ajit Pawar as the NCP National President, Shri. Praful Patel as the National Working President of the NCP, and Shri. Anil Bhaidas Patil as the Maharashtra State President of the NCP.

#### **(IV) ISSUES FOR DETERMINATION**

39. The Hon'ble Supreme Court, in *Subash Desai Vs. Governor of Maharashtra*<sup>1</sup> (*hereinafter referred to as 'Subash Desai'*), was pleased to hold 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*



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<sup>1</sup> 2023 SCC Online SC 607

*political party*” in keeping with the principles discussed in the said judgement.<sup>2</sup>

40. A bare perusal of the pleadings in the present matter indicates the emergence of two factions within the NCP, the Ajit Pawar faction and the Sharad Pawar faction. Although the said judgment was in the matters that arose from a somewhat similar political situation that arose in this House concerning the Shiv Sena, it does constitute a precedent that would apply on all fours to the present disqualification matters as well. Hence, keeping in view the similar factual matrix and the law laid down by the Hon'ble Supreme Court in *Subash Desai (Supra)*, I will *prima facie* determine “*which faction is the real political party for the purpose of adjudicating these disqualification petitions*”. The said preliminary determination is necessary before examining the merits and deciding whether Respondents have incurred disqualification under the Tenth Schedule of the Constitution of India.

41. Therefore, to quote, the preliminary issue that arises for my consideration, before delving into the merits of disqualification petitions under the Tenth Schedule, is “*Which among the two factions was the “real” NCP Political Party for the purpose of deciding the present disqualification petitions?*”.



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<sup>2</sup> Paragraph 206 (d) & (g) of Subash Desai



42. The other issue framed for my consideration in this group of Disqualification Petitions 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?”*

**(V) ANALYSIS, OBSERVATIONS AND FINDINGS**

A. Which among the two factions is the “real” NCP Political Party for the purpose of deciding the present disqualification petitions?

43. In view of the fact that in the present matter, rival factions have emerged and both the factions claim to be the real political party, read with the law laid down by the Hon’ble Supreme Court, in *Subash Desai (Supra)*, stipulating that this Forum should *prima facie* determine *“who the political party is for the purpose of adjudicating disqualification petitions, if two or more factions claim to be that political party”*, it is necessary to consider and determine this preliminary issue before examining the merits of these disqualification petitions.

*Principles laid down by the Hon’ble Supreme Court in Subash Desai relevant for the purpose of determining who the political party is.*

44. Before discussing ‘who the political party is for the purpose of adjudicating disqualification petitions’ it is necessary to set out



the principles laid down by the Hon'ble Supreme Court in *Subash Desai (Supra)* for this purpose. These principles, although laid down in the disqualification matters concerning the Shiv Sena, apply with equal force to the present proceedings. They are as follows:

- (a) *When the conduct prohibited under the Tenth Schedule is (allegedly) committed, there is only one political party. This necessitates the Speaker prima facie determining who the political party was at the time of the alleged act which allegedly attract the provisions of the Tenth Schedule.<sup>3</sup>...*
- (b) *Paragraph 6 of the Tenth Schedule entrusts the Speaker of the House with the authority to adjudicate disqualification petitions. While adjudicating a disqualification petition, the Speaker must also consider any defence(s) raised by the member against whom the petition has been filed. The Tenth Schedule, as it currently stands, specifies five defences which a member may take recourse to, to shield themselves from the consequences of the anti-defection law.<sup>4</sup>...*
- (c) *Both factions of the Shiv Sena claiming to be the "real" Shiv Sena, in effect, points to the existence of a split within the SSLP. However, no faction or group can argue that they constitute the*



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<sup>3</sup> Paragraph No. 157 of *Subash Desai*.

<sup>4</sup> Paragraph No. 161 of *Subash Desai*.

*real political party as a defence against disqualification on the ground of defection.<sup>5</sup>*

- (d) *The inevitable consequence of the deletion of Paragraph 3 from the Tenth Schedule is that the defence of a split is no longer available to members who face disqualification proceedings. In cases where a split has occurred in a political party or in a legislature party, members of neither faction may validly raise the defence that they are the political party in the event that each faction files petitions for the disqualification of members of the other faction. The defence sought to be availed of must be found within the Tenth Schedule as it currently stands.<sup>6</sup>...*
- (e) *Members of multiple groups or factions can all continue as members of the House if the requirements of Paragraph 4(1) of the Tenth Schedule are satisfied. Two (or more) factions of a political party can both remain in the House if one of the factions has opted to merge with another political party in terms of Paragraph 4(1)(a) and the other faction has chosen not to accept the merger. However, in cases where a split has occurred, and members of one of the factions are found to have satisfied the conditions in Paragraph 2(1) and are also unable to establish any of the five defences available under the Tenth Schedule, they would stand disqualified. The percentage of members in each faction is irrelevant to the determination of*



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<sup>5</sup> Paragraph No. 163 of Subash Desai.

<sup>6</sup> Paragraph No. 164 of Subash Desai.



*whether a defence to disqualification is made out.<sup>7</sup> This is necessarily the implication of the deletion of Paragraph 3. To hold otherwise would be to permit the entry of the defence of 'split' in the Tenth Schedule through the back door. This is impermissible and would render the deletion of Paragraph 3 meaningless. It is imperative law that what cannot be done directly cannot be permitted to be done indirectly. The interpretation which we have expounded is the only one which comports with the deletion of Paragraph 3.<sup>8</sup>*

- (f) *Regardless of the defence available to members who face disqualification proceedings, the Speaker may be called upon to determine who the "real" political party is while adjudicating disqualification petitions under Paragraph 2(1)(a) where two or more factions of the political or legislature party have arisen. The effect of the deletion of Paragraph 3 is that both factions cannot be considered to constitute the original political party. In order to determine which (if any) of the members of the party have voluntarily given up membership of the political party under Paragraph 2(1)(a), it is necessary to first determine which of the factions constitute the political party. This determination is a prima facie determination and will not impact any other proceedings including the proceedings under Paragraph 15 of the Symbols Order.<sup>9</sup>*



<sup>7</sup> Paragraph No. 165 of Subash Desai.

<sup>8</sup> Paragraph No. 166 of Subash Desai.

