

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. Raheed Kazi, Adv. Hafizuddin Kazi for Respondent No. 04 in Petition No. 04 of 2023



Reserved on: 31st January 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-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 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 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 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 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 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 03rd 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 06th 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 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 praying for their disqualification under Paragraph 2 (1) (a) of the Tenth Schedule.
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 praying for their disqualification under Paragraph 2 (1) (a) of the Tenth Schedule.
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 Petition No. 01, 03 and 04*) request for extension of time 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 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 Petitioners' witnesses.

19. Petitions were listed on 20th January 2024 for Cross Examination of Petitioner's witnesses. However, the Respondents, *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. Petitioner objected to the same by filing a 'Response' on 19th 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., 23rd January 2024 and 24th January 2024, to conduct and finish cross examinations of Petitioner's witnesses. Petitioner was directed to



conduct and finish cross examinations Respondents' witnesses on 25th January 2024.

20. Thereafter, Petitions were listed on 23rd 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 24th 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 25th 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 20th 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. 29th January 2024, to finish cross examinations of Respondents' 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 (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 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 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 02nd 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 02nd 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 02nd 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 30th 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 02nd 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 10th 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 14th 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 02nd 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 05th 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 02nd 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 02nd July 2023, the Maharashtra State Discipline Committee (NCP) passed a resolution, resolving to take



appropriate action against the MLAs. Subsequently, on 02nd 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 04th July 2023, a meeting of the National Working Committee of the NCP was called on 06th 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 25th 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 30th 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 30th June 2023.
- (c) On 30th 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 30th 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.

