

**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

22-Feb-2023  
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11:00 AM IST

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**MR. SIBAL:** My Lords be kind enough to turn to Common Convenience Compilation Volume 2. My Lords what I had done was taking Your Lordship through the bare list of dates. And I have finished the reading of the Tenth Schedule My Lords, and my interpretation of the Tenth Schedule that I... it's over My Lords.

**CHIEF JUSTICE CHANDRACHUD:** Yes.

**MR. SIBAL:** So now I just want Your Lordship to go through the documentation. So if My Lords have that Common Convenience Compilation Volume 2. First document Dated 27th February 2018. Ladyship has that?

**JUSTICE KOHLI:** I got that.

**MR. SIBAL:** It's at page...PDF page 14.

**JUSTICE KOHLI:** Does it start with the indexation at serial number 37 please?

**MR. SIBAL:** No.

**JUSTICE KOHLI:** *Ramesh Thakur versus State of Madras?*

**MR. SIBAL:** My Lords, the date is 27th February 2018. Page 14, Convenience Volume 2, serial number five.

**CHIEF JUSTICE CHANDRACHUD:** It's called Convenience compilation.

**JUSTICE KOHLI:** I'm just trying to check.

**CHIEF JUSTICE CHANDRACHUD:** What is the PDF page?

**MR. SIBAL:** Page 14, PDF 14. My Lords, prior to 2018, the elections took place in Shiv Sena in 2013. Then they took place in 2018, then they were due to take place in 2023. So, this only reflects that the last elections took place in 2018, and a letter was written to the Election Commission saying organizational elections of Shiv Sena were conducted on 23rd January 2018, at Mumbai and the information regarding the designations and names of the party office bearers sought by office Election Commission of India is being endorsed herewith in format of

1 your record. Along with this, along with this letter, the amendments to the Constitution were  
2 also enclosed. Anyway.

3

4 **CHIEF JUSTICE CHANDRACHUD:** Yes.

5

6 **MR. SIBAL:** Then My Lords, the office bearer names, Your Lordship will see. Shiv Sena  
7 Paksh Pramukh Uddhav Thackeray, Shiv Sena leaders, deputy leaders, secretaries, and all that  
8 is set out. And Shiv Sena's deputy leaders is My Lords, annexure one. And the National  
9 Executive Meet, held on 23rd January, that set out Shiv Sena Paksh Pramukh Uddhav  
10 Thackerayji, appointing the following members as deputy leaders, and Your Lordship will see,  
11 Shiv Sena Paksh Pramukh Uddhav Thackeray appointing the following members as Shiv Sena  
12 leaders which includes Eknath Shinde at serial number 4. Your Lordship see that? So all this  
13 information already sent to the Election Commission.

14

15 **CHIEF JUSTICE CHANDRACHUD:** Serial number four, is at which page?

16

17 **MR. SIBAL:** Sorry.

18

19 **CHIEF JUSTICE CHANDRACHUD:** Serial number four is at what page?

20

21 **MR. SIBAL:** Serial number four, My Lord is at PDF page 17.

22

23 **CHIEF JUSTICE CHANDRACHUD:** National Executive Meet held on 23rd January, 20...

24

25 **MR. SIBAL:** Correct. Normal as the election were due in January 2023, when all this  
26 happened. So,...we're in the midst of a lot of mess. That's all. Now, My Lords kindly see, then  
27 the party Whip.

28

29 **CHIEF JUSTICE CHANDRACHUD:** What is meant by appointing the, appointed the  
30 following person that Shiv Sena leader?

31

32 **MR. SIBAL:** Some are elected, some are appointed, but...

33

34 **CHIEF JUSTICE CHANDRACHUD:** But, oh, but appointed the following members of  
35 Shiv Sena leaders to which, to, Shiv Sena leaders appointed to where?

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37 **JUSTICE KOHLI:** Which platform?

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**MR. SIBAL:** Rashtriya Karya Karini, My Lords.

**CHIEF JUSTICE CHANDRACHUD:** For the National Executive..

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

**CHIEF JUSTICE CHANDRACHUD:** Oh, I see. So this is a meeting of the National Executive held on 23rd January 2018.

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

**CHIEF JUSTICE CHANDRACHUD:** At which these four persons were nominated as members of the National Executive for...

**MR. SIBAL:** Yes, the Rastriya Karya Karini. Elected are at page 15. Your Lordship will see that at page 15, PDF page 15.

**CHIEF JUSTICE CHANDRACHUD:** Yes.

**MR. SIBAL:** You see the elected ones, My Lords. Name of office bearers elected. Your Lordship sees that, fourth column from the left?

**CHIEF JUSTICE CHANDRACHUD:** Yes.

**MR. SIBAL:** So, some are elected, some are nominated.

**CHIEF JUSTICE CHANDRACHUD:** Right.

**MR. SIBAL:** And see if the last column, you say, list of names of leaders and deputy leaders appointed co-opted by Shiv Sena Paksh Pramukh, is also attached for your record. And that's annexure-two My Lords. So all this is informed, My Lords. So there are no dispute on any of this. Of course, the Election Commission ultimately says, I don't have the Constitution. So I will not look at it. Though it was annexed along with this very document, the Amendment to the Constitution, anyway. So, then My Lords kindly see June 21, PDF page 19. My Lords one other fact, Your Lordship may be kind enough to note is at page 15, PDF page 728.

1 **JUSTICE KOHLI:** 15?

2

3 **CHIEF JUSTICE CHANDRACHUD:** PDF page?

4

5 **MR. SIBAL:** 728. My Lords. Your Lordships will see this is important.

6

7 **CHIEF JUSTICE CHANDRACHUD:** Same compilation.

8

9 **MR SIBAL:** Yes. This is important because this is Dated 25th November 2019. Just note that  
10 date. It's important. My Lords on that particular day, My Lords the Uddhav Thackeray was  
11 neither a member of the Legislative Council nor was he Chief Minister. He was only President  
12 of the party. On 25th November 2019. The reason why I'm inviting My Lords' attention to this  
13 document is, please have a look at it. It is to the Honourable Speaker, Legislative Assembly.  
14 The Shiv Sena... Ladyship has it?

15

16 **JUSTICE KOHLI:** 715 did you say?

17

18 **MR. SIBAL:** 715, yes. Shiv Sena's newly elected MLAs meeting was convened at Shiv Sena  
19 bhavan on Wednesday, 31st October. Meeting was chaired by Uddhav Thackeray, Shiv Sena  
20 Paksh Pramukh. All the newly elected MLAs of Shiv Sena party unanimously resolved that all  
21 the decisions of today's meeting be decided by Uddhav Thackeray and authorized Uddhav  
22 Thackeray to take on the decisions. Shri Eknath Shinde and Sunil Prabhu were appointed as  
23 group leader and Chief Whip of Shiv Sena legislature party in the Maharashtra Legislative  
24 Assembly. Resolution passed in this are regard as follows. 'That it is resolved that elected  
25 MLAs meeting of Shiv Sena party of the party with Eknath Shinde is appointed as group  
26 leader.' So he becomes the leader My Lords of the House in a sense. 'And it is resolved that in  
27 the newly elected MLAs meeting of the Shiv Sena party Sunil Prabhu is appointed as the Chief  
28 Whip.' So their the appointment is by the party.

29

30 **JUSTICE NARASIMHA:** This is information to the speaker.

31

32 **MR. SIBAL:** That's right. That's information to the speaker. That's how it happens My Lords.  
33 When the leader of the House, My Lords, or the leader of the Opposition, that's how the party  
34 conveys the...

35

36 **CHIEF JUSTICE CHANDRACHUD:** This letter is addressed by Shri Uddhav Thackeray.

37

1 **MR. SIBAL:** That's correct. Just see.

2

3 **CHIEF JUSTICE CHANDRACHUD:** Because that last the signature doesn't appear there.  
4 That's why I just asked.

5

6 **MR. SIBAL:** Oh.

7

8 **CHIEF JUSTICE CHANDRACHUD:** Maybe. Maybe right also because it's addressed by  
9 those..

10

11 **MR. SIBAL:** It doesn't matter, My lords. It's an information of the decision of the party to  
12 appoint these two people as the leader, group leader, as well as the Chief Whip. Yes. It is  
13 chaired by the Uddhav Thackeray and it says the party has appointed. There's no doubt about  
14 that. First Para itself says so My Lords.

15

16 **JUSTICE SHAH:** No.. It was in the meeting of the MLAs ?

17

18 **MR. SIBAL:** No, no Shiv Sena's... Meeting was convened by Shiv Sena Bhavan. And the  
19 meeting was chaired by Uddhav Thackeray. All the newly elected members unanimously  
20 resolved that all decisions of today's meeting will be decided by Uddhav Thackeray.

21

22 **JUSTICE SHAH:** Okay. Okay. Now read a Resolution Number one.

23

24 **MR. SIBAL:** Yes, 'It is resolved in the newly elected MLAs meeting...

25

26 **JUSTICE SHAH:** MLAs meeting of so and so.

27

28 **MR. SIBAL:** That he is appointed resolution. Yes. He is appointed as a group leader of the  
29 Shiv Sena party. Resolve the newly elected MLA meeting of Shiv Sena party. Sunil Prabhu is  
30 appointed as the Chief Whip the Shiv Sena.

31

32 **JUSTICE SHAH:** So this was a resolution which was communicated was, prima facie subject  
33 to what you can say, the elected MLAs meeting was convened. It was resolved like one and  
34 two, which was intimated to the Speaker.

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36 **MR. SIBAL:** Yes. But no My Lords, the decision was of the Uddhav Thackeray. It's the  
37 decision of Uddhav Thackeray.

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**CHIEF JUSTICE CHANDRACHUD:** It doesn't appear to be so Mr.

**MR. SIBAL:** It says so.. My Lords, the first paragraph. First and the second paragraph both. First and second paragraph both says so...

**JUSTICE NARASIMHA:** Second says - the meeting was chaired and third says - elected MLAs unanimously resolved that all decisions of Today's meeting be decided by Thackeray .

**MR. SIBAL:** Uddhav Thackeray. So he is and.. authorized Uddhav Thackeray to take all the decisions of the meeting. The decision is of Uddhav Thackeray.

**CHIEF JUSTICE CHANDRACHUD:** But having said that, it also appears that the decision attains a certain degree of legitimacy because it is communicated by the MLAs to the Speaker, it appears, it may be, that of course, as the unquestioned party leader at that time, he was to decide who would be the group leader and who would be the Chief Whip. But the communication to the Speaker is signed by all the 56 MLAs and they eventually resolve that who will be the group leader and the Chief Whip. It seems to be that.

**MR. SIBAL:** As I showed Your Lordship, the law on the subject and the decision of the subject, it will be clear that it is only the party that appoints. No, no member of the legislature.

**CHIEF JUSTICE CHANDRACHUD:** I understand that, because your submission yesterday was that the appointment of the Chief Whip or the group leader is something which is never done by the...

**MR. SIBAL:** Never done.

**CHIEF JUSTICE CHANDRACHUD:** It's always done by the party.

**MR. SIBAL:** I'll do. Yes My Lords.

**CHIEF JUSTICE CHANDRACHUD:** So your second limb of the submission was, if there is a split, that split also, of course, there's no concept of a split in the Tenth Schedule, but even assuming there's a split in the party, that split is outside the Legislative Assembly.

**MR. SIBAL:** Correct.

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**CHIEF JUSTICE CHANDRACHUD:** And it can't be that the 56 MLAs decide that, well, we have now merged or we have...there is a split in our party.

**MR. SIBAL:** It is settled law as I mean, I'm just indicating this is how it happened. But it is settled law, that as far as the Whip is concerned, and that's in answer to My Lord's question, as far as the Whip is concerned and the leader is concerned, it's always decided by the party.

**JUSTICE SHAH:** That you said yesterday.

**MR. SIBAL:** Yes. I'm just saying the process was in this particular case this, say if a letter is written, I don't My Lords we will find out. I'll find out. The letter is communicated.

**CHIEF JUSTICE CHANDRACHUD:** And Mr. Sibal, on that you may be right also for this reason that a Whip is a direction to the elected members of the Legislature, whether it's in Parliament or a Legislative Assembly or Council that you shall vote in a particular manner, or this is our position on this particular aspect, on the discussion on a bill, or whatever you are doing as a... as an elected legislator. Therefore that direction to the members is also always...

**MR. SIBAL:** Always by the Whip.

**CHIEF JUSTICE CHANDRACHUD:** Offside, outside the...

**MR. SIBAL:** Outside, yes.

**CHIEF JUSTICE CHANDRACHUD:** Outside the Legislature.

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

**CHIEF JUSTICE CHANDRACHUD:** Show the relevant rules of the Legislature.

**MR. SIBAL:** I will, in fact, My lords, I will show that and it will be clarified. But My Lord is right that from the perspective of the format, Your Lordship may be right that it is forwarded, but we will have to check that. But assuming it doesn't make difference to the substance of...



1 **CHIEF JUSTICE CHANDRACHUD:** Mr. Sibal, why don't we take, go straight to the rules  
2 of the, because the rules of the assembly must be telling us how a Chief Whip is nominated.  
3 How a Group Leader is... would be....

4

5 **MR. SIBAL:** The rules of the assembly don't say that. There is no rule of the assembly. But  
6 this is what has been decided. But this is the convention in every political party. Why My lords?  
7 Because the legislators come into the House on the basis of the symbol given and the election  
8 My Lords. Pursuant to by which they are in the House. They are governed by the discipline of  
9 the Party, not their internal discipline in the House and that discipline of the Party.... I will  
10 please.

11

12 **CHIEF JUSTICE CHANDRACHUD:** So the rules, Mr. Sibal, the rules of the Legislative  
13 Assembly are silent? There is no guidance?

14

15 **MR. SIBAL:** No, no, there is no. But there is also My Lords, there is a particular rule,  
16 Maharashtra Legislature Members Removal of Disqualification Act, under which it is made  
17 clear. That Your Lordship will find at page 140 of the statute compilation. Just let's go there.

18

19 **CHIEF JUSTICE CHANDRACHUD:** Let's quickly go to that.

20

21 **MR. SIBAL:** Let's quickly go there.

22

23 **CHIEF JUSTICE CHANDRACHUD:** Mr. Sibal, anything here in this compilation so that  
24 we are closing it now. We're closing this compilation screen so we can go, if there's something  
25 else to be shown here, you can quickly show us and then go to the rule.

26

27 **MR. SIBAL:** My Lords let's see this as this question has arisen, then I'll go back.

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29 **CHIEF JUSTICE CHANDRACHUD:** So, we might as well complete it from this part here.

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31 **MR. SIBAL:** Just let's complete this part.

32

33 **JUSTICE KOHLI:** Mr. Sibal, if I may? Please look at page 710, PDF 723. Just in case the  
34 essence of the English translation has been lost. This is the same document letter at 710. The  
35 same letter that you were pointing out, 25th November 19. It's in Marathi and that probably  
36 will be the essence, because it's a translation that you have shown us.

37

1 **MR. SIBAL:** My Lords, the Chief...

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3 **JUSTICE KOHLI:** Perhaps Chief can throw more light on that. Hon'ble Mr. Justice.

4

5 **CHIEF JUSTICE CHANDRACHUD:** It says '*Guruwar, Dinank 31 October 2019 roji*'- I am  
6 sure, my learned brothers will get some flavour of it - '*Roji Shiv Sena Bhavan, Dadar Mumbai*  
7 *yethe Shiv Sena Pakshachya navnirvachit amdaranchi baithak Shiv Sena Paramukh*  
8 *Mananiya Shri Uddhavji Thackeray yanchya upasthitit sampann jhali. Maharashtra Rajya*  
9 *Vidhansabha nivadanuk 2019 madhe nivadun aalelya sarv navnirvachit amdarani*  
10 *baithakichi suruwatilach ya baithakit honyarya nirnayanche sarvasvi adhikar adhyaksh*  
11 *mhanun Shiv Sena Paramukh Shri Uddhavji Thackeray yana dile. Yapramane baithakit*  
12 *Maharashtra Rajya Vidhimandalatil Shiv Sena pakshachya Gatneta mhanun Amadar Shri*  
13 *Ek Nath Sambhaji Shinde va Vidhansabhetil Mukhya Pratod mhanun Amadar Shri Sunil*  
14 *Prabhu yanchi ekmatane nivad karnyat aali. Ya donhi nivadinche donhi tharav*  
15 *pudhilpramane aahet.'*

16 So it says that, well, all the decisions, they have power to take all the decisions are entrusted  
17 to Mr. Uddhav Thackeray and an election was then held at which so and so was nominated as  
18 a group leader, and So and So was nominated as the Chief Whip.

19

20 **MR. SIBAL:** That is what I thought. My Lords. The *Adhikar* was given to him.

21

22 **CHIEF JUSTICE CHANDRACHUD:** And then it is sort of ratified by all the MLAs.

23

24 **MR. SIBAL:** So My Lords, kindly come to PDF 55 of the statute compilation. This is what it  
25 is. 55. Oh, sorry 140. Sorry.

