

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

TRANSCRIPT OF HEARING

15-Mar-2023

11:00 AM IST

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JUSTICE SHAH: What's your estimate?

MR. MEHTA: One hour My Lord, and I'll not repeat anything and I'll just point out My Lord seven points I have to assist Your Lordship with, and first I'll narrate those seven points and Your Lordships would find most of them are not....

JUSTICE SHAH: You confine to Governor only?

MR. MEHTA: Yes, yes, yes My Lord, Governor. That's why I wanted to inform that these are the seven points I will be dealing with.

JUSTICE SHAH: [UNCLEAR]

MR. MEHTA: Perfect, My Lords, that's a

JUSTICE SHAH: [UNCLEAR]

MR. MEHTA: Yes, yes My Lord, I would not test Your Lordship's patience...

CHIEF JUSTICE CHANDRACHUD: Mr. Sibal, now you must tell Mrs. Sibal what my learned brother told.

JUSTICE SHAH: I say the one hour means the actual one hour...

CHIEF JUSTICE CHANDRACHUD: Please tell him the last part of what my learned brother had said.

MR. MEHTA: Thereafter you have to sit down.

JUSTICE SHAH: I said, see I told him in Gujarati, so that straightway the message can go.

MR. MEHTA: In letter and in spirit otherwise in English, it's only letter which goes, the spirit is not translated. My Lord the first point I'll make is the objective material which the Honourable Governor has considered. Second My Lord...

1 **JUSTICE SHAH:** One minute.

2

3 **MR. MEHTA:** My Lord, I'm giving the proposition note. Your Lordships may not write
4 the, write down right now.

5

6 **CHIEF JUSTICE CHANDRACHUD:** Sometimes very good to write or type. You know
7 why? That keeps the judge's audio sensory perception a little quiet because otherwise we tend
8 to talk and then eat up a lot of time. So when you're typing, you know, you let the lawyer talk.

9

10 **MR. SIBAL:** I mean when I was young lawyer..

11

12 **MR. MEHTA:** You're still a young lawyer.

13

14 **MR. SIBAL:** Thank you very much. Thank you very much. My Lords, in Justice
15 Chandrachud's Court and Justice Bhagwati's Court, the kind of dialogues that used to go on,
16 that's unbelievable. The judges used to talk because the judges used to express themselves to
17 actually seek answers and in fact, when judges don't talk, My Lords it is very dangerous
18 because you never know...

19

20 **CHIEF JUSTICE CHANDRACHUD:** I felt that when I was a lawyer, if you have a judge
21 who is very quiet, it's very dangerous thing, you never know...

22

23 **MR. SIBAL:** You never know, so we can't even clarify what's in his mind. So it's good
24 wherever...

25

26 **CHIEF JUSTICE CHANDRACHUD:** The trouble is very often now with this live meeting,
27 you know, people don't realize that what is said in the court is not what...

28

29 **MR. SIBAL:** Exactly...

30

31 **CHIEF JUSTICE CHANDRACHUD:**...to illicit the response of the Counsel.

32

33 **MR. SIBAL:** And they misinterpret things.

34

35 **CHIEF JUSTICE CHANDRACHUD:** Ultimately, you know, you look at the holistic
36 perspective of the matter. There may be a little point here against a counsel, a point there

1 against a Counsel, you never have a hundred percent case in favor of one party or the other.
2 They are rare cases.

3

4 **MR. SIBAL:** Right, right.

5

6 **MR. MEHTA:** That tend to make the lawyer argue additional points, thinking that this might
7 be in the mind of the...

8

9 **MR. SIBAL:** The enunciation of the law has to be through a dialogue. It can't be any other
10 way.

11

12 **JUSTICE SHAH:** Sometimes the questions are asked to get the answer, so that we can also
13 know what is...Suppose we are in confusion...

14

15 **MR. SIBAL:** Absolutely, absolutely My Lords.

16

17 **CHIEF JUSTICE CHANDRACHUD:** So, the first point is the objective material.

18

19 **MR. MEHTA:** Objective material My Lord, which is considered. Second point, the
20 submission of the petitioner that Tenth Schedule has a direct correlation with the Governor's
21 exercise of power under Article 174. And I have to wait, when I say I My Lord, I'm sorry I
22 represent the Honourable Governor has to wait till the Speaker decides.

23

24 **CHIEF JUSTICE CHANDRACHUD:** So the argument that the Tenth Schedule has a direct
25 correlation with?

26

27 **MR. MEHTA:** No, that's their argument which I will deal with. The Governor is not
28 concerned with Tenth Schedule or the consequences flowing therefrom. That's my respectful
29 submission.

30

31 **JUSTICE NARASIMHA:** You are saying the Tenth Schedule has a direct relationship with
32 the power of the Governor?

33

34 **MR. MEHTA:** Yes. It doesn't have.

35

36 **CHIEF JUSTICE CHANDRACHUD:** No it doesn't have...

37

1 **MR. MEHTA:** Doesn't have the power.

2

3 **CHIEF JUSTICE CHANDRACHUD:** He is dealing with the argument.

4

5 **MR. MEHTA:** It's their argument. Yes. My Lords are right. It's their argument. I am dealing
6 with that argument that Governor is not concerned with consequences contemplated in the
7 Tenth Schedule. My Lord the other side relied upon, I'm sorry, the other side relied upon....

8

9 **CHIEF JUSTICE CHANDRACHUD:** Third point now?

10

11 **MR. MEHTA:** Yeah the third point. But it is a subcategory of this very point.

12

13 **CHIEF JUSTICE CHANDRACHUD:** We'll take it as three.

14

15 **MR. MEHTA:** Yes. My Lordships would recall the other side relied upon heavily on para 397
16 of Bommai, to show that no the Tenth Schedule and Governor there is...You cannot say that
17 there is no correlation. I will point out that it was in a context and completely different context.
18 In fact on the proposition, whether the Tenth schedule as anything to do with the Governor's
19 exercise of power under Article 174, the real judgment is Rameshwar Prasad. I will read only
20 few paragraphs. I have earmarked, and I will not repeat any other thing. The next point which
21 the petitioners urged, was the Governor should have required, My Lord my learned friend's
22 side, to move a no confidence motion rather than directing a floor test. My Lord, next point
23 is, Dr. Singhvi My Lord raised this point, and in my respectful submission squarely covered
24 by Shivraj Singh Chouhan My Lord, that power under 174 to conduct floor test can be
25 exercised only when the government is formed for the first time and not subsequently. But
26 that is dealt with by Your Lordships My Lord in Shivraj Singh Chauhan. It was argued with the
27 same zeal My Lord by which it was argued here, and it was dealt with. And that is a good
28 law My Lord, that's my respectful submission. And last, why did the Governor invite
29 Mr. Eknath Shinde and not interacted with the party or the President of the party as to whom
30 should I invite? My Lord, these are the propositions My Lord, and I will be as brief My
31 Lord as I can be under the facts case.

32

33 **CHIEF JUSTICE CHANDRACHUD:** Only five propositions?

34

35 **JUSTICE KOHLI:** These are five propositions.

36

1 **MR. MEHTA:** Six propositions. My Lord, so far as the objective effects are concerned, My
2 Lord, I have filed a compilation, it's a very short compilation. Documents Your Lordships have
3 seen, but I have compiled it in one chronological order.

4

5 **JUSTICE NARASIMHA:** Which is this document?

6

7 **MR. MEHTA:** Compilation on behalf of the Honourable Governor, that's the... My Lord, I
8 have the physical copies also.

9

10 **JUSTICE KOHLI:** We found it.

11

12 **JUSTICE NARASIMHA:** There are two documents from your side, Governor LOD with
13 documents and written submissions of Tushar Mehta.

14

15 **MR. MEHTA:** Yes. Governor LOD, My Lord.

16

17 **JUSTICE NARASIMHA:** Yes, we have got that.

18

19 **MR. MEHTA:** Yes, My Lord.

20

21 **CHIEF JUSTICE CHANDRACHUD:** Just give me one second.

22

23 **MR. MEHTA:** And My Lord, the original file of the Honourable Governor is present with the
24 responsible representative of the Governor, if Your Lordships would like to peruse, but all
25 these documents are supplied to them also. Since My Lord, it was once... it fell from My
26 Lord, from the Chief Justice of India that we may call for the file of the Governor, therefore
27 it is kept here. And I will not read My Lord the documents. It is only My Lord for... My
28 Lord can I give the physical file? Could Your Lordships find... ?

29

30 **CHIEF JUSTICE CHANDRACHUD:** LOD? Yes, we got the LOD.

31

32 **MR. MEHTA:** So kindly come to page one, My Lord, this is, Your Lordships, are aware My
33 Lord, there is a concept of legislature party and political party. The Legislature party appoints
34 or elects My Lord, Shri Eknath Shinde as the group leader of Shiv Sena Legislature Party in
35 the legislature.

36

37 **CHIEF JUSTICE CHANDRACHUD:** This is your list of dates, right?

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MR. MEHTA: Yes, My Lord, I'm sorry. PDF page 8, I am sorry.

CHIEF JUSTICE CHANDRACHUD: PDF page?

MR. MEHTA: Eight.

CHIEF JUSTICE CHANDRACHUD: Eight.

MR. MEHTA: I am not taking Your Lordships to the list of dates. The list of dates are essentially for showing which document is for what purpose.

CHIEF JUSTICE CHANDRACHUD: Alright.

MR. MEHTA: I'll show the document itself, just to save time. Page 8, My Lord, it is 25th of November 2019, the Shiv Sena Legislature Party, meaning all MLAs belonging to Shiv Sena, were elected under the banner of Shiv Sena, elects Shri Eknath Shinde as the leader of the House as we say, they say group leader of Shiv Sena Legislature Party and My Lord, this fact is not a fact in dispute. This would have a bearing as to why the Governor called Eknath Shinde when the dispute arose first. But I'll come to the little later, I'm just showing the document. Now, My Lord, kindly see PDF page 12. My Lord, this is Annexure B of my compilation. Your Lordships gets that, My Lord? Today, this is addressed by Shri Eknath Shinde to the Deputy Speaker with a copy to the Governor, which Your Lordships would find marking of copy at PDF page 13. May I read My Lord? Today through media report it has come to our knowledge that there was a meeting of the members of Shiv Sena Legislature Party called without any notice of the said meeting given to any of us including existing leader of Shiv Sena Legislature Party. It has come to our knowledge that only 16 MLAs out of 55 MLAs of our Legislature Party attended the said unauthorized meeting and passed the resolution to remove Shri Eknath Shinde as leader of the Shiv Sena Legislature Party. It is pertinent to note that the said meeting was without any notice and without any quorum and without following the due procedure. We state that 16 out of 55 MLAs could not have appointed a new leader of Shiv Sena Legislature Party in as much as the requirement of even quorum was not met. It has come to our knowledge that Mr. Chaudhry has been unauthorizedly stated to have been appointed as a leader of Shiv Sena Legislature Party. We have today unanimously passed the resolution resolving that the said resolution dated 21st June '22 passed at 12:30 p.m., appointing Shri Ajay Chaudhary is void as being without jurisdiction and the same is inoperative. And kindly see My Lord, PDF Page 14, this is the resolution which is signed My

1 Lord, Your Lordships would find at page 18 onwards, by 34 members. Meaning I'm sorry -
2 - meaning thereby, as on this date, My Lord, that is 21st of June '22 the Honourable Governor
3 was informed that there is no change in the leader of the Legislature party and Shri
4 Eknath Shinde continues to be the leader of Legislature Party in Maharashtra Legislature.
5 My Lord thereafter... I am sorry, My Lord, can I proceed, My Lord? Kindly come to PDF page
6 21.

7

8 **CHIEF JUSTICE CHANDRACHUD:** This resolution is also of the 21st, no?

9

10 **MR. MEHTA:** 21st, My Lord. Yes. Letter sent to the Honourable Speaker and
11 the Honourable Governor on the same day, informing that any unauthorized meeting where
12 14, 15 MLAs may have gathered to change the leader is unauthorized and Shri Shinde who was
13 appointed in 2019 continues. And all 34 have signed. Now My Lord page 21.

14

15 **CHIEF JUSTICE CHANDRACHUD:** Page?

16

17 **MR. MEHTA:** 21. On 25th of June '22, approximately, not approximately, exactly I'll
18 give you the figure. The 38 MLAs, it contains signature of 38 MLAs, writes to
19 the Honourable Governor that malicious withdrawal of security of our family members have
20 taken place and there they point out certain shocking facts and also produced before
21 the Governor, the video clips of national news channels which Your Lordships would find
22 at PDF page 22, para 5 bottom. One leader of the party says, let all the MLAs come to the floor
23 of the House. We'll see then these MLAs who have left, they will find it difficult to return and
24 move around in Maharashtra. Then the NDTV clip is produced. Then these are the signatures
25 of, I'm sorry there are I'm sorry, My Lord. I stand corrected, my learned friend is right.
26 There are not only 38 MLAs, 38 MLAs belonging to Shiv Sena. And at page 2 My Lords there
27 is some other party, small party, Prahar Janshakti Party. They have two. So meaning
28 thereby My Lord, 40 and 7 independent. So, 47 members of
29 the House, 38, 2 and 7 informed the Governor about the threat being administered.

30

31 **CHIEF JUSTICE CHANDRACHUD:** 38 MLAs, right?

32

33 **MR. MEHTA:** 38 MLAs of Shiv Sena Legislature Party, two belonging to one smaller party
34 called Prahar Janshakti Party and seven independent MLAs. That this is the threat being
35 given, our securities is withdrawn and they say that the one of the leader, important leader of
36 the party says that let them come here. They won't be able to move around in....

37

1 **CHIEF JUSTICE CHANDRACHUD:** This is that letter at page 21?

2

3 **MR. MEHTA:** Page 21. And signed up to page 28.

4

5 **CHIEF JUSTICE CHANDRACHUD:** So that, that composition of those MLAs, just give us
6 again.

7

8 **MR. MEHTA:** Yes, kindly come to page...

9

10 **CHIEF JUSTICE CHANDRACHUD:** 38, Shiv Sena.

11

12 **MR. MEHTA:** Yes. 38 Shiv Sena. Yes. Your Lordships are right. That Your Lordships would
13 find the last figure at page 26, PDF 26. 38, Shiv Sena...

14

15 **CHIEF JUSTICE CHANDRACHUD:** Right.

16

17 **MR. MEHTA:** Then at page 27, Prahar Janshakti Party Amdar. Amdar would mean, a
18 member of Legislative Assembly. Amdar and Khasdar. Khasdar means a Member of
19 Parliament. My Lord, the Chief Justice would be obviously knowing. Then page 28. These are
20 Apaksha Amdar. So independent members, they are seven. So total 47 members, pointing out
21 that threats are being administered. Thereafter at page 29 the Honourable Governor informs
22 the Central Government as well as the State Government that these are...This is the
23 representation which I have received and therefore he requested, kindly see page 29, the
24 letter addressed to the Home Secretary of the country. Unnumbered middle para, that would
25 be relevant. Your Lordship has that?

