

BEFORE THE HON'BLE SPEAKER

MAHARASHTRA LEGISLATIVE ASSEMBLY

VIDHAN BHAVAN AT MUMBAI

PETITION NO. 02 & 05 OF 2023

SHRI. ANIL BHIDAS PATIL

PETITIONER

VERSUS

SHRI. JAYANT PATIL & ORS

RESPONDENTS

APPEARANCES:

For the Petitioner:

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

For the Respondents:

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.



Reserved on: 31st January 2024

Delivered on: 15th February 2024

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(I) FACTUAL BACKGROUND & PROCEDURAL HISTORY

Factual background

1. The elections to the 14th Legislative Assembly of Maharashtra were held in October 2019. Of a total of two hundred and eighty-eight seats, the Bharatiya Janata Party (*BJP for short*) returned candidates in one hundred and six seats, the Shiv Sena in fifty-six seats, the Nationalist Congress Party (*NCP for short*) in fifty-four 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 29th June 2022 Shri Uddhav Thackeray resigned as the Chief Minister. On 30th June 2022, the Hon'ble Governor administered oath of office to Shri Eknath Shinde and Shri Devendra 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 is 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 02nd 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 of each other alleging that they have incurred disqualification under Paragraph 2 (1) (a) of the Tenth Schedule of the Constitution of India.

Procedural history

5. On 03rd 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 (08) other MLAs of the Ajit Pawar faction, on 03rd July 2023, under Paragraph 2 (1) (a) of the Tenth Schedule of the Constitution of India.



6. Disqualification Petition No. 02 of 2023 also came to be filed on 03rd July 2023 by the Ajit Pawar faction through Shri Anil Bhaidas Patil against Shri Jayant Patil and Shri Jitendra Awhad of the Sharad Pawar faction on 03rd July 2023 under Paragraph 2 (1) (a) of the Tenth Schedule of the Constitution of India.
7. On 06th September 2023, Disqualification Petition No. 03 of 2023 came to be filed by the Sharad Pawar faction again through Shri Jayant Patil against Shri Narhari Zhirwal and 19 other MLAs of the Ajit Pawar faction on 06th September 2023 under Paragraph 2 (1) (a) of the Tenth Schedule of the Constitution of India.
8. On 08th 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 under Paragraph 2 (1) (a) of the Tenth Schedule of the Constitution of India.
9. On 21st 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 under Paragraph 2 (1) (a) of the Tenth Schedule of the Constitution of India.



10. On 05th October 2023, Notices came to be issued in Disqualification Petitions No. 01 and 03 of 2023.
11. On 23rd October 2023, Notices came to be issued in Disqualification Petitions No. 02, 04 and 05 of 2023.
12. On 27th October 2023, Respondents in Disqualification Petition No. 01, 03 and 04 of 2023 sought extension of four weeks to file replies.
13. On 07th November 2023, Respondents' (*in Disqualification Petitions No. 01, 03 and 04*) request for extension was allowed and time was granted till 23rd November 2023 for these Respondents to file replies.
14. Further, on 07th 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 23rd November 2023.
16. On 02nd 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 04th January 2024. Parties were directed to exchange pleadings by 06th January 2024. Rejoinders were



directed to be filed by 08th January 2024. Further, parties were given an opportunity to file any additional documents, if any, by 09th January 2024. Parties were also directed to finish inspection of documents by 12th January 2024 and file Statement of Admission and Denial by 14th January 2024. Petitions were adjourned to 16th January 2024 for framing of issues after hearing parties.

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

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



January 2024, to conduct and finish cross examinations of Respondents' witnesses. Respondents were directed to conduct and finish cross examinations Petitioner's witnesses on 25th January 2024.

20. Thereafter, Petitions were listed on 23rd January 2024 for Cross Examination of Respondents' witnesses. Cross examinations of Shri Jitendra Awhad (RW-1) and Shri Hemant Takle (RW-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 Respondents' witnesses.

