

BEFORE THE HON'BLE SPEAKER

MAHARASHTRA LEGISLATIVE ASSEMBLY

VIDHAN BHAVAN AT MUMBAI

PETITION NO. 19 OF 2022

SHRI. SUNIL PRABHU

PETITIONER

VERSUS

SHRI. EKNATH SHINDE & ORS

RESPONDENTS

APPEARANCES:

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

For the Respondents:

Sr. Adv. Mahesh Jethmalani, a/w Adv. Chirag Shah & Adv. Mugda Pande for Respondents 01, 03, 06, 07, 20, 27, 32, 36, & 39

Sr. Adv. Anil C. Singh i/by Adv. Manini Roy for Respondents 04, 10, 13, 22, 24, 29, 31 & 34

Sr. Adv. Pradeep Sancheti, a/w Adv. Utsav Trivedi & Adv. Arpit Gupta for Respondents 05, 11, 12, 14, 17, 18, 19, 23, 26 & 35

Sr. Adv. Anil Y. Sakhare, Adv. Piyush Tiwari, i/by Adv. Himanshu Sachdeva for Respondents 02, 08, 16, 21, 28 & 30

Adv. Harshad Bhadbhade i/by Adv. Vishal Acharya for Respondents 09, 33, & 37

Sr. Adv. Nikhil Sakardhande i/by Adv. Shyamsundar B. Jadhav for Respondents 15, 25 & 38



CORAM:	Hon'ble Speaker Adv. Rahul Narvekar
Reserved on:	20 th December 2023
Delivered on:	10 th January 2024

INDEX OF CONTENTS

PARTICULARS		PAGE NO.
I	Factual background and procedural history.	04
II	Summary of Parties' case and reliefs sought.	24
III	Evidence led by the parties.	36
IV	Issues for determination.	46
V	Analysis, observations, findings and ruling.	48
A	Which among the two factions is the "real" Shiv Sena Political party for the purpose of deciding the present disqualification petitions?	48
A-1	Principles laid down by the Hon'ble Supreme Court in <i>Subash Desai</i> relevant for the purpose of determining who the political party is.	49



A-2	Petitioner's submissions on the preliminary issue.	56
A-3	Respondents' submissions on the preliminary issue.	61
A-4	Analysis, observations, and conclusions on the preliminary issue of 'Real Political Party'.	65
	<i>Constitution relevant for the determination of the preliminary issue.</i>	66
	<i>Leadership structure relevant for the determination of the preliminary issue.</i>	73
	<i>When did the rival factions emerge?</i>	77
A-5	Conclusions and findings on the preliminary issue of 'Real Political Party'.	80
	Whether 'Test of aims & objectives' can be applied?	80
	Leadership structure as a criterion to determine who was the political party.	83
	<i>Whether 2018 leadership structure is in conformity with the constitution of the Shiv Sena</i>	89
	<i>Whether decision of the 'Pakshapramukh' is synonymous with the 'will of the political party'</i>	92



		<i>Whether will of the 'majority' leaders in the 2018 leadership structure is synonymous with the 'will of the political party'</i>	96
		Legislative majority considered.	104
	A-6	Ruling on the preliminary issue of 'Real Political Party'.	111
	B	Duly authorised Whip and the Leader of the Shiv Sena Political Party.	112
VI	Final conclusions on the preliminary issue		128
	C	Whether Respondents have incurred disqualification in terms of Paragraph 2 (1) (b) of the Tenth Schedule of the Constitution of India on account of their (alleged) acts, omissions and/or conduct?	129
VII	Order		135