<sup>9</sup> Paragraph No. 167 of Subash Desai

(g) In arriving at their decision, the Speaker must consider the constitution of the party as well as any other rules and regulations which specify the structure of the leadership of the party. If the rival groups submit two or more versions of the party constitution, the Speaker must consider the version which was submitted to the ECI before the rival factions emerged. In other words, the Speaker must consider the version of the party constitution which was submitted to the ECI with the consent of both factions. This will obviate a situation where both factions attempt to amend the constitution to serve their own ends. Further, the Speaker must not base their decision as to which group constitutes the political party on a blind appreciation of which group possesses a majority in the Legislative Assembly. This is not a game of numbers, but of something more. The structure of leadership outside the Legislative Assembly is a consideration which is relevant to the determination of this issue.<sup>10</sup>

(h) The deletion of Paragraph 3 impacts the proceedings under Paragraph 2(1)(b) as well. When there are two Whips appointed by two or more factions of the political party the Speaker must decide which of the two Whips represents the political party. Thus, the adjudication of the Speaker on whether a member must be disqualified under Paragraph 2(1)(b) would also



<sup>10</sup> Paragraph No. 168 of Subash Desai

depend on the decision of the Speaker recognising one of the two (or more) Whips.<sup>11</sup>

45. Thus, what emerges from the principles laid down by the Hon'ble Apex Court is that the question of 'who the real political party is', has to be considered and determined after giving due weightage to (i) *the constitution of the Political Party*, (ii) *the leadership structure of the party* and (iii) *the legislative majority*, if two or more factions claim to be the real political party. ('*the question of who the real political party is*', is hereinafter referred to as the '*preliminary issue*')

46. Since, in these proceedings both the factions are claiming to be the 'real political party' at the relevant point in time, and as the said issue arose for determination in these proceedings on 16<sup>th</sup> January 2024, the said preliminary issue was also framed as one of the issues in these disqualification petitions, thereby affording an opportunity to the parties to make their submissions on this point. I proceed to consider and adjudicate on this. I would be adjudicating the said *preliminary issue* based on (i) the principles laid down by the Hon'ble Apex Court, (ii) record available with the Maharashtra Legislature Secretariat and (iii) submissions made and documents referred to by the parties during the course of the hearing in these disqualification petitions.



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<sup>11</sup> Paragraph No. 169 of Subash Desai



Petitioners' submissions on the preliminary issue

47. Appearing for the Petitioner, Ld. Sr. Adv. Sharan Jagtiani made the following submissions on the preliminary issue:

- (a) The Legislative Majority Test is not available for determining the 'real' political party for the purpose of adjudicating disqualification proceedings under the Tenth Schedule. The appropriate test in disqualification proceedings is to determine which group has majority within the organizational structure of the political party as envisaged by the constitution of the political party.
- (b) Without prejudice to the above submission, and in the alternative, assuming that the Legislative Majority Test can be applied in disqualification proceedings under the Tenth Schedule to *prima facie* determine the 'real' political party, it is a subordinate test and can only be applied when there is no demonstrable organizational structure or leadership structure in place for determining the identity and the will of the political party and its constituents.
- (c) Once it is established that an organizational structure as envisaged by the NCP Constitution and Rules is in place, the Speaker does not have jurisdiction to go into the



validity or propriety of the internal elections at various tiers of the organizational structure to determine if the organizational structure as envisaged by the NCP Constitution is validly in place. This is especially so, given the overwhelming material on record which shows that the Respondents have never disputed and have in fact acted upon and benefited from this very organizational structure.

- (d) In the facts of the present case, there is extensive material on record to show that the NCP political party has an established organizational structure in place as envisaged by the NCP Constitution and its Rules, and that Shri Sharad Pawar is the National Party President within that organizational structure. There are judicial admissions, evidentiary admissions, documentary material, each of which support the Petitioners' case that the organizational structure of the NCP political party existed under the leadership of Shri Sharad Pawar.
- (e) As such, the Legislative Majority Test cannot be applied in the facts of the present matter to determine the 'real' political party and it is the Organizational Majority Test which should be applied by the Hon'ble Speaker to determine the 'real' political party.



- (f) The Respondents' positive case is that the events of 30 June 2023 divest the Group led by Shri Sharad Pawar of their majority within the organizational structure and vest it in the Group led by Shri Ajit Pawar, is itself an admission of (i) the existence of a valid organizational structure, and (ii) Shri Sharad Pawar was the National President of the party. The burden is placed on the Respondents to establish that the change within the organizational structure has in fact taken place.
- (g) Even otherwise, the Petitioners have demonstrated that they continue to enjoy majority within the organizational structure of the NCP political party.
- (h) Even if the Legislative Majority Test is to be applied, the legislative majority must be ascertained with reference to the entire group comprising of NCP legislators across various States and at the Centre, and not merely with reference to the State Legislature Party in the State of Maharashtra.
- (i) In any event, on application of either the Organizational Majority Test or the Legislative Majority Test, the Petitioners have established that the Group led by Shri Sharad Pawar constitutes the 'real' NCP political party.





- (j) The conduct of the Respondents amounts to voluntarily giving up membership of the NCP political party which incurs disqualification under the Tenth Schedule.

Respondents' submissions on the preliminary issue

48. Appearing for the Respondents, Ld. Sr. Adv. Virendra Tulzapurkar and Ld. Sr. Adv. Pradeep Sancheti made the following submissions on the preliminary issue:

- (a) The emergence of two rival factions makes it necessary for the Speaker to determine which faction is the 'real political party' before adjudicating the disqualification petitions.
- (b) In determining the preliminary issue, the Speaker is required to consider the constitution of the party as well as any other rules and regulations of the party which specify the structure of the leadership of the party.
- (c) As per the law laid down by the Hon'ble Supreme Court in *Subash Desai (Supra)* it would be within the purview of the Speaker to see if the organisational structure is in conformity with the party constitution.
- (d) Organisational structure relied on by the Petitioner cannot be taken into account by the Speaker as it is not in conformity with the NCP Constitution and thus the



structure relied on by the Petitioner has to be deemed non-existent for the purpose of determining the preliminary issue.

- (e) Shri Sharad Pawar was declared as the President of NCP, *de-hors* the provisions of the Constitution of the NCP. No elections ever took place as per the original elections schedule, nor as per the amended/preponed schedule to the State Committees. There is a clear admission by PW-3 that the election process for the State of Maharashtra was never completed. Till the elections of the lower committees were completed, no nominations could have been made for the post of the National President. Thus, the appointments made by the President, who was not lawfully elected, is also in violation of the procedure prescribed under the constitution of the party. Thus, the organisational structure relied on by the Petitioner cannot be taken into account by the Speaker while deciding the leadership structure.
- (f) The leadership structure relied on by the Petitioner, in which Shri Sharad Pawar is the National President, does not exist as Shri Ajit Pawar was elected as the National Party President. Thus the relevant leadership structure in existence is the leadership structure led by Shri Ajit Pawar.



*Analysis, observations and conclusions on the preliminary issue*

49. As recorded earlier, the decision on the *preliminary issue* has to be taken after a careful analysis of (i) the constitution of the NCP, (ii) the leadership structure of the NCP and (iii) the legislative majority. After having heard both the sides on the above aspects, I now propose to proceed to record my observations and findings on the *preliminary issue*.