21. On 24th January 2024, Cross examinations of Shri Jayant Patil (RW-3) and Shri Amol Kolhe (RW-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 Respondents' witnesses were concluded, and evidence closed. Petitions were adjourned for cross examinations of Petitioners' witnesses, on 25th January 2024.

22. On 25th January 2024, Cross examination of Shri Sunil Tatkare (PW-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 20th January 2024, cross examinations of



Petitioner's witnesses were to conclude on the said day. However, these could not be completed and thus by consent of both the parties schedule was once again revised giving Respondents one more day, on 29th January 2024, to finish cross examinations of Petitioner's witnesses. By consent of parties, final hearings were scheduled on 30th and 31st January 2024.

23. On 29th January 2024, cross examination of Shri Anil Bhaidas Patil (PW-2) was conducted and 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 Petitioner's witnesses were concluded, and evidence closed.

24. On 30th 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 31st January 2024 for continuation of Final hearings.

25. On 31st 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 02nd February 2024.

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

26. Disqualification Petitions No 02 and 05 of 2023 have been filed by the Ajit Pawar faction through Shri Anil Bhaidas Patil against Shri. Jayant Patil and nine other members of the Sharad Pawar faction under Paragraph 2 (1) (a) of the Tenth Schedule of the Constitution *inter-alia* on the following grounds:

- (a) *Respondents tendered affidavits in support of Shri Sharad Pawar without seeking permission of the Party President Shri Ajit Pawar.*
- (b) *Respondents by making statements against the decision of the party to join the government has committed anti-party activities and have thus voluntarily given up the membership of the party.*

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

- (a) The NCP Political Party decided to elect Shri Ajit Pawar as the Leader of the NCP Legislature Party. In pursuance to the said decision of the NCP Political Party, a meeting



of the NCP Legislature Party was called on 30th June 2023 and in this meeting elected representative of NCP resolved to elect Shri Ajit Pawar as the Leader of the NCP Legislature Party.

- (b) On 30th June 2023, another Resolution passed by the MLAs, MNCs, MPs, and other members of the NCP organisation wing by way of which Shri Ajit Pawar was elected as the National President of the NCP.
- (c) On 02nd July, the NCP as a part of its future political course joined the Shri Eknath Shinde-BJP government.
- (d) Respondents, by making statements against the NCP party's joining of the government acted in a manner contrary to the stand of the NPC Political Party. By making such statements Respondents have gone against the will of the NCP Political Party and its National President.
- (e) Respondents tendered affidavits in support of Shri. Sharad Pawar without seeking permission of the party president Shri. Ajit Pawar.

28.Based on the above facts, circumstances and grounds, Petitioner contended that the conduct of the Respondents leads 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 of India.

29. Respondents answered the Petitioner by pleading the following:

- (a) The Petition presents a distorted, self-serving and contradictory narrative about the events that transpired and led to the defections of the MLAs against whom Petitions have been filed by the NCP. In fact, the consistent and underlying theme of the "facts" sought to be relied on is that the same have been executed/carried out in a clandestine manner, away from public scrutiny and in a covert fashion that implies guilt on the part of the participants concerned.
- (b) Petitioner's claim that Shri. Ajit Pawar and his limited supporters on 30.06.2023 allegedly appointed Shri. Ajit Pawar as the National President of the NCP political party and as the leader of the NCP legislature party in the Maharashtra Legislative Assembly, is based on a



resolution passed by a group of MLAs and admittedly the said resolutions were undated and were not even filed before the Election Commission of India.

- (c) Even assuming that Shri. Ajit Pawar and his cohorts who defected indeed wanted to challenge Shri. Sharad Pawar for the leadership of the party, then the same would have to have been in accordance with the procedure prescribed in the NCP Constitution.
- (d) Constitution of the NCP provides for a clear process for the appointment of the party president which has to be supervised by a Central Retuning Officer. Aside from the fact that the Central Retuning Officer was wholly unaware of any such election, the declaration (and not election) by a group of MLAs cannot by any stretch of imagination, liberal or perverse, be considered to be compliance of the procedure laid down by the NCP Constitution. In fact, not even a pretence has been made to follow the process outlined, nor has it been claimed that the process has been duly followed. This renders the actions of Shri. Ajit Pawar ipso facto illegal and any defections clearly invites disqualification and cannot be cloaked and protected by the claim of change in party leadership.



