

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,