50. In the present matter, there is no dispute as to the relevant 'NCP Constitution'. Both the parties have placed reliance on the constitution and rules annexed as Annexure-R1 and R2 to the Reply filed by the Respondents. The said Constitution of the NCP and Rules are hereinafter referred to as 'NCP Constitution' and 'NCP Rules'.

*When did the rival factions emerge?*

51. On 30<sup>th</sup> June 2023, a resolution was passed by 41 legislators of the NCP, electing Shri Ajit Pawar as the President of the NCP. A dispute, under Paragraph 15 of the Symbols Order, was also preferred by the 'Ajit Pawar faction' before the Election Commission of India. Sharad Pawar faction objected to the Resolution dated 30<sup>th</sup> June 2023 and executed affidavits in support of the leadership of Shri Sharad Pawar, which were





filed before the Election Commission of India. Thus it is abundantly clear that two rival factions had emerged in the NCP on 30<sup>th</sup> June 2023 itself. Hence, the relevant date on which two factions emerged in the NCP is 30<sup>th</sup> June 2023.

***Leadership Structure as a criterion to determine the real political party***

52. As recorded earlier there is no dispute about the relevant constitution of the party. Thus the said 'NCP Constitution' is taken into account for identifying the leadership structure of the NCP. Since there is no factual consensus on what or who constituted the 'relevant leadership structure' which has to be taken into consideration, it is necessary to peruse the NCP Constitution so as to identify the leadership structure provided for in the constitution and consequentially examine the leadership structure put forth by both the sides.

***Leadership Structure provided for in the NCP Constitution***

53. Article 5 of the 'NCP Constitution' read with 'NCP Rules' provides for a vertical organisational structure, which consists of (i) Unit Committee, (ii) City Division Committee, (iii) Area Committee, (iv) Town Committee, (v) Panchayat Committee, (vi) Constituency Committee, (vii) District Committee, (viii) Regional Committee, (ix) Union Territory Committee, (ix)



State Committee, (x) Working Committee, and (xi) National Committee.

54. Each committee at the bottom level acts as the feeder cadre for electing the next immediate higher committee. Article 12 of the NCP Constitution provides that the State Committee shall consist of delegates elected from the constituency/Block Committees. Further, NCP Constitution provides that all members of the State Committees shall be delegates entitled to vote in the election of the President<sup>12</sup>. National Committee of the NCP consists of one tenth of the delegates, the President, Ex-President of the Party who have completed a term of 365 days and continued to be an active member. State Presidents of the NCP, Leaders of the NCP Legislative Parties and other 15 members elected amongst the members of parliament.

55. Article 21 of the NCP Constitution read with 'NCP Rules' provides that the Highest Executive Authority of the NCP is 'NCP-Working Committee', which consists of (i) the President of the Party, (ii) Leader of the Party in Parliament and (iii) 23 other members of whom 12 members are elected by the National Committee and the rest are appointed by the President. The said Article 21 further provides that the highest executive authority of the party, i.e. the NCP-National Working Committee shall have the power to carry out the policies and



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<sup>12</sup> Page 90

programmes laid down by the party and it shall be the final authority in all matters regarding interpretation and application of the provisions of the NCP Constitution.

56. The NCP Constitution read with the NCP Rules provides that *'the president shall preside over National Convention, National Committee and Working Committee and shall have overall control of the working of the party'*. It further provides that *"any decision connected with policy matters or on other important political issues will be announced by the President and nobody shall openly question or challenge any such decision or statement"*.

57. Thus, what emerges from the above is that the leadership structure of the NCP consists of (i) the President of the NCP, (ii) the Working Committee and (iii) the National Committee, where the President and the Working Committee are the decision making entities of the NCP. Thus, the leadership structure of the NCP with reference to the President and the Working Committee are the relevant entities for the determination of the preliminary issue.

*Leadership Structure relied on by the Petitioner*

58. According to the Petitioner, a valid leadership structure in consonance with the NCP Constitution exists as is evident from (i) the letter dated 15<sup>th</sup> September 2022 issued by Shri. T.P. Peethambaran Master addressed to the Election Commission





intimating details of organisational elections held in the year 2022, and (ii) the internal NCP correspondence by way of Notification dated 15<sup>th</sup> September 2022 issued by Shri Praful Patel intimating the National Office bearers, Working Committee members, State/UT Presidents, etc. Petitioner primarily relies on these two documents to establish the existence of a valid leadership structure and further submits that the Sharad Pawar fraction had the majority within the said leadership structure. Based on the said leadership structure the Petitioner made the following submissions.

- (a) Article 5 of the NCP Party Constitution provides for 'Constituents' which lays down the various Committees forming part of the Organizational Structure of the NCP. This includes the (i) National Convention, (ii) National Committee, (iii) National Working Committee, (iv) State Committees.
- (b) A combined reading of the pleadings show that the Respondents have admitted in pleadings that till the time that Shri Ajit Pawar allegedly assumed position as National Party President (30 June 2023), Shri Sharad Pawar was in fact the NCP's recognised leader and its National Party President.
- (c) Material on record (documents as also evidence gathered during the process of cross-examination) establishes that



an organisational structure as envisaged by the NCP Constitution is in place.<sup>13</sup>

- (d) The Group led by Shri Sharad Pawar has an overwhelming majority and support of and within the organisational structure. Shri Sharad Pawar is the undisputed leader/national party president with important powers under the constitution within the framework of this organisational structure. For both these reasons, or either of them, the 'real' political party is that of the group to which the Petitioners belong.
- (e) Till 29 June 2023 there is no contemporaneous challenge either to the organisational structure or the leadership structure. As on that date if the question were to be asked - who is the 'real' political party? - there would be no debate that the 'real' political party is that which is led by Shri Sharad Pawar as the National Party President.
- (f) The Respondents have been a part of the organisational structure as asserted above; have functioned within it by holding posts and discharging duties; and have resoundingly accepted publicly that Shri Sharad Pawar is the National President as also acclaiming the merit of his leadership.



<sup>13</sup> Letters dated 15<sup>th</sup> September 2022

- (g) In the face of categorical judicial and evidentiary admissions, the Respondents are estopped from now stating that although an organisational structure with Shri Sharad Pawar was in place, but it was not in accordance with the NCP Constitution.
- (h) Onus is on the Respondents to show that the identity of the political party gauged by its organisational structure and its leadership has changed overnight, as alleged by the Respondents. There is nothing to demonstrate that the change in party leadership on 30 June 2023 was as per the NCP Constitution. When asked a specific question, Shri Sunil Tatkare was unable to identify any provision of the Constitution under which the meeting alleged to be held on 30 June 2023 was held.
- (i) The Supreme Court has held that the nature of the Hon'ble Speaker's inquiry while determining the applicability of Para 2(1)(a) of the Tenth Schedule is limited to a *prima-facie* determination. [Subhash Desai (supra) Para 167]. Therefore the Speaker's determination of the existence of the organisational structure as envisaged by the Constitution and Rules of the NCP must also be a *prima facie* determination.
- (j) If an organisational structure as envisaged by the Constitution exists, the Speaker cannot entertain and





adjudicate a challenge, much less one made as an afterthought, to the validity of the processes by which the organisational structure came into existence.