26

27 **CHIEF JUSTICE CHANDRACHUD:** And then *Tharav Kramank Ek* also says - '*Shiv Sena*  
28 *Pakshachya navnirvachit amdarnchya ya baithakit tharav karnyat yet aahe ki Shiv Sena*  
29 *Pakshachya Vidhimandal Gatnete padi Amadar Shri Ek Nath Sambhaji Shinde yanchi nivad*  
30 *karnyat yet aahe.'* That's the resolution .

31

32 **MR SIBAL:** My Lords, the Statute compilation just and then I'll come back to the other  
33 documents. Let's clear this issue My Lords.

34

35 **CHIEF JUSTICE CHANDRACHUD:** 140.

36

1 **MR. SIBAL:** Now kindly see My Lords at 142. PDF 142. These are My Lords, the Maharashtra  
2 Legislature Members Removal of Disqualification Act and removal of certain disqualifications.  
3 See Paragraph 2 at Page 142, Section 2, at Page 142.

4

5 **CHIEF JUSTICE CHANDRACHUD:** 142?

6

7 **MR. SIBAL:** I hope Your Lordship are feeling much better today.

8

9 **CHIEF JUSTICE CHANDRACHUD:** Little better yes. Thank you. Just professional  
10 hazards.

11

12 **MR SIBAL:** Page 142 Section 2. 'A person shall not be disqualified from being chosen as of  
13 being a member of the Maharashtra Legislative Assembly or Maharashtra Legislative Council  
14 nearly by reason of the fact that he holds any of the offices specified in Schedule 1. And that at  
15 145. You have schedule 1 My Lords. 23, item 23 there is the 'offices of the Chief Whip or Whip  
16 in the Maharashtra State Legislature'. Now kindly read the explanation with me if Your Lord  
17 Ships and Ladyship has it... 'the offices of the Chief Whip - The expression Chief Whip or Whip  
18 in relation to the Maharashtra Legislative Assembly means that member of the House, who is  
19 for the time being declared by the party...

20

21 **JUSTICE NARASIMHA:** Was it redacted?

22

23 **MR SIBAL:** I'm sorry?

24

25 **CHIEF JUSTICE CHANDRACHUD:** It's actually highlighted it. So much so that there is  
26 nothing except yellow here.

27

28 **JUSTICE KOHLI:** Already highlighted.

29

30 **CHIEF JUSTICE CHANDRACHUD:** *Mere pass hai.* It's all just yellow.

31

32 **MR. SIBAL:** Why, My Lords? How?

33

34 **CHIEF JUSTICE CHANDRACHUD:** They must have highlighted it and then scanned it.

35

36 **JUSTICE KOHLI:** So it has come black.

37

1 **MR. SIBAL:** I'm sorry, My Lords for this.

2

3 **CHIEF JUSTICE CHANDRACHUD:** It's surprising.

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5 **JUSTICE KOHLI:** I was also wondering that I have not done it.

6

7 **MR. SIBAL:** I am surprised myself.

8

9 **JUSTICE KOHLI:** Doesn't matter.

10

11 **CHIEF JUSTICE CHANDRACHUD:** You don't read it slowly then I think.

12

13 **JUSTICE NARASIMHA:** You can give us a copy later. But now you can read.

14

15 **MR. SIBAL:** I can pass on My Lords...

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17 **JUSTICE KOHLI:** I can share it.

18

19 **CHIEF JUSTICE CHANDRACHUD:** on a returnable basis or what?

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21 **MR. SIBAL:** pass on another one, please

22

23 **JUSTICE KOHLI:** I have, mine is fine.

24

25 **MR. SIBAL:** Just give another for the Chief Justice, please.

26

27 **CHIEF JUSTICE CHANDRACHUD:** No, I have. My pen drive is okay.

28

29 **MR. SIBAL:** Okay. Now, may I read My Lords?

30

31 **CHIEF JUSTICE CHANDRACHUD:** Yes, yes.

32

33 **MR. SIBAL:** The expression Chief Whip or Whip, in relation to the Maharashtra Legislative  
34 Assembly means, that member of the House, that member of the House, who is for the time  
35 being declared by the party forming the Government to be the Chief Whip or Whip in that  
36 House and recognized as such by the Speaker and includes a member of the House who is for  
37 the time being declared as such by the party, having at least 10% of the total members of the

1 House and recognized as such by the Speaker. The expression Chief Whip or Whip in relation  
 2 to the Maharashtra Legislative Assembly means the member of the House, that member of the  
 3 House who is for the time being declared by the party forming the Government to be the Chief  
 4 Whip or Whip in that House and recognize as such by Chairman and includes a member of the  
 5 House who is for the time being declared as such by the Party, having at least 10% of the total  
 6 members of the House and recognized as such. It's clear, My Lords, this is, there's no doubt  
 7 about these things, My Lords, I read to Your Lordship yesterday, in fact, the communication  
 8 by the Chairperson of the UPA to the Chairman of the Rajya Sabha that after Mr. Ghulam Nabi  
 9 Azad, Mr. Kharge is the leader, is the leaders of the legislative party. So on this there is no,  
 10 really no issue My Lords.

11

12 **CHIEF JUSTICE CHANDRACHUD:** Yes.

13

14 **MR. SIBAL:** Now My Lords, now I come back to Volume-2, page 17. Then this is My Lords,  
 15 21st of June, the meeting of all members of the Shiv Sena, PDF 19. PDF 19. PDF 19 of  
 16 Convenience Compilation, Volume-2. I am coming back to that compilation list. Page 6  
 17 otherwise.

18

19 **JUSTICE SHAH:** Party Whip.

20

21 **MR. SIBAL:** Party Whip, a meeting of all members of the Legislative Assembly on Tuesday  
 22 on 21st June at 12:30 has been arranged at the Honourable Chief Justice, Chief Minister's  
 23 residence Varsha Bungalow. Therefore, all members of the Shiv Sena should positively remain  
 24 present for the said meeting. So that's how the issue starts. And this is given by the party Whip.  
 25 And those who were present, they have signed it. We don't have to go into that at the moment.  
 26 So typed copy is there. And then kindly come to page, PDF page 32. As per Whip, My Lords  
 27 have 32 PDF? As per Whip issued by the Chief Speaker of Shiv Sena Shri Sunil Prabhu, the  
 28 meeting of members of the Shiv Sena party was concluded on Tuesday, 21st of June, at Chief  
 29 Minister's residence at Varsha Bungalow, and under the chairmanship of the Party President  
 30 Uddhav ji. In the meeting, the following resolution was passed unanimously. Resolution  
 31 Eknath Shinde, the member of Legislative Assembly has been removed forthwith as the post  
 32 of group leader of Shiv Sena legislative party, Ajay Choudhary member of Legislative Assembly  
 33 has been immediately elected unanimously on the post of group leader of Shiv Sena legislative  
 34 party that has become vacant. A copy of the aforesaid resolution vide Article 180 as a  
 35 Constitution, be forward it to the Hon'ble Vice President Maharashtra Legislative Assembly,  
 36 who is discharging the duties of the post of President Maharashtra Legislative Assembly.

1 Presented by Ravindra Waikar and Uday Samant and the others. So My Lords we changed  
2 him, the party's decision to remove him as the group leader.

3

4 Then comes My Lords, PDF page 34. Again on 21st of June.

5 Yes, we communicated this decision to the Deputy Speaker and that Your Lordship will see to  
6 the Vice President Maharashtra Legislative Assembly.

7

8 **CHIEF JUSTICE CHANDRACHUD:** Page?

9

10 **MR. SIBAL:** It is actually Vice President is the wrong translation. It's the Deputy Speaker. At  
11 Page 34 PDF Page 34.' A meeting of members of Shiv Sena Legislative party was held under  
12 the Chairmanship of so and so. In this meeting the following resolution was passed and that  
13 is sent for appropriate action.' Your Lordship see that. You don't have to read the whole  
14 document. Sent for appropriate action.

15

16 Then PDF Page 36. Again 21st of June, because the party decides to make Ajay Choudhary the  
17 group leader that also is communicated to the Deputy Speaker and that Your Lordship will  
18 find at Page 36. I don't have to read it ,just the waste of time. 'That I am directed to inform you  
19 this is the request made vide above letter to record approval to the election of Shri Ajay  
20 Choudhary, member of the Legislative Assembly to the post has been accepted by the President  
21 Maharashtra Legislative Assembly.' So he accepts that, Deputy Speaker accepts that. That's  
22 how the process is My Lords, Party conveys to the Deputy Speaker. Deputy Speaker accepts it.  
23 That's in all assemblies in India, including Parliament. Then My Lords kindly come to...

24

25 **JUSTICE SHAH:** Could the resolution which you read, the communications. One removing  
26 Mr. Eknath Shinde. Correct? And appointing Ajay Choudhary, were in the meeting of the  
27 legislative party. Please see.

28

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

30

31 **JUSTICE SHAH:** They were not the decisions taken. Other resolutions were passed in the  
32 party meeting.

33

34 **MR. SIBAL:** That doesn't happen My Lords. That never happens. What happens..

35

36 **JUSTICE SHAH:** Just to clarify my point. Both these resolutions were in the meeting of a  
37 legislative party.

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**MR. SIBAL:** Yes. I'll tell Your Lordship why. My lords what happens is it's the legislative party that has to accept a leader. There is always a consultation with the party, the party is represented by Uddhav Thackeray.

**JUSTICE SHAH:** Just what we want to say, just speaking of myself it was not in the meeting of the party.

**MR. SIBAL:** No, it is never. It is never My lords. It is never. I'm explaining that to you, explaining that. Ultimately, My Lords, a group leader or a leader in the House has to be chosen right? So what the party Whip and what the leader of the party does is, calls the legislators and says, who would you like to leap in the leader. They take their view, and the party takes the decision. It's not a party meeting, Your Lordship is right. It doesn't happen in the like in the AICC or the DPCC. It happens My Lords with the leader, namely, the Chairperson, the Chairperson, or the Prime Minister My Lords, acting in his capacity as the head of the BJP, he will be consulted. But it's why? Because it is the legislative members who have to accept somebody as a leader. So the decision is given by the party that this is the person who is...we choose as the leader. Now you cannot. This is not...doesn't happen in the plenary My Lords. That's the process and I will demonstrate that. Your Lordship is absolutely right. Because ultimately, My Lords who has to work? Somebody within the Legislature is to work with the leader. So they are the ones who are concerned. So their views will be taken and the party will decide. So therefore they say, Okay, let's Uddhav Thackeray decide, we will accept what you say. That's how it happens.

**JUSTICE SHAH:** So according to you. The decision in the legislative party meeting would always be on the advice of the party?

**MR. SIBAL:** Always. That's right. Always. And it's recognized by this court My Lords in several decisions. So actually and this is a practice. This is a norm everywhere in every political party.

**JUSTICE NARASIMHA:** Leader as well as Whip, both you are saying?

**MR. SIBAL:** Sorry?

**JUSTICE NARASIMHA:** Leader as well as the Whip.

1 **MR. SIBAL:** That's right. That's right. My Lords, what happens, may I just explain that also?  
2 Leadership will decide who the Chief Whip will be, leadership will decide who the group leader  
3 will be but the Chief Whip will decide, not pursuant to, Chief Whip will decide carry out the  
4 instructions of the leader when matters are in the House. There the leader doesn't come in.  
5 Chief Whip will say, we'll go to the leader and say, look, this is the issue before the House. How  
6 do we deal with it? Leader will discuss it with the Chief Whip. Chief Whip will communicate.  
7 That's how Parliamentary democracy works.

8

9 **JUSTICE NARASIMHA:** Yes.

10

11 **MR. SIBAL:** But Your Lordship is absolutely right, it's a good point that Your Lordship have  
12 pointed out so that I can clarify it. Then My Lords, kindly see 22nd of June. In the backdrop  
13 of causing party crossing over and thereby attempting to destabilize the government and  
14 considering the consequential political situation that has been created in the State and an  
15 urgent meeting has been arranged on 22nd of June at 05:00, at Varsha Bungalow, Mount  
16 Crescent Road to face such situations. Your presence for this meeting is necessary, which  
17 please note, the said Notice has been forwarded on your email ID registered in the  
18 Maharashtra Legislative Assembly that apart, that apart you have also been informed through  
19 social media WhatsApp and SMS. You cannot remain absent for this meeting unless valid and  
20 sufficient reason in writing is given. If you fail to remain present for the meeting, it will be  
21 presumed that you have clear intention to leave membership of Shiv Sena party voluntarily as  
22 a result of which action is provided in the Constitution of India with respect to disqualification  
23 of members will be taken against you. Note of which is taken. This is communicated to Eknath  
24 Shinde, by whom? By the Whip. By Sunil Prabhu, who represents the party.

25

26 **JUSTICE KOHLI:** So, is it a typo at the end of that Chief Speaker? It should be Chief Whip?

27

28 **MR. SIBAL:** Yes, it's Chief Whip My Lords, It's not Chief Speaker. It must be a translation  
29 issues.

30

31 **CHIEF JUSTICE CHANDRACHUD:** Yes, it's a, I was reading the Marathi. It's Chief Whip.

32

33 **MR. SIBAL:** Yes, and then My Lords, the 22nd June Notice is sent, which is PDF-39. In the  
34 background of the recent concluded Maharashtra Legislative Council elections held on 20th  
35 of June, and in view of the volatile political situation emerging in the State, on account of  
36 repeated attempts being made to destabilize the government by orchestrating defections  
37 within the Shiv Sena and to discuss and draw out a political strategy to address and contain



1 any such exigency. You are urgently called upon to attend the meeting of the Shiv Sena  
2 legislative party today, on 22nd to be held at so and so place. Please note that failure to  
3 participate in the meeting without providing valid and adequate reasons in writing,  
4 communicated in advance to the undersign will result in consequential action against you  
5 under the relevant provisions of the Constitution. This Notice is being sent on email address  
6 provided by the legislators and registered with the Maharashtra Assembly along with soft  
7 copies being served on SMS and WhatsApp as well. This again is sent by the Chief Whip My  
8 Lords. And next document is page 40, PDF page 40, 22nd of June, says subject Notice of Shiv  
9 Sena legislative party meeting. An emergency meeting has been organized on Wednesday  
10 22nd June at 05:00 p.m. at Varsha whatever, to deal with situation as there is an attempt to  
11 destabilize the government by shifting parties in the background and therefore the political  
12 situation created in the state. It is important to note that this meeting requires your presence.  
13 Notice has been sent to you by email you have registered with the Maharashtra Legislative  
14 Assembly in addition to you then SMS, WhatsApp. It should be noted that if you do not attend  
15 then you're liable in accordance with the Constitution. Action will be taken. This is sent by the  
16 Chief Whip, and then this is sent to all these people and they don't attend. Then Your Lordship  
17 may go straight away....

18

19 **JUSTICE NARASIMHA:** What is the Annexure 10?

20

21 **MR. SIBAL:** Annexure?

22

23 **JUSTICE NARASIMHA:** Annexure 10, that is the next page of PDF 41.

24

25 **MR. SIBAL:** That's for people My Lords, people who attended, and those people who didn't  
26 attend.

27

28 **JUSTICE NARASIMHA:** So attended?

29

30 **MR. SIBAL:** That's right. That's what it is. Yes. Now My Lords, now comes the document  
31 which is crucial for this case.

32

33 **CHIEF JUSTICE CHANDRACHUD:** What is that document Mr. Sibal?

34

35 **MR. SIBAL:** This is at PDF 51. This communication, which I have read, was sent to Eknath  
36 Shinde My Lords, by the Chief Whip. Now Eknath Shinde replies to it.

37

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

2

3 **MR. SIBAL:** Not Eknath Shinde but hopefully....

4

5 **JUSTICE NARASIMHA:** <UNCLEAR> Sunil Prabhu by Eknath Shinde.

6

7 **MR. SIBAL:** Now kindly see to Sunil Prabhu. This document. Now it says, 'you have misused  
8 the authenticate letter of the Office of the Shiv Sena Legislative party. Meeting of 45 MLAs of  
9 Shiv Sena party was held under the Chairmanship of Honourable group leader Eknath Shinde.  
10 And in the said meeting you have been unanimously removed from the post of Chief Speaker  
11 of the party, Chief Whip of the party Shiv Sena MLA Bharat Gogawale has been appointed as  
12 a post of Chief Speaker... Chief Whip of the Legislative Assembly. As per letter of 22nd June  
13 Shiv Sena Legislative Party office. Despite you having no authority to sign has send to me a  
14 notice which is legally invalid. You have no right to send me the said notice. Therefore it is not  
15 binding upon me to remain present.'

16 Now My Lords, this act, the fact that you did not attend the meeting the fact that you wrote  
17 this letter, the fact that you appointed the Chief Whip. You 45 people or whoever, whether it's  
18 40 or 45 at the moment, we are not on that, that you are members of the Legislative Assembly.  
19 You have appointed your own Chief Whip. You have you say that you are no longer the Whip,  
20 is all... there is no as far as I am concerned. My Lords, this is *per-se* illegal. This doesn't  
21 terminate from the party. They cannot... Members of the Legislature cannot my Lord pass such  
22 a resolution. Cannot defy the Whip. Cannot remove the Whip. So the 40 odd members My  
23 Lords sitting in Assam convert themselves into the party and decide to remove everybody.