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

Factual background

1. The elections to the 14th Legislative Assembly of Maharashtra were held in October 2019. Of a total of two hundred and



eighty-eight seats, the Bharatiya Janata Party (*BJP for short*) returned candidates in one hundred and six seats, the Shiv Sena in fifty-six seats, the Nationalist Congress Party (*NCP for short*) in fifty-three seats, and the Indian National Congress (*INC for short*) in forty-four seats. Independent candidates were returned in thirteen constituencies and the remaining constituencies returned candidates from various other parties. In November 2019, the Shiv Sena, the NCP, and the INC formed a post-poll alliance which came to be known as the Maha Vikas Aghadi (*MVA for short*). The MVA successfully staked a claim to form the government in Maharashtra and Mr. Uddhav Thackeray was sworn in as the Chief Minister. On 25th November 2019¹, pursuant to a meeting dated 30th October 2019 of the Shiv Sena Legislature Party (*SSLP for short*) chaired by Mr. Uddhav Thackeray, all fifty-six MLAs of the Shiv Sena issued a communication to the Speaker of the Maharashtra Legislative Assembly intimating him that Mr. Eknath Shinde was appointed as the Group Leader of the SSLP, and that Mr. Sunil Prabhu was appointed as the Chief Whip of the SSLP.

2. On 21st June 2022, the Chief Whip of the Shiv Sena, Mr. Sunil Prabhu, issued a whip² directing all MLAs of the Shiv Sena to

¹ Communication dated 25th November 2019 caused by all 56 MLAs of the Shiv Sena to the Speaker of Maharashtra Legislative Assembly. [Page No. 710-714 of the SC Convenience Compilation Volume II.

² Copy of the Whip dated 21st June 2022 issued by Shri Sunil Prabhu [Annexure-P1 at Page 10 of the Petition No. 01-16 & 18 of 2022]



attend a meeting at Mr. Thackeray's residence on the same day. Many MLAs, including the Group Leader Mr. Eknath Shinde, (allegedly) did not attend this meeting³. The MLAs who were in attendance (allegedly) passed a resolution removing Mr. Eknath Shinde from the position of the Group Leader of the SSLP and appointing one Mr. Ajay Choudhari in his place⁴. The decisions taken by way of this resolution were communicated to the Deputy Speaker on the same day, i.e., 21st June 2022⁵. Also on the same day, the Deputy Speaker communicated his recognition of the change in the Group Leader of the SSLP⁶.

3. Concurrently, thirty-one MLAs of the Shiv Sena (i.e., the respondents) organized a separate meeting and passed a resolution reaffirming that Mr. Eknath Shinde "*continues to be*" the Group Leader of the SSLP⁷. It was further resolved that the appointment of Mr. Sunil Prabhu as the Chief Whip was cancelled, and that Mr. Bharat Gogawale was appointed in his place. Petitioner claims that this resolution was received by the Deputy Speaker only on 22nd June 2022 while the

³ Petitioner relied on the 'Attendance Register' dated 21st June 2022 [Annexure-P2 @ Page 11 of the Petition No. 01 to 16 of 2022]

⁴ 'UBT faction' Resolution dated 21st June 2022 [Annexure-P3 @ Page 16 of the Petition No. 01 to 16 of 2022]

⁵ 'UBT faction' Communication to the Speaker dated 21st June 2022. [Annexure-P4 @ Page 18 of the Petition No. 01 to 16 of 2022]

⁶ Speaker' communication regarding recognition [Annexure-P5 @ Page 20 of the Petition No. 01 to 16 of 2022].

⁷ 'Shinde faction' Resolution dated 21st June 2022. [Annexure-P9 @ Page 33 of the Petition No. 01 to 16 of 2022].



respondents claim that it was sent on 21st June 2022. The record available with the Legislature secretariate indicates that the resolution is dated 21st June 2022 but received by the office of the then Deputy Speaker on 22nd June 2022.

4. On 22nd June 2022, Mr. Sunil Prabhu issued individual communications to all MLAs of the Shiv Sena, calling upon them to attend a meeting of the SSLP scheduled to take place that evening at Mr. Thackeray's residence⁸. The meeting on 22nd June 2022, too, was not (allegedly) attended by many MLAs of the Shiv Sena including Mr. Eknath Shinde⁹.
5. Mr. Eknath Shinde addressed a letter¹⁰ to Mr. Sunil Prabhu on 22nd June 2022 accusing him of misusing the letterhead of the SSLP. The letter stated that:
 - (a) A meeting of forty-five MLAs of the Shiv Sena was held under the chairmanship of Mr. Eknath Shinde;
 - (b) Mr. Sunil Prabhu was removed from the position of Chief Whip of the Shiv Sena;
 - (c) Mr. Bharat Gogawale was appointed as the Chief Whip of the Shiv Sena in place of Mr. Sunil Prabhu; and