- (k) Courts have repeatedly held that intra-party disputes or challenges within a political party are to be raised before a civil court or as per the constitution of the political party and not before Constitutional authorities (like the ECI).
- (l) The Speaker's role is to *prima facie* determine the 'real' political party based on objective material placed before it. The Speaker cannot enter into allegations now raised (as an afterthought and in a defence to the allegations of defection) that the organisational structure from the Block / District up to the National level were not held or were not validly held and therefore the organisational structure in place is not as per the NCP Constitution and Rules.
- (m) Validity of internal processes by which the organisational structure of the NCP political party exists cannot be examined in disqualification proceedings.

59. The Respondents, however, countered this leadership structure on the ground that the said leadership structure cannot be taken into account as the said leadership structure came into existence without following the due process of election/appointment as



provided in the NCP Constitution. In this regard, the Respondents made the following submissions.

- (a) The Speaker is required to prima facie decide as to who represents the “real” political party. For that purpose, what needs to be looked at is whether there exists an organisational structure in line with what is provided in the Party Constitution and Rules. If the existence of any organisational structure as claimed by the petitioners, which is neither in consonance with the party constitution nor communicated to the ECI, will mean that a person not being a member of the party could also be the National President of the Party notwithstanding that he is not even a primary member of the Political Party. Such a contention would also allow for the National President to be elected even in the absence of a valid electoral college, i.e. the delegates and that he could then subsequently appoint the organisational wing as per his whims and fancies. From such appointments, he can subsequently claim a majority support in the party.
- (b) Even if one was to consider the argument of the petitioner as to existence of the organisational structure, what is then required to be seen is the structure as defined in Article 5 of the party constitution. On perusal of the petitioner’s evidence, it reveals that there exist no



committees as contemplated in Article 5 i.e. National Committee, State Committees, District Committees etc. The petitioner to suit their claim cannot claim majority in some alleged committees which are existing as per the petitioners.

- (c) In spite of the alleged claim made by the petitioner that, Shri Sharad Pawar was declared as a Party President on 01.09.2022, Shri Sharad Pawar had resigned from the post of the National President of the NCP on 02.05.2023 and constituted a committee, to decide the way forward for the NCP.
- (d) The organisational structure as envisaged under the NCP Constitution is completely non-existent and that the alleged structure that is claimed to be in existence, which is in complete contravention of the party constitution, cannot be relied upon. Thus, the only ascertainable factor to be considered is that of the Legislative Majority.
- (e) The communication to the ECI dated 15.09.2022 (Document 13) is a credible proof, that there were no elections conducted of the organization of the NCP and that the organisational structure in place was not in conformity with the NCP Constitution or Rules.





- (f) Even when the case of the Petitioner is considered based on their claims, it reveals that the organizational structure is appointed by Shri Sharad Pawar which itself is in stark contravention to the party constitution, which necessitate elections at every level. The fallacy of the claims of the organizational elections being conducted by the petitioners is self-evident from glaring inconsistencies in the claims as to said elections.
- (g) As per the evidence of the witnesses of the petitioner itself Shri Sharad Pawar was elected as National President of the party even before the lower-level committees were elected. The apex body of the party being the National Working Committee was appointed even before the election at lower level.
- (h) Shri Sharad Pawar was declared as the President of NCP, de-hors the provisions of the Constitution of the NCP. No elections ever took place as per the original elections schedule, nor as per the amended/preponed schedule to the State Committees. There is a clear admission by PW-3 that the election process for the State of Maharashtra was never completed. Till the elections of the lower committees were completed, no nominations could have been made for the post of the National President. Shri T.P. Peethambaran Master declared the election schedule for



the post of National Party President, and the last date for submitting the nominations was fixed at 01.09.2022. Under Article 20(ii), the last date by which such nominations must reach the Returning Officer is to be fixed by the Working Committee. So, the abrupt schedule of receiving nominations for the post of National President, fixed by Shri T.P. Peethambaran Master, as the Chief Returning Officer is in breach of the NCP Constitution, as no Working Committee existed on 27.08.2022, the day on which elections were declared.

- (i) Shri. Sharad Pawar was declared as the National President on 01.09.2022, by Shri T.P. Peethambaran Master. The elections to the post of the National President are to be conducted by the Central Organizational Election Authority and is to be nominated and subsequently elected by the Delegates, namely the members of the State Committees of the NCP Political Party. As per PW3, the election process of the State Committee in Maharashtra was yet to be completed. Therefore, there existed no delegates for want of valid elections to State Committee in Maharashtra. Further, as there was no National Committee, the Working Committee could not have been validly formed and thus, in turn, could not have appointed any Election Authority.



- (j) Shri T.P. Peethambaran Master, declared the schedule for the election of the National President on 27.08.2022 as a Chief Returning Officer of the Nationalist Congress Party (Refer to Document 11, to Additional Documents of the Petitioners at pg. 29). All throughout Shri T.P. Peethambaran Master, (Refer Document 12 and 14 to Additional Documents of the Petitioners at pg. 30 to 40) was the Chief Returning Officer, who had no authority to conduct the elections to the post of Party President. Ironically, on document 13, to Additional Documents of the Petitioners at page 41, Shri T.P. Peethambaran Master suddenly designates himself as the "Chairman" of the Central Election Authority. Thus, Shri T.P. Peethambaran Master has conducted the elections without any regard to the constitution of the party and acting on instruction of Shri Sharad Pawar.
- (k) The Working Committee as per Article 21 of the party constitution consists of Party President, Leader of Parliament and 23 other members out of which 12 are to be elected and 11 are to be nominated by the President. It is the evidence of the of Petitioner's witness Mr. Jitendra Awhad (PW-1) that the Working Committee as claimed by the petitioners consists of 28 members out of which 11 are appointed members and 17 are 'Permanent Invitees'. (Ref. Para 19 of Evidence Affidavit of PW-1). It would be





relevant to mention herein that it is in an admitted fact that the Working Committee is the apex executive body within the party. The highest body as allegedly appointed by Shri Sharad Pawar consists of 17 permanent invites, when there is no such concept of 'Permanent Invitees' in the party constitution. Moreover, the constitution of alleged Working Committee has also never been communicated to the ECI by petitioners' own admissions.