- (e) The aforesaid claim is ludicrous, logically fallacious and incorrect, as unlike the Petitioner who decided to defect and join the Government on 02.01.2023, the Respondents have followed the consistent direction of the political party to be in opposition to the party in power and as part of the Maha-Vikas Aghadi alliance of NCP, Indian National Congress and the Shiv Sena (UBT). It is in furtherance of the same, that they have legitimately condemned the anti-party activities of Shri Ajit Pawar and the MLAs with him including the petitioner.
- (f) Considering the premise relied upon by the Petitioner, that the MLAs who refused to support a government whose ideology is directly antithetical to that of the NCP's, which has since its inception fought against the party in power, whose voters vote for it against the party in power, and who have given support to the founder and president of the party, are the ones who have committed anti-party activities. This is such a perverse interpretation that it must be rejected for its mala fide and motivated claim. The claim itself is also mala fide because the complainant himself is the beneficiary of a Ministerial Berth which again demonstrates that these claims of party leadership are aside from being unsupported by facts, also not bona fide.



(g) Since the election of Shri Sharad Pawar as the President of the NCB as announced in the National Convention held on 10-11 September 2022, at Talkotara Stadium, Shri Ajit Pawar has consistently publicly maintained that Shri Sharad Pawar is the National President of the NCP Political Party. The same is the admitted position of the Petitioner till as late as 03.07.23, on which the fact of Shri. Sharad Pawar's undisputed leadership were reiterated. This inconsistency of process and statements completely exposes the illegal action to be merely an afterthought to justify the illegal action of the Petitioner.

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

(III) EVIDENCE LED BY THE PARTIES

31. Petitioner filed two (2) *Affidavits in lieu of Examinations in Chief*, viz (i) Shri. Sunil Tatkare (PW-1) and (ii) Shri Anil Bhaidas Patil (PW-2).

32. **Shri. Sunil Tatkare (PW-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 thereof. NCP Constitution



provides for a pyramidal structure, which consists 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 are to be elected by way of an elaborate election process, where the committees at the bottom of the pyramid acts 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 is based on an alleged election which never was 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, have been appointed 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 *de hors* 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 members gave their sworn 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 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.

33. Shri. Anil Bhaidas Patil (PW-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. NCP Constitution provides for a pyramidal structure, which consists 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 are to be elected by way of an elaborate election process, where the committees at the bottom of the pyramid acts 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 was 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. The Petitioner Shri Jayant Patil 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 most 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 was leading the party from the front and was available to various members of the party for growth of the 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 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 sworn 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 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.
- (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 retrospectively 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.

34. Respondents filed *Affidavits in lieu of Examinations in Chief* of four witnesses; (i) Shri Jitendra Awhad (RW-1), (ii) Shri Hemant Takle (RW-2), (iii) Shri Jayant Patil (RW-3), and (iv) Shri Amol Kolhe (RW-4).

35. **Shri. Jitendra Awhad (RW-1)** in his *Affidavit in lieu of Examination in Chief* deposed *inter alia* that:

- (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 01st 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 01st 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 11th 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 15th September 2022, results of 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 15th 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 (dated 15th 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 02nd 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 05th 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 rescind his resignation as National Party President of NCP. The said committee comprised Respondents (in Group 01) 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 30th June 2023, no NCP members or none of the Respondents (in Group 01), especially Shri Ajit Pawar,



had notified the members of the party of any significant event (as the Respondents (in Group 01) 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 30th June 2023. No one in the organisation had been even remotely aware of any event that had occurred on 30th June 2023 or the intention to join the BJP-Shiv Sena led State Government.

