

**CHIEF JUSTICE'S COURT**

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE M.R. SHAH  
HON'BLE MR. JUSTICE KRISHNA MURARI  
HON'BLE MS. JUSTICE HIMA KOHLI  
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA

Subhash Desai  
*v.*  
Principal Secretary, Governor of Maharashtra and Ors.

**W.P.(C) No. 493/2022**  
Item No. 501

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TRANSCRIPT OF HEARING

21-Feb-2023  
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Transcript to be read with the video recording of the hearing.

11:00 AM IST

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**CHIEF JUSTICE CHANDRACHUD:** So just for the information of all the members of the Bar, you'll see that a screen is there. So we are just trying to explore with the possibility of live transcription of arguments.

**MR SIBAL:** That's wonderful.

**CHIEF JUSTICE CHANDRACHUD:** We had to do it in a live environment with an experiment so we'll just see how it works, at least in the Constitution Bench matters. Because then we'll have a permanent record of arguments. Of course it helps the judges and the lawyers, but it will also help our law colleges. They can analyse you know how matters are argued, what was submitted. It is a huge resource.

**MR SIBAL:** We'll also get to know *Nabam Rebia* was argued My Lord. No I say this in a lighter way, only in a lighter vein.

**CHIEF JUSTICE CHANDRACHUD:** We are already there.

**JUSTICE SHAH:** You know why we are telling, Honourable Chief Justice is telling is - Don't interrupt each other. Otherwise that will be difficult. Argue one by one. One at a time.

**MR SIBAL:** My Lords, in posterity we will get to know what foolish arguments we've made my lords.

**CHIEF JUSTICE CHANDRACHUD:** Nobody admits. But we'll of course, this will be a great record for the...

**MR. SIBAL:** No, no, I think it is a wonderful idea.

**JUSTICE NARASIMHA:** Truly a court of record.....because every word is recorded.

**MR SIBAL:** It should be, it should be.

**JUSTICE NARASIMHA:** Every word is recorded.

1 **MR. SIBAL:** My lords in fact, I can share something with you. When I was of practicing in  
2 New York, we had these EBT proceedings, that is Examination Before Trial. And I'm talking  
3 about this, about the 70s. My Lord they would record everything that was said in the course of  
4 that examination even then, so that we know, lawyers knew what was going to happen.

5

6 **MR. MEHTA:** Gujarat has e-courts my lord in the sessions division, Sessions Court. There  
7 even our internal whisperings are also recorded.

8

9 **MR SIBAL:** That is very dangerous. That is hazardous, completely hazardous.

10

11 **CHIEF JUSTICE CHANDRACHUD:** Now the only thing is that if there are two or more  
12 voices at the same time, that causes little bit of a problem. But they obviously have personnel  
13 who will clean up the errors by the evening. They suggested that during the course of the day  
14 the Counsel will get the link. So the counsel can look at it. By the evening they would have  
15 cleared up the... cleaned up the entire transcript and given it to us.

16

17 **MR. SIBAL:** That's wonderful. That's wonderful. That's truly, truly a milestone, I would say  
18 my Lords. A milestone my lords.

19

20 **JUSTICE NARASIMHA:** In VC proceedings, anybody wanted to interrupt, would lift their  
21 finger. So much there is no cross talk. So we can follow that so that it won't overlap with one  
22 another.

23

24 **MR. SIBAL:** Hopefully. So My Lords, let me just give Your Lordships a birds eye view of what  
25 is in issue here, then I'll go on to the matter in some detail. My Lords as Your Lordship knows  
26 My Lords, what is in issue is whether the legislative party, that's the central issue, whether the  
27 legislative party in the House acts independently of the political party. That's the central issue.  
28 Because I will, My Lords, while I go through the facts before Your Lordships, indicate to Your  
29 Lordships that on the 21st of June when the first meeting took place, and we called the group  
30 led by Uddhav Thackeray, called members of the legislative Party who belonged to now the  
31 Eknath Shinde group to come and attend the meeting, which was not done, pursuant to which,  
32 My Lords, some actions were taken. The contention throughout has been that there is a split  
33 in the party. So the issue before Your Lordships is - can members of the Legislature within the  
34 House or comprising of those members of the House by themselves say that there is a split in  
35 the party because they don't agree with the leadership? This in turn would require Your  
36 Lordships to look at the Tenth Schedule and in that context interpret the role of the party  
37 within the legislature. My Lords, after all, members of the Legislature of any particular party

1 come, get elected on a symbol of the party. They are there because of the party. And if they are  
2 there because of the party My Lords, they are, there is an umbilical cord link between them  
3 while they are sitting in the house and the party outside. Can that link be severed and say we  
4 are an independent set of people, we can do what we like. That will require my lords the  
5 interpretation of the Tenth Schedule. Require Your Lordships to analyse the role of the whip,  
6 how a whip gets appointed, how he happens to be a bridge between the Legislative Party and  
7 the political party and that nothing happens in the House without the political party taking a  
8 decision. Nothing happens. My Lords the bill is introduced by the treasury benches, any bill....

9  
10 **CHIEF JUSTICE CHANDRACHUD:** Is it your contention therefore.... Is it your  
11 contention Mr. Sibal, therefore that, unless there is a split outside the house, within the  
12 political party, that split cannot find recognition within the Legislative Party within the House?

13  
14 **MR. SIBAL:** Absolutely. That's my contention. That is the law also my lords and I will  
15 demonstrate that to Your Lordships. That is the law. Now what happens, I am giving Your  
16 Lordships an example my lords, a Bill is introduced by the treasury benches, a controversial  
17 Bill let's assume. Bill in which there is no consensus. My Lords what happens? The  
18 Parliamentary party, a group of members of the Legislature are invited by the Parliamentary  
19 Party to sit outside the House in a particular room and say, this is the Bill that's being  
20 introduced. What is, what should be our position? The party decides the position and it is  
21 articulated in the House. The Legislative Party by itself dehors the party doesn't decide what  
22 we are going to do, what we are not going to do. When a whip is going to be issued, My Lords,  
23 it is issued outside the House and translated inside the House. On this, you are going to vote  
24 against the bill that has been introduced or that you will vote in favour or that you will abstain.

25  
26 **JUSTICE CHANDRACHUD:** But when the Tenth Schedule speaks about, say, a merger, for  
27 instance, now, there are very few exceptions in the Tenth Schedule, and it speaks of a merger.  
28 Ultimately the Speaker has to decide whether there is a merger. The Speaker will not go into  
29 whether there was a merger outside the House. Because then the speaker will be taking over  
30 the function of the Election Commission of India.

31  
32 **MR. SIBAL:** That My Lords, that argument is entirely on a different plane. We are not dealing  
33 with it and we will interpret the Paragraph 4 for your Lordships also.

34  
35 **CHIEF JUSTICE CHANDRACHUD:** The Speaker's remit cannot lie outside the House.

36

1 **MR. SIBAL:** My Lords, there's a problem. Supposing, alright, let us analyze that for a minute  
2 since your lordships have raised the issue. Supposing there are ten members of the Legislative  
3 Party in the House. Right? And the merger has to take place of the political party, they belong  
4 say to the Samajwadi Party. Right my lords? Now, even Paragraph 4 says there is a merger of  
5 a political party, not the merger of the Legislative Party.

6

7 **CHIEF JUSTICE CHANDRACHUD:** Right?

8

9 **MR. SIBAL:** So therefore Samajwadi Party...

10

11 **CHIEF JUSTICE CHANDRACHUD:** But no, if we accept your argument that would mean  
12 that unless the Election Commission of India decides on a merger outside the House, the  
13 Speaker cannot take a decision within the House whether there is a merger or not. That can't  
14 be.

15

16 **MR. SIBAL:** No, no. Election Commission need not decide this issue my lords.

17

18 **CHIEF JUSTICE CHANDRACHUD:** How else?

19

20 **MR. SIBAL:** Because a resolution will be passed that we have merged and that will be  
21 informed. The Election Commission, they all have taken a decision. They'll be informed. The  
22 majority of the members of the party will decide, they will be informed. Once merger takes  
23 place, these eight people, these eight people may say - we don't want to merge. And Paragraph  
24 4 says they need not merge. But My Lords, I'll come to that later. It is a very complex issue.  
25 Not so....

26

27 **CHIEF JUSTICE CHANDRACHUD:** Let's have a broad now framework of the facts  
28 because...

29

30 **MR. SIBAL:** I will, I will My Lords.

31

32 **CHIEF JUSTICE CHANDRACHUD:** In fact, that was our basic problem that unless we  
33 have a clear perception on the facts...

34

35 **MR SIBAL:** I am going to do that.

36

1 **CHIEF JUSTICE CHANDRACHUD:** ...it is very difficult for us then to look at the law  
2 dehors from the fact.

3

4 **MR. SIBAL:** I entirely agree but, may I just My Lord what are the issues that are going to be.  
5 I just want Your Lordships to...

6

7 **JUSTICE NARASIMHA:** We have to necessarily reframe the issues because the kind of the  
8 issues which are there which are...

9

10 **MR. SIBAL:** Yeah, yeah. It's not reflective of what needs to be decided. I agree entirely. My  
11 Lord the other issue is, the other issue is and that's never come up before the court. And that  
12 issue is, can a Governor, swear in a member of a Legislative Party against whom a  
13 disqualification matter is pending before the House? That is the other issue. Never come up  
14 before. What then are the powers of the Governor in matters in relation to disqualification?  
15 This is not a case of a pre-poll alliance, this is not a case of post-poll alliance, this is not a case  
16 of one political party. It is a case of people who allege that they are the party because they are  
17 a majority in the Legislature. Right My Lords? What then are the powers, or what should be  
18 the function of the Governor in matters of this nature, and how he should conduct himself?  
19 Because he also knows, because the Disqualification Petition is pending, My Lords. He also  
20 knows. And if the Governor does, My Lords, swear him in as a Chief Minister, My Lords, he  
21 actually topples, topples a democratically elected government and aides in doing that because  
22 they happen to be a majority in the Legislature. My Lords, that's one of the issues that Your  
23 Lordships may have to consider. Then the other issue to be considered is, can a Court, a  
24 Constitutional Court without referring the matter to the Speaker in the facts and  
25 circumstances of this case, decide the matter on it's own, given the fact that there are no  
26 disputed facts. We are not going to My Lords place before Your Lordships, any disputed fact.  
27 All are matters of record.

28

29 **JUSTICE NARASIMHA:** Your question is, can a constitutional court decide Tenth  
30 Schedule?

31

32 **MR. SIBAL:** Yeah, that is correct.

33

34 **JUSTICE NARASIMHA:** Tenth Schedule?

35

36 **MR. SIBAL:** That's correct. That's correct. Because under the Tenth Schedule, it has the  
37 Speaker to decide. Correct My Lords? But if the proceedings My Lords are imbued with

1 illegality, and given the conduct of speakers in the past, what then should be the attitude of  
2 the court in a given matter? That's the other thing. And then of course, lastly, My Lords, how  
3 do you deal with an issue, and that My Lords because the last question in the reference is the  
4 powers of the Election Commission. And Your Lordships, and that's the last question, which  
5 is the last issue Your Lordships will have to decide, that under Paragraph 15 of the Symbols'  
6 Order, when there is a split in the political party, it starts with that proposition, that two  
7 factions have arisen pursuant to a split in the political party. Then which factions should get  
8 the symbol?

9

10 **JUSTICE NARASIMHA:** Will that arise in this case?

11

12 **MR. SIBAL:** I am sorry?

13

14 **JUSTICE NARASIMHA:** Will that arise here?

15

16 **MR. SIBAL:** Yes, yes, That's the question. That's the question. What is the role of the Election  
17 Commission in matters under the...That's part of the reference.

18

19 **CHIEF JUSTICE CHANDRACHUD:** So under Para 15 of the Symbols' Order, when two  
20 factions emerge in pursuance of a split, so what is the sequitur and how would you end the  
21 sentence?

22

23 **MR. SIBAL:** My Lords, then what is the role of the Election Commission in deciding that  
24 matter? Should it await the decision of the Constitutional Court? Should it go ahead? Your  
25 Lordships only, as your Lordships will remember, in September said - no stay, but Your  
26 Lordship did not say how he is going to decide it.

27

28 **CHIEF JUSTICE CHANDRACHUD:** But that Mr. Sibal is your independent challenge to  
29 the order of the Election Commission...We can't ...

30

31 **MR. SIBAL:** That's separate issue My Lord..

32

33 **CHIEF JUSTICE CHANDRACHUD:** We can't really decide that.

34

35 **MR. SIBAL:** No, no, that's a part of the reference. I am going to argue My Lords.

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37 **CHIEF JUSTICE CHANDRACHUD:** And can we, how do we....

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**MR. SIBAL:** My Lord, if constitutionally, the Election Commission cannot proceed. The split would have, have to happen on 21st of June. There was no whisper of a split on 21st of June..

**CHIEF JUSTICE CHANDRACHUD:** So your contention that therefore a Election Commission itself cannot proceed...

**MR. SIBAL:** Yes.

**CHIEF JUSTICE CHANDRACHUD:** ...unless the Speaker has decided that.

**MR. SIBAL:** Correct, correct. That's what Your Lordship said - no stay, fine, no stay. We went before the Election Commission and said you cannot decide on this matter. The matter is pending in Supreme court. He said no, but Supreme Court has said no stay and you will find that tomorrow when, Your Lordships sit at 3:30. But, be that as it may these are the My Lords, that's the last question that Your Lordships, Your Ladyship will have to look at. So these broadly My Lords, are the issues that you might be asked upon to decide, that you might wish to decide. Now, My Lords let's go to the list of dates because unless you have the facts My Lords, it will be... My Lords this is now PDF Page 108 of the written submissions <UNCLEAR> It is marked as Capital A. And I have learnt how to use the iPad.

**JUSTICE KOHLI:** Mr. Sibal, just wondering if you could just look at the issues that were framed...

**MR. SIBAL:** Ladyship, I can't hear you..

**JUSTICE KOHLI:** Look at the issues that were framed once, so that we know the perspective in which you are arguing? The issues that were framed for reference to the Constitution.

**MR. SIBAL:** I can read those.

**JUSTICE KOHLI:** Can we just do a quick recall before we...

**MR. SIBAL:** Yeah, I think that's a good idea. Yes reference order, Your Lordships will have that. Order Compilation My Lords? PDF Page 28. And the questions start at Page 30.

**JUSTICE SHAH:** Which is the Order dated?



1 **MR. SIBAL:** It is an order dated, 23rd of August 2022, Page 28 my lords and the relevant  
2 part....question starts at Page 30 at the bottom. PDF Page 30 My Lords. The Ladyship has it?  
3 Justice Shah My Lords?  
4

5 **JUSTICE SHAH:** Yes.  
6

7 **MR. SIBAL:** May I My Lords? (A), whether notice for removal of a Speaker restricts him from  
8 continuing with Disqualification proceedings under the Tenth Schedule of the Constitution, as  
9 held by this court in Nabia? I have already argued that. Your Lordships had deferred Your  
10 Lordship's judgment on that, so we'll skip that for the moment. (B), whether a Petition under  
11 Article 226 or 32, lies inviting a decision on a Disqualification Petition by the High Court or  
12 the Supreme Court, as the case may be? That's the question that I have already formulated in  
13 different... the language is somewhat different, but the intent is the same. Then (C), can a court  
14 hold that a member is deemed to be disqualified by virtue of his or her actions absent a  
15 decision to the Speaker. Actually (B) and (C) are together My Lords. They are interlinked.  
16

17 **JUSTICE NARASIMHA:** Per se cases?  
18

19 **MR SIBAL:** Yes. Language is somewhat My Lords...

20 (D), what is the status of proceedings in the House during the pendency of Disqualification  
21 Petitions against the members? My Lords it really does not clarify what it means. What is the  
22 status of proceedings? What it means is, that can members against whom there is a  
23 Disqualification Petition pending, have a role to play in the House while it is pending?  
24 Otherwise you can topple any Government you want.  
25

26 Then (E) My Lords, if the decision of a Speaker that a member has incurred disqualification  
27 under the Tenth Schedule, relates back to the date of the action complained of, then what is  
28 the status of proceedings that took place during the pendency of a disqualification petition?  
29 Now My Lords this question only arises if you allow proceedings to go on. If you don't decide  
30 on the disqualification before, then this question arises because if at a later point in time, you  
31 consider them to be disqualified relating back to the date when their act led to a voluntary  
32 giving up membership of the party or violation of the Whip, then My Lords what happens to  
33 the intervening proceedings? A Government has been formed, actions have been taken, policy  
34 decisions have been made. Would it not be better for the purposes of, I personally believe,  
35 democratic traditions that you should await your hands till the disqualification is decided first  
36 because this problem will not arise then.  
37

1 Then My Lords (F), I think it's very, very important. What is the impact of the removal of  
2 Paragraph 3 in the Tenth Schedule? According to me that is central to the entire issue because  
3 now you don't have a split. The issue of a split doesn't arise. Which is why if you want to go to  
4 the Election Commission there has to be a split in the party. Not a split in the Legislature. That  
5 is not on record, no such split. So this is central and we will interpret paragraph 4, also in that  
6 context My Lords.