24

25 The next document is at Page 52, again June 22nd 2022. Same thing that- 'You have misused  
26 the official letterhead in a meeting of 45 MLAs, under the chairmanship of group leader  
27 Eknath Shinde. You have been unanimously removed from the position of Chief Whip.' So he  
28 is acting as a group leader of the members of the legislature. So therefore, My Lords let's put  
29 it in simple terms. In any assembly, ten people can get together and remove My Lords, the  
30 Chief Whip and then they can go to the opposite party and My Lords with the numbers' game  
31 that is going on, they can remove, the they can actually destabilize the government and have  
32 their own Chief Minister. This is what... this is the outcome, if, if this is upheld to be... if this  
33 is held to be valid. If such an exercise is held to be valid, the outcome is that you can remove,  
34 an elected government can be removed anytime, depending on the arithmetic.

35

1 **CHIEF JUSTICE CHANDRACHUD:** To put it in the flip side. Therefore, Mr. Sibal, your  
2 contention would be then if this outcome has to be lawfully achieved of removing the Chief  
3 Whip or the group leader. Then what is the course of action to be followed according to you?

4

5 **MR. SIBAL:** You have to go to the party. Call up, call a meeting of the party. Call the meeting  
6 of the party or you merge.

7

8 **CHIEF JUSTICE CHANDRACHUD:** Party would mean the the National Executive or  
9 what would be meaning?

10

11 **MR. SIBAL:** If you have to call My Lords.. the National Executive. The Pratinidhi Sabha, the  
12 general body, the Pratinidhi Sabha. Not the Karyakarini My Lords. That's a 13 member. The  
13 Pratinidhi Sabha has 262 odd members.

14 My Lords, point is, they have never been to the party.

15

16 **CHIEF JUSTICE CHANDRACHUD:** Of course, the only chink in that submission. I mean,  
17 we must put it to you straight so that you can deal with it, is that, that was not the process  
18 which was originally followed when the Chief Whip or the group leader was nominated unless,  
19 unless we also postulate that when the group leader and the Chief Whip were originally  
20 nominated, Uddhav Thackeray was acting as the Party.

21

22 **MR. SIBAL:** Yes, because he was neither member of the Council, nor was he the Chief  
23 Minister. He was nothing. He is the Paksha Pramukh, under the Constitution.

24

25 **CHIEF JUSTICE CHANDRACHUD:** One thing as brother Justice M R Shah pointed out,  
26 very clear is it's obvious that the appointment and the nomination of the group leader and the  
27 Chief Whip was made by at a meeting of the MLAs. Now because it clearly says  
28 '*amadaranchya baithakit.*'

29

30 **MR. SIBAL:** I will answer that straightaway My Lords.

31

32 **CHIEF JUSTICE CHANDRACHUD:** But it is also in the presence of Mr. Thackeray and  
33 the MLAs begin by saying that we are assigning to Mr. Uddhav Thackeray the right to take all  
34 decision. Then they pass a resolution at the meeting of the MLAs. So, it's a sort of a hybrid  
35 situation where the group leader powered to nominate a Group Leader and the Chief Whip is  
36 delegated to Shri Uddhav Thackeray. But there is a so to speak, an anointment of them at the  
37 meeting of the MLAs. So the only way really that can be, the two can be reconciled is by

1 postulating that in that sense, that at the original meeting, Mr. Uddhav Thackeray was the  
2 party. He was whether you like it or not, he was the party. It was not a meeting of the National  
3 Executive. It was not about a member of meeting of the plenary of the party, but he was really  
4 the whole and soul because he was not an elected member at that point of time at all.

5

6 **MR. SIBAL:** He was the President of the party.

7

8 **CHIEF JUSTICE CHANDRACHUD:** He is the President..

9

10 **MR. SIBAL:** Paksha Pramukh.

11

12 **CHIEF JUSTICE CHANDRACHUD:** He was the Paksha Pramukh?

13

14 **MR. SIBAL:** Yes. My Lords, that's, it's very interesting you have raised this. Your Lordship  
15 raised this, let's analyse it. Let's analyse the circumstances against me. Let's assume this all  
16 can be done within the legislature. I'll assume that My Lords that the party has no role. So My  
17 Lords therefore 50 people in the House can actually have a leader in the House without  
18 reference to the party, if that logic is accepted. 50 members of the House can actually oust the  
19 party Whip appointed by the party. That's the consequence.

20

21 **JUSTICE NARASIMHA:** When were the elections held?

22

23 **MR. SIBAL:** 2018.

24

25 **JUSTICE NARASIMHA:** The first document that page PDF 14.

26

27 **MR. SIBAL:** 23rd January, 2018.

28

29 **JUSTICE NARASIMHA:** 17th February, 2018.

30

31 **MR. SIBAL:** No, but that's the communication, but the elections are 23rd January 2018.

32

33 **JUSTICE NARASIMHA:** 23rd January, it speaks about that.

34

35 **MR. SIBAL:** Yes. The point that I'm making to Your Lordship, is this is unheard of, in any  
36 democracy, in any legislature.

37

1 **CHIEF JUSTICE CHANDRACHUD:** Elections were held on 23-01-18 you said?

2

3 **MR. SIBAL:** Yes, yes. My Lords it will be entirely unworkable because you will then say that  
4 there is no relationship between the members of the Legislature and the party. They are  
5 independent of the parties. They can take whatever decision they like. It will be destructive of,  
6 if you ask me the basic structure of a system of governance which allows the party and the  
7 legislatures to be intertwined in matters where the decisions have to be taken on various very  
8 significant issues as they come up in the assembly or in Parliament.

9

10 **JUSTICE NARASIMHA:** Mr. Sibal, you can tell me later, but what I want to know is, this  
11 letter speaks about organizational elections.

12

13 **MR. SIBAL:** Yes.

14

15 **JUSTICE NARASIMHA:** It talks about organizations.

16

17 **MR. SIBAL:** That's corrections.

18

19 **JUSTICE NARASIMHA:** So what are this? It is to the different tiers, is it?

20

21 **MR. SIBAL:** Yes, It is in different tiers.

22

23 **JUSTICE NARASIMHA:** So, there is something called a General Body, is it?

24

25 **MR. SIBAL:** There is a Rashtriya Karyakarini, which is the National Executive, 13 members.  
26 Then there is the Pratinidhi Sabha, which is about 262 members.

27

28 **JUSTICE NARASIMHA:** What is at the bottom?

29

30 **MR. SIBAL:** Sorry?

31

32 **JUSTICE NARASIMHA:** What is representing the General Body?

33

34 **MR. SIBAL:** Pratinidhi Sabha.

35

36 **JUSTICE NARASIMHA:** Pratinidhi Sabha.

37

1 **MR. SIBAL:** Pratinidhi Sabha. My Lords of course you can't hold a meeting of all the  
2 members of the party all over Maharashtra.

3

4 **JUSTICE NARASIMHA:** I am just asking for information.

5

6 **MR. SIBAL:** Right. There is a tier system, there's a tier system.

7

8 **JUSTICE NARASIMHA:** It is virtually like a General Body.

9

10 **MR. SIBAL:** Yeah, there is a tier system, by which people are both appointed and elected.  
11 Appointed...

12

13 **JUSTICE NARASIMHA:** Pratinidhi Sabha?

14

15 **MR. SIBAL:** Yes, Pratinidhi Sabha.

16

17 **CHIEF JUSTICE CHANDRACHUD:** And Mr. Sibal, possibly this line of argument of yours  
18 is also buttress by 2B of the Tenth schedule which says if he votes or abstains from voting in  
19 such House, contrary to the direction issued by the political party to which he belongs or by  
20 any person or authority authorized by it in this behalf.

21

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

23

24 **CHIEF JUSTICE CHANDRACHUD:** So the Whip is really a person who is authorized by  
25 the political party.

26

27 **MR. SIBAL:** That's correct. That's how it functions.

28

29 **CHIEF JUSTICE CHANDRACHUD:** Because the direction has to be given by the political  
30 party. It can't keep on giving a direction. It's a larger body. So therefore it delegates its power  
31 and is authorizes a person who will then issue a direction on which way to vote in the Assembly.

32

33 **MR. SIBAL:** And the matter, when it came up before the Law Commission it will be  
34 disastrous for democracy, disastrous for the country if the legislature party is allowed to act  
35 independent of the political party.

36

1 **CHIEF JUSTICE CHANDRACHUD:** So the actual Whip, without it says all by any  
2 personal authority authorized by it in the...

3

4 **MR. SIBAL:** I read that, yes.

5

6 **CHIEF JUSTICE CHANDRACHUD:** So the party really nominates or authorizes a person.

7

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

9

10 **CHIEF JUSTICE CHANDRACHUD:** And the act of defection lies in voting or abstaining  
11 from voting contrary to a direction given by the party or by that person.

12

13 **MR. SIBAL:** I want to ask myself, supposing, there's a bill in Parliament, the legislature party  
14 on its own can't decide what the position will be. It cannot. Naturally, they'll have to be  
15 consultation with the party because they are not living in asylum. They are not acting in as a  
16 separate entity.

17

18 **CHIEF JUSTICE CHANDRACHUD:** They are the really the voice of the party in  
19 Parliament or the State Legislator.

20

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

22

23 **JUSTICE NARASIMHA:** It's the political party.

24

25 **MR. SIBAL:** The genus is the party. They are the species.

26

27 **JUSTICE NARASIMHA:** Political party either sends the MLAs, who because of majority  
28 form the government or they could even send members of Legislative Assembly who will be  
29 sitting in the opposition. So nevertheless, the controlling factor is the political party which will  
30 through its MLAs operate either as

31

32 **MR. SIBAL:** Because they are there because of the party.

33

34 **CHIEF JUSTICE CHANDRACHUD:** They are the mandate is the mandate of the party  
35 and therefore, how they function in the House is determined by the mandate which has  
36 brought them into the house. And I think that is seems to be a fair understanding of the Tenth  
37 schedule.

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**MR. SIBAL:** My Lords you have to maintain the integrity of the political party within the House. It's programs, its views, it's views on reservations, it's views on Tenth schedule. it's views on foreign policy. Individual members of the legislature don't decide on foreign policy issues. But the party decides. And party systems are such that you have committees where My Lords, people who are in the past also were members of the party who have experience in foreign policy, Ex Ministers of Foreign policy, they become members of the committee. They advise the party as to what position should be taken and a matter comes up the legislators are only told that this is what should be done within that framework you can make your case out.

**JUSTICE KOHLI:** So they articulate the views of the party in the House.

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

**JUSTICE NARASIMHA:** One important distinction...

**MR. SINGHVI:** Just to take 15 seconds of bizarre example of how the party governs. With very interesting approval Lordship. I happened to be Chairman of the Parliamentary standing committee in 2011, and the most contentious Lokpal Bill came. We had a report signed by all except three descents. Three descents and every 31 member committee which is a mini Parliament. Everybody signed. All political parties 70 political parties. Matter went to Rajya Sabha. All of them supported the report because they had signed it. Overnight My Lords the party stand of one particular party, I'll not name it, changed. The matter came to Lok Sabha. The same party which has signed took a different stand Lok Sabha because the instructions from the party to the legislative wing of the Lok Sabha was that - no this has to be opposed. Lok Pal has to be opposed. This is in the record of Parliament. So My Lords, the party decides. This is an extreme example that the party which had agreed with the report, actually opposed it in Lok Sabha because the members are only legislators, but they received the instructions. It's an important, well known regional party. But the policy changed that - no, we must oppose Lok Pal. So they opposed in Lok Sabha. That is validation of this kind of example.

**MR SIBAL:** Any number of examples like that any number of examples..

**JUSTICE NARASIMHA:** It's a reverse engineering.

**MR. SINGHVI:** It's a political factor...



1 **MR. SIBAL:** Legislative members controlling the party is actually reverse engineering.

2

3 **MR. SIBAL:** Yes, Your Lordship is right. Exactly. Therefore, these documents become  
4 exceptionally important because they determine the outcome of this litigation. If you give  
5 validity and legality.

6

7 **CHIEF JUSTICE CHANDRACHUD:** So Mr. Sibal, we have seen all the documents now?

8

9 **MR. SIBAL:** Not yet My lords

10

11 **CHIEF JUSTICE CHANDRACHUD:** No, because the next step I was going to request you  
12 to formulate it in two or three submissions for us. But you can complete the documents and  
13 then give us.

14

15 **MR. SIBAL:** Yes, yes I will.

16

17 **CHIEF JUSTICE CHANDRACHUD:** Give us a formulations of two or three.

18

19 **MR. SIBAL:** My Lords and then I have to read Your Lordship some judgments which actually  
20 deal with this.

21

22 **CHIEF JUSTICE CHANDRACHUD:** Before we go into the judgments, you can just  
23 formulate it for us in two or three submissions.

24

25 **MR. SIBAL:** Yes, yes. I will take it down.

26

27 **CHIEF JUSTICE CHANDRACHUD:** But let's complete the document, then formulation,  
28 and then the judgment.

29

30 **MR. SIBAL:** Yes, let me just quickly go through the documents now.

31

32 **CHIEF JUSTICE CHANDRACHUD:** Yes.

33

34 **MR. SIBAL:** So page 52, I have read. Then kindly come to My Lords, resolution of the meeting  
35 of the Shiv Sena Maharashtra Legislative Assembly 1990 to 2024. That document is at page  
36 50...PDF-55. Now this is what is passed, very interesting.

37

1 **CHIEF JUSTICE CHANDRACHUD:** What is the date?

2

3 **MR. SIBAL:** My Lords it is signed by Bharat Gogawale. Very interesting document. This tells  
4 you the story. Resolution of the meeting of the Shiv Sena Legislative Assembly, Maharashtra  
5 Legislative Assembly 1990 to 2024, we the following members of the 14th Maharashtra  
6 Legislative Assembly belonging to the Shiv Sena. We are notified as the members of the  
7 Maharashtra Legislative Assembly as members of Shiv Sena legislature party, we had  
8 unanimously elected Eknath Sambhaji Shinde on 31st October 2019 as group leader of the  
9 Shiv Sena legislature party. There was a pre-poll alliance between the Bhartiya Janata Party  
10 and Shiv Sena party for the 14th Maharashtra Legislative Assembly. There has been great  
11 dissatisfaction prevalence among the members of our party Shiv Sena and our party cadre at  
12 large on account of corruption in the government administrations regarding police posting,  
13 corruption by then Home Minister so and so, sitting Minority Minister so and so. Apart from  
14 above reasons our party cadre faced tremendous harassment and distress on political as well  
15 as personal grounds from the opposition. Ideological parties who are now a part of the  
16 government and were using their office and power to undermine the base and the foundation  
17 of Shiv Sena. There is enormous discontent amongst the cadres of our party Shiv Sena for  
18 forming the government with NCP and INC, who are ideologically opposed to our party. There  
19 has been a compromise on the principles of our party Shiv Sena, which has been a party of  
20 fierce ideological base and was formed for fighting for the rights of local Marathi people. For  
21 last two and a half years, our party and its leadership have compromised party principles by  
22 aligning with the contrasting ideologies for the sake of achieving power. The ideology of our  
23 party leader late Balasaheb Thackeray was to give clean and honest government to the people  
24 of Maharashtra and also without compromising on the principle of Hindutva, which was  
25 defeated on the first day itself by aligning with the opposing ideologies. Shiv Sena and Bhartiya  
26 Party has forged a pre-poll alliance for 2019 Maharashtra Assembly. They saw the blessings of  
27 the voters of the Sena BJP alliance, which the voters accepted and voted in favour of alliance.  
28 After results were out the Shiv Sena severed, it's ties with the BJP and formed an alliance of  
29 the opposing parties which they had fought against in 2019. This act of our party leaders had  
30 a tremendous negative impact upon the voters and the party cadre. There was a continuous  
31 hue and cry towards party leadership for the act of aligning with the opposing parties. Ignoring  
32 this party leadership went ahead and formed the Maha Vikas Aghadi Government. For the last  
33 two and a half years, we the Shiv Sena Legislative Party members were facing tremendous  
34 pressures from the electorate. We the members of the legislative party as well as all leaders  
35 and workers throughout the country, were facing a lot of humiliating questions. Our leader,  
36 Balasaheb Thackeray, was always a strong nationalist. We've also been subjected to a lot of  
37 criticism for being part of the corrupt Maharashtra. In view of the above, the members of the

1 Maharashtra Shiv Sena legislative party have met today and resolved this under. What has  
2 they resolved? Hereby resolved and reaffirmed that Shinde, who was appointed as leader of  
3 Shiv Sena Legislative Party, is in continuation to be the leader of the Shiv Sena legislative party  
4 of the 14th Maharashtra Legislative Assembly. And this is proposed and seconded by members  
5 of the Legislature and I hereby further resolve that Bharat Gogawale elected and appointed as  
6 Chief Whip of the 14th Maharashtra Legislative Assembly is cancelled with immediate...And  
7 Sunil Prabhu is cancelled with immediate effect, proposed and seconded.