⁸ Letter dated 22nd June 2022. [Annexure-P10 @ Page 41 of the Petition No. 01 to 16 of 2022]

⁹ Petitioner relied on the 'Attendance Register' dated 22nd June 2022 [Annexure-P7 @ Page 25 of the Petition No. 01 to 16 of 2022]

¹⁰ Copy of the Communication dated 22nd June 2022 sent by the Respondents. [Annexure-P10 @ Page 41 of the Petition No. 01 to 16 of 2022]

(d) Mr. Sunil Prabhu did not have the authority to sign the communication dated 22nd June 2022 (issued by him to all MLAs of the Shiv Sena). It was therefore not binding upon Mr. Eknath Shinde to attend the meeting scheduled to take place at Mr. Thackeray's residence.

6. On 23rd June 2022, Mr. Sunil Prabhu filed petitions under Paragraph 2(1)(a) of the Tenth Schedule to the Constitution for the disqualification of Mr. Eknath Shinde and fifteen other MLAs of the Shiv Sena. The Deputy Speaker issued notices in these disqualification petitions on 25th June 2022. [Disqualification Petitions No. 01 to 16 of 2022]
7. On 26th June 2022 Respondents approached the Hon'ble Supreme Court of India *inter-alia* challenging the letter/order dated 21st June 2022 passed by the then Deputy Speaker accepting appointment of Shri. Ajay Choudhari as the Leader of the Shiv Sena Legislature Party and prayed for consequential concomitant reliefs.¹¹
8. On 27th June 2022 Shri. Sunil Prabhu filed another Disqualification Petition [Disqualification Petition No. 17 of 2022], under Paragraph 2 (2) and 2 (1) (a) of the Tenth Schedule of the Constitution of India against 3 MLAs. 2 Independent MLAs and 1 MLA from Prahar Janshakti Party.



¹¹ Writ Petition (Civil) 468 and 469 of 2022 filed before the Supreme Court of India.

On the same day, i.e., on 27th June 2022, Shri. Sunil Prabhu filed yet another Disqualification Petition [Disqualification Petition No. 18 of 2022] under Paragraph 2 (1) (a) of the Tenth Schedule of the Constitution of India, against 22 MLAs of Shiv Sena.

9. On 28th June 2022, the then Leader of Opposition Mr. Devendra Fadnavis addressed a letter to the Governor *inter alia* conveying that he believed that the then Chief Minister, Mr. Thackeray, did not enjoy a majority on the floor of the House. He called upon the Governor to direct Mr. Thackeray to prove his majority on the floor of the House. Seven MLAs who were elected as independent candidates penned a similar letter to the Governor on the same day. They too requested the Governor to direct Mr. Thackeray to prove his majority on the floor of the House.

10. Consequently, the Hon'ble Governor of Maharashtra issued a letter to the then Chief Minister, Mr. Uddhav Thackeray on 28th June 2022, calling upon him to face a floor test on 30th June 2022.

11. On the very next day, i.e., 29th June 2022, Mr. Sunil Prabhu instituted a Writ Petition¹² before the Hon'ble Supreme Court of India for setting aside the communications dated 28th June



¹² Writ Petition (Civil) No. 470 of 2022 filed before the Hon'ble Supreme Court of India.

2022 issued by the Hon'ble Governor to the then Chief Minister on the ground that disqualification petitions against thirty eight MLAs of the Shiv Sena were pending consideration before the Deputy Speaker. The Hon'ble Supreme Court declined to grant any stay to the trust vote.

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

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



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

15. Later that week, the Principal Secretary of the Maharashtra Legislature Secretariat circulated the 'Order of the day' for the session which was scheduled to take place on 3rd July 2022¹³. The fifth item on the agenda was the election for the post of the Speaker. I, Rahul Narvekar, was nominated for this position while an MLA of the NCP nominated Mr. Rajan Salvi. Further, a motion of confidence for the '*Council of Ministers*' headed by the Chief Minister, Mr. Shinde, was scheduled to be moved in a session of the Assembly on 4th July 2022.

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



¹³ 'Order of the day' dated 03rd July 2023.