7

8 Then (G), what is the scope of the power of the Speaker to determine the Whip and the leader  
9 of the House Legislative party? What is the interplay of the same with respect to the provisions  
10 of the Tenth Schedule? My lords, actually again convoluted in its expression. In simple terms  
11 it means, that how is a Whip appointed and how is a leader in the House appointed? Is there  
12 a role of a political party, or is it something that the Legislative Party decides? Can majority of  
13 the Legislative Party decide, I'll change the Whip tomorrow? Can't be. So what has happened  
14 in this case? And I'll come to the facts that sitting outside the House, X number of people said  
15 you are no longer the Whip and those are members of the Legislature only. I can give Your  
16 Lordships documents to the effect. What happens is when a leader of the House is appointed,  
17 the letter that is given to the Speaker is that the party hereby decides that this person will lead  
18 the House for the party. It is not the, members of the Legislature don't decide these issues.  
19 Similarly Whip, because the Whip is the bridge between the Government, between  
20 government or the opposition, whichever party it is and the House, members of the  
21 Legislature. That's why Your Lordships will see that nowhere in the Constitution does the word  
22 political party is referred to except in the Tenth Schedule, because in the Constitution you are  
23 dealing with institutions. You're dealing with an institutional framework within which all  
24 political parties function. In the Tenth Schedule you are dealing with framework within which  
25 a legislative party functions in the context of the political party resulting in disqualification.

26

27 Then My Lords (H) - Are intra-party decisions amenable to judicial review? I don't think that  
28 question arises. There is no intra-party decisions in the Legislature. Your Ladyship is right.  
29 We need to look at some of these questions. Then (I) - What is the extent of discretion and  
30 power of the Governor to invite a person to form the government and whether the same is  
31 amenable to judicial review? My lords, Governor's actions are always amenable to judicial  
32 review. That's not an issue at all. Question is, what should a Governor do in the context of  
33 Disqualification Petitions pending, and which are yet to be adjudicated upon? As a Governor,  
34 My Lords, who represents a.. he is a constitutional authority, he needs to protect the  
35 Constitution and the Laws. In this very state, a Governor My Lords, in the early hours of the  
36 morning gave an oath through the oath of office, made somebody a Chief Minister. And by the  
37 early morning, during, on daylight, he had to resign. Governors, and I say this with respect to

1 all the institution of the Governor, that Governors have, in my respectful submissions acted  
2 far beyond their constitutional responsibilities, as we have seen, as I have seen in the recent  
3 past. That may not be a proposition that the other side will accept. But I'm giving only my view  
4 of the matter. It is unfortunate that Governments are actively involved in the politics of the  
5 country.

6

7 Then My Lords, the last one. What is the scope or the powers of the Election Commission of  
8 India, with respect to determination of a split within a party? That's where My Lords the  
9 question of Para 15 of the Symbol's Order comes in.

10

11 My Lords, kindly now, come up, come to the written submissions of the Petitioner and the list  
12 of dates is at Page 108. PDF 108.

13

14 **CHIEF JUSTICE CHANDRACHUD:** That is 'A' right? A - Petitioner written submission.

15

16 **MR. SIBAL:** Yes, A. PDF 108.

17

18 **JUSTICE SHAH:** Written submission no? You are referring to Written submissions?

19

20 **MR. SIBAL:** Yes, yes.

21

22 **JUSTICE SHAH:** Not additional written submissions.

23

24 **MR. SIBAL:** A... My Lords. A. Page 108. PDF.

25

26 **CHIEF JUSTICE CHANDRACHUD:** Mr. Sibal what we could also do is, that of course,  
27 you see the broad points of reference. And ultimately we'll need to focus narrow down the  
28 reference to the issues which you want to focus on and maybe if you could during the course  
29 of the afternoon share that with the other side. We can have their feedback so that if we narrow  
30 it down to certain specific issues. Because many of the issues which have been framed in the  
31 reference order the may not strictly arise.

32

33 **MR. SIBAL:** Yeah it is not necessary.

34

35 **JUSTICE CHANDRACHUD:** So let's sort of structure that so that it lends some clarity to....

36

1 **MR. SIBAL:** Let us do that in the evening, My Lords. That'll be much easier for us if Your  
2 Lordship will allow us, because I'll consult my colleagues on the other side, who will give some  
3 agreed issues. Because after noon may not be the most appropriate.

4  
5 **JUSTICE CHANDRACHUD:** Evening? Evening would be fine.

6  
7 **MR. SIBAL:** Yes. We will..

8  
9 **JUSTICE CHANDRACHUD:** And also then we can have some idea about, you know, the  
10 time schedule. How long would you take so that then we can restrict them as well, and to  
11 certain time.

12  
13 **MR. SIBAL:** Well, this side My Lord will take 3 days.

14  
15 **CHIEF JUSTICE CHANDRACHUD:** 3? Mr. Sibal, how long would you take about 3 hours  
16 or so today?

17  
18 **MR. SIBAL:** No, no. Because I'll take much more tomorrow too.

19  
20 **CHIEF JUSTICE CHANDRACHUD:** Mr. Sibal, we will have to have structured arguments.

21  
22 **MR. SIBAL:** All right. It'll be structured My Lords. I'm not going to repeat myself at all. Your  
23 Lordship knows I have myself, My Lords reduced. I mean..

24  
25 **CHIEF JUSTICE CHANDRACHUD:** After Mr. Sibal, after you conclude Dr. Singhvi will...?

26  
27 **MR. SIBAL:** Dr. Singhvi and then Mr. Kamat My Lords. My colleague Mr. Kamat.

28  
29 **CHIEF JUSTICE CHANDRACHUD:** So Why don't.... maybe we could do this. We have  
30 about an hour and 15 minutes before lunch and you get 2 hours after lunch today. That's about  
31 3 hours and 15 minutes. So maybe if you could conclude today by 04:00, then we can give Dr.  
32 Singhvi until lunch tomorrow and then a little supplement half an hour after lunch for Mr.  
33 Kamat and then they can start tomorrow afternoon. We are breaking at 3:30 tomorrow so they  
34 get about an hour and a half in the afternoon and maybe on Thursday they can conclude by  
35 maybe lunch. And then we will give you....

36

1 **MR. SIBAL:** We'll try that My Lords. We'll try that. No issue My Lords, we certainly try and  
2 speed it up. I mean, I just think My Lords, Your Lordships may have questions yourselves.

3

4 **CHIEF JUSTICE CHANDRACHUD:** Of course. If we find that of course there's a little  
5 change in the time schedule we can certainly do that.

6

7 **MR. SIBAL:** Then Your Lordships will also have to decide on the Nabam reference at some  
8 stage what your Lordships want to do because that sort of opens up another...

9

10 **CHIEF JUSTICE CHANDRACHUD:** So we'll look at the list of dates?

11 **MR SIBAL:** Yes. So on 19-6-1966 Shiv Sena founded by Balasaheb Thackeray to espouse the  
12 ideology and legacy of whatever and has been recognized as the state political party by the  
13 Election Commission. Balasaheb Thackeray was the President Shiv Sena Pramukh of the Shiv  
14 Sena from its very inception and continued in the role till his demise on 17th November 2012.  
15 After the demise of Balasaheb Thackeray, Uddhav Thackeray was unanimously elected to be  
16 President, Shiv Sena, Paksh Pramukh of the Shiv Sena political party and has continued to  
17 hold the position. At present Shri Uddhav Thackeray unequivocally continues to be the Paksh  
18 Pramukh of the Shiv Sena, the President of Shiv Sena, which is the highest position as provided  
19 in the Constitution of Shiv Sena, and a copy of the Constitution is annexed. 85 - In view of the  
20 repeated defections of elected MLAs and MPs and with a view to curb horse trading of an  
21 elected representative, the Constitution was amended to include the Tenth Schedule by virtue  
22 of the 52nd Amendment to the Constitution with the following statements and objects. The  
23 evil of political defections has been a matter of national concern. If it is not combatted, it is  
24 likely to undermine the very foundation of our democracy and the principles which sustain it.  
25 With this object an assurance was given in the address by the President of Parliament that the  
26 Government intended to introduce the current session of Parliament an anti-defection Bill.  
27 This Bill is meant for outlawing detection and fulfilling the above assurance.

28

29 So nothing in the Tenth Schedule should be interpreted to give credence to a defection.  
30 Nothing in the Tenth Schedule should be interpreted to somehow legalize a defection, give  
31 credibility to that process because the whole object of the Act is to ensure that there are no  
32 unprincipled defections. My Lords, there is an elected government. The attempt of the Court  
33 and of the institution of the Governor should be to allow the elected government to function  
34 till such time as a person is either disqualified or not disqualified. Right? And if there is a  
35 disqualification petition that should be allowed to be decided. Because if you don't allow that  
36 to happen and you pass an order like you did on the 27th of June, unfortunately, it's the judicial  
37 order that led to this. It is that judicial order that led to this. Had that not been passed, we

1 wouldn't be here and that if the speaker had been allowed to decide and they would have gone  
2 up in appeal if there was a decision against them, or somebody else would have gone up in  
3 appeal. So My Lords, 7th April the Tenth Schedule was amended by the 92nd Amendment and  
4 Paragraph 3 thereof, which permitted one-third members of the Legislative party to split, was  
5 omitted. Split is no longer available as a defense against disqualification under the Tenth  
6 Schedule. My Lords please mark that.

7

8 The defenses available were only two that I have one-third of the Legislative party as split  
9 pursuant to a split in the political party. It is not a split of the Legislative party. Paragraph 3  
10 and I will read that Your Lordships. It is a split in the political party resulting in one-third of  
11 the members in the Legislative Party, which gives them a defense to say that they cannot be  
12 disqualified. Similarly with Paragraph 4, it's a defense. If I am two-thirds and there's a merger  
13 of a party, it's a defense saying, now I am entitled to be that party. That is part of the new party.  
14 Either the original a new original party or the part of the merged party. That's a defense. That's  
15 why I indicated to Your Lordships, now there's no question of majority, minority, one-third,  
16 two-thirds, not relevant, if there's a split. Because what the purpose of the Defection Law is to  
17 ensure that there is no un-principled defection. Then My Lords, 23rd January organizational  
18 elections of the Shiv Sena Political Party for the term 2018- 23 were held, wherein Uddhav  
19 Thackeray was elected as President. The results for duly communicated in the prescribed  
20 format to the Election Commission on 27th of February 2018. My Lords, the Election  
21 Commission and that is not relevant here -- Election Commission, in its order, says, I don't  
22 have your Constitution. Therefore, I will not consider that you are above the organizational  
23 wing structure. I will not consider at all. So I go only by what is the legislative majority and the  
24 legislative majority is 38 people from the Eknath Shinde group. Therefore they get the symbol.  
25 Anyway that's, that's another matter..

26

27 Then My Lords October 2019, elections in the 40th Legislative Assembly of Maharashtra were  
28 held. The seat distribution of the said election inter se of political parties is following. Your  
29 Lordship knows this. You have seen it before.

30

31 Then My Lords, November 2019, a post-poll alliance was formed between the Shiv Sena, the  
32 NCP, as well as the INC called Maha Vikas Aghadi to form a stable government in the State of  
33 Maharashtra with the President of Shiv Sena, Uddhav Thackeray being sworn in as the Chief  
34 Minister. 23-11-2019 prior to the swearing in of Thackeray , the Governor hastily swore in  
35 Devendra Fadnavis early in the morning as a Chief Minister of Maharashtra. This honourable  
36 court in Shiv Sena Vs. Union of India directed an immediate floor test and the Devendra  
37 Fadnavis resigned before facing the floor of the house. This only indicates how Governors have

1 been conducting themselves. How can a Governor have sworn in somebody as a Chief Minister  
2 without knowing that he has majority in the early hours of the morning?

3

4 **JUSTICE NARASIMHA:** This order is on 23rd November?

5

6 **MR. SIBAL:** Yes.

7

8 **JUSTICE NARASIMHA:** Supreme Court's Order?

9

10 **MR. SIBAL:** Yes. Oh the order? I'll just...2019 10 SCC 809.

11

12 **JUSTICE NARASIMHA:** Tell me later.

13

14 **MR. SIBAL:** Then My Lords, it's mentioned there. Anyway. April May 2020 Governor has  
15 been at loggerheads with the... 25-11? Oh 25-11, Sunil Prabhu. Now this is important. 25-11  
16 Sunil Prabhu was appointed as Chief Whip of the Shiv Sena Legislative Party with the blessings  
17 of Uddhav Thackeray, President of the Shiv Sena political party and the same was duly notified  
18 to the Speaker of the Maharashtra Legislative Assembly. My Lords, that actually, if Your  
19 Lordships don't mind, look at that document. Or do you want to read the dates and then later.

20

21 **JUSTICE NARASIMHA:** We will read the entire dates.

22

23 **MR. SIBAL:** Alright, alright. Then April May 2020 the Honourable Governor has been at  
24 loggerheads with the MVA government and is almost created a political crisis. Governor was  
25 sitting on to the Shri Uddhav Thackeray's recommendation for nomination to the Maharashtra  
26 Legislative Assembly despite a period of six months as an unelected members about to expire  
27 on 27-05-2020. Further the Governor had blocked holding of the Speaker's election. No  
28 Speaker's election took place. My Lords he was not a member .... there was a seat My Lords for  
29 the Legislative Council, which had to be.. he had to be elected from that seat. He wouldn't hold  
30 the election for almost six months. This tells you My Lords, how Constitutional authorities are  
31 acting. First you swear in somebody, he resigns the next morning, then you have you have this  
32 problem. The BJP has been attempting to create divisions within the Shiv Sena 20th June  
33 2020. In the recently conducted MLC election wherein despite having the requisite number of  
34 MLAs on its side, the MVA alliance, led by Shiv Sena lost the seat to the BJP. This was because  
35 of cross voting within the MVA and particularly within the Shiv Sena at the behest of the BJP.  
36 My Lords, I'm not going to rely on these facts, My Lords because this is disputed. So that these  
37 facts I'm not going to rely on. It was widely reported in the media that Eknath Shinde, who

1 was then the Cabinet Minister of Urban Development and Public Works, has along with certain  
2 other delinquent MLAs of the Shiv Sena gone into hiding in the BJP ruled neighbouring state  
3 of Gujarat.

4

5 Then 21 - 6 My Lords. These are the undisputed facts that now start. To contain and allay, the  
6 apprehensions that were arising in the party post the MLC elections, an urgent meeting of the  
7 Shiv Sena a Legislative party was called on the 21st of June. Eknath Shinde along with certain  
8 other delinquent MLAs, did not attend the above mentioned meeting dated 21st of June. The  
9 party resolved in the said meeting to remove Eknath Shinde from the position of the leader of  
10 the Shiv Sena legislative party and appoint Ajay Chaudhary instead. Now this is interesting  
11 because this is a matter which Your Lordships have to constitutionally considered. So, a  
12 faction, which is a Legislative Party, decides that I will change the Whip. Constitutionally  
13 impermissible.