26

27 Your Lordships, may I read, second unnumbered paragraph, "I have already issued directions
28 to the state police to provide adequate police protection to the MLAs, their families and
29 homes, on an immediate basis". Now please see, "Despite this, offices and homes of some of
30 the MLAs have been vandalized, with the police being a mute spectator. It is accordingly
31 requested that adequate provision of central security forces be made and kept ready, in case
32 required, to address the situation". The next page 30 is a similar letter to the Chief Secretary
33 of the State of Maharashtra. Kindly see the second unnumbered paragraph. "I therefore direct
34 you to provide adequate police protection to the MLAs, their families and homes, on an
35 immediate basis". Similar letter, I am not reading, at page 31, to Additional Chief
36 Secretary, State of Maharashtra Home Department, that you provide immediate security. A
37 similar letter at page 32, PDF page 32 addressed to the Director General of Police, State

1 of Maharashtra. Same My Lord direction, that you provide immediate security. I am not
2 reading it My Lords. Next is My Lord, page 33, similar letter to the Police Commissioner,
3 Mumbai. Now My Lord comes page 34, Bharatiya Janata Party, Maharashtra
4 Vidhi Mandal Paksh, means Legislative.... Legislature Party of the Bharatiya Janata Party
5 writes a letter dated 28 of June, 2022. Kindly My Lord, allow me to place this. This was not
6 read My Lord. My Lord, this is signed by the leader of the Legislative... Legislature party. Shri
7 Devendra Fadnavis in the House on behalf of the Party, and there is no dispute that he is the
8 leader of the House so far as this party is concerned. "I am elected"... Your Lordships can skip
9 first... "The election to the Maharashtra Legis " Am I with the Your Lordships at page 34?
10

11 **CHIEF JUSTICE CHANDRACHUD:** Yes, yes.
12

13 **MR. MEHTA:** "The elections to the Maharashtra Legislative Assembly was held on 21st
14 October and the result were declared". Then he gives the bifurcation. Your Lordships have
15 taken note. "Shiv Sena had contested the election in prepoll alliance with the BJP. However,
16 after declaration of results, the Shiv Sena are chose to enter into a post poll alliance
17 with NCP and INC to form Mahavikas Aghadi Government. The BJP is just the principle
18 opposition party in Maharashtra Assembly, having 106 members. It appears that over the last
19 eight to nine days, there has been an internal strife within the Shiv Sena legislature party. It is
20 common knowledge through widespread media coverage, that a majority of Shiv
21 Sena Legislature Party is feeling that their party's ideology is compromised. It is reliably
22 learned that Shiv Sena Legislature Party and its leader have clearly indicated to the Chief
23 Minister Shri Thackeray, and that they want to end the alliance with NCP and INC. The Chief
24 Minister has thus lost majority in the Assembly. My belief that the Chief Minister Shri
25 Thackeray has lost the majority in the Vidhan Sabha is further reinforced by various news
26 reports circulating on electronic as well as social media, where a group of 39 MLAs of Shiv
27 Sena are seen declaring that they want to exit the unnatural alliance with NCP and INC. The
28 chain of circumstances and events as [UNCLEAR] in the electronic media and various
29 statements made by the majority group of 39 MLAs. It makes it sufficiently clear Shri
30 Thackeray does not enjoy the majority of the floor of the Vidhan Sabha. I say and submit that
31 there is a wide coverage in the electronic media about the members of Shiv Sena
32 Legislature Party being threatened by their top leadership and there have been incidents of
33 attacks on the residences and offices of such members. Further, there appears to be the
34 provocative statements made by the leaders close to the Honourable Chief Minister to incite
35 violence against the members of Shiv Sena Legislature Party. I submit that the same is being
36 used to browbeat and coerce the aforesaid members to fall in line and to make up for the lost
37 majority of the Chief Minister. I submit that the violence unleashed against the members

1 of Shiv Sena Legislature Party is at the behest of leaders close to the Honourable Chief
2 Minister. For instance, Shiv Sena Melava in Bombay, some rally or a gathering, Shri so and so
3 issued a disturbing threat saying and My Lord, video is attached for the Governor to see which
4 the Governor has seen, 40 bodies will arrive from Guwahati and they will be directly sent for
5 post mortem. This is not denied or disputed on facts before Your Lordships or before.. earlier.
6 So, Governor My Lord, relied upon it. That's all I'm saying. Another instance of a clear threat
7 by Shri So and So is where, in an interview given to a leading channel, he has clearly stated
8 that the ongoing violence is only a warmup and that the trailer will come later. He has further
9 stated in the said interview that stones now will now be pelted at the MLAs. The said interview
10 can be accessed and the link is given. It's not just *ipse dixit* or My Lord, some personal view of
11 any particular individual. Then My Lord, he gives several other links for the Governor to see.
12 My Lord, this was the material before the Governor. Now, My Lord, please come to page 38.
13 My Lord, this is.... I'm sorry this is, My Lord, attached. This is the attachment to the email,
14 My Lord, Your Lordships may skip that. Then My Lord, next is letter dated 28th of June '22.
15 My Lord, this has been read and reread and therefore, I am not reading it. Substantially... I'm
16 sorry, My Lord, this is not read. My Lord, I am sorry.

17

18 **JUSTICE SHAH:** What is 38? 37 or 38, that letter.

19

20 **MR. MEHTA:** My Lord, 38...

21

22 **JUSTICE SHAH:** Attachment. What is that attachment?

23

24 **MR. MEHTA:** Yes My Lord, I will just... letter of independent MLAs to the Governor. I'm
25 sorry My Lord. My Lord, the attachment is at next page, My Lord.

26

27 **JUSTICE SHAH:** Please read. What is it?

28

29 **MR. MEHTA:** Allow me to read My Lord, this was not placed by my colleagues My Lord.
30 Request to... this is by the independent MLAs, seven independent MLAs.

31

32 **JUSTICE SHAH:** Those who earlier supported.

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34 **MR. MEHTA:** Yes My Lord, the very, very same MLAs. They say request to ask
35 the Honourable Chief Minister to prove the majority in the shortest possible time. We are
36 members of so and so, Your Lordships can skip, My Lord, the statistics. Para 4, however, in
37 past few days it has become crystal clear that Shri Thackeray Chief

1 Minister... Honourable Chief Minister does not have a majority in the Assembly. The same was
2 reflected in the recently concluded elections for Rajya Sabha members as well as the elections
3 for seats of Maharashtra Legislative Assembly. My Lords, this is also another material that he
4 didn't... he couldn't My Lord get the people of his party elected. The dwindling majority of the
5 incumbent MVA government has been further reduced when more than 38 MLAs of Shiv
6 Sena who were earlier supporting the Honourable Chief Minister declared in press as well as
7 social media that they want Shiv Sena to break its unnatural alliance with NCP and INC.
8 Various photographs and videos have been in circulation in the media of Shiv Sena MLAs
9 reaffirming the same claim. The turmoil within the Shiv Sena Legislature Party and Shiv
10 Sena has raised serious doubts about the Honourable Chief Minister Shri Thackeray,
11 commanding the support of the majority of members in Maharashtra Legislative Assembly. In
12 short, the events that have unfolded in the past few days in the state of Maharashtra have made
13 it absolutely clear that the current incumbent MVA government, led by the Honourable Chief
14 Minister no longer enjoys the majority in the Assembly and therefore does not have any moral,
15 legal, constitutional, or democratic right to continue as the Chief Minister of Maharashtra. We
16 have also come to know that Shri Thackeray and his colleagues with a view to convert the
17 majority into... minority into majority are trying to get certain MLAs of Shiv Sena disqualified
18 by misusing and violating the provisions of anti-defection law. We have already addressed a
19 communication in this regard, vide our letter dated 24th June to the Deputy
20 Speaker, copy whereof is attached herewith. Your Excellency will agree that in a democratic
21 setup, only a person who enjoys the majority support of the House has a right to continue as
22 the Chief Minister. A person who does not enjoy such majority has no right to continue as the
23 Chief Minister and is obliged to prove his majority on the floor. In view of the matter and
24 keeping in view the established democratic principle, they said the immediate floor test be
25 directed. My Lord, now Your Lordships have read this letter, which is at PDF page 42. This is
26 read and reread, whereby the Honourable Governor request, the then Honourable Chief
27 Minister Shri Thackeray ji to prove his majority. I am not reading it, but kindly see My
28 Lord, the request is a special session. This is at page 45. Therefore, I'm just showing My Lord,
29 this was exercise of powers under Article 174 read with 175(2), therefore, in keeping with
30 the Constitutional and Democratic values, and principles as also the law laid down by the
31 Honourable Supreme Court of India, and in pursuance of the powers conferred under Article
32 174 read with Article 175(2), of the Constitution, I hereby issue the following directions, a
33 special sessions of Maharashtra Assembly be summoned on 30th June at 11:00 A.M. And My
34 Lord, other consequential directions. My Lords, suffice to say Your Lordships have seen the
35 Honourable Governor relies upon Bommai, Rameshwar Prasad, Shivraj Singh Chauhan
36 etc., that floor test is the only test. And the only satisfaction which the Governor is supposed

1 to reach at this stage is the satisfaction that floor test is required. He's not supposed to
2 record a satisfaction that yes, you have lost majority. He doesn't do that.

3

4 **CHIEF JUSTICE CHANDRACHUD:** He does that. He does that. Governor says I
5 am therefore confident that you and your Government has lost the trust of the House.

6

7 **MR. MEHTA:** My Lord for the purpose of... Yes, for the purpose of his justifying his
8 direction, that now you go and prove it otherwise that no, you have the trust of the House.
9 Otherwise he would have invited somebody else immediately, if he would have arrived at that
10 satisfaction, which he could never have arrived at constitutionally. It has to be the satisfaction
11 to call for the floor test that you go and face the test. This is prima facie material, material is
12 unimpeachable. Everything is in public domain. The elected people are coming and
13 representing to me in writing, go and face the floor test. Now, if that satisfaction is not
14 recorded that there is a...

15

16 **CHIEF JUSTICE CHANDRACHUD:** So really speaking Mr. Solicitor, the material before
17 the Governor was only three things. One, the resolution by 34 MLAs that any change in the
18 leadership of the House is not warranted. That therefore they continue to have reaffirmed that
19 the leadership will be with Eknath Shinde, not with Chaudhary or Gogawale. One. Two, the
20 letters by 47 MLAs about the threat to their security....

21

22 **MR. MEHTA:** For converting minority into majority.

23

24 **CHIEF JUSTICE CHANDRACHUD:** And the third, the letter of the leader of the
25 opposition.

26

27 **MR. MEHTA:** Yes.

28

29 **CHIEF JUSTICE CHANDRACHUD:** That 39 MLAs of the Shiv Sena want to exit the
30 alliance with the BJP, with the INC and the NCP.

31

32 **MR. MEHTA:** Yes. And saying...

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34 **CHIEF JUSTICE CHANDRACHUD:** Essentially all this correspondence boils down to
35 three aspects, three things basically. Independent MLAs, the leader of the...

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37 **MR. MEHTA:** And the resolution passed.

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CHIEF JUSTICE CHANDRACHUD: ...[UNCLEAR] and the 34 MLAs.

MR. MEHTA: The resolutions passed by them respectively, letter is accompanied by resolutions to show that this is not happening for any other reason, this is happening because the Chief Minister has lost majority and he wants to convert his minority into majority. That's the only thing My Lord in my respectful submission, the Governor is supposed to see. In fact, he appears to have been reduced into minority, but he can go to the floor of the House, that's the ultimate...

CHIEF JUSTICE CHANDRACHUD: Ultimately, it boils down to this. Suppose there is a policy difference between a group of MLAs within a party. It was on the alliance with the NCP and the INC. Suppose there is a policy difference on whatever aspects, pending funds for a backward region in the state, we don't want this to be done...

MR. MEHTA: Several. Yes sir.

CHIEF JUSTICE CHANDRACHUD: The difference of the MLAs can be on a variety of things. Does the policy difference of a group of MLAs within a party... because Governor also says, they also don't say that we are leaving the party, because the moment they say that, they incur the Tenth Schedule. Can the Governor, merely on that basis, say now I'm of the view that you must prove your trust vote in the... you must go do a floor test.

MR. MEHTA: I will answer that My Lord, but that I would better answer after showing the law on the point. Because the answer is this, the immediate answer is this. The reasons for that dissatisfaction or reasons based upon which the sitting Chief Minister has lost majority, is not the consideration for the Governor. That can be a ground for disqualifying them, taking any other action within the party fold etc. The Governor is supposed to only understand My Lord, and that's what the law Your Lordships have laid down whether he has lost majority support or not? Whether...

CHIEF JUSTICE CHANDRACHUD: These are two different things. You see, one is whether the Governor has material to indicate that, well, that the existing government has lost majority on the floor the House. Equally, the Governor must be conscious of the fact that his very calling for a trust vote may lead to a precipitate loss of majority for the government. Because, that calling for a trust vote may itself be a circumstance which will lead to the toppling of the government.

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MR. MEHTA: I don't think My Lord... profound respect, as I understand, the Governor My Lord cannot take that call...

CHIEF JUSTICE CHANDRACHUD: The Governor... the Governor should not really lend their office for effectuating a particular result.

MR. MEHTA: Kindly see My Lord, kindly examine it.

CHIEF JUSTICE CHANDRACHUD: The leader of the Opposition writes... The leader of the Opposition's letter is irrelevant according to me. The leader of the Opposition will always write to the Governor, look, these people are acting contrary to the constitution, that their policies are anti-people. That is no ground for the Governor to act. The independent MLAs who said, or the MLAs who said my security is under threat, this was not a report under the Article 356. He was not saying that the government of the State cannot be carried out in accordance with the dictates of the constitution.

MR. MEHTA: That's going to be my submission My Lord.

CHIEF JUSTICE CHANDRACHUD: So the threat to security cannot be a ground for calling for a trust vote. So, both those are out of reckoning. The only thing which survives is the impact of the 34...

MR. MEHTA: May I answer that? May I answer that?

CHIEF JUSTICE CHANDRACHUD: ...34 is something which is... because 34 in a party which has 55 MLAs. So...

MR. MEHTA: May I answer that? First of all, the parameters for Article 356 are different, and 174 is...

CHIEF JUSTICE CHANDRACHUD: What the Governor indicates is, that he was of the view, that there was a certain dissension within the party on whether to continue with the alliance with the Indian National Congress and the NCP, right? Can that be a ground for the Governor to say you call for a trust vote?

MR. MEHTA: Kindly My Lord, allow me to answer. The Governor...

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CHIEF JUSTICE CHANDRACHUD: Then you're virtually breaking a party.

MR. MEHTA: My Lord, the difficulty is, I'm answering this question before my legal submissions are over, because most of Your Lordships questions can only be answered from my legal submissions which are yet to follow. But my immediate answer is this.

CHIEF JUSTICE CHANDRACHUD: You see, looking at it in hindsight... looking at it in hindsight, in hindsight, they had lost the... they had lost the... The mathematical equation they had lost. It was very obvious. That when 34... and that's why when Mr. Jethmalani said yesterday, they were not willing to disqualify all the 39, because they also realized the moment you disqualify 39, then it redounds to their disadvantage. So, they were trying to disqualify the 16, so that you know you give a threat to the other 23 that look, you will also suffer the same fate. Alright? They also knew that they were likely to lose the plot. But we are now on the Governor's powers, we're not so much on the mathematics. And okay, now at the end of it is obviously... it's very obvious that they had lost the numbers' game. But equally, you know what is a very serious concern, is that the Governor should not enter into this... any area by which their action will, in fact, precipitate the fall of a government.

MR. MEHTA: That is where I would very earnestly and respectfully, My Lord differ constitutionally, and I'll answer that...

CHIEF JUSTICE CHANDRACHUD: You stand away and say that look...

MR MEHTA: Can I? Before Your Lordship concludes on this point. Would Your Lordships allow me to place the law on the point, because law as I have understood My Lord, subject to Your Lordships' final approval, may not support this conclusion. My Lord, if there is a dissatisfaction the Governor's responsibility is to ensure that the stable government is there and government functions in a stable way. If somebody goes and says that there is a party dissatisfaction inter se may not be a ground for the Governor My Lord, possibly to call for a trust vote.

CHIEF JUSTICE CHANDRACHUD: Suppose there is a political party, and MLAs of a political party feel that our leader is not true to our ideology. That our leader is not carrying out the basic ideological premise of our party. Take it, forget Uddhav Thackeray, forget Shiv Sena for a moment. They have their remedies. They can always say that they will.. we will vote our leader out. We want it to be believed that, you know, our leader does not pursue

1 the ethos of our party. They can always vote the leader out in a party forum. But can the
2 Governor say that because there is a dissention about certain aspects of the
3 leadership, therefore I will ask the... I'll ask them to now prove their.... it's a government which
4 has been formed. It is a government which has established majority on the floor of the House.
5 It's a government, which is a functioning government and you know, these kind of and we are
6 now not an inception where you have to ask for a trust vote. It is not... I'm not saying that there
7 is an absence of power in the Governor. There is of course, there is a power in the Governor,
8 even after a government is formed because the variety of things may happen, which will lead
9 the Governor to say no, prove your trust on the floor of the House. But what is really the
10 problem here is that Governors in exercising that power may actually precipitate the fall of
11 the government. And that is something which is very... that is very, very serious for our
12 democracy.