*Leadership Structure relied on by the Respondent*

60. Even though the primary submission of the Respondents on the leadership structure is that no leadership structure exists which can be a basis for rendering any finding on the 'preliminary issue', the Respondents, in the alternative relied on the Resolution dated 30<sup>th</sup> June 2023<sup>14</sup>, whereby Shri Ajit Pawar was elected as the President of the NCP. Relying on this resolution, the Respondents submitted that the constituent members of the leadership structure were changed by electing Shri Ajit Pawar as the president of the Party and if any leadership structure must be considered, then it must be in which Shri. Ajit Pawar is the President

61. The Petitioner disputed the aforesaid claim by submitting that  
(i) the alleged events of 30<sup>th</sup> June 2022 as claimed by the



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<sup>14</sup> Resolution dated 30<sup>th</sup> June 2023

Respondents are inherently improbable and (ii) the election of Shri Ajit Pawar was not in accordance with the procedure prescribed by the NCP Constitution.

### *Findings and Conclusions*

62. At the every outset, I wish to make certain observations. Even though both the parties have submitted, probably owing to the tenor of the observations of the Hon'ble Supreme Court, that the preliminary issue has to be decided on a *prima facie* assessment of materials on record, in fact, both the parties have contrary to their own submissions, led extensive evidence to buttress their respective arguments with facts in respect of the relevant leadership structure. Be that as it may, I am not inclined to diverge from the Hon'ble Supreme Court's directives and consider evidence of both parties in respect of "validity and/or illegality" of organisational/leadership structure. It was this position of *prima-facie* assessment that I adopted in my Final Order dated 10<sup>th</sup> January 2023, when I proceeded to decide the Disqualification Petition No. 01 to 16 of 2022 (*the Shiv Sena set of disqualification matter*), where I have already held that "*jurisdiction under the Tenth Schedule only mandates a prima facie adjudication as to "what leadership structure of the political party was at the relevant time and it does not extend to an inquiry as to whether or not the leadership structure was pursuant to a validly held election"*".



63. It is a matter of fact that, till 29<sup>th</sup> June 2023 there has been no contemporaneous challenge to the leadership of Shri Sharad Pawar as the Party President. However, the said position was sought to be altered by the Ajit Pawar faction by way of the resolution dated 30<sup>th</sup> June 2023. Thus, *prima facie*, as on 30<sup>th</sup> June 2023 there existed two parallel claims in respect of the NCP leadership, the one according to the Petitioner claiming Shri Sharad Pawar is the Party President and the other one claimed by the Respondents where Shri Ajit Pawar is the Party President.

64. In order to try and demonstrate that their separate claims to the leadership of the party by their respective Presidents, both the parties have led oral and documentary evidence, and argued exhaustively. Both the parties claim that it is their leader who was validly elected according to the NCP Constitution and the claim of the other side therefore cannot be entertained. Furthermore, both parties claim that the other side's claim as to their leader's election as the Party President was not in accordance with the NCP Constitution. As noted earlier, under the Tenth Schedule, while deciding the preliminary issue, I cannot go into the validity and/or legality of elections to the leadership. I am therefore confronted with the rival assertions which clearly indicate the existence of two persons claiming leadership of the party.





65. It is to be noted at this juncture that the Respondents No. 01 to 09 in Petition No. 01 of 2023, joined the government on 02<sup>nd</sup> July 2023. The resolution electing Shri Ajit Pawar came to be passed on 30<sup>th</sup> June 2023. This leads to a peculiar situation, where there are seen to exist two parallel leadership structures and two Party Presidents prior to the alleged conduct attracting disqualification.

66. Undoubtedly the rival parties have tried to lead evidence to justify their opposing stands about of the validity of the election of their leader to the post of President. They have tried to show how their separate processes of election were justified by the NCP Constitution. I am not inclined to go into their evidence or appreciate their evidence - based arguments, because this would lead deciding whether the rival elections were in keeping with the constitution and the rules, and whether factually Shri. Sharad Pawar or Shri. Ajit Pawar was validly elected, or whether, in fact Shri. Sharad Pawar had resigned at the relevant time. I possess no jurisdiction to issue any such declaratory order. In the absence of such jurisdiction, which is certainly not available under the Tenth Schedule of the constitution, or the wherewithal to examine the correctness, validity and legality of parallel claims of valid/legal elections, I need not and cannot undertake such an enquiry. Thus for this reason alone, relying on the test of organisational/leadership



structure to examine the two parallel rival claims in respect of the leadership about the post of Party President, I cannot arrive at even a *prima facie* decision on the preliminary issue.

67. Irrespective of my finding hereinabove, if the leadership structure relied on by the Petitioner is looked at even for ascertaining the *prima facie* position, it is seen that it cannot form the basis for determining the preliminary issue for the following reasons:

- (a) The Petitioner's reliance on majority in 'NCP Working Committee' cannot be taken into account for determining the preliminary issue as the composition of the 'NCP Working Committee' relied by the Petitioner is not in conformity with the 'NCP Constitution'. Article 21 of the NCP Constitution read with 'NCP Rules' provides that the Highest Executive Authority of the NCP is 'NCP-Working Committee', which consists of (i) the President of the Party, (ii) Leader of the Party in Parliament and (iii) 23 other members of whom 12 members are elected by the National Committee and the rest are appointed by the President. A perusal of the document relied on by the Petitioner to show the composition of the NCP Working Committee<sup>15</sup>, indicates that the NCP Working Committee has 28 members whereas the NCP Constitution provides



<sup>15</sup> Document No. 14 of the Petitioner's Compilation of Additional Documents.

for only maximum 25 members. The said document shows 16 permanent invitees, whereas the NCP Constitution doesn't provide for any permanent invitees.

- (b) The Petitioner submitted that in the National Committee, 'Sharad Pawar faction' enjoyed the majority support amongst the delegates elected from the State Committees. However, the Petitioner has not provided any document which reflects the election of such delegates. Thus, in the absence of any record reflecting the election results and names of delegates, the said claim cannot be accepted by blindly appreciating it to be true. Thus, the submission of the Petitioner that Sharad Pawar faction enjoyed majority support in the National Committee cannot be relied upon to determine organisational majority.
- (c) Support of the President and/or will of the President is not a reliable factor to determine the preliminary issue as both the factions challenges their respective leaders claiming that the leader was not validly elected. As held earlier, under the Tenth Schedule such claims cannot be adjudicated. It was open for both the parties to have initiated appropriate proceedings to get a declaration to that effect. In the absence of such proceedings or any findings thereon by a competent authority, both the





factions cannot equally claim that the rival faction's leader was validly and/or not validly elected.

68. Thus, for the reasons recorded hereinabove, I hold that leadership structure relied on by the Petitioner and/or the Respondents cannot be taken into account for determining the preliminary issue as it would be an impossible attempt.