14

15 Then My Lords, the decision, then Eknath Shinde, along with certain other delinquent MLAs  
16 did not attend the meeting. Party resolved in the said meeting to remove Eknath Shinde from  
17 the position of the leader of the Shiv Sena legislative party and appoint Shri Ajay Chaudhary  
18 instead. The decision to remove Eknath Shinde was communicated by Uddhav Thackeray to  
19 the Honourable Deputy Speaker. After due verification, the Deputy Speaker accepted the  
20 change of leadership of Shiv Sena in the House. The reason why this happened was My Lords  
21 because as Your lordship knows, he had to be a member of the Legislative Council because  
22 there was no seat in the Assembly. So, the then Chief Minister became a member of the  
23 Legislative Council. Therefore My Lords, in the meantime, somebody had to be appointed as  
24 a leader of the House because they were the treasury benches. So Eknath Shinde was the leader  
25 of the House and he was removed from his position of leadership by a decision of the party  
26 and the Deputy Speaker was told about it and he accepted it. In the larger interest of the party,  
27 it was thought fit to call for another legislative party meeting to give one more opportunity to  
28 the MLAs who were absent in the meeting on 21st June to show their loyalty and support to  
29 the original political party. Hence another meeting of the SSLP was called. Individual notices  
30 were issued to all the MLAs of the Shiv Sena and it was made adequately clear that "failure to  
31 participate in the meeting without providing valid and adequate reasons in writing,  
32 communicated in advance to the undersigned will result in consequential action against you  
33 under the relevant provisions of the Constitution" So we were... they were told. On 22nd June,  
34 despite the importance of the meeting called on 22nd of June aimed at consolidating the  
35 SSLP's strength to contain any possible horse trading, several dissident MLAs did not attend  
36 the meeting. Instead, the delinquent MLAs sitting in BJP ruled states sent communications  
37 rejecting the holding of the meeting as illegal, which itself shows that those MLAs had been



1 working contrary to the dictate of the original political party. 22nd June: Sunil Prabhu in the  
2 capacity of Chief Whip responded to the communication Dated 22nd of June of the delinquent  
3 MLAs rejecting the reasons given for their absence from the SSLP meeting as an afterthought,  
4 frivolous, backdated and proof of them acting contrary to the interests of the original political  
5 party.

6  
7 That's the notice that Your Lordships has read, 21st of June, Dated 21st June. I mean, received  
8 on 22nd June at 11:30 a.m., but dated 21st June. Eknath Shinde wrote to the Deputy Speaker  
9 communicating his appointment as leader. So now My Lords the Legislative Party or a  
10 majority of the Legislative Party can decide who is going to be the leader to the party in the  
11 House, of the party... sitting in Assam.

12  
13 22nd of June, simultaneously a purported notice for the removal of Deputy Speaker Narhari  
14 Zirwal under Rule 11 under Maharashtra Assembly Rules read with 179, was received at a  
15 Legislature Secretariat, expressing no confidence in the Deputy Speaker. Notice was hand  
16 delivered by an unknown courier, and not by any MLA. It is also relevant to note that none of  
17 the purported signatories of the notice had personally delivered any such notice, nor it has...  
18 it was sent through the registered email address of any of them. The Shiv Sena Legislative  
19 Party in its meeting took note of Shri Eknath Shinde and the rebel MLAs and the fact that they  
20 had indulged in antiparty activities and were trying to destabilize the MVA government. In  
21 view of this it was resolved that the Shiv Sena Legislative party meeting at the then CMs  
22 residence that necessary legal action shall be taken under the Tenth Schedule against the  
23 errant MLAs. Now who is CM? CM My Lords is a member of the Legislative Council. He is also  
24 the *param pramukh*, *paksh pramukh*. So he is the political leader. He is the one who decides.

25  
26 23rd of June, this Sunil Prabhu filed disqualification petitions under para 2 (1) (a) seeking  
27 disqualification of Eknath Shinde, and 15 other delinquent MLAs of Shiv Sena.

28  
29 24th of June, it was widely published in the news report that the rebel MLAs is led by Eknath  
30 Shinde were acting in a collusion with BJP and their entire logistical arrangement in Guwahati  
31 was made by the BJP leaders.

32  
33 24th of June, Secretary of Maharashtra Legislative Assembly received an email from an  
34 advocate named Vishal Acharya attaching notice for removal of the Speaker dated 21st June.  
35 On the same day, the Secretary of the Assembly communicated the decision of the Deputy  
36 Speaker to the email of Vishal Acharya, refusing to take on record the communication dated

1 22nd of June until the genuineness and veracity of any such communication and its signatories  
2 was ascertained.

3

4 25th of June, one of the dissident MLAs Deepak Kesarkar, in a live interview, declared that the  
5 dissident MLAs had formed a new group and named it Shiv Sena Balasaheb. And it also  
6 announced that they will have a separate leader Whip, office and everything else, just like a  
7 party has.

8

9 25th of June, Honourable speaker, after due verification, was pleased to issue notices to the  
10 delinquent MLAs under Rule 6 of the Maharashtra Legislative Assembly disqualification on  
11 ground of defection Rules 86 read with the Tenth Schedule of the Constitution asking the  
12 delinquent MLAs to file their replies by 5:30 on the 27th June 2022.

13

14 On 25th of June The National Executive Meeting of the Shiv Sena was held. The said meeting  
15 was attended by over 163 representatives of the National Executive and the leadership of  
16 Uddhav Thackeray as the President of Shiv Sena was unanimously and equivocally accepted  
17 by the National Executive.

18

19 25th of June, Sunil Prabhu filed an additional affidavit that the disqualification proceedings  
20 inter alia containing the media reports that showed the hobnobbing of the delinquent MLAs  
21 with BJP leaders.

22

23 25th of June, Sunil Prabhu file disqualification petitions against two independent MLAs and  
24 one MLA belonging to the Prahar Janshakti Party. The petition against the independent MLAs  
25 were filed on the ground that they gave up their independent status by taking part in the  
26 resolution dated 21st of June passed by the rebel MLAs and signing the said resolution on the  
27 letterhead of SSLP. Also the ground taken against BJP MLA was that the said MLA voluntarily  
28 gave up membership of his original political party by taking part in the said resolution, dated  
29 21st June, and by signing the same on the SSLP letterhead.

30

31 27th June, issuance of the notice of 25th June, by the Honourable Deputy Speaker came to be  
32 challenged by the 16 MLAs, including Sri Eknath Shinde who filed a writ petition under 32.  
33 The said Court, the Honourable Court by the interim order dated so and so in writ petition so  
34 and so was pleased to in the interim direct this. Thus, meanwhile, as an interim measure, the  
35 time granted by the Deputy Speaker of the Assembly to the petitioners or the other similarly  
36 placed members of the Legislative Party to submit their written submissions up to today on,  
37 today 05:30 p.m. is extended till 12.07.

1

2 My Lord, just kindly note the language here - as an interim measure. They have not filed a  
3 reply till date. We are now in February 2023. They've not filed a reply.

4

5 Now My Lords, prior to this, prior to the passing of this judicial order My lords, all that  
6 happened was happening outside of Bombay, outside of Maharashtra, in a state in the  
7 northeast and by.. by whom? By these legislative... members of the Legislative Assembly, that's  
8 all. There was no party in sight. There was no meeting of any party. There was.... nobody called  
9 for a meeting of the party. And these are undisputed facts My Lords. These are not disputed  
10 facts. . Can the Tenth Schedule countenance a situation, where because of whatever reasons,  
11 My Lords, we don't want to go into it, a majority or even a minority of MLAs are just, My Lords,  
12 they... let's forget the majority, supposing a minority. We don't sometimes need the majority  
13 to topple the government. We only need a minority. Supposing it's a minority My Lords and  
14 the minority outside the state of Maharashtra says I have formed. I am the political party. And  
15 then a judicial order is passed on a disqualification petition, that - no, no, no if a petition is  
16 filed, you can file your reply after 10-15 days. In the meantime, the minority gets in touch with  
17 the other party topples the government. A new Chief Minister is appointed. Can you ever  
18 imagine that the Tenth Schedule would allow that? Can it ever be countenanced My Lord?  
19 This is harakiri. This is Legislative harakiri. Political harakiri. And you can't interpret the  
20 Tenth Schedule My Lords in this particular fashion to allow an elected government to fall.  
21 That's why I said it is judicial orders of this Court that resulted in this.

22

23 Then My Lords 27th of June, as several other members of the SSLP had also openly indulged  
24 anti-party activity. Now can anybody say, My Lords, that this is not anti-party or this is not  
25 giving up membership of the party. One of you, one of you sitting there say that we are forming  
26 a new party called Shiv Sena Balasaheb and you are sitting in a state ruled by the opposite,  
27 ruled by a party My Lords, which was in the opposition. First you go to Gujarat, then you go  
28 to Assam. There are no dispute on that. These actions per se amount to giving up membership  
29 of the party, apart from the fact that you don't attend the meeting on 21st-22nd of June. So  
30 what is the Speaker going to decide? What can he decide given these facts?

31

32 Then 28th of June, My Lords, late in the evening the leader of opposition in the state of  
33 Maharashtra, Devendra Fadnavis went to meet the Governor and requested him to hold a floor  
34 test.... after the stay. That is where the role of the Governor comes in. On 28th of June,  
35 immediately after meeting the Devendra Fadnavis, and with utmost haste, the Governor sent  
36 a communication dated 28th of June though received in the early hours of 29th of June to the  
37 then Chief Minister directing him to face a floor test in the House on the very next day, 30th

1 of June. It is relevant to note that the Honourable Governor did not even attempt to ascertain  
2 from the Chief Minister, whether they enjoyed the majority of the House. On 28th of June, the  
3 Governor by way of a separate communication dated 28th of June, which was received in the  
4 early hours directed the latter to forthwith. It directed the latter to forthwith on 30th June to  
5 convene an assembly and hold a floor test. 29th of June, Sunil Prabhu filed a writ petition  
6 before this Honourable Court seeking a stay. So My Lords, we said please stay the matter.  
7 Please don't allow this to happen. Of the directions of the floor test in view of the fact that the  
8 disqualification petition of 42 MLAs under the Tenth Schedule were pending, by order dated  
9 29th June in writ petition so and so. This court was pleased to direct as follows. Having given  
10 our thoughtful consideration to the rival submissions, we do not find any ground to stay  
11 convening of the Special session of the Maharashtra Assembly. How?  
12

13 Vidhan Sabha on 30th June, tomorrow at 11:00 AM and with the only agenda of a trust vote.  
14 So therefore you give legitimacy to those against whom disqualification petitions are pending,  
15 and such legitimacy that they are able to topple the government by colluding with another  
16 party which is an opposition in that very state. That's the effect of the judicial order. So first  
17 stay the proceeding before the Deputy Speaker, then allow another this collusion. And get an  
18 elected government toppled. What used to be My Lords the misuse of 357 has now been  
19 substituted by the misuse of the Tenth Schedule. 356 is now misuse of the Tenth Schedule.  
20

21 And this. The proceedings in the trust vote to be convened on 30th of June, shall be subject to  
22 the final outcome of the instant petition. That's another interesting thing My Lords,  
23 proceedings of the Trust Vote shall be subject to the final outcome of the instant Writ Petition,  
24 as well as the Writ Petitions referred to above. So therefore My Lords every action of the  
25 Governor resulting in a new Government having been formed is subject to Your Lordships'  
26 decision in these petitions. So you cannot give it the colour and clothe it with legality because  
27 the judicial order itself says that it's subject to. So you cannot say now the trust vote has  
28 happened. Now a Chief Minister has been installed. Now a government is in place. Now you  
29 can't do a thing about it. The special session of Maharashtra Vidhan Sabha shall be conducted  
30 in accordance to the directions that contained in the communication dated through 28th June  
31 of the Governor of Maharashtra. Then on 29th June, Chief Minister Uddhav Thackeray  
32 resigned. He knows the writing was on the wall. Have been given legitimacy to those who.  
33

34 Then 30th of June at around 3 p.m. Eknath Shinde and Devendra Fadnavis met the Governor  
35 and staked claim to form the government. This is also anti-party activity. No evidence is  
36 required on this.  
37

1 Then 30th of June, the Governor, without taking into account the fact that the membership of  
2 Eknath Shinde itself was in dispute. Here again, the question of the Governor comes in My  
3 Lords, in dispute in the imminent disqualification petition pending against him swore Shri  
4 Eknath Shinde in as the Chief Minister and Devendra Fadnavis as the Deputy Chief Minister  
5 of Maharashtra. The honourable Governor, thereafter, directed Eknath Shinde to prove his  
6 majority on the floor of the house. We knew that he, everybody knows that he would have the  
7 majority in the House. You can fool the Constitution, but not the arithmetic. Then the  
8 Governor without taking into account the fact that the members and I had read that. Then  
9 30th June due to their antiparty activities which unquestionably amounted to relinquishing  
10 membership of the Shiv Sena political party, Shri Shinde, Tanaji Savant, Uday Samant and  
11 Gulabrao Patil were removed from their positions in the organizational set up of the party by  
12 the undisputed President of the Shiv Sena Shri Uddhav Thackeray . My Lords, let's just note  
13 here, no meeting of any political party took place at the instance of Eknath Shinde and you will  
14 see that tomorrow in the in the petition before the Election Commission that alleged meeting,  
15 alleged meeting, which I will show is bogus, happen to have taken place on 18th July after all  
16 this was over. And the petition for getting the symbol was filed on the 19th July, on the very  
17 next day.

18

19 Then My Lords, 1st of July 2022 Shiv Sena Secretary sent a letter to the Election Commission  
20 intimating the authority regarding the removal of Eknath Shinde from the positions of Shiv  
21 Sena and change in the organizational setup of Shiv Sena there to. Also by the separate letter,  
22 the Shiv Sena Secretary intimated the ECI regarding the removal of Tanaji Sawant and Uday  
23 Samant from the organizational position of Shiv Sena. Similarly Shiv Sena Secretary sent  
24 another letter to the Election Commission of India intimating the authority regarding the  
25 removal of Gulabrao Patil from the organizational position of Shiv Sena.

26

27 On 1st of July an applicant for directions in IA such an such was filed by Sunil Prabhu in the  
28 present writ petition seeking an interim order suspending the delinquent MLAs against whom  
29 disqualification petitions have been filed till the final adjudication of the Tenth Schedule  
30 proceedings. The said application was mentioned before this Court for urgent interim hearing  
31 listing wherein this Honourable was directed to list the application along with the writ petition  
32 on 11th of July.

33

34 Then 2nd of July, the Principal Secretary Maharashtra Legislative Party Assembly circulated  
35 working order for conducting elections to the office of Speaker on 3rd of July. The said agenda  
36 showed that the name of Rahul Narvekar was proposed by the BJP MLA and the name of

1 Ranjan Prabhakar Salvi was proposed by Shiv Sena. This Rahul Narvekar was proposed by a  
2 BJP MLA because he happened to be member of the BJP.

3

4 Then 2nd July Sunil Prabhu acting as chief Whip issues a whip. Now till that day Sunil Prabhu  
5 is still the whip. Acting as Chief whip of SSLP issued whip to the members of SSLP regarding  
6 the election of the Speaker scheduled on 3rd July, all the party members were asked to remain  
7 present in the assembly and vote for the Shiv Sena candidate Rajan Salvi. Sunil Prabhu issued  
8 a further whip to the members of SSLP regarding confidence motion scheduled on 4th of July.  
9 All the party members were asked to remain present in the assembly and till the end of the  
10 session and vote against the Confidence Motion. My Lords, Your Lordships, just keep one  
11 thing in mind, it's not their case that they merged with any party, it's their case that they belong  
12 to the Shiv Sena so if they belong to the Shiv Sena, then how can they disobey the whip and  
13 vote for a BJP candidate against the Shiv Sena member? There's no evidence required here My  
14 Lords.

15

16 Then, on 3rd of July, Ajay Chaudhary, acting as a leader of the SSLP, submitted a letter to the  
17 Deputy Speaker requesting him to conduct the election of the Speaker of the Legislative  
18 Assembly by division of votes. Ajay Choudhary on the 3rd of July submitted a letter to the  
19 Deputy Speaker, requesting that the votes cast by the members of the Legislative Assembly  
20 who have incurred disqualification should not be considered during the election of the  
21 Speaker.

22

23 3rd of July the election for the office of the Speaker of Maharashtra Legislative Assembly was  
24 held, Rahul Narvekar, the candidate for the Bharatiya Janata Party was unconstitutionally  
25 elected as the Speaker of the Maharashtra Legislative Assembly after getting a total of 164  
26 votes. During the elections it was recorded by the Deputy Speaker that 39 delinquent MLAs of  
27 Shiv Sena in a Legislative party led by Eknath Shinde had voted against the party whip. Now,  
28 My Lords, at this point in time there is no other whip. Now you will see on the evening of the  
29 3rd...

30

31 **CHIEF JUSTICE CHANDRACHUD:** How many votes did the rival candidates poll on the  
32 3rd of July?

33

34 **MR. SIBAL:** That's all. We are not on majority minority. That's correct. I'm glad that my  
35 learned friend pointed it out, My lords. Correct.

36

1 **CHIEF JUSTICE CHANDRACHUD:** Therefore, if these 39 are excluded from 164, will  
2 they still have 125?