13

14 **MR. MEHTA:** May I answer My Lord? As I am running against time. Your Lordship would
15 accommodate me, obviously if... I'm on the first point right now.

16

17 **CHIEF JUSTICE CHANDRACHUD:** This is irrespective of their numbers. There's no
18 doubt about it that they lost numbers at that point of time.

19

20 **MR. MEHTA:** But I'm answering, as a proposition of law, kindly allow me to at least
21 answer My Lord. I have understood My Lord, Your Lordships concern on the Constitutional
22 proposition, which is canvassed by a party which has otherwise lost the majority support, as
23 the figure suggests.

24

25 **CHIEF JUSTICE CHANDRACHUD:** And all these hyperboles that you
26 know, you will have 40 corpses, it's Maharashtra, it's not some... it is a very highly cultured
27 developed state. I mean things are said in politics. Sometimes things are said which are
28 inappropriate, they should never be said. Just the other day. Mr. Mehta that we said to Dr.
29 Singhvi, in a matter where he was appearing, that there has to be some level of constitutional
30 disperse and dialogue which is unfortunately going down in our country. So, we are not
31 condoning it. We are not at all condoning it.

32

33 **MR. MEHTA:** Please don't... this amounts to condoning, that is what my concern is.

34

35 **CHIEF JUSTICE CHANDRACHUD:** No, no, we are not condoning it, in fact we have
36 expressed this as the most serious concern about where the.. it's like, in fact, in one of our
37 orders, Justice Narasimha and I say it's like a race to the bottom. But that is different. I mean,

1 you know, we're not condoning it at all. We are deeply concerned with it as a constitutional
2 court. But equally, we have to also say that what about the Governors? They have to.. they must
3 exercise these powers with the greatest circumspection and caution.

4

5 **MR. MEHTA:** Would Your Lordships consider deferring this view till My Lord my...

6

7 **CHIEF JUSTICE CHANDRACHUD:** Alright. We will see the judgements of course.

8

9 **MR. MEHTA:** Yes My Lord. My Lord, kindly allow me to answer at the outset. I will show
10 the judgements, My Lord. My Lord, whenever the Governor's prime responsibilities, that a
11 stable government continues, number one. Kindly only allow me to complete. Number
12 two, the democratically elected leaders should not only enjoy the confidence of the House
13 when the government is formed. He should continue to enjoy the confidence of the House
14 throughout the tenure. And that's going to be another limb of submission when I examine, My
15 Lord, the Governor's power, in facts of the case is concerned. Otherwise, there would not be
16 any accountability on the leader, so far as his constituent electorate is concerned. He can say
17 that now I am elected, to hell with you. I will not concern. I'm not concerned. Allow me to...

18

19 **CHIEF JUSTICE CHANDRACHUD:** Mr. Solicitor, the monsoon session was coming. This
20 is all happening in the third week of June, the last pillar of June.

21

22 **MR. MEHTA:** Can I complete My Lord.

23

24 **CHIEF JUSTICE CHANDRACHUD:** The monsoon session of the State Legislative
25 Assembly was going to take place, when you will play supplementary demands. That's the
26 surest test. If they have to seek the vote of the House on passing legislation, on supplementary
27 demands, one aspect of a revenue measure and if the government does not get a vote. They are
28 out.

29

30 **MR. MEHTA:** My Lord, I will show the judgments.

31

32 **CHIEF JUSTICE CHANDRACHUD:** ...of the monsoon sessions which was going to take
33 place.

34

35 **MR. MEHTA:** I'll have to My Lord, read some judgments also, and therefore I
36 would earnestly request Your Lordships to defer this <UNCLEAR> conclusion.

37

1 **CHIEF JUSTICE CHANDRACHUD:** This is not a conclusion at all. This is a concern which
2 we are <UNCLEAR>....

3

4 **MR. MEHTA:** Another this My Lord....

5

6 **CHIEF JUSTICE CHANDRACHUD:** We may eventually accept your submission and we
7 will equally put your argument, Mr. Sibal...

8

9 **MR. MEHTA:** No, no I understand. I am confident. I am fully conscious of it....

10

11 **CHIEF JUSTICE CHANDRACHUD:** What is happening is extremely...

12

13 **MR. MEHTA:** My worry is different.

14

15 **CHIEF JUSTICE CHANDRACHUD:** Ultimately, whoever fails, whoever succeeds, if a
16 separate issue, but you are not...

17

18 **MR. MEHTA:** My worry is different. My worry is different and I'll put it first, thereafter I'll
19 answer that question at the outset and elaborate. What was said was not just an inappropriate
20 statement which the Governor could have ignored. It was a threat that you will be brought
21 dead and sent to post mortem. That the Houses being, please don't condone it. Inadvertent...

22

23 **CHIEF JUSTICE CHANDRACHUD:** He wrote to Mr. Limaye, he was the additional Chief
24 Secretary, provide security. That is duty by providing that, that please provide protection.

25

26 **MR. MEHTA:** Permit me My Lord to, anyway...

27

28 **CHIEF JUSTICE CHANDRACHUD:** But bringing down Government because of some
29 member of the Legislative Assembly saying that you know, we will, you know that's...

30

31 **MR. MEHTA:** Sorry My Lords, that's too simplistic a way to look at it. Please look at it
32 holistically. 34 persons, 34 MLAs goes that we have lost confidence. They might be
33 disqualified. They may not be disqualified. Whatever is the consequence, forget it for the time
34 being. Along with two plus seven other MLAs that this man is not enjoying majority support.
35 Kindly My Lord, allow me to complete before Your Lordships expresses the concern. They are
36 not saying that we don't like him, or we don't like that A, B, C, D reasons and therefore he has
37 not...He has lost our confidence. Now My Lord all these allegations, all these threats are being

1 administered and the Governor is supposed to be not a mute spectator because the threats are
2 administered not as a law and order situation. The threats are administered and Governor is
3 informed that with a view to create an artificial majority, now not only threats are
4 administered on public platforms, but really attacks are taking place. My Lord would I expect
5 the Governor to sit as a mute spectator and say that you wait till your monsoon session, this is
6 your internal dispute, you sort it out internally. The minimum thing the Supreme Court has
7 said is, that the Governor is not only entitled, he is duty bound to hold up, to direct that if this
8 is the situation, you hold a floor test. If that according to their perception might aggravate the
9 situation for the Chief Minister, again, that consequence is not for the Governor to keep in
10 mind. If in a democratically elected body, like the member, like a Legislative Assembly, if I am
11 elected as a leader, I should not only inspire confidence at the outset I should continue to have
12 that confidence throughout my tenure otherwise it results into complete lack of accountability
13 and answerability, which is a facet of democracy and it would result complete...In complete
14 tyranny that now I am elected you can do nothing to me. My Lord, that is not what is conceived
15 of the Governor's function, because Governor comes into picture only in rare situations like
16 this. That for whatever reasons you have lost your confidence. If 34 people have come maybe
17 because of my floor test 34 may become 40, I am taking the extreme example.
18 As Your Lordships have very rightly expressed the concern that it might aggravate the
19 situation, but that is how the democracy works. That is how leadership works. And
20 therefore they say that you can inherit leadership you cannot inherit leadership qualities. And
21 that is where the leadership quality comes into play in a democracy...

22

23 **CHIEF JUSTICE CHANDRACHUD:** The only concern Mr. Mehta is, that what happens
24 is, people start ditching a Government. And you know, you ditch your Government and then
25 for a variety of reasons the Governments and the Governors are willing allies by saying, hold
26 a trust vote. So you give sanctity to this fact...

27

28 **MR. MEHTA:** I'm not entering into the area whether they should have or they should not
29 have. That is for them to answer.

30

31 **CHIEF JUSTICE CHANDRACHUD:** This is a very sad spectacle, you know, in our
32 democracy that you know, you allow...

33

34 **MR. MEHTA:** My Lord, I don't. But as a Governor, I can't answer that question. But
35 otherwise, if Your Lordships...

36

1 **CHIEF JUSTICE CHANDRACHUD:** This is irrespective of the morality of the Shiv Sena
2 having joined with the INC and...

3

4 **MR. MEHTA:** That was also, the majority feels was a sad spectacle. Ultimately, all
5 this resolution say that having gone before the electorate and I would like to read, kindly allow
6 me My Lord. Kindly allow me. In Kihoto, Your Lordships very carefully say it, that when you
7 go before the electorate you are not going as an individual. You are going as a representative
8 of a particular ideology. You are doing two things.

9 A.) I am representing a particular ideology, vote for me. He represents another ideology, Don't
10 vote for me. Now the situation before Your Lordships and before the Governor was, that
11 majority of me, who went with a particular ideology, particular coalition, particular joint
12 program, sit with him against whom we contested the election, and majority say that this is a
13 spectacle we would not like to be a part of. I'm not concerned as a Governor. I'm not concerned
14 as a Governor. So that's My Lord...

15

16 **CHIEF JUSTICE CHANDRACHUD:** But they broke bread for three years, no? They broke
17 bread with the Indian National Congress and NCP for three years. What happened overnight
18 after three years of happy marriage?

19

20 **MR. MEHTA:** Please see My Lord, then I'll read My Lord what is their reason? Because it's
21 not my function to answer that, that's a political debate...

22

23 **CHIEF JUSTICE CHANDRACHUD:** The Governor has to ask himself this question.

24

25 **JUSTICE SHAH:** On a lighter side, you can very well say, staying together for three years
26 cannot be said to be a happy life.

27

28 **CHIEF JUSTICE CHANDRACHUD:** The Governor has to ask himself this question, what
29 were you fellows doing for three years? You're not in one month after the election has taken
30 place. One month after the election takes place, the Chief Minister suddenly breaks up with...
31 bypasses the BJP and joins with the INC. The Governor can say sorry, there's a serious
32 discontent in the party. Three years you cohabit, and then suddenly one fine day in a group of
33 34 say that there is discontent.

34

35 **MR. MEHTA:** Kindly allow me to place the point...

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37 **CHIEF JUSTICE CHANDRACHUD:** And, all went and became ministers.

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MR. MEHTA: But the difficulty is, out of...

CHIEF JUSTICE CHANDRACHUD: Enjoying the spoils of office, and then suddenly, you know, one day you just...

JUSTICE KOHLI: ...wake up to the fact that...

MR. MEHTA: I leave it to Your Lordships. That's a political debate, but I have an answer. If Your Lordship allows me, I'll answer.

JUSTICE SHAH: You can go to the Law Council.

CHIEF JUSTICE CHANDRACHUD: Yeah, now tell us show us the law.

MR. MEHTA: I will, I will, but before that, let me answer.

JUSTICE SHAH: You state the law first and then supply the letter. Please do one thing, you can show the law, the power of the Governor, what can be weighed with the government, and thereafter you take us to the letter that whether it fits in the law or not.

MR. MEHTA: My Lord, kindly note here at this page 14, is the answer. I will come to it later. On page 14, why these three years of cohabitation My Lord, and why thereafter a divorce? I'll answer. They have answered to me, they have shown it to me. Me means the Governor. The Governor is given why we have been together and now what are... and why it's now a 'now or never' situation. Kindly allow me to place it at page14. Now Your Lordships may kindly take this proposition, and that would My Lord, perhaps answer Your Lordships questions. Because otherwise, I may not be able to fulfil my promise of concluding in...

CHIEF JUSTICE CHANDRACHUD: You are right, absolutely. I took some time out on asking... you're right. It's just that sometimes...

MR. MEHTA: No, no on a lighter side, when the court is quiet, as I said, the arguments are longer. And My Lord, just since everything is now very, very serious, and I want to start the new point not on that serious note, kindly allow me to use My Lord, one... kindly... before Your Lordships takes the proposition. Before Your Lordship takes the proposition. On a little light note I'll start. There is a Urdu couplet. Mr. Sibal is fond of... both of us share that... there is a

1 very good Urdu couplet on the situation which is arising. *Main chup raha toh aur galat*
 2 *fehmiyaan badhi*. This is for the court. When the court is quiet, then we do not understand
 3 what is passing in the court's mind. *Main chup raha toh aur galat fehmiyaan badhi. Woh bhi*
 4 *suna hain usne joh maine kaha nahin*. So this is...

5

6 **CHIEF JUSTICE CHANDRACHUD:** *Woh bhi suna jo mainey kahaa nahin*.

7

8 **MR. MEHTA:** *Woh bhi suna hain usne joh maine kaha nahin. Main chup raha tha...* when
 9 Your Lordships are quiet, we understand that there are ten points.

10

11 **CHIEF JUSTICE CHANDRACHUD:** But Mr. Mehta, *Woh bhi suna jo mainey kahaa*
 12 *nahin*. What we in legal parlance call "Reading between the lines".

13

14 **MR. MEHTA:** My Lord, those who write *shers*, they don't write for legal documentation, they
 15 write for some particular person My Lord. They write for one individual. That one individual
 16 is relevant for them, those who write.

17

18 **CHIEF JUSTICE CHANDRACHUD:** Who is the author of the couplet, Iqbal or who is it?

19

20 **MR. MEHTA:** No My Lord, this is Wasim Barelvi.

21

22 **MR. SIBAL:** Very fine.

23

24 **MR. MEHTA:** Very fine. One of the My Lord, top ranking alive.. poet who is alive.
 25 Contemporary Urdu poet.

26

27 **CHIEF JUSTICE CHANDRACHUD:** Mr. Sibal, I don't know if Mr. Tushar Mehta whether
 28 you read this book called *Dilli oh Dilli*, it is written by one of our lawyers, <UNCLEAR>.

29

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

31

32 **CHIEF JUSTICE CHANDRACHUD:** Beautiful book on the variety of Urdu poets.

33

34 **MR. MEHTA:** Yes My Lord, Delhi had that tradition, now it's dying. Unfortunately, the best
 35 tradition was in Lucknow. Lucknow also, I asked people that there's a dying tradition. In
 36 Allahabad also, Firaq Gorakhpuri and all My Lord, now that tradition is fading away, I will not
 37 say dying, but it's fading away it's not. But there are young writers, My Lord.

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MR. SIBAL: It's the language, My Lord, actually language is taken over and Urdu is a dying language as of today, that's the reality. And that therefore we are losing a lot of that culture, that's what it is.

MR. MEHTA: Yes.

CHIEF JUSTICE CHANDRACHUD: You would like to go through your propositions?

MR. MEHTA: Yes, kindly My Lord...

CHIEF JUSTICE CHANDRACHUD: ... go through your propositions and then we are done.