### *Legislative Majority Considered*

69. As recorded earlier, the Hon'ble Supreme Court in *Subash Desai (Supra)*, has held that the question of 'who the real political party is', has to be considered and determined after giving due weightage to (i) the 'NCP Constitution' (ii) the leadership structure of the party and (iii) legislative majority, if two or more factions claim to be the real party. Having arrived at the conclusion that leadership structure and/or organisational structure does not provide a reliable outcome to settle the issue of 'which faction is the real political party', I now turn to the test or mechanism that exists based on the *legislative majority*.

70. Before delving further, the Petitioner's submissions that 'Legislative Majority' cannot at all be taken into consideration has to be considered. The Petitioner has placed reliance on paragraphs 102 to 111 of *Subash Desai (Subra)* in support of this submission. However, a careful reading of *Subash Desai (Supra)* shows that the said submission is misplaced. Paragraphs 102 to



111 of *Subash Desai (Subra)* deals with the issue of “who appoints the leader and the whip of the party in house”. In the said regard, it was held by the Hon’ble Supreme Court that it is not the legislature party but the political party which appoints the Whip and the Leader in the House. This ratio cannot be read to mean that the Legislative majority cannot at all be considered while determining the preliminary issue. In Paragraph 168 of *Subhash Desai (Supra)* the Hon’ble Supreme Court has in clear terms laid down that for the purposes of disqualification Petitions, the Speaker while deciding the issue of the ‘real political party’ has to take into consideration the Leadership Structure specified and identifiable from the Constitution of the Party along with the Legislative Majority. The only rider provided in the said Paragraph 168 was that the determination of who the ‘Real Political Party’ must not be based on a blind appreciation of Legislative Majority. This is only a rider provided so as to make it clear that even the Leadership Structure outside the Legislative Assembly is also a relevant factor in the determination of who the Real Political Party is. It also indicates that Legislative Majority is also a factor that is not prohibited from consideration. Thus the submission of the Petitioner that Legislative Majority cannot be taken as a factor in arriving at a decision on the preliminary issue is not correct and hence rejected. Needless to mention that it is well settled by the Supreme Court that *where the question arises as to which group is the party, strength of each group becomes an important and*



*relevant factor*<sup>16</sup>. It is thus obvious why the legislative majority becomes a relevant criterion to be taken into account to decide which faction is the real political party.

71. In the present matter the Legislative Majority is undisputed. The Respondents claim that the Ajit Pawar faction had the support of 41 out of 53 MLAs is not disputed by the Petitioner. Even otherwise the resolution dated 30<sup>th</sup> June 2022 passed by the Ajit Pawar faction shows that prior to joining the Government the Ajit Pawar faction outnumbered the Sharad Pawar faction. It is also imperative to note that the very fact that the Sharad Pawar faction has filed disqualification Petitions against 41 MLAs of the Ajit Pawar faction itself indicates the numerical strength of each faction. Further the Respondents assertion that they have majority in the Legislative Assembly of Maharashtra, Legislative Council of Maharashtra, and Legislative Assembly of Nagaland has not been disputed by the Petitioner. It is made clear at this juncture that, 'Affidavits' annexed by the Respondents to the *Affidavit in lieu of Examination in Chief* of Shri Anil Bhaidas Patil (RW-2) was not taken on record and thus not relied upon for my finding that *prima facie* the Ajit Pawar faction had the legislative majority support.



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<sup>16</sup> Saqiq Ali & Anr Vs. Election Commission of India (1972) 4 SCC 664



72. The Respondents' assertion that even the vote share secured by the Legislators supporting the Ajit Pawar faction is substantially large than the Legislators supporting the Sharad Pawar faction is also not disputed by the Petitioner.
73. It is to be also noted that the Petitioner has not claimed Legislative majority in any manner and has not even attempted to demonstrate it.
74. Thus, in view of the above I hold that the preliminary issue as to which faction is the real Political Party is discernible from the Legislative Majority, which existed when the rival factions emerged. Further I hold that the Ajit Pawar faction had an overwhelming Legislative Majority when the rival factions emerged.

**(VI) Final Conclusions on the Preliminary Issue**

75. Thus, in view of my findings that (i) the party constitution and Leadership structure/organisational structure does not provide any reliable outcome to the question which faction is the real NCP Political Party and consequently these cannot be yardsticks to determine which faction is the real Political Party and (ii) Legislative majority provides a clear and reliable answer to the question of which faction is the real NCP Political Party, I hold that the Ajit Pawar faction is the real NCP Political Party for the purposes of these disqualification petitions.



**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/or conduct?**

76. The Petitioner has contended that the Respondents are liable to be disqualified on the following grounds:

- (a) *The Respondents have gone against the official position of the NCP Political Party and joined hands with Eknath Shinde-BJP Government in Maharashtra on 02<sup>nd</sup> July 2023.*
- (b) *The Respondents have taken oath as Ministers in the Eknath Shinde-BJP Government in Maharashtra on 02<sup>nd</sup> July 2023.*
- (c) *Unilaterally, and without authority, the Respondents declared Shri Ajit Pawar as the President of the NCP on 30<sup>th</sup> June 2023.*
- (d) *Unilaterally, and without authority, the Respondents declared Shri Ajit Pawar as the leader of the Legislature party in the Maharashtra State Legislative Assembly on 30<sup>th</sup> June 2023.*
- (e) *The Respondents attempted to continue a Chief Whip who had been removed as a member of the NCP for indulging in anti-party activities.*
- (f) *The Respondents attempted to create confusion by opening 'party offices' without authority.*



- (g) *Without any authority, the Respondents called an open national convention on 05<sup>th</sup> July 2023 to ratify the illegal decisions on 30<sup>th</sup> June 2023.*
- (h) *The Respondents tendered affidavits in support of Shri Ajit Pawar's anti-party activities.*

77. The principal ground on which the disqualification is sought is that by joining the Government on 2<sup>nd</sup> July 2023, the Respondents No. 01 to 09 in Disqualification Petition No. 01 of 2023, and by supporting the said action of Respondents No. 01 to 09 the other Respondents in Disqualification Petitions No. 03 & 04 of 2023 have gone against the will of the NCP Political Party and thereby incurred disqualification under paragraph 2 (1) (a) of the Tenth Schedule of the Constitution. All other grounds are allied grounds arising out of the said principal ground.

78. In view of my finding that the Ajit Pawar faction was the real Political Party when the rival factions emerged within the NCP, Respondents cannot be held to be disqualified on any of these grounds as the decisions of Ajit Pawar faction constituted the 'will of the NCP Political Party'. Consequentially, the Disqualification Petition No. 01, 03 and 04 of 2023 are liable to be dismissed.