3

4 **MR. SIBAL:** I am not on that My Lords, I'm only saying that they voted against the Whip  
5 therefore, they are deemed to be disqualified. That's all I'm saying. I'm not saying, that he  
6 would have, supposing My Lords all of them are disqualified, because on that particular day  
7 they voted against the Whip.

8

9 **CHIEF JUSTICE CHANDRACHUD:** These 39?

10

11 **MR. SIBAL:** All 39.

12

13 **CHIEF JUSTICE CHANDRACHUD:** No, but therefore if you exclude these 39 from the  
14 164.

15

16 **MR. SIBAL:** Yes.

17

18 **CHIEF JUSTICE CHANDRACHUD:** They're still down to, they still get 125. Right?

19

20 **MR. SIBAL:** Your Lordship is right, at the moment My Lords, I am not challenging. At the  
21 moment My Lords...

22

23 **CHIEF JUSTICE CHANDRACHUD:** Because this comes soon on the heels of the trust  
24 vote, which takes place on the 30th.

25

26 **MR. SIBAL:** Yes.

27

28 **CHIEF JUSTICE CHANDRACHUD:** So this is now an indicator within three days...

29

30 **MR. SIBAL:** My Lords, that's what happened on the 4th...

31

32 **CHIEF JUSTICE CHANDRACHUD:** Because, Mr. Sibal...

33

34 **MR. SIBAL:** That don't happened on the 30th My Lord.

35

36 **CHIEF JUSTICE CHANDRACHUD:** Right, you don't, ultimately you don't, you don't face  
37 the trust vote.

1

2 **MR. SIBAL:** Yeah, I don't My Lord and therefore it is held on the 4th. And we challenged the  
3 trust vote also. We've challenged all deficient, the elections, the speaker, the trust vote  
4 whatever. All that is challenged. My Lords the question is, at the moment as we are dealing  
5 with a very very limited issues. One, should the courts have given time?

6

7 **CHIEF JUSTICE CHANDRACHUD :** That is a separated issues because it's an order which  
8 is an Interim Order.

9

10 **MR. SIBAL:** Yeah. It's an Interim Order. What was the result of that My Lords? These people  
11 were able to topple the Government without the Disqualification Petitions having been  
12 decided. There was an elected government My Lord which was in power. The Tenth schedule  
13 was used for the purposes of toppling an elected government and supposing tomorrow, Your  
14 Lordship's posed by these actions which are uncontroverted that they disqualified themselves.  
15 Both, on both counts 2-1A, and 2-1B. What will be the result? And if Your Lordship's pose  
16 otherwise, let's assume against me. Then this will be, you have given them a model to topple  
17 every elected Government.

18

19 **CHIEF JUSTICE CHANDRACHUD:** Mr. Sibal, are we not still down to, if you are really  
20 looking at the numbers here, are we not down to the situation where the Speaker's election at  
21 least indicates that if you, because 38 was sought to be disqualified. There were  
22 Disqualification Petitions against the 38. Now if we exclude the 38 for a moment from the 164  
23 who voted in favour of the resolution for the Speaker, you still have a situation where you,  
24 that's in very close proximity to the date on which the Trust Vote was to be held, on the 30th.

25

26 **MR. SIBAL:** Yes.

27

28 **CHIEF JUSTICE CHANDRACHUD:** Now you resign, right, on the 30th?

29

30 **MR. SIBAL:** Yes.

31

32 **CHIEF JUSTICE CHANDRACHUD:** And therefore, is this not really clearly an indicator  
33 that even excluding these 39...

34

35 **MR. SIBAL:** That's alright, the Speaker could have been, yes, I am not disputing that My  
36 Lords. I am not sure what the arithmetic is? Half, 145 is the halfway mark My Lords. Without  
37 34, you are below My Lords, I'm sorry. In fact, the arithmetic is the other way.



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**MR. KAUL:** No, My Lords 288, was the total strength...

**MR. SIBAL:** Just give us, we'll just give you the...Total strength of the assembly....

**MR. KAUL:** 288.

**CHIEF JUSTICE CHANDRACHUD:** That was there from Sibal's chart.

**MR KAUL:**...Actual votes received by Mr. Narweker were 164, which is over the 50% Mark of 144.

**CHIEF JUSTICE CHANDRACHUD:** I just, one second, total strength?

**MR. SIBAL:** Half mark would be 145.

**MR KAUL:** Yes, so if 144 is the halfway mark, 145. 164 votes were received by Mr. Narveker if the strength was taken to be 288. If 39 MLAs are excluded from the strength of the Legislative Assembly, the effective strength comes down to 249. And out of those..

**CHIEF JUSTICE CHANDRACHUD:** Just one second.

**MR. KAUL:** And the effective votes received by Mr. Narveker were 125, which is over 50% of the votes required. So under any circumstances, even if 39 MLAs are removed.

**[?]:** Only 16 disqualified.

**MR. KAUL:** Yes, plus on that date there were only 16 disqualifications. But I'm going a step further, even if there were 39 disqualifications, even then, Mr. Narvekar was proved.

**JUSTICE NARASIMHA:** What is the halfway mark of 249?

**MR. SIBAL:** 124 My Lords. 125.

**MR. KAUL:** 125. And he had 125.

**CHIEF JUSTICE CHANDRACHUD:** Exactly the same.

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**MR. KAUL:** Yes. And at 12:01, they moved a resolution expressing disqualification, expressing no confidence, it is defeated and later again and defeated.

**MR. SIBAL:** My Lord, there were three independent disqualifications also, apart from this. One second, sir, there were three disqualifications independent also were subject to disqualification. So it makes it below 125. Total is 41.

**MR. KAUL:** But then the strength of the House also comes down.

**MR. SIBAL:** That's all right. But you don't get the majority then. But as I said, we are getting involved in issues that are not an issue before the Court.

**JUSTICE NARASIMHA:** With 249, we will have to explore the independents also. And therefore the halfway mark will accordingly be that. Is that what you are saying?

**CHIEF JUSTICE CHANDRACHUD:** So the total is, go over it again. Total strength of the assembly is 288. The halfway mark is 145.

**MR. KAUL:** That's right.

**CHIEF JUSTICE CHANDRACHUD:** Excluding the 39 Shiv Sena MLAs and plus three independent MLAs...just 1 second.

**MR. SIBAL:** Will be 246, My Lords. And they would be having 122. But My Lord, the tenth Schedule doesn't talk of any of this. You can do the arithmetic..

**CHIEF JUSTICE CHANDRACHUD:** So, we would be down to? Yeah, that is 42. So the effective House, strength of the House comes to 288 minus 42.

**MR. SIBAL:** Yes, yes.

**CHIEF JUSTICE CHANDRACHUD:** Which is 248 and 246.

**MR. SIBAL:** 123 is a halfway mark. My Lords, whether they won or lost is not the issue. They will still be disqualified.

1 **CHIEF JUSTICE CHANDRACHUD:** No, we just. That's all right. The constitutional...

2

3 **JUSTICE KOHLI:** 123...

4

5 **MR. SIBAL:** 124 is the halfway mark. 124. My Lords one more has to be given for to have half  
6 way mark.

7

8 **CHIEF JUSTICE CHANDRACHUD:** So half way mark is 123 and Narvekar gets 125?

9

10 **MR SIBAL:** Three more My Lords, that were disqualified.

11

12 **CHIEF JUSTICE CHANDRACHUD:** You have included those three.

13

14 **MR SIBAL:** 164 minus 42, My Lords. So 122.

15

16 **CHIEF JUSTICE CHANDRACHUD:** So when you, if you exclude those three then he gets  
17 122.

18

19 **MR. SIBAL:** Yeah, 122. So it's below the halfway mark, but these are, the Tenth Schedule, is  
20 not concerned with this. We're not concerned with that according to me. One second, one  
21 second because we have said so.

22

23 **MR. KAUL:** How can three independent MLAs...

24

25 **MR. SIBAL:** Now how can that is to be decided by the Speaker.

26

27 **MR. KAUL:** You can say what you want. But if there are three independent MLAs, they can't  
28 be disqualified by you.

29

30 **MR. SIBAL:** Who says that

31

32 **MR. KAUL:** Procedure. They can't be...

33

34 **MR. SIBAL:** My learned friend....Mr. Kaul you have to read the 10th Schedule. Please read  
35 the 10th Schedule before you make that submission. My Lords, unnecessarily there's no point  
36 in making a submission which is contrary to the 10th Schedule.

37

1 **MR. JETHMALANI:** No, but the most crucial fact is that the Disqualification Petitions are  
2 only against 16 and not not 39.

3

4 **MR. SIBAL:** Doesn't matter.

5

6 **MR. JETHMALANI:** But the disqualified MLAs were only 16, not 39.

7

8 **MR. SIBAL:** One second, in fact, on the third, all 39 are under Disqualification because they  
9 voted against the Whip.

10

11 **MR. KAUL:** That's after the Speaker's...

12

13 **MR. SIBAL:** No, no. Before the Speaker.

14

15 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** We are proceeding towards the  
16 entirety of the 38 function, where is the position?

17

18 **MR. SIBAL:** My lords, I don't think this arithmetic exercise is of any relevance for the  
19 purposes of the 10th Schedule.

20

21 **CHIEF JUSTICE CHANDRACHUD:** We get your point that it's a 10th Schedule issue.

22

23 **MR. SIBAL:** Yes correct. It is just a matter of arithmetic. My lords majorities are made up  
24 like this only. I was on 14th.

25 [NO AUDIO]

26

27 **MR. JETHMALANI:** Minus that 39, it was 125.

28

29 **MR. SIBAL:** My Lords we are not on 39, we are on 42.

30

31 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Just give us the number of, number  
32 that he has gotten, Narvekar.

33

34 **CHIEF JUSTICE CHANDRACHUD:** Narvekar gets total 125 votes.

35

36 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Is that right?

37

38 **MR. JETHMALANI:** No, he gets 164.

1 **CHIEF JUSTICE CHANDRACHUD:** Actual votes are 164.

2

3 **MR. SIBAL:** Yes.

4

5 **CHIEF JUSTICE CHANDRACHUD:** Now we have to, we have to now consider I mean, we  
6 just saw the, from 164, you suppose deduct 39, which are the 39 persons against whom you  
7 say, they are disqualified?

8

9 **MR. SIBAL:** No. Even the other three we said the same My Lord. We filed a Petition to that.

10

11 **CHIEF JUSTICE CHANDRACHUD:** Therefore if you exclude 39, the Shiv Sena MLAs and  
12 three independents. So you exclude from 164, 42, you are down to 122.

13

14 **MR. SIBAL:** That's correct.

15

16 **MR. JETHMALANI:** But they only had a 107. They got a 107 votes for their Speaker  
17 candidate.

18

19 **MR. KAUL:** The actual strength was 287. Right.

20

21 **MR SIBAL:** If they had obeyed the Whip, we'd be in majority, he would not have got elected.  
22 107 plus 39 or whatever. So, this is, we are going into areas which have really not our concern  
23 at the moment. My concern is what happened and how the 10th Schedule, in fact, which was  
24 meant to deal with.

25

26 **CHIEF JUSTICE CHANDRACHUD:** Mr. Sibal, that for it also appears that apart from the  
27 39, who according to you were disqualified, the three independents of course, that you say they  
28 shouldn't have, they are also liable to be disqualified. There are other members of your  
29 Legislative Party who also voted in favor of Mr. Narvekar that day.

30

31 **MR. SIBAL:** No, there some remained absent My Lord. They didn't vote. They didn't vote for  
32 that.

33

34 **CHIEF JUSTICE CHANDRACHUD:** Mr. Narvekar polls 122.

35

36 **MR. SIBAL:** Yes.

37

1 **CHIEF JUSTICE CHANDRACHUD:** After excluding 39 S S MLAs and three  
2 independents,

3

4 **JUSTICE HIMA KOHLI:** 42.

5

6 **CHIEF JUSTICE CHANDRACHUD:** Narvekar still polls 122.

7

8 **MR. SIBAL:** Some must have been absent, some would have been absent. There were 13  
9 Independents, My Lords. There are 13 independents, various parties, SP, BJP, CPM, VBA,  
10 MNS, Swabhiman Party, Rashtriya Samaj Paksha, ASP. All kinds of parties are there. My  
11 proposition has nothing to do with the Speaker.

12

13 **JUSTICE NARASIMHA:** We get that point.

14

15 **CHIEF JUSTICE CHANDRACHUD:** What you are really saying is that look, irrespective  
16 of the numbers games, so to speak. According to you the, first the Speaker could not have been  
17 thwarted from deciding the disqualification.

18

19 **MR. SIBAL:** Yes, yes.

20

21 **CHIEF JUSTICE CHANDRACHUD:** And second, a trust vote could not be held when the  
22 Disqualification Petition was still pending before the Speaker. That really is too...

23

24 **MR. SIBAL:** Those are the two points My Lord. And the Governor should not have sworn  
25 him in, that's the action of the Governor. He could not have sworn him, a man My Lords who  
26 is being, who is facing disqualification.

27

28 **CHIEF JUSTICE CHANDRACHUD:** But this is what we also have to go into the wider  
29 issue as to whether can a trust vote, in that sense or should a trust vote be postponed?

30

31 **MR. SIBAL:** Yeah.

32

33 **CHIEF JUSTICE CHANDRACHUD:** Mainly because a Disqualification Petition is  
34 pending?

35

36 **JUSTICE HIMA KOHLI:** Pending.

37

1 **MR. SIBAL:** No My Lords, is the question is whether time should have been given to them?  
2 It all comes down to 27th of June.

3  
4 **CHIEF JUSTICE CHANDRACHUD:** 27th, yes. That's the...

5  
6 **MR. SIBAL:** So My Lords, the trust vote only happened after that. Had that not happened,  
7 the trust vote would not have happened.

8  
9 **JUSTICE NARASIMHA:** So therefore in other words what you are arguing is that the issue  
10 relating to the 10th Schedule must be done later and what is to be decided is about the status  
11 of the party outside the Legislative Assembly which is to be determined whether there is a split  
12 or a dissent in the party as a primary issue...

13  
14 **MR. SIBAL:** Yes, correct, I am deeply obliged.

15  
16 **JUSTICE NARASIMHA:** And once that is decided, the question of 10th Schedule triggers  
17 in thereafter, is your argument.

18  
19 **MR. SIBAL:** No, the Tenth Schedule triggers immediately, My lord.

20  
21 **JUSTICE NARASIMHA:** Haan, Tenth Schedule will trigger immediately.

22  
23 **MR. SIBAL:** Immediately, yes.

24  
25 **JUSTICE NARASIMHA:** But for the Tenth schedule, what is to be seen is the events with  
26 respect to the political party, not the Legislative Party.

27  
28 **MR SIBAL:** No, no. The Tenth schedule cannot be subverted by members of the Legislative  
29 Party...

30  
31 **JUSTICE NARASIMHA:** Correct.

32  
33 **MR SIBAL:** Taking a decision that there is a split in the party.

34  
35 **JUSTICE NARASIMHA:** That is what I am saying.

36  
37 **MR SIBAL:** Without there being a split in the party.

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**JUSTICE NARASIMHA:** That's what I am saying.

**MR SIBAL:** Correct.

**JUSTICE NARASIMHA:** So your primary argument is that.

**MR. SIBAL:** My Lord, is saying what I'm saying, that is what My Lord is saying. So I can't contradict that.

[NO AUDIO]

**MR. SIBAL:** Now My Lords, Disqualification relates back to 21st of June. That's the day that they have to show what is their defense under the Tenth Schedule. That's the day.

**JUSTICE SHAH:** According to you the Speaker under the Tenth Schedule only gives the declaration?

**MR. SIBAL:** Yes, yes. That's correct.

**JUSTICE SHAH:** So whatever has happened after 21st June, it is always subject to the Disqualification from them is what you have submitted.

**MR. SIBAL:** That's right. My Lord because it relates back. That's Your Lordships five judges have held that, Constitution Bench has held that.

**JUSTICE SHAH:** So this is also one of the issues which is referred. What will be the consequences in between?

**MR. SIBAL:** That's correct. Your Lordship is right. So that's why I've always said, Nabam Rebia and all that has to be decided by Your Lordships one day. All this has to go ahead.

**JUSTICE NARASIMHA:** Today because the applications are pending, complaints are pending, the House is continuing.

**MR. SIBAL:** Yes.

**JUSTICE NARASIMHA:** It's not lapsed by flux of time.



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**MR. SIBAL:** No.

**JUSTICE NARASIMHA:** So the Speaker is there for the House. Speaker decides today, 10th Schedule complaints, it should relate back to....