8

9 Now My Lords, there is no reference to any meeting of the party. There is no reference to any  
10 grievance made prior to this date. They are all members. He was serving as a minister for two  
11 and a half years. There is no reference to any grievance that he has ever had. No reference. No  
12 reference to any statement he made in any organizational election.

13

14 This suddenly could not have happened on the 21st June My Lords. This sudden realization  
15 that this grave injustice has been done My Lords. Obviously, this was planned. My Lords if  
16 anybody had any grievance of this nature, it would be in public statements. It will be in  
17 organizational meetings. After all, this is from 2018. We are in 2023 now My Lords. Not a  
18 single statement anywhere, so obviously. And what this statement is being made from Assam.  
19 Why Assam? So it not something. It's all pre-planned. It's a conspiracy. It's not something that  
20 happened overnight and you are talking about poll promises. Let me My Lords, talk of history  
21 then. My Lords the poll promise was broken at the time when My Lords Devendra Fadnavis  
22 and Ajit Pawar were sworn in the early hours of the morning by the Governor. What about that  
23 poll promise? So let's not go into politics.

24

25 **CHIEF JUSTICE CHANDRACHUD:** I was just going to say that now you're clinching into..

26

27 **MR. SIBAL:** No, no.

28

29 **CHIEF JUSTICE CHANDRACHUD:** Politics.

30

31 **MR. SIBAL:** No, but this is all politics.

32

33 **CHIEF JUSTICE CHANDRACHUD:** You're now leaving the area of constitution.

34

35 **MR SIBAL:** No, no. I know. I said it in the context of the grievance that he has made. He has  
36 made a grievance of poll promise. That's why I said we are. I'm sorry. I'm sorry but

37

1 **CHIEF JUSTICE CHANDRACHUD:** But therefore, Mr. Sibal, ultimately, I mean, we are  
2 just sort of pushing your argument to its logic and conclusion in constitutional terms.  
3 Therefore, what you are saying is that look, when Eknath Shinde was nominated as a group  
4 leader and the Whip was then nominated. The Whip was also notified. It was at the behest of  
5 the party. Be at the MLAs meeting. An alteration of that position was made at the meeting,  
6 which was chaired by Mr. Uddhav Thackeray, the legislatives could not have either abstained  
7 from the meeting, which was convened by the Party President nor could the legislators have  
8 replaced, the Whip or the group leader.

9

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

11

12 **CHIEF JUSTICE CHANDRACHUD:** So that all that they did was really therefore invited..  
13 was contrary to Law, and therefore invited a disqualification under the Tenth Schedule. All  
14 this, really then leads us to this that, therefore they have incurred the disqualification. They  
15 have incurred disqualification.

16

17 **MR. SIBAL:** That is correct.

18

19 **CHIEF JUSTICE CHANDRACHUD:** Now, having said that therefore, this is, therefore  
20 case where the Speaker has to ultimately decide upon the disqualification which they have  
21 incurred, isn't it? Mr. Sibal, that is an area which we are not able to come to bridge.

22

23 **MR. SIBAL:** I will My Lords. I will. Yes. I made that argument. Yes, I will try.

24

25 **CHIEF JUSTICE CHANDRACHUD:** Of course the constitutional position of the Speaker  
26 to decide.

27

28 **MR. SIBAL:** I'll tell Your Lordship the problem in that in that area. But..

29

30 **CHIEF JUSTICE CHANDRACHUD:** There are still problems in the area. We see that. But,  
31 you know also we understand the significance of the point which you have made, which is a  
32 very significant point for Constitutional Democracy that ultimately the party is supreme and  
33 legislators get there into the House or the Parliament or the Legislative Assembly on the  
34 mandate of the Party. What the Party means to the people. Therefore, you are really elected as  
35 a representative of the Party. Your behaviour must be governed by what the party dictates and  
36 a group of legislators, whether you are one-third or 1/10 even 75%, cannot be really  
37 determinative of the wishes of the parties. You can alter that position if the party authorizes

1 you or you leave the party. So far, so good. I mean, that's a very significant point which you  
2 have made. But...

3

4 **MR. SIBAL:** I understand.

5

6 **CHIEF JUSTICE CHANDRACHUD:** But my point is the next point what is the  
7 consequence. Which you are really telling us that look the facts stare you, now why go to the  
8 Speaker.

9

10 **MR. SIBAL:** That what my submission is what is it that the Speaker is going to do in this.

11

12 **CHIEF JUSTICE CHANDRACHUD:** It could be twofold. One - as you say. Well, the  
13 Speaker himself cannot be trusted, as an impartial arbitrator.

14

15 **MR. SIBAL:** I withdraw that My Lords because we are talking about the Constitutional  
16 position.

17

18 **CHIEF JUSTICE CHANDRACHUD:** The second would be where the facts are so clear then  
19 you take the decision with your Speaker ought to have to decided. That there is only one and  
20 one conclusion.

21

22 **MR. SIBAL:** That's right.

23

24 **CHIEF JUSTICE CHANDRACHUD:** That Mr Sibal, honestly, that is, that is the matter of  
25 disquiet for speaking for myself. I mean should the Court be taken into that, entering into that  
26 area. That's an area..

27

28 **MR. SIBAL:** Lordships have been persuaded it in the past. I hope they pursued it in the  
29 future.

30

31 **CHIEF JUSTICE CHANDRACHUD:** There are very serious ramifications..

32

33 **MR. SIBAL:** I'll address that My Lordships.

34

35 **CHIEF JUSTICE CHANDRACHUD:** The ramifications which you have referred to for  
36 constitutional democracy if individual legislators start bucking the party discipline there are  
37 very serious ramifications that we start taking over these functions.

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**JUSTICE NARASIMHA:** Very dangerous.

**MR. SIBAL:** No, My Lords, what happened was in one particular case which is the Constitution Bench My Lords where they said that this illegality cannot be continued even for a day. So we will take the decision. They're occupying the post of the Minister. This cannot continue even for a day. I will not send it back.

**CHIEF JUSTICE CHANDRACHUD:** Right or wrong, this is the system which we have now assumed to ourselves as we the people and when the Courts try and breach the system there is a very...

**MR. SIBAL:** No. My Lords I understand.

**CHIEF JUSTICE CHANDRACHUD:** That's what is worrying us...

**MR. SIBAL:** I put it to you right up quite frankly, quite frankly, a Constitutional Court should be worried, because if you create this as a precedent, it can happen in other situations as well, and that will not be a good precedent. My Lords, I am not disputing that. Please, please. I am not.... I know the limitations of a Constitutional Court. I know that My Lords. But what has happened in this case, unfortunately, is that this has happened because of a judicial order. This would never have happened.

**CHIEF JUSTICE CHANDRACHUD:** Alright we also go to this extent that, you know, if some...a situation transpires because of a judicial order, we are not saying that it has...

**MR. SIBAL:** I understand, I understand.

**CHIEF JUSTICE CHANDRACHUD:** ....your argument. And therefore it's the duty of a court to rectify a situation which emerges as a result of its own order.

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

**CHIEF JUSTICE CHANDRACHUD:** Alright? In various other contexts we always say....

**MR. SIBAL:** You have said that in several judgments My Lord.

1 **CHIEF JUSTICE CHANDRACHUD:** But assuming that is so, and we place ourselves in  
2 the position in which the court was say immediately before the 27th, what would the court  
3 then have done that look let the Speaker decide keeping aside the issue of 2 day or 7 day notice.

4

5 **MR. SIBAL:** Yes. Yes.

6

7 **CHIEF JUSTICE CHANDRACHUD:** Let the Speaker decide.

8

9 **MR. SIBAL:** Yes.

10

11 **CHIEF JUSTICE CHANDRACHUD:** So if we have to restore the position as it would have  
12 been but for that order of the 27th, we would have said, let the Speaker decide. Possibly your  
13 argument would be if the.... until the Speaker is deciding no trust vote. Let them take a decision  
14 first and then because the trust vote....

15

16 **MR. SIBAL:** Because everything happened....after that happened because of this order.

17

18 **CHIEF JUSTICE CHANDRACHUD:** But therefore if you have to restore the situation as  
19 it stands immediately before the interim order of this court, we can restore it by saying that,  
20 well, the speaker has to take a....[UNCLEAR]

21

22 **MR. SIBAL:** Yes.

23

24 **CHIEF JUSTICE CHANDRACHUD:** Had they incurred a disqualification. But we, it  
25 would be very difficult for us to take over that function.

26

27 **MR. SIBAL:** My Lords, I don't mind. Let that Deputy Speaker decide. I have no problem with  
28 that. That's what happened....

29

30 **CHIEF JUSTICE CHANDRACHUD:** Which Deputy Speaker?

31

32 **MR. SIBAL:** The Speaker My Lords who was denied the, who was denied the right to continue  
33 with the disqualification. This has happened in the other case.

34

35 **CHIEF JUSTICE CHANDRACHUD:** So then we restore a putative state of affairs.

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37 **MR. SIBAL:** Yes Your Lordship have done that.

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**CHIEF JUSTICE CHANDRACHUD:** Completely overtaken by events.

**MR. SIBAL:** In *Nabam Rebia*, Your Lordship have done exactly that. Exactly that. Because when I argued this before the Constitution bench then, I said My Lords what is happening is you let things happen, and then you will tell me later that we can't reverse it. He said, no, we will reverse it.

**CHIEF JUSTICE CHANDRACHUD:** Mr. Sibal, then you support *Nabam Rebia's* course of action, when it suits you. And when *Nabam Rebia* is creating a problem you wanted to....

**MR. SIBAL:** No My Lords, there are two different issues in *Nabam Rebia*, My Lords.

**CHIEF JUSTICE CHANDRACHUD:** Alright.

**MR. SIBAL:** I'm sorry, My Lords, you cannot put that argument.

**CHIEF JUSTICE CHANDRACHUD:** No, no, not at all.

**MR. SIBAL:** They are two different issues My Lord. My Lords, in fact, I was wondering when Your Lordship are going to decide to refer it to seven, because this is a real problem. Because that's intrinsically at the heart of the matter which is why I said you take it up as a preliminary submission because ultimately this can only be decided.

**CHIEF JUSTICE CHANDRACHUD:** But Mr. Sibal, look at the consequence. You today have a Speaker. You have a Speaker in a democratically elected House. Tomorrow you may have a Speaker in Parliament. Can the Supreme Court say sorry, we are now overriding the mandate of this Speaker? We will retrace our steps back to say now, something which is eight months ago, restore a Speaker who is now no longer holding the office of the Speaker. And we tell you we now decide that somebody is the Speaker.

**MR. SIBAL:** He is still Deputy Speaker.

**CHIEF JUSTICE CHANDRACHUD:** Huh!

**MR. SIBAL:** He is still Deputy Speaker.



1 **CHIEF JUSTICE CHANDRACHUD:** And ask that...

2

3 **MR. SIBAL:** But he is still Deputy Speaker My Lords.

4

5 **CHIEF JUSTICE CHANDRACHUD:** ...take a consequence. I mean...

6

7 **MR. SIBAL:** He is still Deputy Speaker. My Lords, all right. One second, one second, one  
8 second, hold on, you got a lot of hurdles to cross. But anyway let me...

9

10 **CHIEF JUSTICE CHANDRACHUD:** They 're all very seasoned, constitutional laws but  
11 you know what is worrying us. You understand what is worrying us.

12

13 **MR. SIBAL:** I am not going to make a proposition that will in fact destroy the fabric of a  
14 constitutional structure that has been placed since Independence, since we are a Republic. I  
15 am not going to do that. But see what has happened. First of all, the no stays they are given  
16 time till 12th July, but more important, on the 29th, this court says that we will set aside  
17 everything that happens thereafter. See My Lords where we are now. We say please stay  
18 everything. Don't allow the trust vote to happen. Decide this matter. It could have been decided  
19 on the 12th of July. Then the court tells us no, no, no doesn't matter. On the 29th all that is  
20 subject. Now Your Lordship are telling me how can it be subject? Now, Your Lordship are  
21 telling me rightly maybe that how can we go back on 27. But that's exactly because of the two  
22 court orders. What do we do?

23

24 **CHIEF JUSTICE CHANDRACHUD:** But the court order was also prompted by what your  
25 Speaker did.

26

27 **MR. SIBAL:** I said, you stay. Don't do, don't allow them to take view. Don't have a trust vote.  
28 We said that. Then on 29th June that order is passed. Thereafter all, matters are placed.

29

30 **CHIEF JUSTICE CHANDRACHUD:** Had your speaker, had your Speaker chosen to follow  
31 the law by giving them seven days' notice...

32

33 **MR. SIBAL:** No My Lord. The law is not *Nabam Rebia*, law is *Hollohon*.

34

35 **CHIEF JUSTICE CHANDRACHUD:** Court would have....the court would have said  
36 alright, go and respond to that.

37

1 **MR. SIBAL:** The law is Hollohon. My Lords I tell Your Lordship now, I can't in hindsight say  
2 what the court should have done or stayed everything, allow them to file a reply and allow after  
3 12th of June for the Speaker to decide. What is the problem? There was no problem but the  
4 status quo changed. My Lords, they were given time till 12th of July. All right, let them give  
5 time. Despite the fact that it is contrary to Hollohon. Forget it. They should have been given  
6 time. They should have filed a reply. The Deputy Speaker would have decided. Why allow the  
7 status quo to be changed? And that also because a judicial order says doesn't matter. Even if  
8 the status quo is changed, we'll restore it back. So we had two judicial orders then and now  
9 Your Lordship rightly Your Lordship rightly puts now under the proceedings of the House a  
10 new Speaker, has been appointed. But then you yourself said that we will deal with it. All that  
11 will be subjective.

12

13 **CHIEF JUSTICE CHANDRACHUD:** So essentially, we'll therefore have to invalidate the  
14 trust vote which never took place on the...

15

16 **MR. SIBAL:** It was only on the basis of these 39...

17

18 **CHIEF JUSTICE CHANDRACHUD:** A trust vote which we will have to invalidate. A trust  
19 vote which never took place.

20

21 **MR. SIBAL:** No, no, no. Even the trust vote that took place on 4th is subjective. I'm sorry. All  
22 other actions are subject to ...

23

24 **CHIEF JUSTICE CHANDRACHUD:** My learned brothers are....

25

26 **MR. SIBAL:** I'm sorry My Lords, I'm sorry.

27

28 **JUSTICE SHAH:** Mr. Sibal just what...

29

30 **MR. SIBAL:** Yes.

31

32 **JUSTICE SHAH:** On your submission that as per the interim order dated 29 June correct,  
33 all subsequent proceedings are subject to ultimate...

34

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

36

1 **JUSTICE SHAH:** Now see factually, we have to consider that. On 29th you challenged that  
2 trust vote to be held on 30th June.

3

4 **MR. SIBAL:** Yes.

5

6 **JUSTICE SHAH:** Correct? You challenged that only.

7

8 **MR. SIBAL:** That's correct, that's correct.

9

10 **JUSTICE SHAH:** Correct? Now see the order, interim order which is passed by this court on  
11 29th. Please read it.

12

13 **MR. SIBAL:** Yes My Lords, I will read it. Also an order compilation My Lords. Let's see that.

14

15 **JUSTICE SHAH:** That is....page 7 of the Order Compilation.

16

17 **MR. SIBAL:** Orders compilation Volume-1.

18

19 **JUSTICE SHAH:** Volume-1.

20

21 **MR. SIBAL:** Yes, I have it. PDF page is 7.

22

23 **JUSTICE SHAH:** Order dated 29th June.

24

25 **MR. SIBAL:** It starts...We will just see my Lords.

26

27 **JUSTICE KOHLI:** PDF 8 at 10, para 8.

28

29 **MR. SIBAL:** I will just read it. Yes. Page My Lords, the writ petition is order to be listed for  
30 hearing.

31

32 **JUSTICE SHAH:** Para 8.

33

34 **MR. SIBAL:** Para 8. Having given our thoughtful consideration. That's the one?

35

36 **JUSTICE KOHLI:** Yeah.

37

1 **MR. SIBAL:** Yes, yes. We do not find any ground to stay convening of the special session or  
2 the Maharashtra Vidhan Sabha tomorrow at 11:00 AM, with the only agenda of a trust vote.  
3 The proceedings of the trust vote to be convened on 30th shall be subject to the final outcome  
4 of the instant writ petition as well as the writ petitions referred to above.

5

6 **JUSTICE SHAH:** Correct?

7

8 **MR. SIBAL:** Yes, and the special session of the Maharashtra Vidhan Sabha shall be  
9 conducted... So as well as writ petitions referred to above.

10

11 **JUSTICE SHAH:** Okay. And what? What?

12

13 **MR. SIBAL:** Write petitions referred to above is that...

14

15 **JUSTICE SHAH:** What was the subject to ultimate the outcome? The proceedings of the  
16 convening meeting on 30th....

17

18 **MR. SIBAL:** I agree.

19

20 **JUSTICE SHAH:** Not all the...

21

22 **MR. SIBAL:** My Lords I don't dispute that. I am saying...

23

24 **JUSTICE SHAH:** The fact remains that on 30th June for whatever reason....

25

26 **MR. SIBAL:** I had resigned earlier. Your Lordship is right. Your Lordship is absolutely right.  
27 But My Lords....