79. In view of my finding that the Ajit Pawar faction was a real NCP Political Party when the rival factions emerged, the Respondents cannot be held to be disqualified for grounds recorded in paragraphs 76 (a) and (b). Even otherwise, irrespective of my conclusions about which faction was the real Political Party, for the reasons recorded hereinbelow the Respondents cannot be held to be disqualified on the grounds recorded in paragraphs 76.

80. Irrespective of my conclusions on the real political party, in my considered opinion, none of the averments, contentions or pleading raised by the Petitioner, especially grounds (c) to (h) recorded in Paragraph 76 hereinabove, fall within the ambit of Paragraph 2(1)(a) of the Tenth Schedule of the Constitution. It is necessary to understand the scope and object of the said provision in the tenth Schedule of the Constitution. The object underlying the said provisions was to curb the evil of political defections motivated by various considerations which endanger the foundations of our democracy. What is to be noted is that the Tenth Schedule is intended only for the purposes of prohibiting and punishing defections, and that too with the objective of preserving the foundations of democracy.

81. I am pained to observe that in the present matter, when the facts, circumstances and evidence are viewed, the misuse of the provisions of Tenth Schedule by the political parties becomes



apparent. It appears that the intention of the proceedings is not to prevent maverick and irresponsible defection or to call an errant member to book. It is to suppress dissent within the party and open a new direction in the political tussle for power. The attempt is to stretch the provisions of Tenth Schedule to suit private objectives of individuals or parties rather than prevent the harm that is caused to elective democracy itself.

82. In the facts and circumstances brought before me, it is necessary to consider the cardinal question: Does every act of a member of the legislature that may be described as defiance or dissent, or behaviour of groups of members of the legislative party in the House that goes against some other group within their own party, fall within the meaning of the term "defection" under Paragraph 2 of the Tenth Schedule? As the Speaker, and even as an elected representative, I witness the daily churning of politics as it plays out before me. I see members, their political leaders and their parties as if through a kaleidoscope: making and breaking into new forms, forging new alliances, undoing old relationships, striking out in unknown directions. This is in the very nature of politics as we see it unfolding before our eyes. It is the reality of politics today. Surely every such action cannot qualify as defection within the meaning of the Tenth Schedule.



83. The Constitution Bench in the case of *Kihoto Hollohan Vs. Zachillhu and other*<sup>17</sup>, has somewhat touched upon this aspect. The observations merit reproduction:

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

*14. Paragraph 2(1)(b) deals with a slightly different situation i.e. a variant where dissent becomes defection. If a member while remaining a member of the political party which had set him up as a candidate at the election, votes or abstains from voting contrary to “any direction” issued by the political party to which he belongs or by any person or authority authorised by it in this*



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<sup>17</sup> 1992 Supp. (2) SCC 651



*behalf he incurs the disqualification. In other words, it deals with a Member who expresses his dissent from the stand of the political party to which he belongs by voting or abstaining from voting in the House contrary to the direction issued by the political party."*

34. *On the other hand, there are, as in all political and economic experimentations, certain side effects and fall out which might affect and hurt even honest dissenters and conscientious objectors. These are the usual plus and minus of all areas of experimental legislation. In these areas the distinction between what is constitutionally permissible and what is outside it is marked by a 'hazy gray line' and it is the Court's duty to identify, "darken and deepen" the demarcating line of constitutionality – a task in which some element of Judges own perceptions of the constitutional ideals inevitably participate. There is no single litmus test of constitutionality. Any suggested sure decisive test, might after all furnish a "transitory delusion of certitude" where the "complexities of the strands in the web of constitutionality which the Judge must alone disentangle" do not lend themselves to easy and sure formulations one way or the other. It is here that it becomes difficult to refute the inevitable legislative element in all constitutional adjudications.*

35. All distinctions of law – even constitutional law – are, in the ultimate analysis, "matters of degree". At what line the 'white



*fades into the 'black' is essentially a legislatively perceived demarcation. (emphasis supplied).*

84. Then, would every act of defiance or dissent, or behaviour of groups of members that goes against some other group within their own party, fall within the meaning of the term "defection" under Paragraph 2 of the Tenth Schedule? This question, no doubt, is foundational but by no means, is it the only question that arises for consideration. The companion question that arises is equally fundamental: Is the Tenth Schedule a tool to control opposition within the political ranks of a party?

85. Assuming that rightly or wrongly the behaviour or the acts of the Respondents in these group of petitions of raising their voice against Shri Sharad Pawar and disobeying the dictates of Shri Sharad Pawar amount to indiscipline, could such action amount to members having voluntarily giving up membership of the party, thereby attracting disqualification under the Tenth Schedule? The events that unfolded between 30<sup>th</sup> June 2022 and 2<sup>nd</sup> July 2022 were clearly in the nature of intra-party dissent within the Nationalist Congress Party and the members of the party stood divided between two leaders i.e., Shri Sharad Pawar and Shri Ajit Pawar. But this conflict was clearly within the political party. Questioning the decision of Shri Sharad Pawar and going against his wishes cannot be said to be an act of defection, or of leaving the party. It is a dissent expressed by



the members of the NCP. At no point of time did any of the leaders, including the Respondents, ever made any attempt that would amount to a statement or contention to leave the NCP political party. Members of the party expressing concerns against certain political behaviour of other members of the party would not constitute "defection" under the Tenth Schedule. Such collective dissent would remain to be a 'dissent within the political party' even when it began to be raised publicly, on the platforms other than party forums. It may not be to the liking of the this leader or that, but it would still remain to be a dissent and not desertion.

**86.**A word about 'dissent'. Intra-party dissent by individual members of a political party need to be distinguished from 'collective dissent' of a group in the legislative party. It further needs to be established that if such 'collective dissent' has occurred, it amounts to defection from the party. Here, an examination of the motive also becomes relevant. I need to decide whether 'collective dissent' against the party leadership, can be termed as 'honest dissent' within the political party, permissible in a democratic institution such as the Political Party. Further, whatever be the nature of this dissent can it be given the status and character of dissent within the Legislative Party, which alone is the dissent on which the Speaker is empowered to act under the Tenth Schedule.