MR. MEHTA: Para 4 My Lord, para 4, page 1, para 1 My Lord. In a parliamentary democracy, the Cabinet and the Chief Minister must enjoy and must continue to enjoy the majority support of the House at any given point of time. It is the constitutional obligation of the Governor to ensure that government is stable and the government as well as Chief Minister enjoys majority support in the House. The argument My Lord, third, right now Your Lordships may ignore it, I will come to it a little later. Fourth, the question as to whether the government or Chief Minister has lost confidence or support of the House is not to be decided by the Governor and shall have to be decided on the floor of the House. The Governor, based upon the material from wherever derived, this expression I have borrowed from Bommai, from wherever derived, because this was an expression used by the Committee of Governors appointed in seventies, and Bommai has approved that report My Lord, can only arrive at a conclusion that prima facie the Cabinet of the Chief Minister has lost confidence support of the House, which requires to be tested on the floor of the House. His satisfaction is limited only to the requirement of floor test and not whether A enjoys majority or B enjoys majority. Now My Lordship's very pertinent question was, that if I am sorry My Lord, Your Lordships are here, that merely because there is some internal dissatisfaction amongst the party, can the Governor take this call or not? My Lord, a similar question arose, in case of Rameshwar Prasad, where the question was that you're permitting somebody to request you to hold a floor test would violate Tenth Schedule because what these people, this group who is expressing no confidence against the Chief Minister stand disqualified or will stand disqualified under the Tenth Schedule. And the question before the Court was whether the Governor, while taking a decision under say Article 174 and 175 is concerned, what will be the effect of their act ultimately in the Tenth Schedule? I hope My Lord, I am able to make myself clear. While taking

1 the decision I am supposed to be cognizant that what they are doing might be a reason
2 for Tenth Schedule punishment, a consequence subsequently. Your Lordships through a
3 Constitution bench says no. My Lord, please take My Lord, 2006, Volume 2, SEC. Page One, I
4 will read only four paragraphs on this point. The Governor is agnostic to Tenth Schedule. He
5 has to be satisfied that the confidence is lost prima facie, it needs to be tested on the floor. They
6 may suffer consequence, they may not suffer consequence. That's not the Governor for the
7 Governor to see. That's what Your Lordships have said. Kindly see PDF page 393
8 in JC Volume 1.

9
10 **CHIEF JUSTICE CHANDRACHUD:** There are two important things which the Governor
11 has not taken into account, which to my mind were extremely important. One that in so far as
12 the Congress and the NCP are concerned, there is absolutely no shaking up of the.. there's no
13 internal dissension in either the Congress or the NCP. Congress had 44 members. NCP had 53
14 members. This is a block of 97, absolutely no dissension in either Congress or the NCP. So in
15 the 97, the 97 still continues to be a solid block. What is disturbed is, say out of the 56 which
16 the Shiv Sena had, 34 have expressed a...

17
18 **MR. MEHTA:** Which brings it down to, Your Lordships are...

19
20 **CHIEF JUSTICE CHANDRACHUD:** So, out of the 97...second thing which the Governor
21 had to bear in mind is this, that as of this date there is not even a suggestion that the Shiv
22 Sena is going to team up with the BJP to form the Government. So that's again a circumstance
23 is totally alien and alien to his consideration. So he can't be oblivious to the fact that in a three
24 party coalition the dissension has taken in one party out of the three. The other two are
25 steadfastly for the coalition. And they are not, they are not by any means, you know psychics.
26 They are almost at par, all the three are virtually at par except the Congress, which was a
27 little...

28
29 **MR. MEHTA:** May I make only one request? To examine the facts of the case after I show
30 the law on, Your Lordships are shown but some of the paragraphs, some of the law is
31 unfortunately not assisting.

32
33 **CHIEF JUSTICE CHANDRACHUD:** 2006.

34
35 **MR. MEHTA:** Thereafter also. Why the Governor can take that step even if NCP Congress
36 Block is not disturbed. I will answer that. It is para...

37

1 **CHIEF JUSTICE CHANDRACHUD:** What is the citation Mr. Mehta?

2

3 **MR. MEHTA:** My Lords, 2006, Volume 2, SEC page one, para 85.

4

5 **JUSTICE KOHLI:** Which compilation is it?

6

7 **MR. MEHTA:** Judgment Compilation-1. PDF page 482.

8

9 **JUSTICE SHAH:** Starts from page 393.

10

11 **MR. MEHTA:** Yes My Lord.

12

13 **JUSTICE SHAH:** You want to go to 482.

14

15 **MR. MEHTA:** 482, para 85. I am reading 85-161, 164 and 165, which is on this point. And
16 My Lords kindly bear one factor in mind, whether the Court would have taken the same view
17 which the Governor took, may not be the test while determining the decision taken by
18 the Governor. What may perhaps on the facts arrive at a different conclusion. My Lords, 85.
19 Certainly there can be no quarrel with the principle laid down in Kihoto case about
20 the ill effects of defections, but the same have no relevance for determination of the point in
21 issue. The stage of preventing members to vote against the declared policies of the political
22 party to which they belong had not reached. If MLAs vote in a manner so as to run the risk of
23 getting disqualified, it is for them to face the legal consequences. That stage had not reached.
24 In fact, the reports of the Governor intended to fore stall any voting hence taking the claim to
25 form the Government. My Lords, this was a case of 356. He sent a report that now dissolve
26 the Government.

27

28 **JUSTICE NARASIMHA:** The stark distinction so far as Rameshwar is
29 concerned, Rameshwar Government was not formed. It was at the initial stage immediately
30 after elections where there was no party who got the majority. Instead of waiting for somebody
31 to form a majority, the Governor asked for dissolution of the House.

32

33 **MR. MEHTA:** 356, My Lord, he exercised.

34

35 **JUSTICE NARASIMHA:** And the reason he has given is that if I spend more time to allow
36 a coalition to be formed, they will cobble up a majority and thereby violate Tenth Schedule and
37 then create a Government. So court said the Governor cannot assume that the one of the

1 political parties would go ahead, cobble up majority by coalition. This is a wrong inference that
2 the Governor has drawn. But as against Rameshwar Prasad's case, this is a case where
3 the Government is subsisting for more than three and a half years. So that's the distinction
4 between Rameshwar and ours. I'm just putting it to you.

5
6 **MR. MEHTA:** Facts yes. But the legal proposition which I would place for Your Lordship's
7 consideration maybe the same. The consequence which would, the power of the Governor or
8 the exercise of power of the Governor at the time of initial formation or subsequent shall have
9 to be the same. That is my respectful submission. Please come to now PDF page 520, at para
10 161. Because I with profound respect do not see any dis...Any reason to not read this ratio for
11 exercise of power under 174 and 175 also. This was also the case where the Supreme Court said
12 you should have called for the floor test. You could not have said that no, they might
13 incur disqualification. 161, If your Lordships... We are not impressed with the argument based
14 on a possible disqualification under the Tenth Schedule if the MLAs belonging to LJP Party
15 had supported the claim of so and so to form the government. At the stage, it was wholly
16 extraneous to take into consideration that some of the members would incur disqualification,
17 if they supported a particular party against the professed stand of the political party, to which
18 they belong. The intricate question as to whether the case would fall within the permissible
19 category of a merger or not, could not have been taken into consideration, assuming that it did
20 not fall in the permissible arena of merger, and the MLAs would earn the risk of
21 disqualification. It is for the MLAs or the appropriate functionary to decide and not the
22 Governor to assume disqualification, and thereby prevents staking of the claim by
23 recommending dissolution. My Lord, Your Lordships are right. My Lord Justice Narasimha is
24 right. The fact situation was 356, but why... My Lord I'm posing a question to myself... does
25 this ratio not apply when the Governor decides to call for a floor test, which Your Lordships
26 said is the only test? My Lord further, it is not necessary for us to examine for the present
27 purpose, para four of the Tenth Schedule, dealing with merger and or deemed merger. In this
28 view, the questions ought to be raised... My Lord, please see the last line. It could not have
29 been gone into by the Governor for recommending dissolution.

30
31 My Lord, what fell from my Lord, the Chief Justice would be... if I put it in the context of this
32 ratio... would be, that the Governor will have to first form an opinion that these people are
33 working since three years. They have a reason to... they have shown reason to the Governor
34 why they are parting ways after three years. But, can they do it after three years? Would it not
35 amount to a split? Would it not amount to disqualifications under Chapter 10? Schedule 10?

36

1 My Lord, kindly come to 162, the provision of the Tenth Schedule dealing with
2 defections. Those of the RP Act dealing with corrupt practice, electoral offenses, and
3 disqualification, etc., and are legal safeguards available for ensuring purity of public life in
4 democracy. But insofar as the present case is concerned, this had no relevance at the stage
5 when the dissolution of the Assembly was recommended without existence of any material
6 whatsoever. There was no material for the assumption that claim may be staked based on
7 democratic principles, but based on manipulation by breaking political parties. Now kindly
8 come to 164 and 165. It is true. Does Your Lordships have that? It is true... and kindly My Lord,
9 for my satisfaction, read it as 174, 175 instead of 356. It is true, as has been repeatedly opined
10 in various reports and by various constitutional experts, that defections have been a bane of
11 Indian democracy. But at the same time, it is to be remembered that defections have to be
12 dealt with in the manner permissible in law. If the political party with the support of other
13 political party or other MLAs stakes claim to form a government and satisfies the Governor
14 about its majority to form a stable government, the Governor cannot refuse formation of the
15 government and override the majority claim because of his subjective assessment that the
16 majority was cobbled by illegal and unethical means. No such power has been vested with the
17 Governor. Such a power would be against the democratic principles of majority rule. The
18 Governor is not an autocratic political ombudsman. If such a power is vested in the Governor,
19 and/or, the President, the consequences can be horrendous. The ground of maladministration
20 by a state government enjoying majority, is not available for invoking power under Article 356.
21 The remedy for corruption or similar ills and evil lies elsewhere and not in Article 356 (1). In
22 the same vein, it has to be held that the power under the Tenth Schedule for defection, lies
23 with the Speaker of the House, and not with the Governor. The power exercised by the Speaker
24 under the Tenth Schedule is of judicial nature dealing with the question whether power of
25 disqualification of members of the House vests exclusively within the House to the exclusion
26 of the judiciary, which is in Britain, was based on certain practices of the British Legislature as
27 far as India is concerned. My Lord, it has been said.... I will skip that. Please see 166. The
28 Governor cannot assume to himself the aforesaid judicial power, and based on that
29 assumption, come to the conclusion that there would be violation of the Tenth Schedule, and
30 use it as a reason for recommending dissolution. My Lord, he also cannot refuse floor test.

31

32 **CHIEF JUSTICE CHANDRACHUD:** But look at what the consequence of these
33 observations in the present case is. The Governor...

34

35 **MR. MEHTA:** I earnestly request Your Lord...

36

1 **CHIEF JUSTICE CHANDRACHUD:** But since we are on those two paras. Just those two
2 paras. No such, the court says the Governor cannot refuse the formation of the government
3 and override the majority because of his subjective assessment that the majority was cobbled
4 by illegal , unethical means. Therefore, irrespective of what the Governor feels or what
5 somebody else feels about, you know the fact that in forming a government with the INC and
6 the NCP, you give up a pre-poll alliance, it is irrelevant to the Governor. This is a
7 government.... This is a government which has been legitimately formed. Alright, that's step
8 1. Second para 166 says, that the Governor cannot assume to himself the aforesaid judicial
9 power and based on that assumption, come to the conclusion that there'd be a violation of the
10 Tenth Schedule. So, it was alien to the Governor's mind that these 34 would have to be
11 excluded from consideration because they have incurred a disqualification under the
12 Tenth Schedule. For the Governor, he has to treat these as part of the Shiv
13 Sena irrespective of what their internal <UNCLEAR> is. Therefore he cannot now say that this
14 34... the letter which this 34 have given me, is a ground for shaking the faith of the
15 government or the trust of the government, which they have. He has to take these 34 as
16 forming a part of the Shiv Sena Legislature Party...

17

18 **MR. MEHTA:** Now let me show.

19

20 **CHIEF JUSTICE CHANDRACHUD:** And if they are a part of the Shiv Sena Legislature
21 Party, where is there any.. Where is there any ground to say that, Well, there is a there's now
22 a change in the... in the position of trust in the House? Prima facie at least for him.

23

24 **MR. MEHTA:** Now My Lord let me show the judgment of the High Court, which was dealt
25 with by Bommai judgment. Your Lordships My Lord, very right concern comes in the form of
26 Mr. Sorabji's arguments, which was rejected. And Your Lordship in Bommai did not accept
27 that rejection. Kindly My Lord, allow me to place My Lord, that High Court judgment because
28 when we cite Bommai, we generally don't see the High Court judgment. Can we see para 32,
29 and this would be My Lord an answer and My Lord, please again My Lord I am requesting
30 please examine the law as agnostic of the facts right now and thereafter, My Lord, I
31 will assist Your Lordships on the facts. What is the law? What is the power of the Governor?
32 What are the contours of power? What are the limitations? Please come to para 32 at 2472.
33 The right-hand side top is the pagination.

34

35 **JUSTICE SHAH:** One minute.

36

37 **MR. MEHTA:** 2472, para 32. This can be my answer.

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JUSTICE SHAH: Para 32?

MR. MEHTA: 32 at page 2472 of this judgment, left or right-hand side, My Lord, top is pagination. May I read My Lord? Mr. Soli Sorabji also contended, this is his argument before the High Court, that the factors like alleged unethical methods adopted during the formation of Janta Dal, expansion of cabinet, horse trading and atmosphere getting vitiated are not only vague but have no rational nexus at all. The question of failure of constitutional machinery. The Learned Council also laid, kindly come down, My Lord, anti-defection law, it says... I will just read fully, the Learned Council of also laid great stress by contending that Governor, by acting upon the latest given by 19 legislators head circumvented the anti-defection legislation, the primary aim of which is to discourage the toppling game by legislators by changing their loyalties and by acting upon those letters, the legislators were permitted in substance to play the game of toppling the ruling party, ruling Ministry without incurring the consequence of anti-defection law, because if these legislators had withdrawn their support in the House and voted against the Ministry, they would have incurred disqualification under anti-defection law. The reliance upon these letters is contrary to the underlying purpose and the essence of anti-defection legislation and therefore illegitimate and prohibited. Kindly mark this, the Learned Counsel buttressed this arguments by contending that if the floor tests had been held, the legislators would have written letters, who had written letters might have changed their mind for several valid reasons i.e. change of the style of functioning of leadership, change in the leadership, realization for maintaining party unity, unwillingness to incur disqualification under anti-defection legislation and five, not giving a pretext for imposition of President's Rule. In support of the contention that the floor test has always been recognized as the legitimate and relevant method, Shri Sorabji relied on the judgment of Odisha High Court so and so, so and so. My Lord he was insisting that please allow floor test because that's what the law says is the only test that's what we call dance of democracy is on the floor of the House, not outside. And the Governor cannot go beyond a particular point. This was rejected by the High Court. At para 54, sorry at 34. Page 2475. May I read My Lords? Mr. Soli Sorabji had made pointed reference to the Tenth Schedule that is anti-defection law for bringing home this point that the factom of the withdrawal of support by 19 legislators was wholly irrelevant. This argument was advanced to his point in 34. I'm sorry My Lords, page 2475, para 34. I'll read again for My Lord Justice's assistance. Mr. Sorabji had made pointed reference, this is the finding of the High Court, pointed the reference to the Tenth Schedule i.e. anti-defection law for the bringing home his point that factom of withdrawal of the support by 19 legislators was wholly irrelevant. This argument was advanced to prove his point that, in the context of anti-defection legislation

1 floor test was the most relevant, legitimate and surest method to determine whether the
2 Council of Ministers headed by Sri Bommai commanded the majority in the House or not. We
3 are afraid, we are unable to agree with this submission of the Learned Counsel. The
4 introduction of Tenth Schedule in the Constitution has not in any way affected the exercise of
5 powers under Article 356, nor has it amended Article 356 in any manner. The amending body
6 which inserted the Tenth Schedule to the Constitution had before it the several decisions
7 especially the Rajasthan case as to the scope of Article 356. There is a presumption that the
8 law making body was aware of the existing interpretation and the courts said that, no he should
9 have kept Schedule Nine, Schedule Ten in mind while exercising powers under 356.
10 Now please see how Bommai Judgment deals with this. My Lord, it was pointed out t
11 hat para 397 was read out of context to show. My Lords kindly see Bommai is, JC Volume
12 2, PDF page 516.

13

14 **CHIEF JUSTICE CHANDRACHUD:** 516?

15

16 **MR. MEHTA:** Yes, Your Lordships in the judgment of Justice Jeevan Reddy at page 516,
17 para 389 formulates the question. The allotted time is over My Lord. Kindly allow me. I am
18 not repeating anything.

19

20 **CHIEF JUSTICE CHANDRACHUD:** Certainly.