28

29 **JUSTICE SHAH:** Your submission that all...as per the order dated 30th June, all other  
30 subsequent will be....

31

32 **MR. SIBAL:** My Lords, I just asked myself a simple question. Had I not resigned, had I not  
33 resigned, the trust vote it would have happened and I would have the same thing would have  
34 happened.

35

36 **JUSTICE SHAH:** Correct.

37

1 **MR. SIBAL:** Correct? The same thing happened on the 4th.

2

3 **JUSTICE SHAH:** <UNCLEAR> Council.

4

5 **MR. SIBAL:** The same thing happened on the 4th.

6

7 **JUSTICE SHAH:** Provided the meeting would have been convened on 30th.

8

9 **MR. SIBAL:** My Lord the same thing happened on the 4th. A trust vote was happened on the  
10 4th. And that is also subject to writ petition was filed. Your Lordship said we will consider that.  
11 That will also be subject to.

12

13 **JUSTICE SHAH:** No, no we were on your submission....

14

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

16

17 **JUSTICE SHAH:** Technically...

18

19 **MR. SIBAL:** Technically, what My Lord is saying is absolutely right. I cannot have any two  
20 opinions or there can be no two opinions. But the fact is in substance, it's the same thing. Yes,  
21 Your Lordship is right. I mean, I can't get away from the fact that he said, What's the point of  
22 going to the... these people are going to vote for him. That's exactly what happened on the 4th.  
23 That's why we challenged the 4th. That's also the writ petition is here. So My Lords, are we  
24 going into the technicality or are we going into the substance of the matter? Whether these 39  
25 could have voted in favour despite the Whip. There is a Whip issued My Lords on the 3rd.  
26 Whip is issued on the 3rd that you vote against the trust vote. They did not. And who is the  
27 Whip? Sunil Prabhu, voted against the Whip. So My Lords, where does it take us? It doesn't  
28 take us anywhere. So he votes against the Whip and My Lords Gogawale is then appointed. He  
29 can't be appointed by the Speaker. And Gogawale - they have issued, Speaker has issued notice  
30 to us. Those notices can't be issued. I can't be subject to any disqualification proceedings. And  
31 my notice has been given by the Speaker to me to be disqualified. Your Lordship will strike it  
32 down on the facts. So all these issues will have to be decided My Lords, I am sorry.

33

34 **JUSTICE NARASIMHA:** Which are the issues that you want us to decide?

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36 **MR. SIBAL:** My Lords that is exactly what I will just show. Let's give it to My Lords. I am  
37 sorry My Lords it has taken... what Your Lordship might or might not choose to decide.

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**JUSTICE NARASIMHA:** No, no, the crucial facts which you have told us....

**MR. SIBAL:** It is not finished yet My Lords.

**JUSTICE NARASIMHA:** ...leading to the 22nd.

**MR. SIBAL:** Yes.

**JUSTICE NARASIMHA:** I think those are completed, right?

**MR. SIBAL:** Yes. Those are complete. Then what happens thereafter My Lords another letter is....the letter of 22nd....

**JUSTICE NARASIMHA:** ....notices on the Tenth Schedule notices.

**MR. SIBAL:** That's correct, that's correct. And thereafter on 24th another notice. Then on 25th...

**CHIEF JUSTICE CHANDRACHUD:** Mr. Sibal, we were at page 55 of that...

**MR. SIBAL:** You want me to finish that first My Lords?

**CHIEF JUSTICE CHANDRACHUD:** So that, that part is over. Just for the sake of completeness, let's...

**JUSTICE NARASIMHA:** Indicate those dates....

**CHIEF JUSTICE CHANDRACHUD:** Let's go to page 55, you were at page....

**MR. SIBAL:** I will just go back to my documents My Lords. The Convenience compilation...

**CHIEF JUSTICE CHANDRACHUD:** Convenience Compilation 2 at....

**MR. SIBAL:** We are at 49 My Lords. Now this is at PDF 62, this is that document which Your Lordship have already read. Dated 22nd... dated 21st, but served on 22nd at 11:30, which Your Lordship have already read.

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**CHIEF JUSTICE CHANDRACHUD:** We will just make a note of it since we have already...

**MR. SIBAL:** That is right. I am not going to read....

**CHIEF JUSTICE CHANDRACHUD:** Relevant from *Nabam* Page 62 right?

**MR. SIBAL:** Except My Lords the fact that they are a majority, no other cause was shown. So 179C, I've made my job submissions on 197C already My Lords. And that this connects with *Nabam Rebia*, this document. So that issue is over. Then kindly come to My Lords page PDF 71. This only gives you My Lords what is happening. 40 members form the MLAs in Assam. No dispute on any of this. And then is the disqualification petition filed on the 25th. That is at page 72.

**JUSTICE KOHLI:** Page 62. Mr. Sibal, page 62 PDF that we have just touched upon, notice to move a resolution, what does para 2 say?

**MR. SIBAL:** At page 62?

**JUSTICE KOHLI:** Yes please.

**MR. SIBAL:** Para two says my lords: We all respectfully submit that you no longer have the right to continue as Deputy Speaker, as you no longer enjoy the support of the majority of the House.

**JUSTICE KOHLI:** Majority of the House.

**MR. SIBAL:** More particularly the following members...

**JUSTICE KOHLI:** Majority of the House.

**MR. SIBAL:** Yes.

**JUSTICE KOHLI:** Is that what you're trying to....this is your emphasis.

**MR. SIBAL:** Yes.

1 **JUSTICE KOHLI:** That here also the reference is to the majority of House. And goes on to  
2 say particularly the following members of the party.

3

4 **MR. SIBAL:** That's correct because My Lords, what is party means the legislature party.

5

6 **MR. JETHMALANI:** My Lords that is not quite correct. My learned friend repeatedly says  
7 this. But every member of the Legislative Assembly and of Parliament is ex-officio member of  
8 the Pratinidhi Sabha. They are also part of that.

9

10 **MR. SIBAL:** Yes, that's right. No doubt. Hold on, hold on. Hold on. No dispute. The 39  
11 members of the legislative party are also members of the party.

12

13 **CHIEF JUSTICE CHANDRACHUD:** No dispute. No question about it.

14

15 **MR. SIBAL:** I have not said anything contrary to that.

16

17 **CHIEF JUSTICE CHANDRACHUD:** <UNCLEAR>

18

19 **MR. SIBAL:** I have not said anything against that. Only thing is that 39 members cannot  
20 hijack the party.

21

22 **JUSTICE KOHLI:** That's all.

23

24 **MR. SIBAL:** That we will see that's the issue. Of course we welcome you. So My Lords, Your  
25 Ladyship was right. Exactly My Lords. Then kindly come to 59 My Lords. First, yes. 71. PDF  
26 71, Page 58. Maha Trouble for Uddhav. Hemanta Meets Eknath. 40 MLAS in Assam.  
27 Photograph...

28

29 **CHIEF JUSTICE CHANDRACHUD:** Sorry where are you? Hindustan Times article?

30

31 **JUSTICE KOHLI:** Hindustan Times article.

32

33 **MR. SIBAL:** It just shows My Lords that you know the surroundings are comfortable.

34

35 **JUSTICE NARASIMHA:** Relevant for Tenth Schedule no doubt. Not for a Speaker,  
36 relevant.

37



1 **MR. SIBAL:** Then My Lords, the notices.

2

3 **JUSTICE NARASIMHA:** Inference.

4

5 **MR. SIBAL:** Now the notices we don't have. No more My Lords, documents. All kinds of  
6 statements have been made My Lords that we are forming a separate party. But be that as it  
7 may, that all happens in Assam. It's a given My Lords. So let's not go into that. So this is all My  
8 Lords as far as the documentation is concerned. Now let's see what the issues are.

9 The first My Lords deals with *Nabam Rebia* basically that Your Lordship will have to decide  
10 that does the Constitution permit an institutional hiatus by tying the hands of the Speaker in  
11 functioning under the Tenth Schedule through proceedings initiated by a member of the  
12 Legislative Assembly under 179C. That I've argued that Your Lordship will decide. All I can say  
13 in that regard is that if you allow that law to stay it will be misused. It will be a new model of  
14 toppling governments. Safety valve for the defectors. Now My Lords, second, what are the  
15 consequences in law when members, whether in minority or majority of the Legislature party  
16 in the House act de hors the Political Party and our contrary to the directions of the political  
17 party and assert their separate identity by forming a separate group within the Legislature  
18 Party in the legislature. Squarely My Lords that is an issue. Squarely. That can in any  
19 legislature X number of people form a separate identity and say we will not listen to the party.  
20 We will decide what to...

21

22 **CHIEF JUSTICE CHANDRACHUD:** That you have been arguing.

23

24 **MR. SIBAL:** Then will a group... next third, will a group within the Legislature party asserting  
25 their separate identity and acting de hors, the political party, or contrary to its directions, have  
26 per se, incurred disqualification under para 2 of the Tenth Schedule? There is no evidence to  
27 be led here. Admittedly there is a Whip, Sunil Prabhu on the 3rd saying vote against the trust  
28 vote. Admittedly on the record of the House they voted in favour of the trust vote. Even by that  
29 time, Gogawale would not been appointed by the Speaker. Though Speaker had no right to  
30 appoint Gogawale. He appointed Gogawale on the 3rd evening which he can't do otherwise,  
31 but that's another matter. So My Lords, what is there for the Speaker to decide? There's a  
32 violation, the vote is on the record. You are not usurping anything. you are only declaring.

33

34 **JUSTICE NARASIMHA:** This question is inchoate. This issue is inchoate. What is the  
35 logical follow-up? Speaker will say it is per se case.

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

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**JUSTICE NARASIMHA:** Speaker will say it's a per se case.

**MR. SIBAL:** I hope so.

**JUSTICE NARASIMHA:** So you are...

**MR. SIBAL:** I hope so My Lords, I hope so.

**JUSTICE NARASIMHA:** It is a different matter. What you're trying to say in 3 is in per se cases should the court not decide.

**MR. SIBAL:** Yes. That's the point. So that's why I put per se there My Lords, only for that reason.

**JUSTICE NARASIMHA:** Got that. It is inchoate.

**MR. SIBAL:** We have to ultimately persuade you My Lords, so we have to... I always say, without the court on your side, there's no point arguing. And the only way to have the court on your side is to be as reasonable as possible. Though politics is essentially unreasonable. The art of politics is to do the make the unreasonable look reasonable.

**JUSTICE NARASIMHA:** Necessary. Politics can be very reasonable also.

**MR. SIBAL:** Three: will a group within the Legislature party asserting their separate identity and acting de hors the political party or contrary to its directions, have per se, incurred disqualification under paragraph 2?

Then four, can a group within the legislature party asserting their separate identity and acting de hors, the political party, or contrary to its directions, have the constitutional authority to alter the leadership of the political party in the House or the Whip appointed by the political party of the House. Directly in issue. Because of those documents, that I've shown to Your Lordship already, that you are removed from Assam, you are removed as a Chief Whip and I continue to be the party and you are removed as leader. I continue to be the group leader.

Five, given that an elected government should be allowed to serve its full term, this is now a constitutional premise My Lords on the basis of which I made this proposition. Given that an elected government should be allowed to serve its full term, as a matter of constitutional law, can a group within the legislative party asserting a separate identity dislodge an elected

1 government while proceedings for disqualification under the Tenth Schedule appending that  
2 is, before the Speaker decides on the issue of disqualification. Directly an issue. But what you  
3 are doing in this process is side-tracking the disqualification proceedings, toppling a  
4 government and then saying, now my Speaker will decide. Actually the constitutional premise,  
5 and every constitutional authority should in fact help in ensuring that an elected government  
6 continues to be in power. My Lords, that is something that I am going to argue later, but I want  
7 to just tell Your Lordship something very interesting. The Governor is to decide to administer  
8 the oath of office. So, 30 people go to him. 20 people go to him. The Governor must first know  
9 which party they belong to. Either it is post-poll alliance, or pre-poll alliance. Right? So the  
10 Governor must first ask them, which is that party? Now My Lords, their position, 39 members  
11 position is inchoate. They can't represent the Shiv Sena. This is the first time this issue has  
12 arisen in this country. So My Lords, how does the Governor decide that I'll administer oath of  
13 office? There is no party before him. Just touching it. This is an issue that Your Lordship will  
14 have to consider.

15

16 So My Lords let's come to six. Should the Governor, who is constitutionally obliged to sustain  
17 the continuity of an elected government, change the status quo by allowing for a change in  
18 government before disqualification proceeding that decided by the Speaker.

19 Then next, whether the Governor can swear in as Chief Minister, a person against whom a  
20 Notice for disqualification has been issued by the Speaker acting as a Tribunal under the Tenth  
21 Schedule and is pending adjudication? What is the impact of pending disqualification petitions  
22 on the ability of members to participate in a test of strength on the floor of the House when  
23 their vote would have the effect of toppling of government? I can understand in a situation,  
24 that it clearly doesn't matter. The outcome would be the same. But here the hard facts are,  
25 their vote topples the government. So you have allegedly according to me, a member who  
26 should be disqualified, voting to topple an elected government without the Governor asking  
27 him which party you belong to, without the Governor even finding out for himself or the  
28 Governor saying, look, there is some disqualification petitions, by this an elected government  
29 to be toppled. Let's stay our hands. We will not administer oath of office till this  
30 disqualification is decided. He can say that. Should he say that? Should he not say that? That's  
31 My lords, some in area where Your Lordship have never looked at, so to say. Obviously it's  
32 premised on constitutional morality.

33

34 Then My Lords, can a constitutional court in a matter relating to disqualification of the Tenth  
35 Schedule decides the matter on its own without referring the matter to the Speaker for decision  
36 and if so, under what circumstances? Right? Directly what My Lord put to me. And we are  
37 aware of it. If the decision of the Speaker that a member has incurred disqualification under

1 the Tenth Schedule relates back to the date of the action complained of, then what is the status  
2 of proceedings that took place during the pendency of a disqualification petition? Because it  
3 relates back? He is the Chief Minister. What do we do? Which is why time is of the essence.  
4 What is the impact of removal of Para 3 of the Tenth Schedule? I've already argued that.  
5 In what circumstances do the Speaker recognize the Whip and the Leader of the political  
6 party? I'm arguing that.  
7 What is the scope of powers of the Commission with respect to determination of a split, that  
8 is something I'll argue later.  
9 This is My Lords, according to me, the issues that Your Lordship might wish to look into.  
10 Now My Lords kindly have a look at my overview document which is document for the...our  
11 submissions, the petitioners submissions.

12

13 **CHIEF JUSTICE CHANDRACHUD:** A.

14

15 **MR. SIBAL:** A, My Lords correct and kindly have a look at outlines and over PDF Page 5.  
16 Overview. Your Lordship may skip that. I want Your Lordship straight away to take you to the  
17 issue of the Whip. Chapter 7 yes, yes. Of whips and the role of political parties. This is that PDF  
18 page 70.

19

20 **JUSTICE KOHLI:** Which File?

21

22 **MR. SIBAL:** Of the written submissions of petitioner. Same document. Written submissions  
23 A, My Lords, of the petitioner. Page 70. I hope to finish today, My Lords so that I don't take  
24 too much of Your Lordship's time.

25

26 **JUSTICE KOHLI:** Did you say it's PDF page?

27

28 **MR. SIBAL:** Page 70.. 70. Chapter 7 - What is the scope and power of the Speaker to  
29 determine the Whip and the leader of the house? What is the interplay of the same with respect  
30 to the provisions of the Tenth Schedule? 'The petitioner respectfully submits that the  
31 leadership of the original political party is exclusively empowered to determine which member  
32 of the House shall be the Whip, and also the leader. Petitioner respectfully submit that the  
33 leadership of the original political party is exclusively empowered to determine which member  
34 of the House shall be the Whip and also the leader of the House Legislature Party the speaker  
35 is bound to recognize the person who are communicated by the leadership of the original  
36 political party to be its Whip and Leader of the House Legislature Party. The Speaker's role in  
37 this regard is really administrative in nature the speaker cannot abuse his role to defeat the

1 spirit and intent behind the provisions of the Tenth Schedule. Now, it is submitted that the  
2 respondents case is hinged on illegal misconception that the Whip under Paragraph 2(1)(b) of  
3 the Tenth Schedule, can be issued, changed by a majority of the members of the legislative  
4 party, which is what they did on the 22nd June. The defence is in the teeth of the plain reading  
5 of 2(1)(b), which My Lord has already read. That's exactly what we were wanting to do. A bear  
6 reading of the aforesaid provision, which shows as the framers of the Tenth Schedule were  
7 conscious that the disqualification was to be incurred for violation of the Whip issued by the  
8 political party or any person or authority authorized by the political party, there is no reference  
9 at all to the legislature party in Para 2(1)(b) of the Tenth Schedule . This distinction between  
10 political party and legislative party is also born out from a reading of paragraph 1(b), and 1(c)  
11 of the Tenth Schedule, which brings out the difference between the meaning ascribed to the  
12 legislator party and the original political party. The Respondents in defence have sought to  
13 intermingle the definition of political party with that of the legislature party and have sought  
14 to extrapolate the legislature party in place, in the place of a political party into 1(b). It is  
15 further submitted that Para 1 of the Tenth Schedule makes a clear distinction between the term  
16 legislature party and original political party. The term legislature party is defined as the group  
17 consisting of all the members of that House for the time being belonging to that political party.  
18 And the term original political party is precisely defined as the political party to which a  
19 member belongs. Further, the definition makes it clear that the said term is specifically defined  
20 for the purposes of two one of the Tenth Schedule in this regard. My Lords Kuldeep Nayar's  
21 case. Kindly have a look at a Paragraph 4. I, just a quote there. 'Authorities are certainly not  
22 one thing which indicates that Court should interpret in a broad and generous spirit, the  
23 document which contains the fundamental law of the land or the basic principles of  
24 government. Nevertheless, the rule of plain meaning or literal interpretation described in  
25 Maxwell's interpretation of statues, as the primary rule, could not be altogether abandoned  
26 today in interpreting any document. Indeed, we find Lord Evershed, the length and detail of  
27 modern legislation is undoubtedly reinforced the claim of literal construction as the only safe  
28 rule. It may be that the great mass of modern legislation, a large part of which consists of  
29 statutory rules, make some departure from the literal rule of interpretation more easily  
30 justifiable today than it was in the past. My Lords the next is very important. But the object of  
31 interpretation and of construction, which may be broader than interpretation, is to discover  
32 the intention of the lawmakers in every case.