- (m) On 02nd 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 02nd 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 02nd July 2023 itself 09 MLAs took oath as Ministers in the Maharashtra State Government.



- (n) On 02nd 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 02nd 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 02nd 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 09 MLAs joining the government, Shri Jayant Patil, was constrained to file Disqualification Petition against the 09 MLAs.
- (o) Actions of the MLAs on 02nd 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 25th July 2023, the Election Commission had 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 30th June 2023 and thereupon had been elected as the National Party President of the NCP on 30th 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 30th 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 (in Group 01) have committed anti-party activities and thereby voluntarily giving up NCP membership.
- (r) The alleged Resolution dated 30th 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 recognises the National Working Committee as the primary and the highest executive authority of NCP. As per the admitted document of Shri Praful Patel dated 15th 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 30th June 2023 and even after 30th 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 (in Group 01) MLAs have (i) voluntarily given up their membership; (ii) continued to engage in anti-party activities; (iii) concerted 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; (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 Awhad asserted that he was familiar with the signatures of



various persons appearing on various of those documents that had been wrongly denied.

36. Shri. Hemant Takle (RW-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 10th June 1999 under the aegis and leadership of Shri Sharad Pawar. I 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 (in Group 01) over the several years in relation to party matters.



(c) On 31st 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 is at Sr. No. 06 and his signature on form annexed at page 40 is 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 01st 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 01st 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 15th 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 NCP Shri Sharad Pawar.

37. Shri. Jayant Patil (RW-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 has 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 (in Group 01) 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 23rd November 2019 with unanimous approval of the MLAs and the directions of the National Party President, Shri Sharad Pawar. On 30th 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 Group 01). In summary, he stated that he I have filed the disqualification petition in view of the Respondents (in Group 01) 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 of India.

- (e) On 30.07.2022, Shri T.P. Peethambaran Master addressed a letter to me 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, wherein, the State Party Presidents were to submit the name of the nominee with the support of 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 had 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, results of 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, me 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 Mr. Jitendra Awhad and himself, i.e., Shri 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 rescind his resignation as National Party President of NCP. The said Committee comprised the Shri Ajit Pawar and other Respondent (in Group 01) MLAs, and 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 02nd 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 02nd 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 02nd July 2023 itself 09 MLAs took oath as Ministers in the Maharashtra State Government.



(m) On 02nd 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 02nd 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 02nd July 2023, it was resolved that appropriate actions were to 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 02nd 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 not ideologically different in their political aims and objectives (to NCP).

- (o) On 25th July 2023, the Election Commission had 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 30th June 2023 and thereupon had been elected as the National Party President of the NCP on 30th 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 (in Group 01) 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 (in Group 01). 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.

38. Shri. Amol Kolhe (RW-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 knew 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 02nd July 2023, he went to the official residence of Shri Ajit Pawar (Devgiri) as instructed by Shri Sunil Tatkare by a phone call on 01st 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 the this, he spoke to Shri Sharad Pawar and clarified his stand and support to him. Pursuance to this, he executed an Affidavit dated 01st August 2023 and clarified his allegiance to the leadership of Shri Sharad Pawar.

(IV) ISSUES FOR DETERMINATION

39. The Hon'ble Supreme Court, in Subash Desai Vs. Governor of Maharashtra¹ (*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*



¹ 2023 SCC Online SC 607

political party” in keeping with the principles discussed in the said judgement.²

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 force 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?”.



² 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. The issue as to ‘which faction was the real NCP Political Party when the rival factions emerged has been extensively discussed and decided in Disqualification Petitions No. 01, 03 and 04 of 2023 (NCP Group No. 01). Since the genesis of both these groups (Group 01 and Group 02) is the same, the preliminary issue is common. Thus, the said decision on the *preliminary issue* decided in Disqualification Petitions No. 01, 03 and 04 of 2023 (NCP Group No. 01) be read as the decision rendered hereunder.