21

22 **MR. MEHTA:** The 389, as Your Lordship has. I am not reading all questions because they
23 are not relevant for the present. Only question number six. A special Bench of three judges of
24 High Court heard the writ petition and dismiss the same on the following reasoning. Please
25 come to six My Lord. The introduction of Tenth Schedule of the Constitution has not affected
26 in any manner the content of power under Article 356. The argument of Mr. Sorabji was, that
27 all right, you are not concerned with Tenth Schedule. Direct floor test to be held. Don't dismiss
28 the Government under 356 straightway. And the Court thereafter records page 393. I am
29 sorry, 397. In this context the Court examined this that it is wrong. The Governor should
30 consider before removing the ministry, before not installing the Government and imposing
31 President's Rule you should have given the floor test. And that in that context My Lord, 397.
32 Please see 397. May I read? We are equally of the opinion that High Court was in error in
33 holding, that enactment or addition of Tenth Schedule to the Constitution has not made
34 difference. The object of Tenth Schedule is to prevent and discourage floor crossing and
35 defections, which at one time assumed alarming proportions. Whatever may be his personal
36 predilections, a legislator elected on the ticket of a party, is bound to support that party in case
37 of division or vote of confidence in the House, unless he is prepared to forego his membership

1 of the House. The Tenth Schedule was designed precisely to counteract horse trading. Except
2 in case of split, a legislator had to support his party willy-nilly. This is the difference between
3 the position obtaining prior to, and after Tenth Schedule. Prior to the said Amendment, the
4 Legislature could shift the loyalty from one party to the other, any number of times without
5 imperilling his membership of the House. It was, as if he had property in the office. My Lord,
6 in that context, the request was, that give me floor test, don't impose President's Rule. Let the
7 Tenth Schedule play its role. If somebody votes against the will of the party, he will be
8 disqualified. But don't take extreme step of 156, take step under 174 and 175. That's what
9 precisely the Governor has done. And My Lord, a similar situation arose... and My Lord, now
10 I will read Your Lordships' judgment in Shivraj Singh Chauhan, where all this is considered.
11 But before that, please come to para 7 of my proposition.

12

13 There are more than one reasons My Lord, why this cannot be the argument of the petitioner.
14 And I'll demonstrate, My Lord, what is the flip side of this argument. If your Lordships were
15 to hold, that Governor cannot examine the inter se dispute or, he waits till the Speaker decides
16 disqualification. What is the flip side? I must assist Your Lordships with that flip side, para 7.
17 There is one more reason why Governor cannot pre-empt the decision of the Speaker at the
18 stage of directing floor test, since it is possible that the original political party of the members
19 of the House might condone the defiance of the Whip, as contemplated under para 2(1)(b) of
20 the Tenth Schedule. Kindly pause here for a minute. My Lord, disqualification is not
21 automatic. If I as a member of Legislature Assembly... Legislative Assembly of a particular
22 party, vote in defiance of the Whip, there is a provision that the party may condone it within
23 15 days. So, Governor cannot say that I'll wait for 15 days, when he is presented with the facts
24 that this is the dissatisfaction, the Government has lost majority, there are attacks taking place,
25 there is vandalism taking place, threats being administered. Then I will not wait for 15 days,
26 because party may... Your Lordships are examining proposition.

27

28 **CHIEF JUSTICE CHANDRACHUD:** Mr. Solicitor there are two different... distinct things.
29 One is, dissatisfaction within a party, right? And, the other is a loss of majority of the
30 government. One is not necessarily indicative of the other.

31

32 **MR. MEHTA:** Correct.

33

34 **CHIEF JUSTICE CHANDRACHUD:** Now tell us, in this situation which we had over here,
35 we now put ourselves in the shoes of the Governor. What was it that would have led the
36 Governor to come to the conclusion that the government had lost the majority? What was the...
37 what was the factual... what was the factual basis for him to conclude?

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MR. MEHTA: Only My Lord one thing, kindly bear....

CHIEF JUSTICE CHANDRACHUD: Only 134.

MR. MEHTA: Who were part of the government, who were supposed to be having confidence of the Chief Minister,

CHIEF JUSTICE CHANDRACHUD: Right. Therefore, so let's go to the bottom of it.

MR. MEHTA: Can I first take Your Lordships to the bottom of it?

CHIEF JUSTICE CHANDRACHUD: What is the Governor saying? What is the Governor saying? These 34 who were part of the Shiv Sena, have now expressed that dissatisfaction with the leadership of the Shiv Sena. Unless the Governor says that the natural corollary is, that these 34 will cease to support the Shiv Sena...

MR. MEHTA: I'm sorry.

CHIEF JUSTICE CHANDRACHUD: We will take.. we will take.. make every assumption in favour of the Governor's decision. Because that's how we test the proposition. What would the Governor have said, though he doesn't say that.. that these 34 person.. these 34 persons who were part of the alliance between the Sena, the Congress and the NCP have now expressed their dissatisfaction. He can call for a floor test if he has any circumstances before him to indicate that the strength of this three party coalition has been substantially reduced. The Bommai is absolutely correct. It binds us anyway, that this disqualification issue under the Tenth Schedule is completely relevant. So what is the consequence? The Governor has to treat these as continuing members of the Shiv Sena. Even before us, they are not saying that we have ceased to be members of Shiv Sena.

MR. MEHTA: Yes.

CHIEF JUSTICE CHANDRACHUD: Now, if they continue to be members of the Shiv Sena, and the Shiv Sena therefore continues to have 55 or 56 members, which it originally had...

1 **MR. MEHTA:** Then if they vote against, they will incur disqualification. Governor would say
2 that.

3

4 **CHIEF JUSTICE CHANDRACHUD:** Right. But then where is the question? What is the
5 reason for calling a trust vote?

6

7 **MR. MEHTA:** Because they say that.

8

9 **CHIEF JUSTICE CHANDRACHUD:** All our judgments say Rameshwar Prasad says
10 that, Bommai says that, that the Tenth Schedule disqualification is irrelevant to the exercise
11 of judgment by the government...

12

13 **MR. MEHTA:** I am obliged.

14

15 **CHIEF JUSTICE CHANDRACHUD:** <UNCLEAR> authority goes to the Speaker.
16 Therefore, the facts as they stand before the Governor indicate that these 34 are part of the
17 group of 56 Shiv Sena MLAs. Now if that is so, on what cogent material does a Governor call
18 for a floor test? What has changed for it to call for a floor test?

19

20 **MR. MEHTA:** The difficulty is..

21

22 **CHIEF JUSTICE CHANDRACHUD:** Tell us one reason why he has to call for a floor test?

23

24 **MR. MEHTA:** My Lord, Your Lordships are again on facts My Lord, I'm on propositions
25 first. And then, My Lord, I will try and fit into the propositions to the facts of the case. Number
26 one, number two...

27

28 **CHIEF JUSTICE CHANDRACHUD:** Forget the facts. Forget the facts.

29

30 **MR. MEHTA:** Principally...

31

32 **CHIEF JUSTICE CHANDRACHUD:** Forget the facts. The Governor as a matter of
33 principle now, Bommai tells us, and Rameshwar Prasad tells us that circumstances which
34 would lead to the warrant, which would warrant the invocation of the Tenth Schedule are alien
35 to the mind of the Governor when he calls for a floor test.

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37 **MR. MEHTA:** Correct.

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CHIEF JUSTICE CHANDRACHUD: all right. So therefore, the possibility that these 34 in our case would incur a disqualification is irrelevant to the exercise of power by the government.

MR. MEHTA: I bow down, My Lords.

CHIEF JUSTICE CHANDRACHUD: Right. Now, if that is so, then the Governor must forget the facts of this case, the principle. The Governor must proceed on the basis of the position as it obtains. Where the government has been formed, there is nothing which has unless there is something, some subsequent event which alters the legal Constitution of the government.. of the government. The Governor must continue to have before him and analyse the situation on the basis of the situation as it was when the government was formed and prior to the 21st of June, in our case. He can't go into the Tenth Schedule, that's the Speaker's jurisdiction. If he can't go into that Speaker's jurisdiction, which is the Tenth Schedule, then what is the basis for calling a floor test? The only reason why he could have called for a floor test is that these 34 numbers.. these 34 have alienated themselves. They have given up. They say that we have lost faith in Uddhav Thackeray . And therefore these 34 are excluded, their numbers.

JUSTICE NARASIMHA: But there also Mr. Solicitor, there's one difficulty for them. And we are only looking at the material that is available for the Governor to draw an inference, that floor test is necessary. We are not about the facts of the case. Three factors you have indicated. One is the 21st of June letter. Second is the case of threats. Third is about BJPs, and fourth is about the Independence letter. Those two if we eschew from consideration because from the opposition side, for him to base his decision apart from threats which is purely a law and order situation, what is remaining is the 21st..

MR. MEHTA: It's not... I am sorry.

JUSTICE NARASIMHA: 21st of June 2022 letter. That letter merely informs the Governor that we reaffirm that Shinde to be appointed and continues to be appointed as the leader of the House, number one. Number two, Gogawale will be the Whip. You continue to recognize that, nothing more than that. It doesn't say anything more than that in that letter.

MR. MEHTA: Allow me to answer that.

1 **JUSTICE NARASIMHA:** Now where does he draw an inference on the basis of this letter,
2 which will become part of the material for him to take consideration.

3

4 **MR. MEHTA:** Please come to page 14 of the material which I have placed on record. It's not
5 just a letter, it is coupled with....

6

7 **JUSTICE NARASIMHA:** Yeah, we have seen that. Yeah.

8

9 **MR. MEHTA:** The resolution. Coupled with a resolution. And My Lords kindly bear with...

10

11 **CHIEF JUSTICE CHANDRACHUD:** Resolution of the 34, right?

12

13 **MR. MEHTA:** 34. It's not read before Your Lordships.

14

15 **CHIEF JUSTICE CHANDRACHUD:** Alright. Just one second let's go to that.

16

17 **MR. MEHTA:** PDF page 14.

18

19 **CHIEF JUSTICE CHANDRACHUD:** LOD of the Governor.

20

21 **MR. MEHTA:** LOD of the Governor. Yes.

22

23 **JUSTICE NARSIMHA:** That's what I was referring to. Correct.

24

25 **MR. MEHTA:** The following members of the 14th Maharashtra Legislative Assembly
26 belonging to Shiv Sena. We are notified as the members of Maharashtra Legislative Assembly
27 as members of so and so. We have unanimously elected Mr. Shinde on so and so as group
28 leader. There was pre-poll alliance between Bhartiya Janta Party and Shiv Sena Party. There
29 has been great dissatisfaction prevalent amongst the members of our party that is Shiv Sena of
30 our, and our party cadre at large on account of corruption in the Government. Why this three
31 years co-habitation and then an attempt for divorce using that sort of expression.
32 Administration regarding police posting, corruption by the then Home Minister Shri
33 so and so, and sitting Ministers Shri so and so, who is also in jail for involvement with
34 underworld don Dawood. Apart from above reasons, our party cadre faced tremendous
35 harassment and distress on political as well as personal grounds from the opposition
36 ideological parties who are not now a part of the Government, and we're using their office and
37 power to undermine the base and foundation of our Shiv Sena cadre. This is their reason I am

1 not justifying, nor can I put myself into the shoes of the Governor, and with profound
2 respect, Your Lordships would also examine not what Your Lordships would have decided
3 with these facts, but whether there exists...

4

5 **CHIEF JUSTICE CHANDRACHUD:** But the Governor can constitutionally decide. We are
6 not saying to go into that what our view is the situation...

7

8 **MR. MEHTA:** Kindly allow me to complete the sentence.

9

10 **CHIEF JUSTICE CHANDRACHUD:** It is the duty and power of the Governor and the
11 situation.

12

13 **MR. MEHTA:** My Lords can I kindly complete the sentence.

14

15 **CHIEF JUSTICE CHANDRACHUD:** And see page 17 now. PDF page 17. Hence it is
16 unanimously at the end of it what do they say?

17

18 **MR. MEHTA:** My Lords I am on 15, kindly allow me to read 15 also.

19

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

21

22 **MR. MEHTA:** This is enormous discontent. There is enormous discontent amongst
23 the cadre of our party that is Shiv Sena, for forming the Government with NCP and Indian
24 National Congress were ideologically opposed to our party, that Shiv Sena. Initially they say
25 that they are destroying our cadre base. They are corrupt. They found to be corrupt
26 in near past. We are facing embarrassment. Then they say there had been a compromise on
27 the principles of our party, Shiv Sena, which had been a party with fierce ideological base and
28 was formed for fighting of the rights of local Marathi people. For last two and a half years, our
29 party and it's leadership has compromised party principles by aligning with the contrasting
30 ideologies for the sake of achieving power in the State of Maharashtra. The ideology of our
31 party's leader Late Shri Balasaheb Thackeray was to give clean and honest Government to the
32 people of Maharashtra and also without compromising on the principle of so and so, which
33 was defeated at the first day itself by aligning with the opposition ideologies. Shiv Sena and
34 Bhartiya Janta Party had forged a pre-poll alliance for 2019 Maharashtra Assembly elections.
35 They sought the blessing of voters for this Shiv Sena BJP alliance, which the voters accepted
36 and voted in favour of this alliance. After the results were out, the Sena severed it's ties with
37 BJP and formed an alliance with opposing parties, which they fought against in the

1 2019 Assembly elections. This act of our party leaders had a tremendous negative impact upon
2 the voters and the party cadre at large. As an elected member, I am answerable first to my
3 voters, then to anybody else. Because 39 members can say that we will vote against the party
4 even at the cost of being disqualified and ceasing to be MLAs. Then the Governor is faced with
5 the situation where there would be instable Government. Government which cannot
6 withstand on it's state...

7

8 **CHIEF JUSTICE CHANDRACHUD:** Which means he is going to go into, he's going to the
9 disqualification issue.

10

11 **MR. MEHTA:** No, I'm sorry.

12

13 **CHIEF JUSTICE CHANDRACHUD:** That's the problem. All that you are reading up
14 to PDF page 17, where they passed the resolution. The resolutions at page 17. There are two
15 parts of this letter. Two parts of the resolution. First part is let's formulate it. One. The first
16 part is, BJP and Sena had a pre poll alliance. One. In breach of the pre-poll alliance, the Shiv
17 Sena teamed up with the Indian National Congress and the NCP, two. Three, by teaming up
18 with the NCP and the Indian National Congress, the Shiv Sena has militated against the core
19 ideology of the Shiv Sena. Four, that there has been corruption in the government, and five,
20 that there is discontent within the cadre of the party. This by itself will not justify the Governor
21 in calling a trust vote. Never! That's what our judgments has repeatedly said...

22

23 **MR. MEHTA:** Your Lordships have said otherwise in Shivraj Singh Chauhan.

24

25 **CHIEF JUSTICE CHANDRACHUD:** The fact that the government... the fact that the
26 conduct of a government has gone against the core ideology of that party, can never call for a
27 trust vote. Now, what then is in that letter? What then comes in the resolution? Two things,
28 that we reaffirm that Eknath Sambhajirao Shinde, who is elected as a leader of the party,
29 continues to be the leader, and two, that Gogawale, that we reaffirm that Gogawale is elected
30 as the Chief Whip. Two things. The first part of the resolution has no bearing on a trust vote at
31 all. The first part of it only reflects on the fact that there is this grave disquiet among these
32 people that well, you militated against our pre-poll alliance and the core ideology of the Shiv
33 Sena. That's alien to the Governor, because they have already come... they have formed
34 government already. Second, what do they do? They merely reiterate that Eknath Shinde
35 continues to be the leader of the party in the Legislature... the Legislative Party. How is this a
36 justification for a trust vote?

37

1 **MR. MEHTA:** I'll just answer that question. Kindly come to Page 21, PDF page 21. This is
2 signed by 41 MLAs. My Lord, the difficulty is, we are trying to examine and analyse the
3 justification given by 34 or 39, whether it could have been a justification for floor test? For
4 Governor, he has to only examine that... but for this 39, the government would fall. I would
5 rather go for the floor test.