33

34 C), Crawford. The object can obviously be best achieved by first looking at the language and  
35 used in the relevant provisions. Other methods of extracting the meaning can be resorted to  
36 only if the language used is contradictory, ambiguous, or leads really to absurd results. This is  
37 an elementary and basic rule of interpretation, as well as of construction processes which from

1 the point of view of principles applied, coalesce and converge towards the common purpose of  
2 both, which is to get at the real sense and meaning. So far as it may be reasonably possible to  
3 do this or what is found there laid down, the provisions whose meaning is under consideration  
4 are therefore to be examined before applying any method of construction at all. And 2(1)(a)  
5 and 2(1)(b) makes it very clear. Violation of the Whip and giving up, voluntarily giving up  
6 membership. And Your Lordship with experience knows what act amounts to voluntarily  
7 giving up membership.

8 We endorse and reiterate the view taken in the above quoted paragraph is a judgment. It may  
9 be desirable to give a broad and generous construction to the constitutional provisions but  
10 while doing so, I'll just read this, to the rule of plain meaning or literal interpretation, which  
11 remains the primary rule, as also to be kept in mind. In fact, the rule of literal construction is  
12 the safe rule unless language used is contradictory, ambiguous, or leads really to absurd  
13 results. I'll continue after lunch.

14

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<< LUNCH BREAK >>

16

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18 **CHIEF JUSTICE CHANDRACHUD:** Mr. Maninder Singh you are not the only personal  
19 who is feeling hot in the court. We agree with you. We have to start the ACs.

20

21 **MR. MANINDER SINGH:** Yes, My Lords.

22

23 **CHIEF JUSTICE CHANDRACHUD:** Mr. Maninder Singh, is it the heat of the weather or  
24 the heat of Mr. Kapil Sibal's arguments?

25

26 **JUSTICE KOHLI:** Both together.

27

28 **CHIEF JUSTICE CHANDRACHUD:** Only light.

29

30 **MR. SIBAL:** This is the generosity of the Bar, My Lords.

31

32 **CHIEF JUSTICE CHANDRACHUD:** We'll start the ACs.

33

34 **MR. SIBAL:** My Lords. I was reading PDF-72 and I was at the end of the paragraph. I am  
35 reading now Para 174.

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37 **CHIEF JUSTICE CHANDRACHUD:** 174?

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**MR. SIBAL:** Yeah 174, at PDF Page 72.

**CHIEF JUSTICE CHANDRACHUD:** Yes.

**MR. SIBAL:** It is submitted that Parliament in its wisdom, had used the term political party under the provisions of 2(1)(b), wherein a member attracts the disqualification for going against the wishes or directions of its political party. The Respondents in substance are asking this Honourable Court to read the term political party as legislature party which has a completely different meaning altogether, as pointed out here and above. In this regard it is well settled that when the language of a statute is amply clear and also the words used are self-explanatory, the Court ought not to read any other interpretation to the language or the statute. It is further submitted that the question whether the term political party under the provisions of 2(1)(b) of the Tenth Schedule, refers to the legislative party was considered by Justice Srinivasan in a separate opinion in Mayawati.

Now My Lords kindly have a look at that, Para 17. The argument of the appellant is the expression political party in subparagraph (b), means political party in the House. In other words, the legislature party. This argument runs counter to the definition contained in 1(c). Your Lordship will notice that 1(c) says 'original political party.' 2(1)(a) and 2(1)(b), makes no distinction. So the political party relates back to 1(c). Therefore, it's the original political party so therefore it cannot be the legislative party.

That's what My Lords held. According to that definition, original political party in relation to a member of a House means the political party to which he belongs for the purposes of subparagraph 1 of Para 2. The expression original political party is used in para 3 only. Para 2, does not at all use the expression original political party. The said expression in Para 3, is equated to the expression political party in Para 2(1). The definition Clause in Para 1(c), does not make any distinction between sub-para (a) and sub-para (b) of part 2, but the appellant's counsel wants us to make such a distinction. According to him, political party in sub-para (a) would refer to the original political party. But the same expression in sub-para (b) would refer only to the legislature party. The term legislature party, having been defined in 1(b), which would well have been used into 1(b). Instead, the term political party of the intention of Parliament was to refer only to the legislative party. There is another feature in 3(b), which negatives the appellant's argument. According to 3(b) from the time of the split in the original political party, such as the one referred to in the first part of the Para, the faction referred to therein shall be deemed to be the political party to which a member concerned belongs for the



1 purposes of subparagraph 1 of Para 2, and to be his original political party for the purposes of  
2 Para 3. The entire sub-para 1 of Para 2 is referred to therein, meaning thereby both Clauses A  
3 and B of sub-para 1, and no distinction is made between the two Clauses. Hence, for the  
4 purposes of Clause A as well as Clause B, the faction referred to in the first part of Para 3 shall  
5 be deemed to be the political party mentioned in sub-para, and the same faction shall be  
6 deemed to be the original political party mentioned in Para 3. It is thus clear that political  
7 party in Clause B of sub-para 1 of Part 2 is none other than the original political party  
8 mentioned in 3.

9

10 The argument that the context in Para 2(1)(b) requires to equate political party with legislature  
11 party, even though the definition Clause runs differently, is not acceptable. A reading of sub-  
12 para B and the explanation of 2(1) places the matter beyond doubt whether a political party in  
13 sub-para B refers to the original political party only and not to the legislature party. According  
14 to the explanations for the purpose of the entire sub-para, an elected member of the House  
15 shall be deemed to belong to the political party, if any, by which he was set up as a candidate  
16 for election as such member. Certainly the legislature party could not have set up the member  
17 concerned as a candidate for election. According to the Learned Counsel for the appellant, the  
18 legislature party may have to take decisions now. This is of the argument. May have to take  
19 decisions on urgent matters in the House and as it represents the original political party in the  
20 House, whatever direction is issued by the leader of such legislature party must be regarded  
21 as a direction issued by the political party. There is no merit in this context. When the  
22 provision in the Constitution has taken care to make a distinction between the legislature party  
23 and the original political party and prescribed that the direction should be one issued by the  
24 political party or any person or authority authorized in this behalf, there is no meaning in  
25 saying that whatever the Leader of the legislature party directs must be regarded as that of the  
26 original political party.

27

28 It squarely answers My Lords the argument. Their argument is we are 38. We are therefore  
29 the political party. So 38 people My Lords in the Legislative Assembly as members can't be the  
30 political party. We are the legislative party. Members of the legislative party. The reason is not  
31 far to seek. Disqualification of a member elected by the people is a very serious action. And  
32 before that extreme step is taken, it should be proved that he acted contrary to the direction  
33 issued by the party which set him up as a candidate for election. Then they go to Hollohon, We  
34 don't have to go there. We've already... now I'll come to 176.

35

36 Okay My Lords, my Learned Colleague, My Lords, points out just one part. Middle of that  
37 paragraph, My Lords... I am just seeing that. Yes. It says My Lords 'the said object would be



1 achieved with the disqualification incurred on the ground of voting or abstaining from voting  
2 by a member is confined to cases by the change of government is likely to be brought about or  
3 is prevented as the case may be as a result of such voting or abstinence, or where such voting  
4 or absence is a matter which was a major policy and program on which the political party to  
5 which the member belongs went to the polls. For this purpose direction given by the political  
6 party to a member belonging to it, the violation of which may entail disqualification thereto  
7 would have to be limited to a vote on a motion of confidence and no-confidence in the  
8 government, or where the motion under consideration relates to a matter which was an  
9 integral policy and program of the political party, on the basis of which it approached the law'.  
10 Now My Lords kindly come to 176. 'It is humbly submitted that the interpretation sought by  
11 the Respondents is accepted. If the interpretation sought by is suspected the same would result  
12 in a far reaching consequences and would destabilize the framework of the party system by  
13 taking away the powers assigned to a political party to prevent defections within. The reading,  
14 this reading would negate the meaning ascribed to 2(1)(b) of the Tenth Schedule, as well as  
15 defeat the entire purpose of insertion of the Tenth Schedule to curb the menace of defection.  
16 The entire edifice of our parliamentary democracy is based on a party system. A candidate is  
17 chosen by the elected or the symbol of the political party. The legislature of the legislature  
18 party is only a product of the political party. My Lords, the Chief Justice has just articulated  
19 that earlier. The legislature party is the species and the political party is the genus. There is an  
20 umbilical cord which links the political party and the legislature party. The actions of that  
21 umbilical cord cannot be out of line with the objective of political party. In Kyoto, this court  
22 said the following, My Lords this is important. But a political party functions on the strength  
23 of shared beliefs. Its own political stability and social utility depends on such shared beliefs  
24 and concerted action of its members in furtherance of those commonly held principles. Any  
25 freedom of its members to vote as they please, independent of the political parties declared  
26 policies will not only embarrass it's public image and popularity, but also undermine public  
27 confidence in it, which, in the ultimate analysis, is the source of such sustenance. Nay, indeed  
28 it is, in its very survival. Intra-party debates are, of course, a different thing. But a public image  
29 of disparate stance by members of the same political party is not looked upon in political  
30 tradition as a desirable state of things. Loyalty to party is a norm being based on shared beliefs.  
31 A divided party is looked on with suspicion by the electorate. It is natural for members to  
32 accept the opinion of their leaders and spokesman on the wide variety of matters on which  
33 those members have no specialist knowledge. Generally, members will accept majority  
34 decisions in the party even when they disagree. It is understandable, therefore, that a member  
35 who rejects the party Whip, even on a single occasion, will attract attention and more criticism  
36 than sympathy. To abstain from voting when required by party to vote is to suggest a degree  
37 of unreliability. To vote against party is disloyalty. To join with others in abstention of voting

1 with the other side smacks of conspiracy. That's exactly what happened here and it started on  
2 the 21st of June.

3

4 Clause B of para 2(1) of the Tenth Schedule gives effect to the principle and sentiment by  
5 imposing a disqualification on a member who votes or abstains from voting contrary to any  
6 directions. The provisions, however, recognized two exceptions. One, when the member  
7 abstains from the political party, prior permission to vote or abstain from voting. And the other  
8 when the member is voted without obtaining such permission but his action has been  
9 condoned by the political party. This provision itself accommodates the possibility that there  
10 may be occasions when a member may vote or abstain from voting contrary to the directions  
11 of the party he belongs. This in itself, again, may provide a clue to the proper understanding  
12 and construction of the expression, any direction in Clause B of paragraph 2(1), whether really  
13 all directions or Whips from the party entail the statutory consequences on whether having  
14 regard to the extraordinary nature and sweep of the power, very serious consequences that  
15 flow, including the extreme penalty of disqualification. The expression should be given a  
16 meaning confining its operation to the context indicated by the objects and purposes of the  
17 Tenth Schedule. We shall deal with this aspect separately. It is thus submitted that it is the  
18 political party which appoints the Chief Whip and not the legislative party. The political party  
19 is headed by the leadership, and this factum of leadership is not in dispute. Organizational  
20 elections in Shiv Sena were held on 27-02-2018. My Lords that's a wrong date. It actually is  
21 23rd January 2018. And the leadership structure of the party was intimated to ECI, wherein it  
22 is clearly stated, that Uddhav Thackeray is the Paksh Pramukh. It may not be out of place that  
23 under the Maharashtra Legislative members removal of disqualification rule... which I have  
24 already read.

25

26 **JUSTICE SHAH:** That you have already shown.

27

28 **MR. SIBAL:** So, My lords, I'll skip that. It is clear that the Whips are the directions issued  
29 by the political party and not the members of the legislative party or the leaders of the  
30 legislative party or the leaders of the legislature. Then Erskine May says, Whip serves as an  
31 intermediate between the leaders and parliamentary membership of their parties in order to  
32 keep each informed of the views of the other, which is what I was mentioning to Your Lordship.

33

34 The phrase Adopted by Burke caught public fancy and soon became popular. Then, My Lords  
35 kindly come to 183, skip the 5-6 lines on top and the sentence on the right side. The  
36 keep....'They keep members supplied with information.' They were talking about Whips. Your  
37 Lordship has that? 'They keep members supplied with information about the business of the

1 House.' My Lords, what happens traditionally is My Lords, the members do not know the  
2 business of the House because the business of the House is decided by what is called the  
3 Business Advisory Committee. And only some members of the House of political parties are  
4 members of that committee. So every week couple of times we can probably... My Lords every  
5 week a meeting takes place as to what should be the business for the next week. So My Lords  
6 that's decided? And then it is announced in the House. On that basis, the Whip then informs  
7 the members of the House that this is going to be the business. These are the bills that are to  
8 be, that are to be debated. This is the position that we have to take on the bills. Therefore, you  
9 please prepare your speeches in the context of the position of the party. That's the job of the  
10 bill. Now My Lords, now that is not the job of somebody who says, I am a Group Leader and I  
11 will decide. That is why the Whip is appointed by the political party, for that very reason.

12

13 **CHIEF JUSTICE CHANDRACHUD:** On general parliamentary business, how specific are  
14 the Whips? I mean, this is not.. unrelated to this case.

15

16 **MR. SIBAL:** My Lords a WhatsApp message is sent to us. Three lines at the end underlining  
17 otherwise you have to be present otherwise action will be taken. And you come and vote. And  
18 this is how you have to vote. <UNCLEAR> and Whip will come. Vote for this bill. Vote against  
19 this resolution. So each one on our WhatsApp, that message is sent. So we have to be present.  
20 They are very generous because while we argue our cases, proceedings are going on. So we are  
21 not present. So they don't trouble us too much.

22

23 **MR. MAHESH JETHMALANI:** Exception of Ninth Schedule.

24

25 **CHIEF JUSTICE CHANDRACHUD:** That holds for Mr. Jethmalani also, Right?

26

27 **MR. SIBAL:** My personal opinion is this is my personal... I don't want to say it the fact of the  
28 matter is if you want to practice, you should practice. You want to be in Parliament, devote  
29 your time to Parliament. That should be. Otherwise My Lords we can only perform one  
30 function. We can't perform both. Anyway, that's another matter. It's not that. It's not that. It's  
31 what happens is that the key issues of the party are nowadays before the court. They want us  
32 to be here and slowly, Mr. Jethmalani will realize as the burden increases, that he might also  
33 have to do that.

34

35 **MR SINGHVI:** Just one second, aside about coming out of the Hall of Parliament, a very  
36 leading left leader mentioned inside the House that lawyers, chartered accountants, doctor  
37 and other similar people should not be in Parliament. They should concentrate on their

1 profession. Mr. Jaitley and I were talking in the lobby . So when he came out, a good friend of  
2 mine. He told him that you want Parliament only to consist of unemployed and unemployable  
3 persons.

4

5 **MR SIBAL:** Don't say that, don't say that publicly.

6

7 **MR SINGHVI:** This is what happened with... I am taking his example. He said it for a large  
8 class of profession, not lawyers alone. So My Lords there is a certain amount of input you bring  
9 in if you are otherwise also gainfully employed.

10

11 **MR. SIBAL:** That's true. But lawyers in many jurisdictions are not allowed My Lords to do  
12 both things. That's also true.

13 'They keep members supplied with information about the business of the House and enforce  
14 party discipline, being constantly in touch with the members and the lobbies of the House, the  
15 Whips acting as intermediaries between the leaders and the rank and file of their parties keep  
16 the former in touch with the currents of opinion not only within their own party and thereby  
17 nip the incipient revolt in the bud, but also to some extent with other movements of opinion  
18 inside the House. And it is through the Whips that members of a party come to know about  
19 their leaders' views and the plans into which the leader thinks it is necessary or experience to  
20 initiate them. The Whips are the active agents within the parties, a channel of communication,  
21 whereby one party negotiates with another concerning topics of debate or conduct of business  
22 in the House'. In the handbook of the working of the Ministry of Parliamentary Affairs, the  
23 background of origin of Whips is noted in this regard. It is stated that 'Whips who are drawn  
24 from various political parties are vital links in the internal organization of parties inside the  
25 legislature'. The expression Whips is derived from the...My Lords we don't have to go into that.  
26 Then come as the House of Commons library, that also My Lords goes to Edmund Burke.  
27 We've already read that. Let's not waste our time on it.