**MR. SIBAL:** That's 21st of June.

**JUSTICE NARASIMHA:** 21st of June, 2022.

**MR. SIBAL:** That's correct. That's correct.

**JUSTICE NARASIMHA:** Then in simple cases we should ask the Speaker to decide.

**MR. SIBAL:** But My Lords, why ask the Speaker to decide for the simple reason, I'll tell Your Lordships why?

**JUSTICE NARASIMHA:** Your other argument that Court should decide is a different matter. If the 10th Schedule should operate, the complaints must be decided by the Speaker prima facie to start with. So that the argument is just this.

**MR. SIBAL:** Yes. Your Lordship is right.

**JUSTICE NARASIMHA:** Decide now, he should decide now. Speaker is speaker irrespective to whoever it is.

**MR. SIBAL:** Correct.

**JUSTICE NARASIMHA:** If he decides it will relate back.

**MR. SIBAL:** Correct, correct.

**JUSTICE NARASIMHA:** In other words to say, that we direct the Speaker to take a decision.

**MR. SIBAL:** The same thing should have happened to the Deputy Speaker on 27th of June.

1 **CHIEF JUSTICE CHANDRACHUD:** Mr. Sibal assuming you are right in everything that  
2 you have argued. That look first, the 27th Order should not have been passed, that the Speaker  
3 should have been allowed to take a decision on the Petitions for Disqualification. What is the  
4 net consequence of your argument? I mean what direction...

5

6 **MR. SIBAL:** Facts are undisputed. What is the Speaker to decide in this? My Lords, what is  
7 the Speaker? I want to know, what is the speaker to decide? What is the ...My lords what is  
8 the Speaker...they have not filed a reply till date.

9

10 **CHIEF JUSTICE CHANDRACHUD:** No, but the question is who decides? I mean the court  
11 can't take a decision on this?

12

13 **MR. SIBAL:** Why not? My Lords, the court decided. The court decided My Lords in Rana.

14

15 **CHIEF JUSTICE CHANDRACHUD:** They have the power to decide a disqualification...

16

17 **MR. SIBAL:** They decided on Rana My Lords, five judges decided in Rana, saying that we  
18 will not send it back. The facts were undisputed. My Lords, what is, what is that... there can  
19 be no defense My Lords because other the Tenth Schedule there is no defense except a merger.  
20 What is the Speaker to decide? And then Your lordships will say we can't issue a mandamus  
21 to the Speaker to decide within seven days. Then there will be a constitutional issue referred  
22 to five judges, then? Because you can't issue a mandamus to the Speaker. Justice Nariman,  
23 says, within three months, you should decide. No Speaker accepts that judgment. Where are  
24 we going?

25

26 **JUSTICE NARASIMHA:** That has got referred to Constitution Bench.

27

28 **MR. SIBAL:** What are...Where are we going My lords? My lords the point...

29

30 **JUSTICE NARASIMHA:** Since you are raising the question, it will require reconsideration  
31 of the court.

32

33 **MR. SIBAL:** I am myself saying so My Lords. No, no, you please, whatever it is. I have said  
34 so twice already.

35 [NO AUDIO]

36

37 **MR. SIBAL:** That's only a merger My Lords. That is not their case.

1

2 **CHIEF JUSTICE CHANDRACHUD:** But Mr. Sibal, just as you say that look, on the 27th,  
3 the Speaker could not have been stultified in taking a decision on the Disqualification  
4 Petitions, once we adopt that principle, then we have to be consistent and apply the principle  
5 across the spectrum because there's a very valid point which you are making which is that the  
6 Speaker himself is a constitutional...or the speaker themselves. I shouldn't say himself, the  
7 speaker themselves are constitutional authorities. Therefore the Speaker has to take a decision  
8 under the Tenth Schedule. If that is so, then we have to be extremely circumspect about, you  
9 know, replacing the mechanism, the institutional mechanism, which has been provided by the  
10 Tenth Schedule itself.

11

12 **MR. SIBAL:** The problem in this case is My lords that this is because we perpetuated an  
13 illegality. Now the speaker came into existence by perpetuating an illegality. And now you are  
14 giving the clothe of authority to that Speaker who has actually come into place because by....

15

16 **CHIEF JUSTICE CHANDRACHUD:** We can't reinstate the... we can't reinstate the earlier  
17 Speaker because there we are clenching upon the....

18

19 **MR. SIBAL:** In Nabam Rebia you did it. In Nabam Rebia you did it. In fact, you reinstated  
20 the entire government. I'm not saying you should do it, My Lords. But if Your Lordships ask  
21 me that question, that's exactly what happened in Nabam Rebia.

22

23 **JUSTICE KOHLI:** Mr. Sibal, would the court not be getting into the thicket of the entire  
24 gamut by virtually clothing itself with the powers of the Speaker?

25

26 **MR. SIBAL:** No, because the facts are undisputed. My Lords that's why I said these are  
27 undisputed documents. There is no political thicket here.

28

29 **JUSTICE KOHLI:** What you're saying is put the clock back in every which way. When you  
30 say a Speaker....

31

32 **CHIEF JUSTICE CHANDRACHUD:** Ultimately Mr. Sibal, it will boil down to this. You  
33 have to say that well, if you are logically consistent that retrace your steps to the position in  
34 which we were before the 27th of, before the 27th of June.

35

36 **MR. SIBAL:** That's what I said. When I argued Nabam, that's what I said and the court  
37 accepted it. That's exactly what I said. Because you cannot My Lords... this is all staring us in

1 the face. As I said, forget a majority, minority. Even five people can dislodge a government by  
2 saying that all right, we have a trust vote now. New speaker is appointed. Then every time the  
3 same thing will happen. My Lords, Your Lordships looks at the other point of view. If you do  
4 not My Lords, stop this menace now. It will be perpetuated. That's the other issue. I'm not  
5 saying Your Lordships, whatever Your Lordships will do will be acceptable.

6

7 **CHIEF JUSTICE CHANDRACHUD:** No, we are trying to explore that even assuming that  
8 your argument is correct, where does it lead the Constitutional Court to? I mean, therefore,  
9 that is something which would like to....

10

11 **MR. SIBAL:** There are many things you can do. Your Lordships can say you decide it within  
12 seven days only and you challenge the order if it's against you, before us after seven days.

13

14 **JUSTICE NARASIMHA:** Sorry come again?

15

16 **MR. SIBAL:** You decide it within 7 days. They have not even filed a reply. Let's assume. I am  
17 giving Your Lordships the options. Decide it within 7 days. We are sitting here. If there is an  
18 order against you, you come up and appeal and then we decide the matter.

19 [NO AUDIO]

20 In fact, the Speaker issued Notice against us on the 8th of July. He has not even issued Notice  
21 in their matter, in our matter.

22

23 **CHIEF JUSTICE CHANDRACHUD:** So, to have clarity Mr. Sibal, you say that we ask this  
24 Speaker to decide the disqualification of the 39 MLAs. Ask him to do so within a stipulated  
25 period, we will then challenge. The two options that Speaker may come to the conclusion that  
26 they are disqualified. Then what happens?

27

28 **MR. SIBAL:** My Lords, then what happens? They will come in appeal.

29

30 **CHIEF JUSTICE CHANDRACHUD:** No, but how does that affect? What is consequence  
31 practically in terms of the trust vote which takes place? Speakers, alright, assuming that the  
32 court has the power...

33

34 **MR. SIBAL:** Chief Minister will go. The Chief Minister will go.

35

36 **CHIEF JUSTICE CHANDRACHUD:** How?

37

1 **MR. SIBAL:** 164-1B. He cannot hold office.

2

3 **CHIEF JUSTICE CHANDRACHUD:** 39 people will go out.

4

5 **MR. SIBAL:** And he will not be Chief Minister...

6

7 **CHIEF JUSTICE CHANDRACHUD:** Disqualifies them..

8

9 **MR. SIBAL:** And he will not be the Chief Minister.

10

11 **CHIEF JUSTICE CHANDRACHUD:** 39 people then, if your argument is right, if the  
12 Speaker holds that well, they are not disqualified those. Then you have a right to challenge that  
13 order before an appropriate court.

14

15 **MR. SIBAL:** Not appropriate, before Your Lordship.

16

17 **CHIEF JUSTICE CHANDRACHUD:** Whatever. If the Speaker comes to the conclusion  
18 that there is a disqualification, those 39 persons go. In this case according to Eknath Shinde  
19 also, therefore has to move out.

20

21 **MR. SIBAL:** Yes.

22

23 **CHIEF JUSTICE CHANDRACHUD:** Then what is the next? What is the sequitur?

24

25 **MR. SIBAL:** Nothing. Then whoever is the Chief Minister will get back on the trust vote. We'll  
26 see about that.

27 Then this court order on 29th said, trust vote is subject to these petitions, all proceedings, all  
28 proceedings. Well this is the problem My Lord, the judicial orders are passed law. We are put  
29 in these situations. Then we are asked, what can we do now?

30

31 **CHIEF JUSTICE CHANDRACHUD:** We are not saying, what can we do. What we are  
32 asking is what is your submission on what we can do?

33

34 **MR. SIBAL:** No, no My Lords...

35

36 **CHIEF JUSTICE CHANDRACHUD:** Mr. Sibal, ultimately you are arguing a constitutional  
37 point, but we have to also factor relief which a Constitutional Court then should give or can is

1 capable of granting within the format of the Constitution to take the argument to its logical  
2 conclusions. So we are not, we're not for a moment saying that your argument is incorrect.  
3 What we are trying to do now is to test what are the limits of your argument. How far should  
4 the court go....

5

6 **MR. SIBAL:** As I told Your Lordships, Your Lordship is right. That's why, why did I say seven  
7 days, because Your Lordships puts it to me, ultimately, what should be done? And I said, Your  
8 Lordships its alright, give him seven days. But then the question will arise, can you issue a  
9 mandamus to the Speaker to decide within seven days? And there will be a constitutional crisis  
10 because the Speaker will not obey.

11

12 **JUSTICE NARASIMHA:** That we don't know now.

13

14 **MR. SIBAL:** I don't know, It is possible. It has happened before. It has happened before.

15

16 **JUSTICE NARASIMHA:** Nekchandra is the only case where there is a direction for an early  
17 disposal of the Petition. That's the only exception. And that again got referred to a Constitution  
18 Bench and saying that you can't direct this.

19

20 **MR. SIBAL:** Correct. Now My Lord, Justice Nariman's judgment...

21 [NO AUDIO]

22 In this also the same thing happened. The other problem is...Sorry... Fundamental issues.  
23 We've challenged decisions of 3rd of July, of the Speaker. My lords, we are the party that's  
24 fundamental. Before anything is done by the Speaker. So Your Lordships, my respectful  
25 submission...please consider the decisions and then whatever the outcome is, let the outcome  
26 be. But a shortcut of this nature will lead us nowhere.

27

28 <<LUNCH BREAK>>

29

30 **MR SIBAL:** So My Lords as I was on the list of dates, let me finish that first. So I was on item  
31 47. Now 48 - as the delinquent MLAs of SSLP voted against the party whip on 2nd July, issued  
32 regarding the election office of the Speaker, election of the Office of the Speaker. Fresh  
33 disqualification proceedings were initiated against the delinquent MLAs as per the provisions  
34 of 2(1)(b) of the 10th Schedule. Because whether they voted against the party Whip so all 39  
35 were involved in there. So 16 earlier, then on the 27th My Lords the balance 22, for which My  
36 Lords notice has not yet been issued, and all 39 now. This is 2(1)(b). That is 2(1)(a) and even  
37 for this notice has not been issued.

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**CHIEF JUSTICE CHANDRACHUD:** So this 3rd July, issued against how many you said?

**MR. SIBAL:** 39, 39 for two under 2(1)(b) for violating the Whip. I'm sorry.

**CHIEF JUSTICE CHANDRACHUD:** Fresh One?

**MR. SIBAL:** Fresh one, 2(1)(a) My Lord, 16 earlier for which notice was issued and 22 later for which petition was filed. But then, of course, next day was a trust vote. I mean, there was a decision and therefore, no notice has been issued. Even now, notice has... no notice has been issued. So those are all pending.

**CHIEF JUSTICE CHANDRACHUD:** And now the 39.

**MR SIBAL:** Now the 39. That's correct. That's correct. So and the election of the Speaker was held in complete violations of provision. Certain MLAs submitted letter notices to the Principal Secretary of Maharashtra led to removal a resolution, for removal of Rahul Narvekar from the office of Speaker under 179. This is the tit for tat My Lords. This is not an argument that I wish to make.

On 3rd of July 2022, just after being elected as the speaker of the House, Narvekar entered the political thicket and issued a communication late in the evening on 3rd of July illegally recognizing Bharat Gogawale as the Chief Whip and Eknath Shinde as the leader of the party. And what basis did he do that My Lords? This is under challenge. Under which power did the Speaker do that? Your Lordship knows My Lords. This has to come from the political party. Leader of the House has to come from the political party that he is our leader of the House. My Lords that letter is written by the Speaker My Lords. For example, recently when My Lords, Mr. Kharge became the leader of the Congress Party. It is Mrs. Gandhi, who wrote a letter saying that now instead of Gulam Nabi Azad, Mr. Kharge is the leader of the party, I have the letter with me. So this is the this is the... On what basis did the Speaker do it?

The aforesaid communication of the Speaker of 3rd July was challenged by Sunil Prabhu before this Honorable Court, wherein the Honorable Court by the order Dated 4-7 and writ petition directed to list the writ petition along with other connected writ petitions, so that's also pending.

1 Then 4-7, as the Speaker has misconducted himself by entering into the political thicket and  
2 attempted to recognize Bharat Gogawale as the Chief Whip of the Shiv Sena, certain MLA  
3 submitted a notice to the Principal Secretary, Maharashtra Legislative Assembly to move a  
4 resolution for removal of Narvekar from the office. Then, on 4-7, the Confidence Motion was  
5 called for on the floor of the Maharashtra Legislative Assembly by Eknath Shinde. On 4th July  
6 Confidence Motion was carried out in favor of Eknath Shinde. Again several MLAs of Shiv  
7 Sena voted contrary to the Whip issued by the official Chief Whip of Shiv Sena.

8  
9 4-7-2022 Bharat Gogawale, and My Lords when Your Lordships will see the petition before  
10 the Election Commission, till the 18th of July, there is no reference to any meeting of any  
11 political party. So all this was happening outside the political party. Bharat Gogawale also files  
12 disqualification petitions against 14 MLAs under the 10th Schedule for the alleged breach of  
13 the Whip issued by him. It is submitted that Bharat Gogawale has not been authorized by Shiv  
14 Sena political party to issue Whips on behalf of the Shiv Sena.

15  
16 5-7-2022, since the delinquent MLAs of the SSLP has openly defied the Whip dated 2-7-2022  
17 in the floor test, Confidence Motion held on 4-7. Sunil Prabhu has filed fresh disqualification  
18 petition against 39 delinquent MLAs seeking their disqualification under 2(1)(b).

19  
20 Then 07-07-2022 Uddhav Thackeray, in his capacity as President of Shiv Sena wrote a letter  
21 to the Speaker objecting to the illegal recognition of Bharat Gogawale as the Whip of the Shiv  
22 Sena, and reiterated the decision of the Shiv Sena political party to recognize Sunil Prabhu as  
23 a Whip of the SSLP. So My Lords, what's happening here is, that the legislative party, a  
24 majority in the legislature of the Maharashtra Legislative Assembly is treating itself as the  
25 political party and making orders for its own benefit. That's the constitutional issue that Your  
26 Lordships will have to decide.

27  
28 **CHIEF JUSTICE CHANDRACHUD:** But who represents the Political party is a.....

29  
30 **MR. SIBAL:** As I said, My Lords, it's the two offices. My Lords, that is the leader of the three  
31 offices, Chief Whip and Whip are appointed by the political party and conveyed to the...

32  
33 **CHIEF JUSTICE CHANDRACHUD:** Chief Whip and the...?

34  
35 **MR. SIBAL:** And the Deputy Whip. These are.. these are offices My Lords, that are bridge  
36 between the political party and the legislative party.



1 **CHIEF JUSTICE CHANDRACHUD:** And according to you who determines who is the  
2 political party?

3

4 **MR SIBAL:** I'm sorry,

5

6 **CHIEF JUSTICE CHANDRACHUD:** Who determines who is the political?

7

8 **MR. SIBAL:** There's no challenge here.