6

7 **CHIEF JUSTICE CHANDRACHUD:** In which case he is now assuming... but you are right.
8 You are absolutely right. You spot on, there's no difficulty about it at all. Therefore, what the
9 Governor is saying is, but for these 39, as you rightly say, the government will fall. Can he look
10 into the fact that but for these 39 the Government will fall, when exclusion of these 39 is
11 postulated on the Speaker passing an order for their disqualification under the Tenth
12 Schedule? Until that order is fast, he cannot... he cannot assume that they are going to be...

13

14 **JUSTICE KOHLI:** It is a peremptory move.

15

16 **MR. MEHTA:** I think we are...

17

18 **JUSTICE KOHLI:** In fact, they continue to say that we remain part of that, but we are not
19 parting company.

20

21 **MR. MEHTA:** My Lords are saying the same, my Lord...

22

23 **CHIEF JUSTICE CHANDRACHUD:** They say we continue to be in the Shiv Sena.

24

25 **MR. MEHTA:** Correct, My Lord, but still, we don't support the government.

26

27 **CHIEF JUSTICE CHANDRACHUD:** If they continue to be in the Shiv Sena, then how do
28 you call for a trust vote?

29

30 **JUSTICE KOHLI:** What is the apprehension that the Governor had?

31

32 **MR. MEHTA:** Trust vote is not Shiv Sena, trust vote is against the government, against the
33 Chief Minister. My Lord, suppose what happens if the leader loses the confidence while
34 members remain? My Lord, now kindly see the flip side of this. Flip side is this. My Lord, today
35 there is a government of Shiv Sena and BJP. Now Your Lordships' prima facie view is, that
36 merely because some people go and say that we don't trust this government, Governor should

1 not do anything. Not that he cannot do anything Your Lordships' the prima facie view is... this
2 is the debate, I hope this is not the conclusion.

3

4 **CHIEF JUSTICE CHANDRACHUD:** ... Shiv Sena. It's a dialogue.

5

6 **MR. MEHTA:** Yes, it's a dialogue. Suppose today BJP has got 106 members. If 100 members
7 were to say that we have lost faith in the leader, even our Chief Minister. Kindly allow me to...

8

9 **CHIEF JUSTICE CHANDRACHUD:** Right, right? But, 106 say we have lost faith in
10 Fadnavis, he was a leader. For a moment, postulate it. Yes, yes, you are right,
11 absolutely. Exactly. You are absolutely on spot on!

12

13 **MR. MEHTA:** Kindly see, would Your Lordships consider giving Governors the power to
14 wait for the floor test and ensure that there is some management whereby majority is created?
15 That's the flip side of it.

16

17 **CHIEF JUSTICE CHANDRACHUD:** Mr. Solicitor, you can never allow the Governor to
18 ask for a trust vote, when there is absolutely nothing to shake the majority on the floor of the
19 House. What is a Trust vote for? Do you have the numbers in the House? The trust vote is not
20 for determining who is going to be your leader in the House. No. The trust vote. What is the
21 purpose of the trust vote? In a House of 288, do you have 144? That's the purpose. And if there
22 is nothing to indicate that 144 is disturbed, who will lead those 144 is alien to the Governor. It
23 may not have been Uddhav Thackeray, they could have elected somebody else. The
24 INC, NCP and the Sena would have said, we are electing somebody else.

25

26 **MR. MEHTA:** Would Your Lordships come to page 21. There is a dia..

27

28 **CHIEF JUSTICE CHANDRACHUD:** That is a matter of internal party discipline. That can
29 never be a matter for the Governor. Governor's trust vote is where the majority in the House
30 is shaken. And where was there anything to indicate that?

31

32 **MR. MEHTA:** Page 21.. page 21.

33

34 **CHIEF JUSTICE CHANDRACHUD:** Yes, page 21.

35

36 **MR. MEHTA:** 47 MLAs writing to the Governor on 25th of June. Para 2. As is common
37 knowledge, we no longer wanted to be a part of the corrupt MVA government. However, we

1 were being continuously threatened to continue supporting the incumbent government
2 without our free will. Thus left with no option. We were constrained to flee away, at so and so,
3 so and so. However as yet another attempt to break out our resolve and arm twist us to give in
4 to the demands of MVA government comprising NCP and INC goons, security which was
5 earlier provided, etc. etc. They say we don't wish to support this government.

6
7 **JUSTICE KOHLI:** Mr. Mehta, if you would look at para 11, that's the conclusion. We
8 demand security. That's all, they don't say we are parting company. Where do they say
9 that? They say, Please give us adequate security as also our family, because it's withdrawn.

10
11 **Mr. MEHTA:** My Lord, the Governor is not a court where where this prayer was not
12 couched in this manner. He has to based upon the material before him arrive..

13
14 **JUSTICE SHAH:** No, no, Mr. Mehta, what is being pointed out is this, this communication
15 cannot be said to be withdrawing the support to Mr. Uddhav Thackeray. This is that what
16 happened earlier....

17
18 **MR. MEHTA:** But what it says, it may say that give us protection, but they say we no longer
19 want to be a part of this corrupt government. Thereby, 47 people are minus now from the
20 magical mark.

21
22 **JUSTICE SHAH:** What is being pointed then thereafter they don't say further,
23 that henceforth, correct, we are not supporting this <UNCLEAR>

24
25 **MR. MEHTA:** If it is a petition, there is no prayer.

26
27 **JUSTICE SHAH:** For the subjective satisfaction.

28
29 **JUSTICE KOHLI:** What is the next step they took after they said we no longer want to be
30 part of the corrupt government?

31
32 **CHIEF JUSTICE CHANDRACHUD:** Alright, can just reflect on it.

33
34 -----LUNCH BREAK-----

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36
37 **CHIEF JUSTICE CHANDRACHUD:** Yes Mr. Mehta. 21.

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MR. MEHTA: 21 of the compilations of the Governor My Lords.

CHIEF JUSTICE CHANDRACHUD: Right.

MR. MEHTA: My Lords please note one difference, it's not Legislative Party members showing lack of confidence in their party. It's not their internal party affairs anymore. These members are saying that we are withdrawing support from the government. That's the distinction. My Lords I would hasten to add, that this not being a petition or a suit may not have a prayer clause, etc. But Governor, as I will from show from one para of Bommai from whatever material if he comes to the prima facie satisfaction and that test is accepted by My Lords in the Shivraj Singh Chauhan judgement that there is loss of confidence by this government and he can ask, not only can ask, he should ask the floor test. Kindly see para 2 once again. As is common knowledge, we no longer wanted to be a part of corrupt MVA government. However, we are being continuously threatened to continue supporting the incumbent government without our free will, thus left with no option, etc. etc. and this is signed by 47 members of the Legislative Assembly, not just Shiv Sena MLA's but independents and two members of Prahar Janshakti Party saying we are withdrawing support from the government. And this is My Lord, in my respectful submission the material as... My apologies, page 21. [UNCLEAR] No its past and continuous also that we have already declared that we don't want to support, but now we are being pressurized to support. My Lords kindly see and I will show My Lord para 393 Bommai. But from whatever material he comes to prima facie conclusion that there needs to be a floor test My lord, he would be under an obligation. We don't want to support this government and therefore give us security because we are being threatened. Second, what is the fact situation before the Governor and I will read only one para from Bommai. One set of MLAs, namely, 49....47, saying that we want to withdraw support from the government. One set of MLA, MLAs or the leader of the party, saying that we will see when you come on the floor of the House. In my respectful submission, I am posing a question to myself, would the government not just Governor not be justified informing an opinion that the Governor, that the government has lost confidence. I am not saying anything. I am not pre-empting anything. As Mr. Sorabji narrated several possibilities, I am only asking for a floor test. Maybe they might change their view. Maybe they might sacrifice themselves. Maybe they stand disqualified. May be they are persuaded. Maybe the leadership changes. There are several possibilities. The Governor My Lord, in my respectful submission, will have no jurisdiction once he has a material. And what can be the material apropos, Her Ladyship's question. My Lords, page 393. Para 393, of S. R. Bommai. It need not be a letter also. Suppose in a given set of circumstances, it is in public media, everywhere which cannot

1 be disputed. All channels are showing something. My Lord I am posing a question to myself,
2 can the Governor not examine those facts also? Ultimately he is not just when a 174, 175
3 situation arise, he is not supposed to be a mute spectator. He will have to act. His actions would
4 be subject to judicial review within the parameters which Your Lordships have fixed for My
5 Lord's future assistance. But please see 393, which is at volume Judgment Compilation
6 Volume-2, PDF 518. That's Bommai Judgment My Lord. Am I, with Your Lordships? My
7 Lords, Justice...

8

9 **CHIEF JUSTICE CHANDRACHUD:** And Lok Prahari and these 17 independent MLAs
10 were backing the Government up to then.

11

12 **MR. MEHTA:** Yes, seven My Lords.

13

14 **CHIEF JUSTICE CHANDRACHUD:** Seven.

15

16 **MR. MEHTA:** And one set of 393. In this connection, it would be appropriate to notice the
17 unanimous report of the Committee of Governors appointed by the President of India. The
18 five Governors unanimously recommended that the test of confidence in the Ministry should
19 normally be left to a vote in the Assembly, where the Governor is satisfied by whatever process
20 or means. Please kindly see My Lord. It need not be a prayer that please hold a floor test etc.
21 People are telling him that the Government has, is not enjoying our support. They have lost
22 the confidence. By whatever process or means that the Ministry no longer enjoys majority
23 support. You should ask the Chief Minister to face the Assembly and prove his majority within
24 the shortest possible time. If the Chief Minister shirks this primary responsibility and fails to
25 comply, the Governor would be in duty bound to initiate steps to form an alternative Ministry.
26 A Chief Minister's refusal to test his strength on the floor of the Assembly can well be
27 interpreted as prima facie proof of he is no longer enjoying the confidence of the legislature.
28 I'm sorry, Your Lordships gets it.

29 The subsequent event of the Honourable Chief Minister not deciding... deciding not to face
30 justifies the decision that whatever material I gathered and the satisfaction I arrived at was the
31 right satisfaction that the Government has lost the majority confidence. Now, My Lords may
32 allow me to place the Shivraj Singh Chauhan judgment, and that I would earnestly
33 request Your Lordships to permit me to read because that was read by the petitioner bits and
34 pieces on this side, but not from the Governor's point of view. I'm sorry, page 395. My learned
35 friend is right. Para 395 also in Bommai My Lords. 395. Because it's not a luxury which is
36 conferred upon the Governor. It's the duty. 395 of SR Bommai.

37

1 **CHIEF JUSTICE CHANDRACHUD:** What is the PDF page, can you give me?

2

3 **MR. MEHTA:** 518 of the judgment compilation-1...Two I am sorry. 518 My Lords, 395. The
4 High Court, in our opinion, erred in holding that the floor test is not obligatory if only one
5 keeps in mind the democratic principles underlying the Constitution and the fact that it is the
6 Legislative Assembly that represents the will of the people and not the Governor. The position
7 would be clear beyond any doubt. In this case, it may be remembered that the Council of
8 Ministers not only decided on so and so to convene the Assembly on so and so, but also offered
9 to prepone the Assembly if the Governor so desire. It pains us, it pains us to note, Your
10 Lordships that's from the facts of the case My Lords. The Governor did not choose to act upon
11 the said offer, and that was frowned upon by the court. Indeed, it was his duty to summon the
12 Assembly and call upon the Chief Minister to establish that he enjoyed the confidence of
13 the House. Not only did he not do it, but when the Council of Ministers offered to do the same,
14 he demurred and chose instead to submit the report to the President. Here I am being asked
15 by the person who did not choose to face the vote of no confidence. That why did you call for
16 the vote of confidence? Why did you call for the floor test? The converse situation and more
17 drastic My Lord in terms of the facts. In the circumstances it cannot be said that the
18 Governor's report contained or was based upon relevant material. There could be no question
19 of the Governor making an assessment of his own. The loss of confidence of the House was an
20 objective fact which could have been demonstrated one way or the other on the floor of the
21 House. In our opinion wherever a doubt arises whether the Council of Ministers has lost the
22 confidence of the House, the only way of testing it is on the floor of the House, except in an
23 extraordinary situation where because of all pervasive violence, the Governor comes to the
24 conclusion and records the same in his report that for the reasons mentioned by him a free
25 vote is not possible in the House. So, My Lord, it's not his right. It's his obligation.

26

27 Now My Lord kindly come to My Lord the.... and the threshold in my respectful submission is
28 that some material which creates a doubt in his mind and My Lord, I would at the cost of
29 repetition and with profound respect. Please, this is a constitutional submission My Lords
30 don't misunderstand the submission. My Lords the threshold of Your Lordships judicial
31 review, which I am not disputing, would be whether there was any material. Whether based
32 upon that material Your Lordships may perhaps would have taken a different view may not be
33 a test. Now Your Lordships kindly come to Shivraj Singh Chauhan. Volume-1, PDF 1360. My
34 Lord I want your Lordships to see the contentions reached because that was not read before
35 Your Lordships and this would really be illuminating and will assist Your Lordships to lay
36 down the law correctly.

37

1 **CHIEF JUSTICE CHANDRACHUD:** 1360?

2

3 **MR. MEHTA:** Yes My Lords. 1360 PDF. It is internal page 22 of Shivraj Singh Chauhan. My
4 Lords this is the arguments of Dr. Singhvi, which, My Lords, were pleased to record. 17.2 My
5 Lords I have marked my copy so that I do not have to read everything and I will
6 leave some things which is not relevant. Your Lordships can trust my discretion on that. 17.2
7 - There is a fallacy in the assumption that the Governor has any locus to direct the Chief
8 Minister to conduct a floor test, to establish a majority on the floor of the House. Next,
9 this court ought not to enforce the direction for convening a floor test as it will have the effect
10 of short circuiting as it was described. The large discretion which is entrusted to the Speaker
11 on the matters of resignation by Members under Article 190.

12

13 Then My Lords 17.8 - the precedent of this Court in regard to convening of the
14 trust vote have arisen in the context of fresh elections held to the Legislature and not in the
15 context of a running Assembly. My Lord, Shivraj Singh Chauhan was a case of a
16 running Assembly. And in the midst of the government functioning the then Chief Minister
17 lost the confidence. This is what Your Lordships were dealing with.