28

29 Then My Lords, kindly see further Para 186. Further is elucidating the duties of the Whip it is  
30 stated as follows. The primary role of the Chief Whip is to get the Government's business  
31 through Parliament and in particular, to secure the Government's majority in votes on its  
32 legislative and policy programs. The duties of the Whip include keeping MPs and peers  
33 informed of forthcoming parliamentary business, as I told Your Lordship, maintaining the  
34 party's voting strength by ensuring members attend important debates and support their party  
35 in parliamentary divisions and passing on to the party leadership, the opinions of back-bench  
36 members. The note also relies upon Roger and Walter, let's leave that. Kindly come to Law  
37 Commission. This is very important. Para 188.

1

2 The Law Commission, recognized the importance of the Whip necessarily by abiding for the,  
3 by the Whip, for abiding by the Whip and observed in Para 3.4.4, is as follows. Necessary for  
4 abiding by Whip, the necessity for abiding by the Whip -- 'In such a case the endeavour should  
5 be to strengthen the political parties by providing for internal democracy and internal  
6 structures rather than to weaken them. In as much as we are recommending in this report  
7 insertion of a new chapter, governing the political parties, the political parties including the  
8 provisions ensuring internal democracy, internal structures and transparency in the conduct  
9 of affairs. There should be no objection to strengthening of the political parties so that they  
10 will... the will of the majority, the will of the majority prevails in their political party. Freedom  
11 of speech is undoubtedly precious. But when a person becomes a member of the political party,  
12 accepts it's ticket and fights and succeeds on that ticket, he renders himself, subject to the  
13 discipline and control of the party. It should also be noticed that when a person applies for the  
14 ticket of a political party, he knows and is expected to know about the leadership, internal  
15 working, policies and programs of the party. He must also reckon with the fact that in future  
16 the leadership may change, policies and programs may change, and so on. If he with his eyes  
17 open, applies for and obtains the ticket and contests and wins on that basis, he cannot plead  
18 later that he does not agree with the leadership or policies of the party. This is all this  
19 argument, My Lords, that was made. Freedom of expression. We have a right. We feel that  
20 your policies are wrong. You have deviated from ideology. You knew the ideology, you knew  
21 that he is the Paksh Pramukh. You knew what he stands for, you took his ticket, you were a  
22 minister, you never raised your voice. And suddenly in Assam, you go to say that, no, no, we  
23 are very, very concerned about it. Prior to 2000.....before 21st June, where is the single  
24 statement that is on the record of this case? Not a single statement. That is because you got  
25 lured into it. That you thought that maybe by using your majority in the legislature, you could  
26 actually topple the government and become the Chief Minister.

27

28 So then it says My Lords, any difference of opinion must be first ventilate and fight within the  
29 party. Kindly see that. Your Lordship asked me that question. And what does he do? He has to  
30 ventilate it within the party. Call a meeting. Then My Lords more important, the membership  
31 of the House does not become his private property, nor can he trade in it. How patient these  
32 words are. That is not his private property nor can he trade in it. I mean, I am sure My Lords,  
33 he wasn't in Assam for cleansing his conscience. Either there were bigger issues that were to  
34 be dealt with in Assam. Somewhat akin to some ground issues. Anyway, it is a trust that he is  
35 in the members of...in the members of a trustee. He cannot also say that he will take advantage  
36 of the same, of the name and facilities of a political party, fight the election of the ticket of that  
37 party, and succeed, but he will not subject to the discipline of the political party. This is simply

1 unthinkable besides being unethical and immoral. He has to abide by the party discipline  
 2 within the House. He might fight within the Party to have his point of view or policies adopted  
 3 by the party. But once the party takes a decision one way or the other and issues the Whip, he  
 4 shall have to abide by it or resign and go out.'

5

6 This, in essence, tells you, My Lords, what the contours of the conduct of a member of the  
 7 legislature in the House should be and in what circumstances? And there are only two that he  
 8 can actually disobey the Whip. One, we can take the permission of the leader, and two, he says  
 9 something contrary to the Whip and the party condones it. And this Law Commission Report  
 10 led to the 91st Constitutional amendment deleting Paragraph 3.

11 So in practice, the connection between the political party and its elected legislators is  
 12 maintained by the office of the Chief Whip, who, in his essence, is the representative of the  
 13 political party amongst legislators. Then *Perumal versus* that My Lords. Just kindly have a  
 14 look at the Paragraph 12, but I won't read the whole thing, The paragraph starting.... second  
 15 paragraph. 'The Whips have to know their men.' Your Lordship has that paragraph?

16

17 'The Whips have to know their men. This involves a close contact with all members and  
 18 knowledge of their interests, special aptitudes, qualities and potentialities. Whips take these  
 19 aspects into account while sending list of Speakers to the chair in the interest of quality of  
 20 debate and deliberations. They keep members...' - now My Lords I cannot go to the Speaker.  
 21 No member of the legislature can go to the Speaker in Parliament or Rajya Sabha or Lok Sabha  
 22 that I want to speak. He has no choice in the matter. The party will decide who to, who is the  
 23 party My Lords? It's the leader. That on this issue on cooperative societies, my member in the  
 24 legislature knows more about cooperative societies than somebody else. Therefore, allow him  
 25 to lead the debate. In finance, who leads the debate in Rajya Sabha? Mr. Chidambaram. Who  
 26 decides that? The party. So My Lords, each person has his expertise on education, on telecom.  
 27 Every different people in the House who will be espousing the cause of that subject matter  
 28 because he has expertise and who decides that? Not even the leader. Leader will put up the  
 29 name to the party president or the UPA Chairperson of the party. And then they will say, okay,  
 30 now you let him decide. Let him debate. So this whole argument and sitting in Assam, I can  
 31 throw you out and I can throw the Whip out and I can change the leader of the House and I'll  
 32 proclaim myself as the leader of the House. What is the Speaker going to do when you send it  
 33 back to the Speaker? And this realization dawned two years afterwards My Lords, when he  
 34 was, he was a Minister and all that.

35

36 'So being constantly in touch with the members of lobbies of the House, the Whips acting as  
 37 intermediaries between the leaders and the rank and file of their parties. Keep the former in



1 touch with the current opinion, not only within their own party and thereby nip the incipient  
 2 revolt in the bud, but also to some extent with other movements of opinion. And it is through  
 3 the Whips that members of a party come to know about their leaders views and the plans into  
 4 which the leader thinks it necessary, experience initiate them. The Whips are the active agents  
 5 within the parties, a channel of communication whereby one party negotiates.' And I'll leave  
 6 that out.

7

8 Then, My Lords, kindly come to the next paragraph Para 13. 'The Chief Whip is the eyes and  
 9 ears of the leader of the party.' So far as the members are concerned. 'He conveys the wishes  
 10 of the leader to the members of the party and keeps the leader informed of the current opinion  
 11 in the party and also the moods and inclinations of individual members when these deserve  
 12 special notices. During sessions in his capacity as advisor to the leader, he normally meets the  
 13 Prime Minister, not only on one set interview daily but also several times in the course of the  
 14 date for brief consultations.' Why My Lords, what happens is there is *hungama* in the House.  
 15 There are not.. people are going go to the well, you immediately have a meeting with the leader.  
 16 What should we do? Because the House is adjourned for 15 minutes, 20 minutes, half an hour.  
 17 You go back to the leader, you have a quiet meeting My Lords, the Whip will have a quiet  
 18 meeting, a decision will be taken, conveyed to the legislature. So to say that I am a 40 members  
 19 of the legislative party, I can do what I like, I am a separate group, I'm a separate entity, I could  
 20 remove you. It's unthinkable in Parliamentary Democracy. Unthinkable. And this per se, that's  
 21 why I used the expression "per se". He has voluntarily given up his membership of the party,  
 22 "per se". Apart from making the House and keeping essentials for transactions of business, the  
 23 Chief Whip has the Whip hand in shaping the core tone and tenor of debate on special  
 24 occasions for he selects the Speakers from his party and hands over list to the Speaker for  
 25 facilitating the process of catching his eyes.

26

27 The responsibility of keeping everybody at his post and keeping his party united, strong and  
 28 well-knit falls on him. He selects members for the select committees and other Parliamentary  
 29 and government assignments, keeping in view the background experience, the aptitude  
 30 qualifications of members of his party. This gives him...Supposing My Lords, a select  
 31 committee is to be formed and the person to be nominated. Who decides that? If 40 members  
 32 of the House will say no, no. Because we are 40, we nominate this person. No. The Whip will  
 33 tell the Speaker that this is our nominee on the select committee or this joint committee or the  
 34 standing committee. So this gives him wide power, power of patronage which comes handy  
 35 and keeping with party members amenable to his influence. It is thus clear from a reading of  
 36 the aforesaid that the Whip forms an important link and umbilical cord between the political  
 37 party and the legislators. The Whip enforces the directions of the political party.

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Then My Lords, there is a discussion about how the term political party as My Lords actually was not there in the Constitution earlier or not Constitution even otherwise, was not there in a statute. Then 29(A), of the representation. I don't have to go through the representation. We are short of time and I don't want to take time unnecessarily. My learned friend can, if he wishes to deal with some of this.

Then My Lords, kindly come to...there is a judgment of this Court in 2018, Volume-9, SCC. (2018) 9 SCC page 100. This is *Sailesh Manubhai Parmar versus Election Commission Of India*. My Lords, in this case, they wanted to introduce NOTA option in the Rajya Sabha elections, for elections to the Rajya Sabha. In that context at page 116, the judgement starts at 100. I will just read one paragraph, paragraph 19, at page 116. Page 116, paragraph 19?

**JUSTICE SHAH:** Yes we all are here.

**MR. SIBAL:** Yes, My Lords, I'll just read it. The aforesaid passages throw immense light on the distinction between direct and indirect elections, and especially on the concept of indirect election which encompasses proportional representation. There is voting by open ballot, and it has been so introduced to sustain the foundational values of party discipline and to avoid any kind of cross voting, thereby ensuring purity in the election process. They have been treated as core values of democracy and fair election. It is worth to note that in a voting for members of the Council of States, the nature of voting by an elector is a grave concern. It is because in such an election, there is a party Whip and the elector is bound to obey the command of the party. The party discipline in this kind of election is of extreme significance, for that is the fulcrum of the existence of political parties. It is essential in a parliamentary democracy. The thought of cross voting and corruption is obnoxious in such a voting. In this context we may refer with profit to the...

Then Para 22 at Page 118. 23 actually. 23 at page 118. If I may read My Lord? 'In a democracy the purity of election is categorically imperative. The Democratic body politics, as has been held in *Manoj Narula* stipulates that the quintessential idea of democracy is abhorrent to corruption and laws, emphasis on prevalence of genuine orderliness, positive propriety, dedicated discipline, and sanguine sanctity by constant affirmance of constitutional morality which is a pillar stone of good governance. The purity of democracy does not withstand anything that has the potential to create an incurable chasm in the backbone of a democratic setup. The law is meant to eradicate the same. When one analyses the exercise of choice NOTA in the voting process of the Council of States where open ballot is permissible and secrecy of



1 voting has no room and further, where this discipline of the political party/parties matters, it  
2 is clear that that such choice will have a negative impact.' That's all My Lords that I wish to  
3 state.

4

5 Now My Lords coming back to.... so I skip that and I come My Lords now to.... I have dealt  
6 with the facts now My Lords and I don't want to take too much time now. Then My Lords, now  
7 I come to the Governor's decision.

8

9 **JUSTICE KOHLI:** Chapter 9?

10

11 **MR. SIBAL:** Yes My Lords, Chapter 9. I'm not going to intra-party decisions My Lords. I'll  
12 just save time. Come to Chapter 9. Now My Lords, this is, as I said, an issue that has arisen for  
13 the first time. A member of the BJP, along with...

14

15 **CHIEF JUSTICE CHANDRACHUD:** Where does Chapter 9 begin? At Page 100?

16

17 **MR. SIBAL:** My Lords sorry. Page 100. I'm sorry. My Lords 235, 'It is respectfully submitted  
18 that the exercise...

19

20 **JUSTICE NARASIMHA:** Is it the 28th June decision of the Governor ?

21

22 **MR. SIBAL:** Sorry.

23

24 **JUSTICE NARASIMHA:** 28th June, decision of the Governor. Decision of the Governor  
25 which...

26

27 **MR. SIBAL:** To invite Shinde My Lords.

28

29 **JUSTICE NARASIMHA:** 28th of June.

30

31 **MR. SIBAL:** 30th.

32

33 **JUSTICE NARASIMHA:** 30th?

34

35 **MR. SIBAL:** 30th. 28th is our trust vote. We do not go to the trust vote.

36

37 **JUSTICE NARASIMHA:** 30th.

1

2 **MR. SIBAL:** 30th My Lords he is sworn in. Now Your Lordship knows that under the  
3 Constitution there are areas where the Governor has discretionary power, subject to three  
4 exceptions, which are given in *Nabam Rebia* which is in... this is an area when in the beginning  
5 My Lords, there is an election that takes place. Who is to form the government? There is  
6 enough discretion with the Governor. He will see as whether there's a pre-poll alliance. And if  
7 the pre-poll alliance has majority, he'll call the leader. Normally. I mean, there are exceptions.  
8 There's a post.... if he doesn't get a pre-poll alliance majority, he'll call a post-poll alliance and  
9 if not, My Lords, he will otherwise see if the majority can be cobbled up by a leader who has  
10 the confidence of the House, who may have the confidence of the House. That discretion is  
11 always with him My Lords. Now we are talking of the discretion of a Governor, post the  
12 formation of a government. That's the first issue. So post the formation of an elected  
13 government if ten people go to the Governor, what is his discretion in the matter? Because the  
14 Governor has to ascertain - one, that look these people along with others, the leadership that  
15 I will administer the oath to will have the confidence of the House. That's one criteria on the  
16 basis of which he will swear him in.

17

18 Two My Lords, he will ask the question, which party do you belong to? He has naturally have  
19 to ask. I am sure he will know that before even he asks that question. So he knows My Lords,  
20 that the Shiv Sena is not before him. On the 30th he knows Shiv Sena is not before him. So  
21 what is his discretion in administering the oath of office to Eknath Shinde? Except the fact that  
22 all the 39 rebels will support or the BJP along with the 39 rebels, will oust the government and  
23 will support the new Chief Minister. He also knows that there is a disqualification petition  
24 pending. So Your Lordships will have to decide for the first time in situations of this nature,  
25 when there is an already an elected government in place and there is a taint, alleged taint of a  
26 certain set of members pursuant to the fact that disqualification proceedings are pending,  
27 whether the Governor can exercise discretion in a manner which will topple an elected  
28 government, not await the outcome of the disqualification proceedings, the Governor could  
29 have done two things. Could have said, I know for a fact that there is a disqualification notice  
30 against you all or against 16 of you. You who claim, want me to administer an oath of office to  
31 want to be the Chief Minister. The Court has given you time till the 12th of July, please first  
32 file your reply on the 12th of July, see the outcome of those proceedings. And if there is no  
33 taint as far as your membership is concerned, I will administer the oath of office to you. That  
34 I think is a constitutionally moral path that the Governor ought to have adopted. My Lords,  
35 institutional morality demands that he follows that path. The Constitution in fact, persuades  
36 him to follow that path. Why? Because there is an elected government in place of which he was  
37 a member. He himself. Eknath Shinde was a member. So why would a Governor My Lords

1 administer an oath except that he himself knows that the elected government will be toppled?  
2 That's a very serious matter according to me My Lords. You looked at the Sarkaria Commission  
3 Report My Lords, Your Lordship will find no such eventuality My Lords consider to it. The  
4 Governor which...

5

6 **JUSTICE SHAH:** Eventualities are to be considered on experience.

7

8 **MR. SIBAL:** That's true, that's true. My Lords ultimately democracy only thrives when  
9 institutions uphold the sanctity of the Constitution.

10

11 **JUSTICE SHAH:** Correct.

12

13 **MR. SIBAL:** And quite frankly My Lords, and this is again my personal opinion, no court, no  
14 institution should balk from that. Should withhold it's hands from that. Because ultimately it's  
15 the message sent by Court, by institutions, that we are above the vicissitudes of fortune that  
16 come with politics. That is the only way to gain respect within the public and to uphold the  
17 values for which our forefathers gave us this Republic. But unfortunately, that's not to be. So  
18 My Lords here there is a big conundrum. Very big conundrum. So, first the 27th order, the  
19 29th order, then the Governor. Even the Governor could have stopped it. Even he chose not to  
20 stop it. So Your Lordship will have to evolve some principle in the context of it because this, if  
21 *Nabam* is not overruled this will happen time and again. And the Governor will play. I'm sorry  
22 to say My Lords. I have seen the Governor, we did. It happened in Arunachal. And we have  
23 seen My Lords, and I mean no disrespect to the institution of the Governor. We have seen  
24 Governors performing a more proactive role as institutional heads within the State which has  
25 created disturbances within the polity. So therefore, how Your Lordship will evolve a principle  
26 to ensure that Constitutional morality is upheld, is something that I leave it to Your Lordships.  
27 I cannot give an answer.