9

10 **CHIEF JUSTICE CHANDRACHUD:** No. I mean, ultimately, who is entrusted with the  
11 authority to decide.

12

13 **MR. SIBAL:** They have to have a split in the party first otherwise, how do you determine  
14 another 10th Schedule party.

15

16 **CHIEF JUSTICE CHANDRACHUD:** If there is a contest then who represents the political  
17 party? Who will decide?

18

19 **MR. SIBAL:** There's no contest. My Lords, this is not their case. My Lords please appreciate.  
20 Till all this is happening, it is not their case that there is a split in the political party. It is  
21 nobody's case. They say they are the Shiv Sena .

22

23 **CHIEF JUSTICE CHANDRACHUD:** That's here. But who will then have the authority to  
24 decide who is the political party?

25

26 **MR. SIBAL:** That's right. Now you go, what you do is call a meeting of the political party.  
27 Supposing My Lord, let's forget about the 10th Schedule. Let's not talk about 10th schedules.  
28 My Lords, I happen to be a faction in the party and I say, look, actually, the majority of the  
29 party is with me. So like an requisition of meeting of the party. Forget the 10th schedule and  
30 after a requisition of meeting in the party My Lords, I take over. So I am the party. By majority  
31 I take over.

32

33 **JUSTICE NARASIMHA:** 10th schedule.

34

35 **MR. SIBAL:** And there's nothing to do with the 10th schedule. I'm not talking about the 10th  
36 Schedule now. I'm sorry.

37

1 **JUSTICE NARASIMHA:** The test as they have said. The test in Sadiq Ali...  
2  
3 **MR. SIBAL:** In Sadiq Ali has nothing to do with this issue. I mean that's not. I'm not talking  
4 of the 10th schedule now. I'm talking generally how a faction in a party can take over the party.  
5 Forget the 10th Schedule. Now My Lords forget that 1985 10th Schedule was not there. Then  
6 also this question would arise. But this question would arise only if there is a division in the  
7 Legislative party. Dehors the 10th schedule. I hope My Lords, I have made myself clear. Dehors  
8 the 10th schedule this question can arise, that people in the legislative party can say that -  
9 Look, no, we don't agree with your policies. Let's call a meeting of the party. Right? In that  
10 meeting My Lords, they feel that they are a faction who are entitled My Lord to the symbol of  
11 the party. We want to set up a separate party, right? They can go and say that we, the  
12 legislators, along with the organizational structure, are the party... separate party. Give us the  
13 symbol. We are the majority. Forget the 10th Schedule. It can happen even out. But that can  
14 only happen if there's a split in the legislative party. Correct, My Lords? It can only happen  
15 then, otherwise, it's a normal procedure of taking over the presidentship of the party. Sadiq  
16 Ali the same thing happened. There was a split in the in the legislative party and the political  
17 party. And in Sadiq Ali they said that look as far as the organizational structure is concerned,  
18 on both issues, on both issues, they are entitled. The other side is entitled to the symbol. That's  
19 fine. No issue. Here, My Lords this split should have happened on the 21st of June. That is  
20 nobody's case in the political party. Why? Because Para. 15 of the 10th Schedule says that if  
21 there are two factions, and the Symbols Order says, if there are two factions resulting from a  
22 split in the political party then the question of symbol will arise. Right, My Lords? It is  
23 nobody's case here. Nobody. They say they are the Shiv Sena? Why? Because they are 40. So  
24 how does a majority in the Legislative Assembly become the Shiv Sena. Then My Lords if in  
25 the Congress in Goa, if majority of the Congress legislators join, as they do My Lords, I have  
26 been seeing this happen again and again, My Lords, then they are the Congress. You can say  
27 they are the Congress. How can they say that? Therefore, My Lords this has grave  
28 consequences on the polity of this country. Because now the legislative party seems to believe  
29 that it can under the 10th Schedule proclaim itself to be the political party and throw out office  
30 bearers, who are appointed by the political party in the House. Constitutionally that cannot be  
31 countenanced. Who appoints the Leader of the House? It says... in exercise of my power as  
32 Chairperson of the Congress Parliamentary Party, I hereby make the following appointment  
33 to the Rajya Sabha, Sri Kharge MP leader of the Congress Party against the vacancy of Ghulam  
34 Nabi Azad, whose term in the Rajya Sabha has come to an end on 15th February. This is a letter  
35 written by the Congress UPA Chairperson to the Speaker. So the Chairman of the Congress  
36 ...of the Rajya Sabha. That's how that's how My Lords, people are appointed. Can My Lords

1 Mr. Kharge on his own, could he have said that I am the leader? I have so many MPs, so I am  
2 the leader? The same thing with the Whip.

3

4 Now My Lords 57. The newly elected Speaker in an illegal, arbitrary and blatant display of  
5 malafide, how do you know allows the speaker to decide this matter when he's been doing  
6 these things? Your Lordships, My Lords have great, great, What should I say....confidence in  
7 the Constitutional office of the Speaker My Lords. Great confidence... but do they discharge  
8 this confidence?

9

10 **CHIEF JUSTICE CHANDRACHUD:** That confidence you also have when you say that that  
11 Speaker had to decide that disqualification petition.

12

13 **MR. SIBAL:** Yes. Correct My Lords.

14

15 **CHIEF JUSTICE CHANDRACHUD:** And that is not dependent..

16

17 **MR. SIBAL:** It will be subject to challenge. Subject to challenge.

18

19 **CHIEF JUSTICE CHANDRACHUD:** And that is not dependent on who is the Speaker Mr.  
20 Sibal?

21

22 **MR. SIBAL:** No My Lords, I am sorry. That Speaker did not do anything like this. My Lords,  
23 you have to now see... kindly see look what is happening.

24

25 **CHIEF JUSTICE CHANDRACHUD:** But the constitutional authority of the Speaker to  
26 decide is not based on who the Speaker is or what it decisions he take.

27

28 **MR. SIBAL:** My Lords, can ever finding of a bias be reached by a Constitutional Court. Your  
29 Lordships will say - No. Let's put it another constitutional issue. If a constitutional authority  
30 has so conducted itself. That a constitutional Court comes to the conclusion that such a  
31 constitutional authority cannot discharge the functions that it is discharging because it's open  
32 bias. Your Lordships will say - no, we let them decide. I don't know My Lords. I don't have the  
33 answer for it.

34

35 **JUSTICE NARASIMHA:** No not necessarily. Rameshwar Prasad with respect to a  
36 Governor...

37

1 **MR. SIBAL:** Governor yes...

2

3 **JUSTICE NARASIMHA:** Judgement of this court that if there is an allegation of bias, then  
4 Government has to come and defend it.

5

6 **Mr. SIBAL:** My Lords that's exactly.

7

8 **JUSTICE NARASIMHA:** It's possible not that the court will naturally do it. But then we all  
9 are proceeding on the premise that... in fact, your argument had been in the first part also, that  
10 so far the Speaker is concerned it is the constitutional authority.

11

12 **MR. SIBAL:** No. But see what he has done? He has appointed the Whip. He has appointed  
13 the leader of the House. Then what kind of confidence can we have this, in this constitutional  
14 authority who without reference to the political party is doing all this? Do you think he can  
15 ever decide in my favor? There is no way.

16

17 **CHIEF JUSTICE CHANDRACHUD:** Then you have a first Speaker who in defiance of the  
18 legislative rules gives two days' notice.

19

20 **MR. SIBAL:** I'm sorry. No... that is....

21

22 **CHIEF JUSTICE CHANDRACHUD:** In defiance of the legislative rules gives two days'  
23 notice.

24

25 **MR. SIBAL:** That Your Lordships have.

26

27 **CHIEF JUSTICE CHANDRACHUD:** They all... this is the way everybody is behaving.

28

29 **MR. SIBAL:** That is correct. So what do we do My Lords? Your Lordships will then have to...

30

31 **CHIEF JUSTICE CHANDRACHUD:** There are two options. Either you debunk the  
32 authority of the Speaker or you say that irrespective of what the...

33

34 **MR. SIBAL:** I said that on day one....

35

36 **CHIEF JUSTICE CHANDRACHUD:** Alternately irrespective of what lesser mortals  
37 decide, ultimately, in a democracy you value the office of the institution.

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**MR. SIBAL:** Then that 27th order should not...

**CHIEF JUSTICE CHANDRACHUD:** If we start...if we say...

**MR. SIBAL:** Then that 27th order should not have been passed.

**CHIEF JUSTICE CHANDRACHUD:** Denigrating constitutional offices, including the office of the Speaker, it's a....

**MR. SIBAL:** My Lord they are denigrating themselves. They are denigrating themselves. We are not denigrating...

**JUSTICE NARASIMHA:** No, Mr. Sibal, there is some problem...

**CHIEF JUSTICE CHANDRACHUD:** It is a race to the bottom then.

**MR. SIBAL:** Yes we are. We have to start My Lords...What to do? What to do? But the problem is My Lords, that problem is very serious and therefore, therefore....

**JUSTICE NARASIMHA:** It is the...they are the Legislators, Parliamentarians, who have decided upon the Speaker to be the Tribunal per the 10th Schedule is parliamentarian's decision.

**MR. SIBAL:** Correct. I agree.

**JUSTICE NARASIMHA:** So therefore, Court is only interpreting that.

**MR. SIBAL:** Fine My Lords. Then we must go back to 2017....

**JUSTICE NARASIMHA:** Take this anywhere Mr. Sibal, the difficulty repeatedly uses at one stage it poses a very big problem for the Court. On the one hand, if the speaker is with you, you would say that it's a constitutional authority. What's wrong with the Speaker? If you have some difficulty, you would say -- You means not YOU. You would say, look at the way the Speakers have behaved. So therefore, for us as long as the Constitution Bench judgment is there, we will go by the fact.

1 **MR. SIBAL:** I agree.

2

3 **JUSTICE NARASIMHA:** Speaker he is the tribunal and he is the presiding officer per the  
4 10th Schedule.

5

6 **MR. SIBAL:** Correct, correct.

7

8 **JUSTICE NARASIMHA:** And we will not, go back the decision. That's the final decision so  
9 far as we are concerned.

10

11 **MR. SIBAL:** Fine. I don't... I don't want to My Lords say anything contrary to that except that  
12 on that logic the 27th Order could not have been passed. Then we come back to that My Lords.  
13 Then that's what led to what we... where we are where we are today.

14

15 **JUSTICE KOHLI:** And again, it's merely because one or two Speakers have gone astray  
16 would the court be inclined to debunk the whole procedure as laid down and the 10th  
17 Schedule?

18

19 **MR. SIBAL:** No. My Lords. My intention is not that. I'm just My Lords telling Your Lordships  
20 what has been happening.

21

22 **JUSTICE KOHLI:** So it's a conundrum?

23

24 **MR. SIBAL:** Yes, it's a conundrum. It's a Constitutional conundrum. But Your Lordships will  
25 one day have to sort it out.

26

27 **JUSTICE NARASIMHA:** Sorry for.... another question. Every time this question is raised  
28 before the court, I would want to ask you how many times did the parliamentarians raise this  
29 question in the Parliament saying that let us actually amend the Constitution, change the  
30 Speaker? How many times the discussion took place in the Parliament to review the conduct  
31 of the Speaker? Why is that question raised before for the Court, which is not the forum for us  
32 for the consideration? How many times the parties have sat down together and decided that  
33 this is not working?

34

35 **MR. SIBAL:** Once Kihoto Hollohan was rendered My Lords, what would Parliament would  
36 say?

37

1 **JUSTICE NARASIMHA:** It only upheld the 10th Schedule. It is you are making the 10th  
2 Schedule.

3

4 **MR. SIBAL:** No My Lords, it is the political party in power, wherever it is, wants to use the  
5 office of the Speaker to do what they are doing. The political party would never empowered,  
6 would never like to change it.

7

8 **JUSTICE NARASIMHA:** This will take us nowhere Mr. Sibal, frankly and this will... unless  
9 there's an Amendment to the Constitution, unless there is a reference, a direct challenge....

10

11 **MR. SIBAL:** Justice Sabharwal says....

12

13 **JUSTICE NARASIMHA:** We have to proceed on that premise.

14

15 **MR. SIBAL:** Justice Sabharwal said it in a judgment of this court. Jagjit Singh.

16

17 **CHIEF JUSTICE CHANDRACHUD:** Jagjit Singh.

18

19 **MR. SIBAL:** Exactly that. 'Undoubtedly our constitutional scheme, the Speaker enjoys a  
20 pivotal position. The position of the Speaker is and has been held by people of outstanding  
21 ability and impartiality without meaning any disrespect for any particular Speaker in the  
22 country, but only going by some of the events of the recent past....recent past. Certain  
23 questions have been raised about the confidence in the matter of impartiality on some issues  
24 having political overturns which are decided by the Speaker in his capacity as a tribunal. It has  
25 been urged that, if not checked, it may ultimately affect the high office of the Speaker. Our  
26 attention has been drawn to the recommendations made by the National Commission to  
27 review the working of the Constitution, recommending that the power to decide on the  
28 question as to disqualification on the ground of defection should vest in the Election  
29 Commission.' - I dread that as of today My Lords, Election Commission, instead of the Speaker  
30 of the House. - 'concerned. Our attention has also been drawn to the views of a number of  
31 other experts, committees, commissioners to the effect that power of disqualification as a  
32 result of defection needs to be exercised in accordance with the opinion of the Commission as  
33 in the case of decision on questions as to disqualification of members. Whether to vest such  
34 power of the Speaker or Election Commission or other institution is not for us to decide' - As  
35 Your Lordship rightly said - 'This is for Parliament to decide.'

36

37 **JUSTICE NARASIMHA:** Exactly.

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**MR. SIBAL:** I agree. I am not disputing that. But I'm just saying that disquiet, that My Lords we have witnessed in the functioning of the Office. That's all that I'm saying. I'm not saying this person is good or that person is good. It's the institutional framework within which he functions My Lords is not consistent with his responsibilities as a tribunal. That's all that I'm saying My Lords. What to do? But the fact is that he had no authority in law to decide on the Whip and on the leader of the house. That's not his....

**CHIEF JUSTICE CHANDRACHUD:** That is a separate issue. We have made a note of that.

**MR. SIBAL:** That's why I made that argument. Then My Lords, come to 'The newly elected Speaker in a illegal, arbitrary and a blatant display of malafide and bias, issued notice to 14 MLAs seeking their response to disqualification petitions filed by Bharat Gogawale. The Speaker is still sitting tight on the disqualification petitions filed by Sunil Prabhu and has not even issued notice in them despite their disqualification petitions being filed much earlier.' He issues notice on our... on their disqualification petition, but not on ours. And they haven't filed a reply, My Lords. This court said in the interim we adjourn it to 10th.... 12th of July. My Lords, from July we are in February, where's the reply?

18th of July, the notice issued by the Speaker in the disqualification petitions filed by Bharat Gogawale against 14 Shiv Sena MLAs including Sunil Prabhu was challenged by Sunil Prabhu in writ petition wherein this Honorable Court vide order dated that directed to tag the writ petition along with other connected matter. So that's also before Your Lordships. And now My Lords, the Election Commission says they are the Shiv Sena. Now we will be further disqualified. Any meeting called if we don't attend, then we are... there will be further problems. Despite the fact that this Honorable Court is seized of the issues regarding disqualification of Eknath Shinde under the 10th Schedule, Shinde, filed a petition before the Election Commission under Para 15 of the Election Symbol's Reservation and Allotment Order to declare the splinter group led by him as the Shiv Sena. So this is the first time My Lords that he went. On 20th July vide order dated 20th July, and order connected in writ petition so and so another connected petition, this court issued notice in writ petition so and so, it was directed by this Honorable Court the writ petition shall be treated as a lead matter. 20th July pursuant to the Order of the Court dated 20th July, Shri Subhash Desai made a representation to the ECI vide representation requesting the ECI to not proceed with any petition related to Shiv Sena as substantially similar matters, and issues are pending before this Honorable Court and not to take any preemptive actions.



1 Then IA 100285 was filed on 21st July, was preferred by Sunil Prabhu in writ petition, seeking  
2 direction to the Speaker Maharashtra Assembly to produce the following records. All  
3 proceedings relating to disqualification of rebel Shiv Sena MLAs filed by Sunil Prabhu. All  
4 proceedings related to disqualification filed by Shri Gogawale. All proceedings of the Speaker  
5 and Deputy Speaker in relation to recognition of the Leader of the House and Chief Whip of  
6 Shiv Sena, proceedings of the House on 3rd July and 4th July.