18

19 Now My Lord kindly come to para 19. Again My Lord submission. Elucidating on
20 the above submissions, it was urged that the object of exercise undertaken by the so and so is
21 to find a way around the two-third stipulation contained in the Tenth Schedule by engineering
22 resignations of the 22 members in a running House. The submission is that if a trust vote were
23 to be held before a decision has been taken by the Speaker on whether to accept the resignation
24 of the members, this will pave the way for the 16 members whose resignations have not been
25 accepted till date to abstain from voting. Their abstention it has been urged would alter the
26 strength of the members present and voting thus modifying the required majority in the House
27 and impacting the outcome of the trust vote. Now Your Lordships may kindly directly go to
28 para 26 my learned senior Mr. Sibal's submission. My Lord it would be at PDF page 1363.
29 1363. Mr. Sibal contends that the observations of the Constitution Bench in Nabam Rebia on
30 the authority of Governor to order a trust vote to be conducted on the floor of an ongoing
31 Legislative Assembly are purely orbiter. Nabam Rebia was also an ongoing Assembly, not first
32 time government formation. The case before the Constitution Bench in Nabam Rebia dealt
33 with a situation where the Governor had preponed the date for meeting of the Legislature
34 Assembly to decide the question of Speaker's removal. It was submitted that Nabam Rebia is
35 not a precedent for the proposition that the Governor is entitled to require a trust vote to be
36 conducted on the floor of a legislative Assembly, which has been duly constituted and is in
37 session. Mr. Sibal submitted that the consequences of upholding the power of Governor would

1 be to encourage both the demolition of an elected Government and democratic structures of
2 the governance. Mr. Sibal's submission, in Mr. Sibal's submission, Governor would have the
3 power to summon the House where it is not in session. Since under Article 168, the Governor
4 is a part of the Legislature, if the House is not in session, it is open to a Governor to seek a
5 special session where fact indicate that the existing government has lost it's majority. But this
6 is in support of what I did as a Governor, that if it's not in session and something would
7 turn My Lord, he has written another argument that no confidence motion was the only way
8 and not the confidence vote by floor test. However, in a similar vein Dr. Singhvi's submission,
9 Mr. Sibal urged that this course of action is not open to the Governor when the House is in
10 session and in such an eventuality the only remedy is to seek a motion of no confidence to test
11 whether the incumbent government is possessed of the confidence of the House. With respect
12 to exercise of the power of the Governor by calling for a trust vote it has been submitted by Mr.
13 Sibal that there must exist an objective satisfaction of the Governor based on material in his
14 possession. Absent a physical verification, it cannot be said that mere tendering of resignation
15 by members led to valid exercise of power by the Governor to call for a trust vote. Here My
16 Lord withdrawing support from the Governor... government in the present case. The Governor
17 had no material to conclude that 16 members had submitted their resignations voluntarily.
18 Legislative history in the country indicates that minority governments have survived. And
19 unless it is shown that mere tendering of resignations actually cause the loss of confidence in
20 the incumbent government, it is not open to the Governor to conclude that actions of the
21 16 members would result in a loss of confidence. Here they specifically say in writing that we
22 are... we want to withdraw support from the government. Your Lordships kindly then skip my
23 submissions. I happen to appear for the Governor there. Kindly My Lord come to
24 1369, PDF 1369.

25

26 **JUSTICE SHAH:** Para?

27

28 **MR. MEHTA:** Para 42.

29

30 **JUSTICE SHAH:** PDF page?

31

32 **MR. MEHTA:** 1369 My Lord. 1369. The Governor relied upon My Lords this. Para 42
33 My Lords have? My Lord Justice Narasimha. The letter sent by the Governor to the Chief
34 Minister indicate that the Governor relied on the following circumstances in coming to the
35 conclusion that a floor test was urgently required. A receipt of information by the Governor
36 that 22 members who had previously supported the incumbent government had submitted
37 their resignations to the Speaker of the Assembly. The members who had tendered their

1 resignations had communicated their decision through the print and electronic media. Copies
2 of the letters of resignation had been submitted by the 22 members to the Governor. The 22
3 members had asked the Governor to provide security to facilitate their appearing before
4 the Speaker. Amongst the group of 22 members who had tendered resignations, were six
5 Cabinet Ministers whose resignations had been accepted by the Speaker.

6 Now My Lord may kindly come to 43. It was on the basis of the above material and
7 circumstances that the Governor informed the Chief Minister of his having formed the opinion
8 prima facie that the Government had been reduced to a minority in the House,
9 making it necessary to conduct a floor test immediately after the address of the Governor at
10 the budget session. Then My Lord para 44. The action of the Governor requiring a trust vote
11 be carried out has essentially been assailed on three broad grounds of challenge. It has been
12 submitted that Governor had no power to order a trust vote in course of an
13 ongoing Legislative Assembly or at any rate, while the Legislative Assembly was in session. If
14 the Governor did possess such a power, then the exercise of the power by the Governor in
15 ordering a trust vote impinged upon the authority entrusted to the Speaker under proviso to
16 Article 190, sub-article 3B. And three, the Governor had no objective basis of or material to
17 form the prima facie opinion that incumbent Government had lost its majority in the Madhya
18 Pradesh Legislative Assembly.

19
20 Now questions before the court My Lord, kindly come to para, PDF 1371, para 46. The present
21 controversy raises two separate but intertwined constitutional questions. First, whether the
22 Governor is entrusted with the authority to call for a trust vote in the course of a
23 running Assembly? And second, whether the Governor exercised this authority correctly? If
24 the Governor does not possess the authority, the action of calling for an immediate floor test is
25 ultra-virus and unconstitutional. Alternatively, if the Governor does possess the authority to
26 call for a floor test, this court must determine the contours of such power and answer the
27 question of whether the Governor acted within these contours. It was briefly contended before
28 us that this court should be wary of entering the realm of politics, where no judicially
29 manageable.... Your Lordships can skip that.

30
31 Now kindly come to para... page 1372, para 50. Constitutional role of the Governor. I don't
32 think My Lords, anything more is required to be said by me except very respectfully adopting,
33 My lord's judicial determination. Para 50, Your Lordships have My Lord? Can I read para 50?
34 We must consider the constitutional scheme in operation between the State
35 Legislature and the office of the Governor. As a matter of constitutional principle, the State
36 Legislature comprised of the Governor and the Legislative Assembly. The Governor is not an
37 elected member of the State Legislature. The Governor is appointed by the President and is

1 the head of the executive branch in whom under Article 154, the executive power of the State
2 is vested. While holding office at the pleasure of the President, the Governor as a
3 Constitutional authority, is not a member of either House of Parliament or the Legislature of
4 the State. Thereafter, My Lords were pleased to trace the history which with My Lord's
5 permission, I may skip at this stage. It may not be necessary how the Governor, as a
6 constitutional head, came into being.

7
8 Please come to page 1375, para 57. The Constituent Assembly thus decided to vest the office of
9 the Governor with certain discretionary powers under the Constitution. In taking this decision,
10 the Constituent Assembly was aware that there were certain associated risks in granting the
11 Governor discretionary powers including in question of formation, disruption and dissolution
12 of democratically elected Governments. However, the framers felt that this discretion was
13 necessitated by unique historical factors that existed at the time of adopting the Constitution
14 and it was hoped that with the maturing of our polity, a level of constitutional statesmanship
15 and trust would taper over the crux of constitutional choices necessitated by more
16 violent times.

17
18 My Lord kindly come to para 61 at PDF page 1377. All arguments which are made here were
19 advanced, were present before Your Lordships and My Lords, thereafter are pleased to lay
20 down the law. Para 61. The issue of whether a Governor can call for a trust vote in an already
21 constituted legislative Assembly is no longer...is not entirely res integra. Before a nine judge
22 Bench of this Court in S. R. Bommai, the individual cases which came up for consideration
23 included the dispute emanating from the State of Karnataka. In the State of Karnataka
24 following elections to the Assembly in March 85, the Janta Legislature Party emerged with the
25 majority. Shri Hegde was elected as the leader of the House. Kindly allow me to read these
26 facts. There is something which may assist Your Lordships.

27
28 Shri Hegede was elected as the leader of the party and was sworn as Chief Minister. Following
29 his resignation Shri Bommai was elected as the leader of the party and was sworn in as Chief
30 Minister on so and so on. In September there was a merger of Janta Party with Lok Dal B
31 resulting information of Janta Dal. On so and so a legislator defected from the party and
32 presented it letter to the Governor of Karnataka withdrawing his support from the Janta Dal
33 government. The legislature met the Governor on the next day and presented 19 letters
34 purportedly of 17 Janta Dal Legislators and independent and the BJP legislator withdrawing
35 support from the Janta Dal government. On so and so the Governor sent a report to the
36 President opining that as a result of withdrawal of support, the ruling party had been reduced
37 to the minority in Karnataka Legislative Assembly and recommended that action be

1 initiated under Article 356 of the Constitution. Because if this is the correct assessment of the
2 Governor, there are two options either go for a floor test or 356 which Your Lordships have
3 frowned upon. Subsequently on so and so, seven legislators submitted letters to the Governor
4 complaining that their signature had been obtained by misrepresentation and reaffirmed their
5 support to Shri Bommai's government. The State Cabinet decided to convene an Assembly on
6 so and so and the Chief Minister met the Governor, offering to prove his majority on the floor
7 of the House if necessary, by preponing the Assembly session. In spite of this, the Governor
8 submitted another report to the President on so and so and a proclamation was issued under
9 Article 356. It was in this background that nine judge bench, My Lord 391, I have already read.
10 I'll skip that. Kindly come to My Lord 65, para 65 at 1380 where Your Lordships are now
11 analysing Bommai's judgment in SR Bommai's case.

12

13 In analysing the observations made by the Nine Judge Bench in SR Bommai. It is pertinent to
14 remember that the Governor in that case did not call for a floor test. Rather, the Governor of
15 Karnataka sent a report to the President based on which a proclamation was
16 issued under Article 356, the observation in Bommai can be relied on in determining whether
17 the Governor possesses the power to call for a floor test. This is what I was respectfully urging.
18 I can see both My Lord but can't help it. Power to discerning the subsequent question of
19 whether when the exercise of such power is appropriate is a distant issue. On a perusal of the
20 above observation in SR Bommai it is evident that Your Lordships finding whether or not the
21 Council of Ministers has lost confidence of the House must be determined only on the floor of
22 the House and not by the Governor conducting an independent verification. Where the
23 Governor has reasons to believe, he is not supposed to pass a judgment, when he has a reason
24 to believe that incumbent government does not possess the support of the majority in the
25 Legislative Assembly. The correct course of action would be for the Governor to call upon the
26 Chief Minister to face the Assembly and to establish the majority of the incumbent government
27 within the shortest possible time. An exception to the invariable rule of testing when whether
28 the government has the Assembly's confidence are on the floor of the House is envisaged only
29 in extraordinary situations where because of existence of all pervasive violence, a free vote is
30 not possible in the House. Then 66 - As a matter of constitutional law, it would not be correct
31 to proceed on the basis that constitutional authority entrusted to the Governor to require the
32 Council of Ministers to prove their majority on the floor of the House can only be exercised at
33 the very inception after general elections are hailed and not when the Governor has objective
34 reasons to believe that the incumbent government does not command the confidence of the
35 House. Therefore I say, you should not only command the confidence, but continue to
36 command the confidence that is the requirement of democratic functioning.

1 The Governor is not denuded of the power to order a floor test where, on the basis of the
2 material available to the Governor it becomes evident that the issue as to whether the
3 Government commands the confidence of the House requires to be assessed on the basis of a
4 floor test. Undoubtedly the purpose of entrusting such a function to the Governor is not to
5 destabilize an existing government. When the satisfaction on the basis of which the Governor
6 has ordered a floor test is called in question, the decision of the Governor is not immune from
7 judicial review. The Court would be justified in scrutinizing whether the Governor prima
8 facie had relevant and germane material to order a floor test to be conducted. It must be noted
9 that Governor does not decide whether incumbent government commands the confidence of
10 the House. The purpose of holding a floor test in the Legislative Assembly is precisely to enable
11 the elected representatives to determine whether the Council of Ministers commands the
12 confidence of the House. That verification is not conducted by the Governor. The decision in
13 SR Bommai in fact held at recourse of the power, recourse to the power under 356 was not
14 warranted in a situation, Your Lordships can skip the rest.

15

16 Now para 68, Your Lordships were pleased to reject the argument. The argument was that the
17 exercise of power by the Governor under Article 174 and 175 should also be based on aid
18 and advice. Your Lordships were pleased to reject that submission. I am not troubling Your
19 Lordships with that. Now 69, at page 1383. Judgment after judgment it is settled. Please allow
20 me to place Nabam Rebia only...

21

22 **CHIEF JUSTICE CHANDRACHUD:** Just read para 71 and 72 also.

23

24 **MR. MEHTA:** Yes My Lords, I'm coming to that. My Lords 70 also. 70, according to me, I'll
25 reach 70 also. We are unable to accept the submission of, that the observations of the
26 Constitution Bench in Nabam Rebia are orbital. The observation in Nabam Rebia are
27 consistent with the formulation of principles in the Nine Judge Bench decision in SR Bommai
28 as we have discussed earlier. Please note My Lord, the power and Article 174 of the
29 Constitution to summon the House and to prorogue is, prorogate is one which is exercised by
30 the Governor on the aid and advice of the Council of Minister. But in a situation where the
31 Governor has reasons to believe that the Council of Ministers headed by the Chief Minister has
32 lost the confidence of the House. Constitutional propriety requires that the issue be resolved
33 by calling for floor test. The Governor, in calling for a floor test cannot be construed to have
34 acted beyond the bounds of constitutional authority. And loss of confidence mean in a
35 running Assembly.

36

1 Now My Lord, if Your Lordships may, kindly 71. The powers which are interested to
2 constitutional functionaries are not beyond the pale of judicial review, where the exercise of
3 discretion by the Governor to call for a floor test is challenged before the Court. It is not
4 immune from judicial review. The Court is entitled to determine whether in calling for the
5 floor test, the Governor did so on the basis of objective material and reasons which were
6 relevant and germane. These are the potent words used by Your Lordships. It should not be
7 irrelevant material or something completely not germane to the issue. The exercise of such
8 power is not intended to destabilize or displace a democratically elected government
9 accountable to the Legislative Assembly and collectively responsible to it. The exercise of the
10 power to call for a trust vote must be guiding, guided by the overarching consideration that
11 the formation of satisfaction by the Governor is not based on extraneous considerations. So
12 My Lord, when there are extraneous considerations, Your Lordships would step in and
13 exercise the power of judicial review. And extraneous would mean completely irrelevant and
14 not germane to the issue. Issue namely whether the Governor would be justified in forming an
15 opinion or entertaining a doubt about the government having lost the majority support. If the
16 documents are not irrelevant or not germane then perhaps Your Lordships may not take a
17 second guess on the basis as to what Your Lordships would have perhaps perceived the
18 situation to be capable of.

19

20 My Lord kindly para 73. Para 73 My Lord. I have something to say on that no confidence
21 because that was not argued by anyone of us. In a situation where the House has been
22 summoned following the aid and advice of the Council of Ministers, the position would be
23 more nuanced in the sense that the remedy of a no confidence motion would be available to
24 any segment of the Legislature seeking to espouse the view that the government has ceased to
25 command the confidence of the House. When the government calls for House being, the
26 session being called. In exercising the constitutional authority to demand a trust vote, the
27 Governor must do so with circumspection in a manner that ensures that authority of the House
28 to determine the existence or loss of confidence in the Government is not undermined. Absent,
29 exigent and compelling circumstances, there is no reason for the Governor to prevent the
30 ordinary legislative process of no confidence motion from running it's due course. My Lord,
31 74. In discharging this crucial role, it is necessary that the Governor bear in mind that the
32 purpose underlying the entrustment of the authority to require a trust vote is not to displace
33 newly elected government, but to intervene with caution when the circumstances which are
34 drawn to the attention of the Governor indicate a loss of majority. Circumstances should be
35 present before the Governor. This power is granted to the Governor to ensure that principle of
36 collective responsibility is maintained at all times and must be exercised with caution. The
37 circumstances on the basis of which the Governor forms a prima facie opinion leading to a

1 communication requiring a trust vote in the Legislative Assembly must be of an objective
2 nature. The decision of the Governor to do so is not immune from judicial review and must
3 therefore withstand the ability of being scrutinized on the touchstone of circumstances. Again,
4 My Lords, Your Lordships are careful in saying being relevant, germane and not extraneous.