B. Have 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?

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

- (a) *Tendered affidavits in support of Shri Sharad Pawar without seeking permission of the Party President Shri Ajit Pawar.*
- (b) *Respondents by making statements against the decision of the party to join the government has committed anti-party activities and have thus voluntarily given up the membership of the party.*

45. In my considered opinion, irrespective of my decision that the Ajit Pawar faction was the real NCP Political Party when the rival factions emerged, none of the averments, contentions or pleading raised by the Petitioner in this group of Petition fall within the ambit of Paragraph 2(1)(a) of the Tenth Schedule of the Constitution. The object underlying the provisions in the Tenth Schedule 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 provisions of the amendment are intended only for the purposes of prohibiting and punishing defections, and that



too with the objective of preserving the foundations of democracy.

46. 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.

47. 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.

48. The Constitution Bench in the case of *Kihoto Hollohan Vs. Zachillhu and others*³, has somewhat touched upon this aspect. The same are re-produced hereunder:

“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.



³ 1992 Supp. (2) SCC 651

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 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).

49. 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?

50. Assuming that rightly or wrongly the behaviour or the acts of the Respondents in these group of petitions of raising their voice against Shri Ajit Pawar and disobeying the dictates of Shri Ajit 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 30th June 2022 and 2nd 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 Ajit 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.

51.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.

52. 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.

53. 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.



54. At this juncture, it would be appropriate to refer to the recent judgment of the Hon'ble Supreme Court in the case of Balchandra L. Jarkiholi and others Vs. B.S. Yeddyurappa and others⁴. It is an interesting case which had come up before the Hon. Supreme Court from the State of Karnataka and touches upon the aspect to which I refer. The facts of the said case were that - 13 MLAs of BJP and 2 other independent MLAs wrote to the Hon. Governor indicating that as MLAs of BJP they had become disillusioned with the functioning of the Government headed by Chief Minister, who belonged to their own party. They made various allegations of nepotism and corruption against their own Chief Minister, who also happened to be the leader of the Legislature Party. They accordingly wrote to the Hon. Governor that they are withdrawing support to the BJP Government headed by Mr. B.S. Yeddyurappa with a rider that 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 the same to the Speaker of the Legislative Assembly. On the same day itself, the Chief Minister who was also the leader of the Legislature Party, filed Disqualification Petition against his own MLAs accusing them of voluntarily giving up membership of the political party.



⁴ (2011) 7 SCC 1

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 Mr. Yeddyurappa and that they would support any (BJP) Government headed by a clean and efficient person. That their conduct did not fall within the scope of Para 2(1)(a) of Schedule X. The Speaker-Karnataka Legislative Assembly, however, disqualified the MLAs under para 2(1)(a) of the Tenth Schedule.

55. 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 another leader Judge gave divergent opinions. The Hon'ble Chief Justice rejected all the contentions of the MLAs and dismissed the writ petitions while the other Single Judge in his separate judgment, differed from the views of the Hon'ble Chief Justice in regard to interpretation of paragraph-2(1)(a) of Schedule X to the Constitution and set aside the impugned order of Speaker. 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.



56. The Judgment of the Speaker and that of the Hon'ble High Court was challenged by the Disqualified MLAs before the

Hon'ble Supreme Court. In the said judgment, the Hon'ble Supreme Court extensively referred to with approval the observations made by the Dissenting Judge of the Hon'ble Karnataka High Court Mr. 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.”

57. 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.

58. Thus, for the reasons stated hereinabove, Respondents cannot be held to be disqualified on any of the grounds as they do not amount to voluntarily giving up membership of the political party. Consequentially, the Disqualification Petition No. 02 and 05 of 2023 are liable to be dismissed.



(VI) FINAL ORDER

59. In view of my conclusions and findings recorded hereinabove,
Petitions No. 02 and 05 of 2023 are hereby dismissed.



.....
Speaker
(Maharashtra Legislative Assembly)

Date: 15.02.2024

Place: Vidhan Bhavan, Mumbai