7

8 22nd July without deference to the proceedings pending before this court as well as without  
9 considering that no adjudication can take place till disqualification petition is pending against  
10 delinquent MLAs are decided, Election Commission issued noticed to Uddhav Thackeray on  
11 the petition file by Eknath Shinde. And on 25th July aggrieved by the issuance of the notice by  
12 the Election Commission in Shinde's petition, Subhash Desai has filed two applications IA so  
13 and so, seeking impleadment of Election Commission of India as Respondent 51 in writ  
14 petition so and so and seeking stay of proceedings initiated by the Commission on 22-7 till the  
15 final adjudication of the present petition. On 4th of August this court, after hearing the  
16 Election Commission and the parties, recorded the submission of the Commission that no  
17 orders may need to be passed by this court interdicting proceedings before the Election  
18 Commission. Liberty was granted to the Petitioner to file an application before the Election  
19 Commission for seeking time. Accordingly, 6th August - Petitioner, in terms of the order of  
20 4th August filed an application with a prayer to defer/adjourn the proceedings in dispute on  
21 one... on Dispute No. 1/ 2022 for four weeks and extended the time for filing a response for  
22 four weeks. 10th August, Election Commission communicated to the petitioner for extending  
23 time.

24

25 23rd August Honorable Court vide it's Order held that the present batch of petitions raised  
26 important...then those questions were My Lords. Then Your Lordships please come to 23rd  
27 August. Made a request on the very same date to the Commission to defer proceedings. Then  
28 this went on My Lords and on 22nd of September a further request was made by the Petitioner  
29 to the Commission for deferment of proceedings by two weeks till this Court decides the  
30 question as to whether proceedings before the Commission should go on and then 27  
31 December Your Lordships dismissed the application.

32

33 So that created another problem My Lords because the Election Commission decided the  
34 matter de hors My Lords, these pending proceedings. And on the basis of that majority in the  
35 Legislative Assembly has given them the symbol. With that very majority subject of  
36 disqualification petitions. So we have another problem. And we went to the Commission and  
37 said - please await the decisions. The Supreme Court did not stay... didn't stay the proceedings.

1 But the Supreme Court did not say that you decide it on merits based on... based on majority  
2 in the Legislative Assembly. Because those disqualification petitions are pending. But he said  
3 - No. Supreme Court has said no stay. So I will decide the entire matter. That's, that's the other  
4 problem that happened. But I never thought Your Lordships meant stay of proceedings only  
5 meant that you decide that whatever the matter is, you hear the arguments. Decide the ... on  
6 law, on the submissions made, where they took it. The High Court also took it the same way  
7 My Lords. We went to the High Court also. They rejected it, saying, Your Lordships have said  
8 No stay. Therefore the Commission can decide what it likes. And I told the Commission that  
9 look, if supposing you give this symbol to them based on this majority, and ultimately they are  
10 disqualified, then what happens to the symbol? Will we get back the symbol? So My Lords we  
11 have another problem on our hands. So only Your Lordships can decide this matter.  
12 We can only place the facts before people. You have to.... You have to do something to be able  
13 to ensure that there is confidence in institutional frameworks in the system, in this country.  
14 That's my only concern. Winning or losing doesn't matter. These are political battles, will be  
15 won today and lost tomorrow or lost today and won tomorrow, but the institution must go on.  
16 The people of India must have confidence in that institution, whether it's the Election  
17 Commission or the office of the Speaker or the Court.

18

19 Now My Lords, then we come to 4th October, Eknath Shinde filed an application before the  
20 Commission under Para 15 of the Symbols' Order to urgently hear, dispose off, and allow the  
21 petition filed by Shinde under paragraph 15. On 7th October, Thackeray filed a preliminary  
22 reply to the application under para 15 with a prayer requesting Commission not to pass any  
23 order without an opportunity of oral hearing to Thackeray. My lords on 8th October,  
24 Thackeray filed a reply to the application of Shinde under para 18 of the Symbol's Order.  
25 Election Commission without hearing either of the parties -- this is another curious thing --  
26 on 8th October, without hearing either of the parties and merely hours after the reply of  
27 Uddhav Thackeray was filed passed an order in Dispute No. 1/ 2022 inter alia freezing the  
28 symbol of bow and arrow. And Your lordship knows my lords, that the hearing is required. It's  
29 mandatory under Paragraph 15.

30

31 Also, the Election Commission directed Uddhav Thackeray and Eknath Shinde to first furnish  
32 their preferences for interim party names and interim symbols. Uddhav Thackeray under  
33 protest and without prejudice to his right to challenge the impugned order freezing the symbol  
34 bow and arrow proposed three interim names and interim symbols of his own choice in the  
35 order of preference.

36

1 10th October, Shinde proposed his preferences of symbols out of which first two were identical  
2 to the interim symbols proposed by the Uddhav Thackeray. The first interim name proposed  
3 by Shri Shinde was also identical to the first interim name proposed by Thackeray. On 10th  
4 October, Election Commissioner rejected the first two interim symbols proposed by Thackeray  
5 on the basis of Shinde had also proposed. Due to some same reason Shri Uddhav Thackeray  
6 was denied the interim name Shiv Sena Balasaheb Thackeray. On 10th October aggrieved by  
7 the arbitrary freezing of symbol without affording an opportunity of oral hearing, vide order  
8 dated that passed by the Commission, in Dispute No. 1/ 22 Uddhav Thackeray filed a writ  
9 petition in the High Court of Delhi seeking inter alia to quash the aforesaid order. Election  
10 Commissioner allotted the interim name, Balasahebanchi Shiv Sena to Shri Eknath Shinde  
11 and requested Shinde to furnish a fresh preference list of symbols. 11/10 Eknath Shinde  
12 submitted a fresh list of preferred symbols. Election Commissioner allotted, the symbol of *Do*  
13 *Talwarein aur Ek Dhaal* to Shri Eknath Shinde. The present batch of matters was listed before  
14 the Constitution Bench for directions on such and such date.

15

16 Then my lords Election Commission addressed a letter to Uddhav Thackeray and Shinde  
17 asking to submit all the details, particulars documents to dispute one and the High Court of  
18 Delhi dismissed the petition filed by Uddhav Thackeray.

19

20 **JUSTICE NARASIMHA:** We'll have.. the date of the decision. Yesterday or day before?  
21 Election Commission.

22

23 **MR. SIBAL:** Now the Election Commission. 17th February. So that My lords is really the list  
24 of dates and the list of events. My lords having said that, just let's go to the Tenth Schedule  
25 straightaway.

26

27 In this schedule, unless the context otherwise requires, House means...in this Schedule, unless  
28 the context otherwise requires House means either House of Parliament or the Legislative  
29 Assembly or as the case may be either House of the State Legislative of the State.' Legislation  
30 party in relation. Just My Lords justice to have the facts straight My Lords out of 55, 38 are  
31 with them in the Maharashtra Legislative Assembly, right My Lord? And in the Lok Sabha, out  
32 of 18, they allege that 13 are with them but they have filed affidavits of 12. The Legislative  
33 Council My Lords in Maharashtra all of them are with us. All 12 are with us.

34

35 **JUSTICE NARASIMHA:** Twelve out of twelve?

36

1 **MR. SIBAL:** All of them are with us. And in the Rajya Sabha, three out of three are with us.  
2 And in the Lok Sabha six are with us, according to us.

3

4 **JUSTICE KOHLI:** Mr. Sibal, will you repeat the numbers?

5

6 **MR. SIBAL:** Yes my lord. In the Legislative Council in Maharashtra, all 12 are with us. All  
7 twelve are with us. But in the Legislative Assembly My Lords, 38 are with them, you say 40,  
8 but they have the affidavit of 38. It's all right, you can say 40. I don't mind. Yeah, it's all right.  
9 40 and 15 with us, doesn't matter. In the Rajya Sabha, all 3 are with us and in the Lok Sabha,  
10 My Lords, out of 18...19? 13 are with them and 6 are with us. So it is not as if, it is some  
11 overwhelming majority with them. And in the organizational structure, and my lords...

12

13 **CHIEF JUSTICE CHANDRACHUD:** What about Rajya Sabha you said?

14

15 **JUSTICE KOHLI:** Lok Sabha?

16

17 **MR. SIBAL:** Three Rajya Sabha, are all with us.

18

19 **JUSTICE KOHLI:** And Lok Sabha?

20

21 **MR. SIBAL:** Lok Sabha, My lords, 6 are with us out of 19. Out of 18. So in two Houses they  
22 have majority and in two Houses we have majority. But be that as it may, this is, the issue is  
23 ultimately not that. But just so that Your Lordship knows, in the organizational structure, the  
24 other surprising thing is My Lords, we both argued on the Constitution of 2018.

25

26 **JUSTICE NARASIMHA:** What is organization?

27

28 **MR. SIBAL:** Pratinidhi Sabha. There is the Pratinidhi Sabha and there is the Karya Karini,  
29 which is the executive, largest executive body, 13 members of the Karya Karini. Upto 260 odd  
30 members of the Pratinidhi Sabha, which we will come to later.

31

32 **JUSTICE NARASIMHA:** Okay.

33

34 **MR. SIBAL:** The point that I'm making is that we both relied upon the 2018 Constitution.  
35 But the Commission in it's order without letting us know during the argument, said that 2018  
36 Constitution is not recorded in the, in... the Election Commission. Never put it to us. Never  
37 told us, not their argument, not my argument. Both argued on the 2018 Constitution and the

1 Commission without ever informing us, says that Constitution is not on our record. Anyway,  
2 be that as it may. Anyway, so even though we have majority in the organization, they say we  
3 will not consider that. So they don't consider the organization. They consider these majority  
4 of those who are according to us disqualified and give them the symbol. So you move from the  
5 Speaker to the Election Commission. And then from there, where do you go? Anyway, so let's  
6 now come to 10th Schedule.

7

8 The Legislature Party, in relation to a member of a House belonging to any political party, in  
9 accordance with the provisions of paragraph 2 or 4, means the group consisting of all the  
10 members of that House for the time being belonging to that political party in accordance with  
11 the said provisions. So Your Lordships, sees the symbiotic relationship between the Legislative  
12 Party and the Political Party. The original political party in relation to a member of a House,  
13 means the political party to which he belongs for the purposes of sub-paragraph one of  
14 paragraph two. Paragraph means paragraph in this Schedule.

15

16 Then two, subject to the provisions of paragraphs 4 and 5, a member of a House belonging to  
17 any political party shall be disqualified from being a member of the House, if he voluntarily, if  
18 he has voluntarily given up his membership of such political party. Or if he votes or abstains  
19 from voting in such House, contrary to any direction issued by the political party to which he  
20 belongs or by any reason or by any person or authority authorized by it in this behalf, without  
21 obtaining in either case the prior permission of such political party, person or authority and  
22 such voting or abstention has not been condoned by such political party, person or authority  
23 within 15 days from the date of such voting or abstention. So My Lord, what's important here  
24 to note is that he cannot vote contrary to any direction issued by the political party. So  
25 obviously, in terms of Paragraph 3, it is the Political Party which issues the direction not the  
26 Legislative Party. And the direction is issued through the leader of the political party, normally  
27 the Whip or the leader of the political party. Such person authorized. So therefore, the political  
28 party will authorize such person and he is my lords the Whip. The Whip, term is not used in  
29 the 10th schedule as you will notice. The term used is direction. Or by any person or authority  
30 authorized, without obtaining in either case the prior permission of such political party. Now,  
31 My Lords, whose permission has to be obtained if I want to vote against the Whip? Political  
32 party's permission. And political party is outside the House, not within the House. Within the  
33 House are only Legislatures. So you'll have to go to the Whip, you'll have to go to the Whip or  
34 the person authorized, that look, I want to vote against or I want to make a speech against. I  
35 don't agree with this Bill. And some times actually Whips do agree. It has happened so often  
36 with us. You say, no, these particular clauses I don't...Allow me to speak, but I will vote for you

1 ultimately, because I don't want to violate the Whip. But allow me to speak. And sometimes  
2 we are allowed.

3

4 Then My Lords, kindly come to the explanation. For the purposes of this sub-paragraph, an  
5 elected member of a House shall be deemed to belong to the political party, if any, by which  
6 he was set up as a candidate for election as such member. A nominated member of a House  
7 shall, where he is a member of any political party on the date of his nomination, as such  
8 member be deemed to belong to such political party. In any other case he deemed...be deemed  
9 to belong to the political party of which he becomes, or as the case may be, first, becomes a  
10 member before the expiry of six months from the date on which he takes his seat after  
11 complying with the requirements of 99 or as the case may be Article 180. So a nominated  
12 member within six months actually can join a party. Not after six months. Then subsection-  
13 two, is very important. An elected member of a House who has been elected as such otherwise  
14 than as a candidate set up by any political party shall be disqualified for being a member of the  
15 House if he joins any political party after such election. I belong to that category My Lords. If  
16 I try and join any other party, I shall be disqualified.

17

18 **JUSTICE NARASIMHA:** Anglo Indians.

19

20 **MR. SIBAL:** That's right. That's for nomination My Lords.

21

22 **JUSTICE NARASIMHA:** Three.

23

24 **MR. SIBAL:** Yes. Three is, a nominated member shall be disqualified being a member of the  
25 House if he joins any political party after six months. That's what I told Your Lordships, from  
26 the date on which he takes his seat after complying with the requirements of 99.  
27 Notwithstanding anything contained in the foregoing provisions of this paragraph, a person  
28 who on the commencement of the Constitution is a member of a House whether elected or  
29 nominated as such, shall where he is a member of a political party immediately before such  
30 commencement be deemed for the purposes of subparagraph-one of this paragraph, to have  
31 been elected as a member of such House as a candidate set up by such party. In any other case,  
32 be deemed to be elected, this we don't, really worry about that. Para three, is now deleted. Let's  
33 see what para 3 said. Your lordships will find that in statutes My Lords, item number three.

34

35 **JUSTICE NARASIMHA:** Page 48. PDF 50.

36

37 **MR. SIBAL:** Yes, PDF page 50. Your lordship has that?

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**JUSTICE HIMA KOHLI:** Yes.

**JUSTICE NARASIMHA:** Yes.

**MR. SIBAL:** My Lords, Justice Shah has it? Now, Disqualification account a defection not to apply in case of split. Where a member of a House makes a claim that he and any other members of his Legislature Party, constitute the group representing a faction which has arisen as a result of a split in his Original Political Party and such group consists of not less than 1/3rd of the members of such Legislative Party, he shall not be disqualified under subparagraph-one, of paragraph 2. So paragraph 3, as it then stood operated on the assumption that there is a split in the original political party. A split in the Legislative Party could not have been a defense even if it is more than one-third.

**CHIEF JUSTICE CHANDRACHUD:** There has to be a split in the original political party.

**MR. SIBAL:** Correct. Now how does that split happen? Because he makes a claim before all this happened. Demonstrates in the claim that a split has occurred. Calls for a meeting of the original political party, as a faction, has a resolution passed, breaks away... Breaks away My Lords and then if he is one-third, it's a defense. Even if he loses in capturing the party, he shall not be disqualified in the paragraph two, that he has voluntarily...Sorry, that such group consists of not less than one-third of the members of such Legislative party, he shall not be disqualified under subparagraph-one of para two, on the ground that he has voluntarily given up his membership of the original political party or that he has voted or abstained from voting in such House contrary to any direction issued by such party, or by any reason or authority authorized by it in that behalf, without obtaining the prior permission of such party, person or authority, and such voting or abstention has not been condoned by such party, person or authority within 15 days from the date of which such voting or abstention. And from the time of such split, such factions shall be deemed to be the political party to which he belongs, for the purposes of subparagraph one of two, and to be his original political party for the purpose of that paragraph. So the splinter group of that party can be a separate political party. He will, because he is one third in the legislature belong to that party. Because that becomes his original political party. None of this has happened here.

**CHIEF JUSTICE CHANDRACHUD:** The quantum of the split interestingly was not defined in terms of numbers. So long as there is a split, the 1/3rd in relation to the group representing the Legislative Party.

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**MR. SIBAL:** Yes, yes. I agree My Lord. That split may be minority, majority, it doesn't matter.

**CHIEF JUSTICE CHANDRACHUD:** Right. So long as you know, there is a split.

**MR. SIBAL:** There is a split.

**CHIEF JUSTICE CHANDRACHUD:** In the original political political party.

**MR. SIBAL:** Correct, correct. So that's not the case here My Lords. On 21st June, they were in Gujarat, and they were in the Northeast, only the Legislative members. And they never said there's a split. They said we are the Shiv Sena. So that claim was also not there. Then came the 91st Amendment, 2003. Sorry, 1st January 2004. No, no. Yes, yes an Act of 2003, but came into force on 1st January 2004.