87.A useful reference may be made to the recent judgment of the Hon'ble Supreme Court in the case of *Balchandra L. Jarkiholi and others V/s B.S.Yeddyurappa and others, reported in (2011) 7 SCC 1*. It is an interesting case which had come up before the Hon'ble Supreme Court from the State of Karnataka and touches upon this aspect. The facts of the said case were; 13 MLAs of BJP and 2 other independent MLAs wrote to the Hon'ble Governor indicating that as MLAs of BJP they had become disillusioned with the functioning of the Government headed by Chief Minister and also the leader of the Legislature Party, who belonged to their own party. After stating their reasons, they added that that they were withdrawing support to the BJP Government headed by Mr. B.S. Yeddyurappa, but they would support BJP Government with any other leader from BJP in its place. On the basis of the said letters, Governor asked the BJP Chief Minister to seek vote of confidence in the Legislative Assembly and also intimated this to the Speaker. On the same day itself, the Chief Minister filed Disqualification Petition against his own MLAs accusing them of voluntarily giving up membership of the political party. Upon issuance of Show Cause notices, the MLAs filed a reply stating that they did not intend to withdraw support to BJP but had withdrawn support only from the Government headed by Shri Yeddyurappa and that they would support any (BJP) Government headed by a clean and efficient person. They asserted that their conduct did not fall within the scope of Paragraph 2(1)(a) of the Tenth



Schedule. The Speaker, however, disqualified the MLAs under Paragraph 2(1)(a) to the Tenth Schedule.

88. The Speaker's decision was challenged before the Division Bench of Karnataka High Court. The Division Bench comprising of the Hon'ble Chief Justice and Justice N. Kumar gave differing judgments. The Hon'ble Chief Justice rejected all the contentions of the MLAs and dismissed the writ petitions while Justice N. Kumar in his separate judgment, differed with the views of the Hon'ble Chief Justice in regard to interpretation of Paragraph 2(1)(a) of Tenth Schedule and set aside the Speaker's order. The matter was then referred to a third Judge, who in turn, concurred with the judgment of the Hon'ble Chief Justice. Thus, by a majority it was held that the Speaker had rightly disqualified the BJP MLAs.

89. The Order of the Speaker and the judgment of the High Court was challenged before the Hon'ble Supreme Court. In its judgment, the Hon'ble Supreme Court extensively referred to, with approval, the observations made by the dissenting Judge of the Karnataka High Court Justice N. Kumar. I am in complete agreement with this view, and am bound by it. I reproduce the said paragraphs which are relevant for the present purpose:

*"40. N. Kumar J. who, along with the Chief Justice, heard the Writ Petition filed by the appellants herein, in his separate judgment, differed with the views expressed by the Chief Justice in regard to*



*the interpretation of Paragraph 2(1)(a) of the Tenth Schedule to the Constitution. ...*

*“45. The learned Judge went on to further hold that when a Member of a House expressed his no-confidence in the leader of a legislature party and if he happened to be the Chief Minister who is heading the Council of Ministers and had written to the Governor in that regard such act by itself would not amount to an act of floor-crossing. Similarly, if the Governor, after taking note of the expression of no-confidence, was satisfied that the Chief Minister had lost majority support in the House he could call upon the Chief Minister to prove his majority on the floor of the House. It was further observed that if the Chief Minister, on such request, failed to establish that he enjoyed the support of the majority of the Members, his Ministry would fall, but such an act of the Member of the House would not constitute “defection” under the Tenth Schedule. By such an act the political party which had formed the Government, would not lose its right to form a Government again.*

*46. ...On the other hand, what is disturbed by such an act is the Government of the political party with a particular leader in whom the Members of the House belonging to the same political party have no confidence. But this would not mean that the member of the political party to which the Chief Minister belonged had given up his membership of the political party...*





*“49. Having dealt with the various decisions referred to hereinabove, the learned Judge came to the conclusion that it was clear that an act of no confidence in the leader of the legislative party does not amount to his voluntarily giving up the membership of the political party. Similarly, his act of expressing no confidence in the Government formed by the party, with a particular leader as the Chief Minister would not also amount to a voluntary act of giving up the membership of that political party.*

*“50. The learned Judge further observed that deserting the leader and deserting the Government is not synonymous with deserting the party. If a Minister resigned from the Ministry, it would not amount to defection. What constitutes defection under Para 2(1)(a) of the Tenth Schedule is deserting the party. The learned Judge observed that dissent is not defection and the Tenth Schedule while recognising dissent prohibits defection.”*

90. In this background, on an appreciation of facts on record I find that the present petitions do not attract or justify action under the Tenth Schedule. In my view, the Petitioners cannot and should not use the provisions of Tenth Schedule as a weapon to silence or brow-beat the members, or to crush opposition. That would be a complete abuse of the process of law and would run counter to the constitutional intent behind the Tenth Schedule. It also underlines the insistence of the Election Commission of India to bring about changes in the Party Constitution to make



it more democratic, by providing party cadre a platform to express themselves, and give them a voice in the party's decision-making.

91. It may be that some members, go overboard and make some statements or do some acts which may be in breach of party discipline. It would be for the political party to deal with them appropriately, and not for the Tenth Schedule. Looking at the degree or gravity of the indiscipline, the concerned members may be censured, admonished or reprimanded or given a more extreme punishment such as suspension or expulsion from the party as may be warranted by the Party's rules. Even the most extreme punishment of expulsion from the party would not have the effect of these members losing their seats in the House. The members would remain as "unattached" members in the House, continuing to represent their constituencies, and they would still continue to be member of the political party for the purpose of Tenth Schedule. The Tenth Schedule is not intended to be used as a device for imposing intra-party discipline, much less for administering the party. No party's leadership can use the provisions of the Tenth Schedule as a deterrent to stifle the collective dissent of large number of members by threatening them with disqualification under the Tenth Schedule. In a given case, when a tussle for leadership arises between leaders in a political party, the elected members, as indeed the common party workers usually cannot remain mute onlookers. They are



compelled to choose sides. Whatever else may be the consequences of their actions or inactions, the parties cannot expect that the Speaker's office be used to eradicate opposition or quell dissent in party ranks by employing the mechanism of the Tenth Schedule. Tenth Schedule can only enter the arena if the members voluntarily give up membership of the party.

92. As things stand, the Speaker has no role to play in this game of political tussle between the warring party leaders. The Speaker's action of imposing penal consequences is prompted by the letter of the law or spirit behind the Tenth Schedule, which, in my considered view, is to preserve the democratic foundations of the Legislatures or the Parliament. The Speaker must keep in mind this object underlying the Tenth Schedule, and see if the indiscipline falls within the provisions of Paragraph 2(1)(a) of the Tenth Schedule. The Speaker must guard against the power under the Tenth Schedule from being invoked with ulterior motives for party gains.

93. Thus, for the reasons stated hereinabove, Respondents cannot be held to be disqualified on any of the grounds recorded in Paragraph 76 (c) to (h) as they do not amount to voluntarily giving up membership of the political party. Consequentially, the Disqualification Petition No. 01, 03 and 04 of 2023 are liable to be dismissed.





(VI) FINAL ORDER

94. In view of my conclusions and findings recorded hereinabove,  
Petitions No. 01, 03 and 04 of 2023 are hereby dismissed.



.....  
**Speaker**  
(Maharashtra Legislative Assembly)

Date: 15.02.2024

Place: Vidhan Bhavan, Mumbai