28

29 I can only say in the facts and circumstances of this case, the Governor should not have  
30 administered the oath of office to Eknath Shinde, because he was not the leader of the Shiv  
31 Sena. There was a pending disqualification petition against him. He did not.... He belonged  
32 to the Shiv Sena, but had dissociated himself with the Shiv Sena. And he had no locus who was  
33 to go to the... supposing, whether the Shiv Sena form a government with the BJP, who was to  
34 go to the Governor? The leader of the Shiv Sena. That's the Paksh Pramukh, Uddhav  
35 Thackeray. It is he, who would represent the Shiv Sena before the Governor and say, okay, we  
36 want to join hands with the BJP. In what capacity was Eknath Shinde before the Governor? In  
37 which capacity? And in which capacity did the Governor accept or give him audience and

1 administer the oath of office? And My Lords, kindly see Shinde has never disputed that  
2 because he is the... he is in the... He says, I am Shiv Sena and he has never disputed that  
3 Uddhav Thackeray is the Paksh Pramukh. He has not disputed it even today. So in what  
4 capacity did he go to the Governor? Where did he get authority from? Not from Uddhav  
5 Thackeray, not from the Paksh Pramukh. In fact, My Lords what the Governor does in this  
6 process, it revives the concept of a split and allows it to be alive before him, even though Para  
7 3 has been deleted from the... gives it legitimacy. Now all this is a violation of 2(1)(a). All this  
8 per se My Lords. What is the Speaker to decide? From the 21st June right up to 30th June,  
9 when he is sworn in, each Act amounts to voluntarily giving up membership of the party. Each  
10 Act. And under the Tenth Schedule, he has no defence because there is no amalgamation.

11

12 May I, My Lords, Your Lordships My Lords the Chief Justice asked me a very pertinent  
13 question, My Lords, as to what a person should do if he's unhappy. Actually the answer lies in  
14 a judgment of the Election Commission, Brahmanand Reddy, which was came up in SLP to  
15 Supreme Court. SLP was dismissed. I will just give it to My Lords.

16

17 **JUSTICE NARASIMHA:** That is the judgment of which Court? That's the judgment of?

18

19 **MR. SIBAL:** The Election Commission.

20

21 **JUSTICE NARASIMHA:** Election Commission.

22

23 **MR. SIBAL:** Yes. Just give it to My Lord please. My Lords, when you proclaim that you  
24 continue to be member of the Shiv Sena you also proclaim that you are working under the  
25 Constitution of the Shiv Sena. Naturally, My Lords, you must assume that. And the  
26 Constitution of the Shiv Sena allows you to voice your opinion in the form of a dissent or  
27 otherwise. And to get support from primary members of the party or from the Pratinidhi Sabha  
28 as well as the Karyakarini, so that you can actually articulate your concerns. And so it is in this  
29 context My Lords this order was passed by the Election Commission, and this judgment, My  
30 Lords, I want My Lords' attention to paragraph...[NO AUDIO]  
31 My Lords had a couple of questions for me.

32

33 **JUSTICE NARASIMHA:** There's two things. Lots of the submissions I don't know whether  
34 they will join issues with you. Straightforward from the interpretation of the Constitution and  
35 the provision. Two aspects. One relating to the leadership issue which is staring in the face of  
36 the Speaker at least. That is one aspect of the matter. How does one deal with it?

37

1 **MR. SIBAL:** Other is?

2

3 **JUSTICE NARASIMHA:** That is what is staring in the face of the Speaker. Leadership issue.  
4 Particularly in the context of the legislators.

5

6 **MR. SIBAL:** Correct.

7

8 **JUSTICE NARASIMHA:** Now another aspect I want your exposition on that is that  
9 legislators double up as the political leaders in every district. They are the same legislator.  
10 Here he is a legislator. In a district he is a leader. And normally, we all know that in the district,  
11 the legislators are the top leaders invariably. An MLA in a district is not. So therefore, he wears  
12 the hat of the political leader and he comes into the Legislative Assembly and he is a legislator  
13 there. So therefore he in a way represents the political perspective also while he is performing  
14 the function of a legislator.

15

16 **MR. SIBAL:** Sure, sure.

17

18 **JUSTICE NARASIMHA:** So therefore, the question arises as to how, whether... where is..  
19 there is some kind of an overlap with respect to the position of a legislator as a person  
20 representing the political part of the political party. At what stage and what is the test to  
21 determine it? Sadiq Ali is in a different context. But of course, substantially what you have told  
22 us that batting order or for the Speaker is first to determine the Tenth Schedule issue. But in  
23 the context of these two factors, I just wanted your...

24

25 **MR SIBAL:** My Lords what happens is, I'll tell Your Lordship. I represent a particular  
26 assembly constituency in a state. The nature of that constituency may be entirely different  
27 from the nature of another constituency, a 100 miles away. The nature of issues may be entirely  
28 different My Lords. As Your Lordship knows, My Lords, the spread of the other backward  
29 classes and constituencies are different in different States. Different in one state also. The  
30 nature of the population, the SC/ST may be more, SC may be less, backward may be more. My  
31 Lords are highly complex issues. But when you come to the legislature, you are not looking at  
32 your constituency. You are looking at the issues of the State and the politics of the State in the  
33 context of, including the nature of the problem that you may face in your constituency. So My  
34 Lords, in fact, the interest of the legislature, when it comes to the interests of the State, are  
35 subjugated.... the interest of his district or his particular parliamentary state is subjugated  
36 to the larger interests of the State. That's why it's the Whip who decides what should be done,  
37 what should not be done. But you are right. There is an element of interplay My Lords. But he

1 can't on the context of that element in his own interest qua his constituency say that I will not  
2 obey the Whip of the party. That's the nature of the animal My Lords. And therefore My Lords,  
3 he has to do that. As far as the Speaker is concerned, My Lords the Speaker has no choice in  
4 the matter. Speaker is only conveyed what the party conveys to him. Speaker has no individual  
5 right to say you are the Whip or you are, I now proclaim you to be the Whip. They can't....

6

7 **JUSTICE NARASIMHA:** Here there is no over tact in the nature of the legislators calling  
8 the members of the party to have a prior meeting and thereafter the legislators themselves...

9

10 **MR. SIBAL:** Even that can be done. My Lords even according to me even that can be,  
11 supposing, all of them said and the party Whips said otherwise.

12

13 **JUSTICE NARASIMHA:** You are saying that the legislatures can sit together and take a  
14 decision.

15

16 **MR. SIBAL:** Yes, My Lords because they will have to obey the party.

17

18 **JUSTICE NARASIMHA:** No, no, no. Can the legislators sit together and say that now we  
19 are the party?

20

21 **MR. SIBAL:** No, they can't. They can't. They can't. Only that's, only merger then My Lord.  
22 That's the only difference is paragraph four. That can't be. This is the conundrum. This is a  
23 conundrum which was...

24

25 **JUSTICE NARASIMHA:** But the same legislators don't sit in the Parliament, but go out and  
26 call for a meeting...

27

28 **MR. SIBAL:** On the political party, Yes.

29

30 **JUSTICE NARASIMHA:** As a political party?

31

32 **MR. SIBAL:** Only political party. Yes, they can.

33

34 **JUSTICE NARASIMHA:** As a political, as if it's under the banner of a political party?

35

36 **MR. SIBAL:** That they can't do My Lords. That they can't do.

37

1 **JUSTICE NARASIMHA:** But then if they are the majority?

2

3 **MR. SIBAL:** No, no. They are majority in the legislature. They have the majority of the  
4 legislature there's no doubt about that, but they can't call a meeting of the political party  
5 because they are bound by the constitution of the party.

6

7 **JUSTICE NARASIMHA:** You'll have to slightly also explain to us, how in Sadiq Ali they got  
8 over this problem.

9

10 **MR. SIBAL:** For Sadiq Ali, I'll tell Your Lordships straight away, *Sadiq Ali* My Lords, it's  
11 Congress J, and Congress O. And the Court said in Sadiq Ali that both Congress...Congress J  
12 both in the organizational wing as well as in the legislature in Parliament, have a majority. So  
13 there's no issue at all.

14

15 **JUSTICE NARASIMHA:** Then that Kerala Mani...

16

17 **MR. SIBAL:** Both. Both you have to see. The organizational wing as well as that. Not one.

18

19 **JUSTICE NARASIMHA:** Additional.

20

21 **MR. SIBAL:** That's correct, that's correct.

22

23 **JUSTICE NARASIMHA:** There were, there were.

24

25 **MR. SIBAL:** So that's what and...

26

27 **JUSTICE NARASIMHA:** There were also identical in that, I don't know what that name in  
28 Kerala, that Mani?

29

30 **MR. SIBAL:** Unnikrishnan?

31

32 **JUSTICE NARASIMHA:** Mani.

33

34 **MR. SIBAL:** Unnikrishnan? Mani? I'll find out, My lords we will find out.

35

36 **JUSTICE NARASIMHA:** Recent judgment of the High Court.

37

1 **MR. SIBAL:** But the question is, they are bound by the Constitution, there is a constitutional  
2 procedure given by the party constitution, through which they can articulate their opinions.  
3 Which is exactly what Brahmanand says. That's why I was reading it.

4

5 **JUSTICE NARASIMHA:** Let's state.

6

7 **MR. SIBAL:** Precisely the point. Paragraph, Page 12 at the bottom, about 10th line from the  
8 bottom, to take a view that the Commission, page 83 of the compilations. My Lords the Chief  
9 Justice also asked me that question. I'm trying to answer that. Page 83 My Lords, about 10th  
10 line from the bottom of that paragraph, to take a view that the Commission ... Lordship has  
11 that?

12

13 **JUSTICE NARASIMHA:** You can mail it to the Court Master. They will mail it to us. Yes,  
14 even the airdrop is not coming.

15

16 **CHIEF JUSTICE CHANDRACHUD:** Which para?

17

18 **MR. SIBAL:** Para 83, 10th line from the bottom, to take a view that the Commission while  
19 deciding cases falling under Paragraph 15. My Lords, have that? As Your Lordship know  
20 paragraph 15 says when factions are very pursuant to a split in the political party. 72 at 83, My  
21 Lords. My Lords the Chief Justice has that?

22

23 **CHIEF JUSTICE CHANDRACHUD:** Yes.

24

25 **MR. SIBAL:** To take a view that the Commission, while deciding cases falling under  
26 Paragraph 15 of the Symbol's Order, should not be concerned with the party constitution  
27 would be to introduce utter chaos in the functioning of the political parties in the country, and  
28 the operation of the Symbol's Order would be rendered a play thing between the various  
29 shades of opinion or groups in the political party. It cannot be gainsaid that a group claiming  
30 to be a particular party must abide by its own Constitution which imposes contractual  
31 obligation on its members, unless it is shown that it is, that a clear impasse had been reached  
32 where the functioning of the Party could not be carried out in accordance with its own  
33 Constitution. To ensure a healthy standard of political life the Commission should not lay  
34 down any procedure which will make it easy for the established political parties to break up at  
35 the slightest pretext. The commission considers that a group or section which wants to form a  
36 rival group within a party, must declare itself a rival group and assert that there has been a  
37 split in the party. It must show that it has exhausted all the remedies available to it under the



1 Constitution of the Party to assert its majority but that the other group has frustrated its efforts  
 2 whimsically or capriciously, and is not itself function in accordance with the province of the  
 3 Constitution of the Party or Democratic norms. The rival group must also show that it has no  
 4 alternative but to come to the Commission to establish its majority in the party.' So the answer  
 5 My Lords to the question is you have to under the Constitution, go to the party, make all efforts,  
 6 raise your voice, articulate your opinion. Get a membership of substantial number of members  
 7 of the party. They may not be majority, even minority of the party with you, claim then that  
 8 there is a split in the party. Attempt to change the leadership. You can't do that. If you can  
 9 muster up majority My Lords, you will become the party. If you can't muster up a majority My  
 10 Lords, then you say there is a split in the party. Then the Election Commission will decide who  
 11 gets the symbol and that also from a future date My Lords. Now the question here  
 12 unfortunately is, there is no meeting of any party. Meeting of party of legislators is in Assam.  
 13 What is the political party and the members of the political party in Maharashtra have  
 14 anything to do with the meeting, with meeting legislators in Assam My Lords? And it's not  
 15 even their claim. So you don't call a party meeting. You have not called it prior to 21st June.  
 16 Now My Lords, what's very interesting is that in Sadiq Ali. That's the principle that, Your  
 17 Lordship must keep in mind the court said that I will not go into the actions that have taken  
 18 place after there has been a dissonance between two factions because each section has thrown  
 19 out people in the other section, and vice versa. I will take the position prior to that. That is  
 20 what was the state of the party prior to that, in this case prior to 21st June. What is there?  
 21 There is nothing prior to 21st June. There is no split. There is no attempt to split. There is no  
 22 talk of split. So My Lords how does Paragraph 15 come in? Paragraph 15 comes in only when  
 23 there are two factions pursuant to a split. There is no case of a split. The case of a split happens  
 24 My Lords, on the 18th July according to the petition before the Election Commission. We are  
 25 dealing with disqualification on 21st of June. And 18th of July there is no meeting of the party.  
 26 There is no notice, there is no venue, there is no time, there is no evidence of any meeting.  
 27 Because if there is a meeting of the party notices must also come to us because we happen to  
 28 be the party. No notice. No notice even to their own people is shown. So My Lords the question  
 29 of Paragraph 15 also doesn't arise. That we will argue at 330 My Lords. This is the problem. So  
 30 you don't go by the Constitution. You don't claim to have a split. You say the legislature party  
 31 or 30 of them, 38 of them are the political party and then My Lords you go with the BJP and  
 32 get yourself anointed as a Chief Minister of the State.

33

34 Now I will quickly go through what I have said so that finish it. Now I'm at Para 235 My Lords.  
 35 "It is respectfully submitted that the exercise of discussion by the Governor in inviting a person  
 36 to form the Government must be in accordance with constitutional provisions and values.  
 37 While democracy and rule by majority is part of the constitutional scheme, the prohibition on

1 defection is equally a constitutional mandate. Hence while according respect to the principle  
 2 of rule by majority as envisaged in a democracy Governor must have regard to the  
 3 constitutional prohibition on defection. Consequently, the Governor is duty bound to refuse  
 4 to recognize the majority that has been secured through unconstitutional means. The scope of  
 5 judicial review of the exercise of discretion by Governor would necessarily extend to ensuring  
 6 that the discretion was not exercised in a manner that disregard... was exercised in a manner  
 7 disregarding the constitutional methods of securing the right to govern."

8 My Lords that decision of the Governor is justiciable. All decisions of the Governor are  
 9 justiciable. So whether he could have administered an oath of office or not, My Lords, in the  
 10 context of the facts before you, is a matter that is to be decided by Your Lordships. And if that  
 11 decision goes, My Lords, everything goes. Admittedly the fact of the present case, there was no  
 12 merger, as envisaged under paragraph four of the Tenth Schedule. These rebel MLAs have not  
 13 merged in any other political party or formed a new politic party. Therefore, even if it is  
 14 assumed that their two-third strengths of legislature party para four, is not at all attracted. The  
 15 President of the Shiv Sena Uddhav had publicly admittedly not aligned supported the BJP. In  
 16 these circumstances the satisfaction of the Governor for the purposes of calling upon  
 17 Respondent number 4 to be Chief Minister. As the head of 39 rebel MLAs of Shiv Sena, which  
 18 is not endorsed by the Shiv Sena political party, is by itself ex facia unconstitutional. The  
 19 Constitution prohibits recognition of rebel MLAs of a political party under the Tenth Schedule  
 20 and the action of the Governor legitimizes what is expressly prohibited by the Constitution.  
 21 The Governor has sought to recognize what the Constitution prohibits. The Governor is also  
 22 not empowered under law to recognize who is the Shiv Sena. Who is the Governor to say that  
 23 My Lord? That is the domain of the Election Commission, admittedly recognition of the Shiv  
 24 Sena and it's leadership by Uddhav Thackeray has been endorsed by the Election Commission,  
 25 and there is no dispute whatsoever or challenge before the appropriate authority, as on 30th  
 26 of June. In these circumstances the Governor and his *ipse dixit* guided by his political masters,  
 27 acted mala fide. Legally mala fide. I don't mean any other way My Lords, mala fide and in the  
 28 teeth of the provisions of the Constitution granted de facto recognition to the 39 rebel MLAs  
 29 by inviting Respondent 4 to be the Chief Minister. It is submitted My Lords, I'll finish it  
 30 tomorrow, now, I'll talk for not more than 10-15 minutes. I'm done My Lords.

31

32 **CHIEF JUSTICE CHANDRACHUD:** All right come back...We'll resume tomorrow  
 33 morning.

34

35

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