[NO AUDIO]

Then My Lords, Ten was amended. That's important.

**CHIEF JUSTICE CHANDRACHUD:** Yes.

**MR. SIBAL:** Now My Lords, kindly see this Constitutional Amendment. They have amended 164, of the Constitution which you will find in PDF page 52. In Article...I'm sorry. Article 164 of the Constitution after Clause-one, the following clauses have been inserted.

**CHIEF JUSTICE CHANDRACHUD:** Where are we?

**MR. SIBAL:** PDF page 52.

**CHIEF JUSTICE CHANDRACHUD:** PDF page 52.

**MR. SIBAL:** Yes. This is the, the amendment starts at PDF page 51. And the relevant part, because 1A and 1B have been added. And if you see Section-C, of that. In Article 164, of the Constitution after Clause-1, the following clauses shall be inserted namely,  
1A, the total number of ministers including Chief Minister in the Council of Ministers in the state shall not exceed 15% of the total number of members of the legislative assembly of that State. Provided, the number of ministers including the Chief Minister shall not be less than twelve. Provided further, we are not concerned with that.



1 1D, My Lords, a member of the Legislative Assembly of a State, or either House of the  
2 Legislature of a State having Legislative Council belonging to any political party who is  
3 disqualified for being a Minister of that House under paragraph 2 of the 10th Schedule shall  
4 also be disqualified to be appointed as a Minister under Clause 1 for duration of the period  
5 commencing from the date of his disqualification till the date on which the term of his office  
6 as such member would expire or where he contests any election to the Legislative Assembly of  
7 a State or either House of the Legislative of a State having Legislative Council, as the case may  
8 be before the expiry of such period till the date on which he is declared elected, whichever is  
9 earlier. This also creates a lot of problems. That problem doesn't confront us in this case,  
10 because most of these people then resign, join the other party, get elected and become  
11 ministers. So there is some scope for challenge to this particular provision, on it's  
12 Constitutionality. But be that as it may, we are concerned with the earlier parts that if you are  
13 disqualified, you can't be a Minister. Now your disqualification is pending, matter is before the  
14 Constitution Bench, matter is before the Speaker, whichever it may be and you are appointed  
15 by the Governor.

16

17 **JUSTICE NARASIMHA:** And also there's a provision of Representation of Peoples Act,  
18 where they can't contest again.

19

20 **MR. SIBAL:** That's right. Not for this My Lords, not for the 10th Schedule. That is for other  
21 corrupt practice. There is no period here. That's why I say this is subject to challenge.

22

23 **CHIEF JUSTICE CHANDRACHUD:** Right.

24

25 **MR. SIBAL:** They are My Lords for all kinds of other reasons, corrupt practice and he's been  
26 convicted for X number of years. Now, what is happening in a ordinary case of a dharna on a  
27 road, trial court convicts you for two years and you lose your membership of the Legislative  
28 Assembly. That's also happening. We can see it, headline news everywhere. What do we do?  
29 We can't keep on coming to court, every other day. Your Lordships will also get fed up with us.  
30 Sorry. How many times do we give you justice?

31 Now kindly...So therefore now the bottom line is, there is no concept of a split anymore. Then  
32 the statement of objects and reasons for deletion of the paragraph, paragraph at PDF page 54.  
33 This is para 2, the Committee on Electoral Reforms. Demands have been made from time to  
34 time to certain, in certain quarters for strengthening and amending the anti-defection law.

35

36 **CHIEF JUSTICE CHANDRACHUD:** Where that is?

37

1 **MR. SIBAL:** My lords at PDF page 54. The objects and reasons of the deletion. May I read  
2 that My Lords?

3

4 **JUSTICE KOHLI:** Yes.

5

6 **MR. SIBAL:** Demands have been made from time to time in certain quarters for  
7 strengthening and amending the anti-defection Law, as contained in the 10th Schedule to the  
8 Constitution of India, on the ground that these provisions have not been able to achieve the  
9 desired goal of checking defections. The 10th Schedule has also been criticized on the ground  
10 that it allows bulk defections while declaring individual defections as illegal. The provisions  
11 for exemption from disqualification in case of splits as provided in paragraph three of the 10th  
12 Schedule to the Constitution as in-particular come under severe criticism on account of it's  
13 destabilizing effect on the Government. Please see this. Please mark this. The purpose of the  
14 amendment is that we will not allow you to destabilize the government by bulk defection and  
15 that's exactly what has happened here. So you have to interpret the Tenth Schedule and its  
16 provisions to ensure that there is no bulk defection and the concept of minority is over. Bulk  
17 majority also will be subject to disqualification. And one-third of it was a defense. Majority is  
18 not a defence anymore. There is no defense as far as a split is concerned in the Legislative  
19 party. My lords paragraph two there, the Committee on Electoral Reform, the Dinesh Goswami  
20 Committee, in its report of May 1990, the Law Commission of India, and 170th Report on  
21 Reform of electoral laws 1999 of the National Commission to review the working of the  
22 Constitution in its report of 31st March 2002, have inter alia recommended omission of said  
23 paragraph 3 of the Tenth Schedule to the Constitution pertaining to exemption from  
24 disqualification in case of splits. The NCRWC is also of the view that a defector should be  
25 penalized for his actions by debarring him from holding any public office as a Minister in any  
26 other remunerative political post for at least a duration of the remaining term of the existing  
27 Legislature or until the next fixed election, whichever is earlier, it is  
28 proposed to accept these suggestions.

29

30 **CHIEF JUSTICE CHANDRACHUD:** Mr. Sibal, not with sending the deletion of paragraph  
31 three of the Tenth Schedule, the issue is to who represents the political party is still a moot  
32 issue?

33

34 **MR. SIBAL:** No.

35

36 **CHIEF JUSTICE CHANDRACHUD:** But that has to resolve outside the legislative party.

37

1 **MR. SIBAL:** No my lords.

2

3 **CHIEF JUSTICE CHANDRACHUD:** That cannot be still according to you resolved within  
4 the fold of the legislative party.

5

6 **MR. SIBAL:** No my lords that question doesn't arise in this case...

7

8 **CHIEF JUSTICE CHANDRACHUD:** May not be in this case. But that question as to who  
9 represents...

10 **MR. SIBAL:** That will happen outside the house.

11

12 **CHIEF JUSTICE CHANDRACHUD:** That will happen outside the house. That cannot be  
13 resolved by the number of legislators within the House.

14

15 **MR. SIBAL:** That's my only submission my lord. How that is resolved outside the house is  
16 actually given in a judgment of this court in Brahmananda Reddy.

17

18 **CHIEF JUSTICE CHANDRACHUD:** Director of the internal constitution.

19

20 **MR. SIBAL:** That's right. We have to call a meeting. You have to raise the issue. For two and  
21 a half years, the gentleman was a Minister.

22

23 **CHIEF JUSTICE CHANDRACHUD:** The procedure, the bylaws of that party.

24

25 **MR. SIBAL:** Yes, yes you have to follow those bylaws, you have to call a meeting, you have to  
26 resolve that issue. And then you can do all this when paragraph 3 was there. Otherwise, my  
27 lords, what you do, what you're doing is exactly what the object says. You shouldn't be allowed  
28 to do bulk defections. Toppling the government. As I said, what what this would result if you  
29 were to uphold this... my lords my humble submission. If you were to uphold this, then any  
30 government can be toppled. My lords for the simple reason you take those people become  
31 majority appoint your Speaker my lords and have a trust vote and you are in government. You  
32 don't need anything else.... you do not need to have a split in the political party. That's a matter  
33 of matter of dispute that will arise and it will go to courts. And the courts will decide in their  
34 own time. In the meantime, the five years will pass. So if you wanted to remedy this menace,  
35 you can't allow the perpetuation of this menace by recognizing a split in the legislative party  
36 as if there is a split in the political party which is not even, which is not even addressed, which

1 is not even claimed. What is claimed is that we are the party. Now we are the Party can't be  
2 claimed within the Legislative Party.

3

4 My lords for two and a half years....I'm sorry.

5

6 **CHIEF JUSTICE CHANDRACHUD:** What two and a half years?

7

8 **MR. SIBAL:** For two and a half years, he was a Minister. This very government never raised  
9 any issue. There is no public document saying that he is dissenting, or this is he is a  
10 conscientious objector, nothing. No evidence. No document filed. No evidence of that. No  
11 public statement, no newspaper report. Nothing. He was a leader of the house till 21st of June  
12 and overnight my lords...the facts stare you in the face. The only way my lords...this is not what  
13 Parliament will be ready to do. The only way to remedy this is to have a five year period of no  
14 public post the moment you defect. No minister, no public post, no public sector, no nothing.  
15 All this will stop. That is the only way. 164(1)(b) now gives you a way out. Instead of defecting,  
16 you can resign and then you become Minister. You were a Minister before, all you have to do  
17 is resign. This is the only way. If you want to maintain morality in public life you will not be  
18 given any public office. No governorship. No remunerative posts.

19

20 **JUSTICE KOHLI:** Kind of cooling off.

21

22 **MR. SIBAL:** I'm sorry?

23

24 **JUSTICE KOHLI:** Cooling off of sorts.

25

26 **MR. SIBAL:** Yes. Even in 361 my lords in fact disqualification for appointment on  
27 remunerative political post, capital B my lords. If he was disqualified, he can't hold a  
28 remunerative post. Actually 91st Amendment my lords was very careful in trying to sort of  
29 settle part of the problem, but one thing was clear they did not allow for bulk defections.

30

31 Now My Lords, Paragraph 4 if I may read my lords of the Tenth Schedule. 4(1) My Lords. I'm  
32 just waiting for.... Your Ladyship to...A member of a House shall not be disqualified under  
33 subparagraph 1 of paragraph 2, where his original political party merges with another political  
34 party and he claims that he and any other members of his original political party have become  
35 members of such other political party, or, as the case may be, of a new political party formed  
36 by such merger. So My Lords if the Congress or if a small party in a state merges with another  
37 big party to form a new party, that becomes his original political party. Therefore, a member

1 of a House shall not be disqualified where his original political party may be a small party  
2 merges with another political party, and he claims that he and any other members of original  
3 political parties have become members of such other political party... that is they merge into  
4 that party or as the case may be of a new political party. Both of them may form a new politics  
5 party formed by such merger.

6

7 **CHIEF JUSTICE CHANDRACHUD:** So A merges with B or A and B merged together to  
8 form C.

9

10 **MR. SIBAL:** Form a new party. So therefore no disqualification. It's a merger of the political  
11 party. 'Or have not accepted the merger and opted to function as a separate group.' So I say,  
12 look, I don't accept the merger.

13

14 **JUSTICE NARASIMHA:** There is no compulsion to merge.

15

16 **MR. SIBAL:** No compulsion. I may be majority. I may be a minority within the legislature.

17

18 **JUSTICE NARASIMHA:** This will be called the unattached member?

19

20 **MR. SIBAL:** Uh yes. No. But if he, if he has not merged, My Lords, he can form a separate,  
21 he will belong to the original. Supposing two parties merged and form a new party. Correct,  
22 My Lords? And he belongs to the original political party on which he won the election he will  
23 continue to be the original political party.

24

25 **JUSTICE NARASIMHA:** I think Amar Singh sat like that.

26

27 **MR. SIBAL:** Amar Singh yes. He will become the.. he will continue with the original political  
28 party that also issue is before the larger bench. The larger bench. So if there's a new political  
29 party formed pursuant to merger, and I belong to the original political party on the basis of  
30 which I was elected, I continue to be in that original political party.

31

32 **CHIEF JUSTICE CHANDRACHUD:** But Clause 2 now again has (unclear) requirement.  
33 At least two thirds of the existing members of the party....

34

35 **MR. SIBAL:** I'm coming to that. That's a very interesting provision which doesn't call for  
36 interpretation now, but it has some nuances that's important for us to understand. And from  
37 the time of such merger such other political party or new political party or group, as the case

1 may be, shall be deemed to be the political party to which he belongs, for the purposes of  
2 subparagraph 1 of paragraph 2 and to be his original political party for the purposes of this  
3 sub paragraph.  
4

5 So from the time of such merger either to a party or to a new political party he is deemed to be  
6 a member of that political party to which he belongs for the purposes of subparagraph 1. So  
7 may belong to that original political party and he has dissociated himself or after merger he  
8 belongs to the other political party. No issue. Now comes the problem. 'For the purposes of  
9 subparagraph one of this paragraph, the merger of the original political party of a member of  
10 a House shall be deemed to have taken place if and only if not less than two-thirds of the  
11 members of the Legislative Party concerned have agreed to such merger.'  
12

13 Now My Lords if two-thirds of the members don't agree, then there is no merger as far as the  
14 legislatures are concerned. First, the merger takes place, then the question arises whether you  
15 are two-thirds or not. If you are two-thirds and you agree, it is fine. It is a defense. If you are  
16 not, two-thirds, My Lords, then you can be a separate group. So two-thirds happens to be a  
17 defense after the merger.  
18

19 **JUSTICE NARASIMHA:** This deemed is also very important.  
20

21 **MR. SIBAL:** Yes.  
22

23 **JUSTICE NARASIMHA:** Because what Tenth Schedule does is that it doesn't create a new  
24 category. By saying deemed it is relating back to the position of the Assembly as it were. When  
25 the people legislators got elected and come to the Assembly. That position will be deemed the  
26 instead of creating a new category.  
27

28 **MR. SIBAL:** Correct. For the purposes of one, the merger of the original political party of a  
29 member of the House shall be deemed to have taken place only if not less than two thirds of  
30 the member are concerned have agreed to such merger. So two thirds of the member, less than  
31 two thirds of members My Lords question defense doesn't arrive. But if two thirds of the  
32 members agree, then My Lords, that's a defense. That's a perfect defense. So My Lords looked  
33 at it from any standpoint, these 40 people have no defense under the Tenth Schedule. They  
34 don't claim that there's a merger. They say that they are majority in the Legislative party. They  
35 claim that because of that majority, they can change the Whip. They claim that they can change  
36 the leader of the House. They can call themselves, Eknath Shinde can call himself the leader  
37 mainly because he happens to be one of 40. And so what happens My Lords to the political

1 party to which he belongs? What morality are we talking about? What conscience My Lords,  
2 conscientious objectives are we talking about? 'Conscientious defectors' is the word that I used  
3 last time. And you don't raise a voice for two and a half years, you are the leader. You enjoy  
4 the fruits of minister-ship, and suddenly you say that - look, now, I am free to do what I want.  
5 I can join up with the BJP. I can go to Guwahati or wherever I want to go to and that's it. So  
6 the questions that Your Lordships will have to ask My Lords - how does the Tenth Schedule  
7 come to their aid at all? Under what provision of the Tenth Schedule can they have a defense?  
8 The schedule doesn't give them a defense. Whether it's a minority bulk moving away or a  
9 majority moving away. Which is when we last time My Lords were discussing this matter. This  
10 is what I mentioned. That the schedule doesn't, the 10th Schedule doesn't make a distinction  
11 between majority and minority. It just ensures that this habit of bulk defections, which is  
12 destroying the polity of this country and by which governments... elected governments can  
13 be...The objective is that you should not allow an elected government to be overturned. That's  
14 the fundamental premise on the basis of which Paragraph 3 was deleted. You cannot  
15 destabilize government and if you uphold such an Act through a judicial process you are  
16 enabling future defections and therefore destabilizing elected governments which has far  
17 reaching consequences for the polity of this country. That's the issue that Your Lordships have  
18 to decide.

19

20 **CHIEF JUSTICE CHANDRACHUD:** Yes.

21

22 **MR. SIBAL:** My Lords Paragraph 6 of the Tenth Schedule. But My Lords I'll take up the next  
23 topic tomorrow if your lordships don't mind.

24

25 **CHIEF JUSTICE CHANDRACHUD:** The transcript which we have made today.  
26 Transcription will be cleaned up in the early part of the evening today. And we will you give a  
27 copy so that you can have a look at it if there is something you know, you can know what you  
28 argued.

29 **JUSTICE SHAH:** You can know what you have argued.

30

31 **MR. SIBAL:** That'd be wonderful.

32

33 **JUSTICE NARASIMHA:** Don't file an application for amendment.

34

35 **MR. SIBAL:** Thank you. Appreciate it. I hope you continue to be well.

36

37

***END OF DAY'S PROCEEDINGS***