5
6 I had 47 members before me saying that we don't want to support this Government. We want
7 to withdraw support from this Government. That is itself and enough ground in my respectful
8 submissions. Kindly My Lords, thereafter see, Your Lordships were pleased to para 77, at page
9 1386. Your Lordships were pleased to record several past cases where the Governor either
10 decided to direct a floor test, parties came here, and Your Lordships did not intervene or
11 Governor was not directing floor tests, parties came here and when required, sitting at
12 midnight. Your Lordships directed that immediate floor test and the only purpose was, I'm
13 sorry, My Lords are typing. I'm sorry. The object of My Lord was, Your Lordship may complete.
14 I'm sorry... That there is no time for either pressure, threat, coercion, violence, allurements
15 etc. etc. Whatever is the will should be reflected at the first available opportunity. Therefore
16 Your Lordships sat at night in case of Karnataka. There are several such instances. And
17 therefore I am not reading but there are large number of cases which Your Lordships were
18 pleased to reproduce and thereafter, say at page 1389 at para 78, at the foot of 1388. The idea
19 underlying the trust vote in the ultimate analysis is to uphold the political accountability of the
20 elected Government to the State Legislature. Therefore, I was saying that you should not only
21 command the majority support at the time of formation of the Government, you must continue
22 to command that. That's the democracy. Assertion of accountability is a mirror image of
23 collective responsibility of the Government to the Legislature. The requirement of the trust
24 vote fulfils that purpose in the present case. The present controversy has shown a light on the
25 often fluid allegiances of democratically elected representatives. This is a matter of their
26 conscience and the court expresses no opinion on the matter. However, it is important to note
27 that in directing a trust vote, the Governor does not favour a particular political party. It is
28 inevitable that the specific timing of a trust vote may tilt the balance towards the party
29 possessing a majority at the time the trust vote is directed. All political parties are equally at
30 risk of losing the support of their elected legislators just as the legislators are at the risk of
31 losing the vote of the electorate. This is how the system of parliamentary governance operates
32 and the learned Senior Counsel on both sides of, of the dispute congenially admitted that the
33 outcome of the trust vote is the ultimate litmus test for the legitimacy to govern. However, we
34 note that where the evidence indicates the circumstances of violence and coercion exist, that
35 would undermine a free and fair vote in Assembly, the Governor and the court must take
36 measures to ensure that the sanctity of the trust vote is maintained. In circumstances as they
37 have emerged in this case, the exercise of authority by the Governor was based on

1 circumstances which were legitimate to the purpose of ensuring that norm of collective
2 responsibility is duly preserved. There existed no extraordinary circumstances for the
3 Governor to determine that the trust vote was not the appropriate course of action on 16th
4 March. So it is only in extraordinary circumstances that there would be a departure from
5 floor test rule. Otherwise, floor test is the rule. That's what the test Your Lordships were
6 pleased to lay down. Because when we say My Lord, that defection is the highest political
7 sin My Lord running a government after losing the confidence of the electorate, namely, the
8 House is a larger constitutional sin to which Governor should not be a party.

9

10 My Lord Kindly last para 80 at page 1390.

11

12 **JUSTICE NARASIMHA:** One minute.

13

14 **MR. MEHTA:** This is para 79. The submission that short-circuiting the Speakers power. That
15 Governor by asking for the floor test has short circuited the Speaker's power
16 and Your Lordships are My Lord dealing with that at para 80. It is trite law that neither the
17 Governor, nor for that matter, this court as the power to impinge upon the authority of the
18 Speaker to take a decision on the above issues. The issue, however, is whether the convening
19 of a trust vote has to be deferred until such time as the Speaker has taken a decision on whether
20 or not to accept the resignation, and if so, the consequence of the members departing from the
21 fold of the party on whose ticket they were elected under the Tenth Schedule. Holding of a
22 trust vote operates in a distinct field from the issue as to whether one or more individual
23 members of the Legislative Assembly have embarked upon a voluntary act of resignation, or
24 have incurred the wrath of Tenth Schedule. Holding a trust vote is necessary to ascertain
25 whether the Council of Ministers headed by the Chief Minister has the confidence of the
26 House. The continuous existence of that confidence is crucial to the legitimacy and hence
27 survival of the government. I could never have put it like this. Continuous existence of that
28 trust gives you the legitimacy in democracy. It is a matter which can brook no delay, since the
29 authority of the Government presided over by the Chief Minister, depends on the Council of
30 Ministers continuing to have the faith of the legislative body as a collective entity particularly
31 where the members resigned in an expression of lack of faith in the existing government. The
32 convening of a floor test is the surest method of assessing the impact of resignations on the
33 collective will of the House. The consequence of the acceptance of a resignation is to reduce
34 the numerical strength of the House. Until the resignations are accepted members who have
35 resigned continue to be reflected in the strength of the House having regard to the language
36 which has been employed in Article 193B. Whether in a situation such as the present and
37 elected government is entitled to continue despite resignations of 22 of its members has a

1 significant bearing on the issue of confidence. If this is right then the Governor is right that if
2 47 people want to withdraw support, it is the most relevant fact to be considered while
3 deciding the floor test. Nothing beyond that. Governor does nothing beyond that. Neither the
4 Governor nor for that matter, the Court can entrench upon the power of Speaker, but the
5 pendency of proceedings before the Speaker cannot be a valid basis not to have the confidence
6 of the House in the Government determined by convening of a floor test. Added to it is a factual
7 circumstance in the present case that the Speaker except.... that is on the facts of the case.

8

9 Kindly allow me last para 81. We have highlighted above factual scenario only to emphasize
10 that convening of a trust vote is of crucial importance to affirm fundamental values of the
11 Constitution namely, abiding by the rules which govern a parliamentary democracy. The
12 fundamental precept of parliamentary democracy is that Government owes collective
13 responsibility to Legislative Assembly and as a collective body, the Legislative Assembly is
14 entitled to hold the Government to account the ultimate expression of accountability is the
15 exercise of or the lack of confidence in the Council of Ministers. We are therefore unable to
16 accept the submission that the holding of a trust vote would short circuit the jurisdiction of
17 the Speaker. Rest may not be relevant My Lord.

18

19 Now last, kindly take my propositions My Lord. Para 7. I will just quickly go through it. There
20 are only two pages left. Para 7. There is one more reason why Governor cannot pre-empt the
21 decision of the Speaker at the stage of directing, Your Lordships may read them. I am not
22 reading it for the sake of convenience.

23 a). The Governor is satisfied based upon the material available, Your Lordships can skip that.
24 Kindly come to 10. The Governor, in the instant case, did not recognize the split as alleged. If
25 the Governor would have recognized the split in Shiv Sena as alleged, he would have directly
26 called Shri Eknath Shinde to take oath. There was a split. The Governor merely based on
27 objective material before him, none of which is disputed on facts formed an opinion as to the
28 doubt about... as to the doubt as to whether Shri Thackeray enjoys majority in the House and
29 considering the threats and violence, he should be immediately called upon to face the floor
30 test. Now this is, 11 is important. The argument was that floor test could not have been ordered
31 because they, this side and other independents etc. who withdrew support from the
32 Government. They should have gone for no confidence motion. And this is a new point which
33 I would be urging for Your Lordship's consideration, not argued so far. First of all whether it
34 is a floor test, which is a motion of confidence or a no confidence motion which is negatively
35 worded. The result is the same and therefore, that can never be a ground to invoke Your
36 Lordships equity jurisdiction in a 226. Floor test also, the numbers will be counted and people
37 would decide whether I have the majority. In no confidence, numbers will be counted and

1 members would decide whether I have the majority. But there is something more than that.
2 Please come to PDF page 40 of Convenience Compilation 3-C. The provision in the
3 Maharashtra Legislative Assembly Rules regarding no confidence motion. Your Lordships are
4 confronted with a situation where the Governor is receiving representations that we have
5 withdrawn support. We want to withdraw support, etc. etc. I'm not repeating. There is a threat
6 of violence. There is in fact violence. Attacks are taking place at the Houses and now My Lords,
7 the submission is that you should have allowed the no confidence route rather than directing
8 a floor test. Please see, page 40 of Convenience Compilation 3.

9

10 **JUSTICE KOHLI:** 3-C?

11

12 **MR. MEHTA:** CC-3, My Lords, Convenience Compilation 3. That is part of rules of
13 Maharashtra Legislative Assembly Rules. Your Lordships have said, please bear in mind that
14 such floor tests cannot brook any delay. And why is this reliance on no confidence motion?
15 Maybe they wanted more time, which the Governor prevented them from doing. Para 90, Rule
16 95. My Lordships have that, Rule 95? My Lords, two things. I will say at the outset and I'll read
17 that. First, I can, any member can move a no confidence motion only when House is in session
18 not otherwise. House was not in session. Number two, it depends upon the discretion of
19 the Speaker whether to allow the motion to be placed or tabled or not. It's not a right. So again,
20 I'll be dependent upon the discretion to be used by the Speaker. If I am the
21 elected representative. This is what therefore, Governor says no, you hold a session. Kindly see
22 My Lord, Rule 95. A member who desires to move by, Your lordship has that? The member
23 who desires to move or leave to make a motion expressing want of confidence in the Council
24 of Ministers or a motion disapproving the policy of the Council of Ministers in a particular
25 respect shall give written notice of such motion. If the motion is admitted by the Speaker leave
26 to make the motion may be asked for. So first he can sit for one week to decide whether to
27 permit this or not. But if he admits, then the members will seek leave to make the motion for
28 on such day, not later than two days after it is admitted. If the Assembly is in session, as
29 the Speaker may appoint, after questions and before the list of business for the day is entered
30 upon. So when the Assembly is in session, this can be done with the Speaker. There is no time
31 limit fixed. He can decide to admit it after a week. And thereafter, if the Assembly is in session
32 we can, the members can say two days. Now My Lord further, provided that, Your Lordships
33 have the next page? Provided that if the notice of such motion is received when the Assembly
34 is not in session, the leave to make the motion may be asked for on a day not later than two
35 days after commencement of the session, as the Speaker may appoint. So next session may be
36 after 15 days, after one month, after five months, we do not know. Your Lordships are deciding
37 this constitutional principle that whether the Governor was right in directing, summoning of

1 the House for floor test and they are saying that no, no confidence motion was the root.
2 Meaning thereby, this threat allurements, violence, etc. etc. continues and the
3 Governor's satisfaction that prima facie as the Government has lost confidence would continue
4 without any legitimacy, borrowing Your Lordship's, very, very pertinent expression. After the
5 member has asked for leave of the Assembly to make the motion, the Speaker shall read the
6 motion to the Assembly and request those members who are in favour, that's the procedure
7 My Lord, how the motion would be passed or failed. This is no remedy, in fact situation like
8 this. Because the test right from the state of Rajasthan till Shivraj Singh Chauhan is, it cannot
9 brook any dealing.

10

11 Last three points. Last page of my proposition. 12, I have already covered. 13. Decision of the
12 Governor to direct floor test is not to be based on aid and advice. Para 28 of my detailed
13 submissions, I have already covered that. What Your Lordships have held in Shivraj Singh
14 Chauhan. After the decision of Shri Uddhav Thackeray not to face the floor test by tendering
15 resignation, the only option for the Governor was to call Eknath Shinde, who could prima facie
16 satisfy the Governor that he can form a stable Government. Another option was 356, which is
17 frowned upon and nobody, that has to be the last resort. And how that happen? Please come
18 to as a last submission. My written documents which I have placed. My Lord, the Governor
19 received two letters. That now Eknath Shinde has the majority. And another very risky
20 argument which Mr. Sibal made, that why did the Governor call Eknath Shinde to form
21 the Government and why not the President of the party was consulted. The Governor knows
22 only the elected leader of the House. He is not concerned with political parties. There are
23 political parties where leader of the House is in fact the leader, and President is not controlling
24 him from somewhere else. Governor has to contact the elected leader of the Legislative Party.
25 When he is shown...I will show those documents. There are two letters, I'll show
26 that document. Because every party has a different structure. Kindly see My Lord mischief in
27 this argument. I'm saying argument not mischief in making of the submission. I'm sorry My
28 Lord. I thought...

29

30 **CHIEF JUSTICE CHANDRACHUD:** We are relieved with your clarification.

31

32 **MR. MEHTA:** No, no, it was not correctly worded. The potential mischief if this argument is
33 accepted, that's what I wanted to convey. Every party has a different party infrastructure, for
34 example, in some parties, the highest authority is the General Secretary, there is a polit bureau
35 in Communist Party, General secretary is the highest authority. In some, there is a body, five
36 people committee or something. In some there is a President. There may be a dispute, who is
37 the President. The Governor would not enter into that. Governor would say that who is the

1 leader of the Legislative Party. The Governor would deal with only leader of the Legislative
2 Party and Mr. Uddhav Thackeray who did not face the confidence and therefore he resigned,
3 is not even a member of the Legislative Assembly.

4
5 Kindly see page 47, PDF 47 of the Governor's compilation. This is the... page 47 of Governor's
6 compilation. The apprehension of MLAs is also fortified by the letter of leader of opposition
7 who has in fact [UNCLEAR] provided links to videos where Mr. So and So has openly stated
8 that dead bodies would come, and I would earnestly urge My Lord not to condone this. My
9 Lord, this is a threat in public platform. Let's not the lesson the gravity of it. It is a very
10 serious thing. I leave it at that. I leave it at that.

11

12 **CHIEF JUSTICE CHANDRACHUD:** It is a law and order situation.

13

14 **MR. MEHTA:** No, My Lord. It can be law and order situation also. But if that law and order
15 situation is being created to bring pressure on the legislative process then it is not just a law
16 and order situation. It is one of the major consideration for the Governor that yes, he seems to
17 have lost majority and now open threats are being administered that you come in our fold or
18 you will be sent to post mortem. It's a threat to death. I would earnestly request Your
19 Lordships it cannot be taken lightly by the Constitution. I leave it at that.

20

21 **CHIEF JUSTICE CHANDRACHUD:** The ground for unseating a government. I mean,
22 Ultimately, that somebody who is subject to section 156-3, is subject to FIR. You can do what
23 you want about [UNCLEAR].

24

25 **MR. MEHTA:** Allow me to put it differently. That's where the perception differs. If I say that
26 because somebody is threatening you face the floor test, then Your Lord ships are right. But
27 when I have the letters that we have...we want to withdraw support and we are being
28 threatened then it is not that reason. That's the ground not the reason

29

30 **CHIEF JUSTICE CHANDRACHUD:** We will hear what Mr. Sibal has to say in rejoinder.

31

32 **MR. MEHTA:** My Lord one clarification. Not on the merits of the case. I checked up the
33 couplet which I started with it's by Dr. Bashir Badra they are contemporaries. Their style of
34 writing is very similar. It's likely to mislead every reader. It's by Dr. Bashir Badra. He is no
35 longer there. Mr. Wasim Bareli sahab.

36

37 **JUSTICE KOHLI:** You are giving credit where it is due.

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MR. MEHTA: Yes Sir when specially when he is not. Dr. Wasim Barelvi is alive and Dr. Badra who passed away recently, but contemporary. Same age group.

CHIEF JUSTICE CHANDRACHUD: Thank You, Mr. Solicitor.

MR. MEHTA: Obligated Your Lordships.

MR. SIBAL: What I've done My Lord I have filed a rejoinder of submissions My Lords, before Your Lordships.

CHIEF JUSTICE CHANDRACHUD: Has it been circulated?

MR. SIBAL: It was circulated, not hard copies, but it's been circulated. It's been circulated for Your Lordships in the morning itself the site.

MR. MEHTA: On the lighter side, the rejoinder submissions given are lengthier than my reply. You need not respond to this.

MR. SIBAL: I have to respond to more weighty things than the pages of my rejoinder. My Lords Your Lordships may just at the moment, My Lord not deal with this document. It will come to you. Let me just broadly tell your Lordships My Lord what we have to meet and what the issues are. My Lords, I think that we seem to have been... We are somewhat innocent of the manner in which people are represented in the House and who their legislator owes his duty to? Your Lordship knows that under the 1950, Representation of People's Act you have a delimitation provision. And in each state, a delimitation takes place and the territorial constituencies are carved out. So the elections takes place with respect to those territorial constituencies in each state and the number is already fixed. So My Lords, under the Representation of People's Act, first under the Constitution, under Article 170, people are directly elected from the territorial constituencies. And there is a process by which they are elected. That process is also elaborately set out in the conduct of Election Rules. First, there's a nomination that takes place, the nomination takes place pursuant to your party nominating you and giving you the symbol on the basis of which you go to the returning officer and say, I am the nominee of the party and this is my symbol, which is represents the party. After which the election takes place. When the election takes place and the votes are counted My Lords, the returning officer, then gives you a certificate saying that you have been elected from this party. A copy of that is sent to the Election Commission. It's all set out here, so Your Lordships,

1 at the moment I'm just broadly.... a copy of that is sent to the Election Commission and the
2 Election Commission conveys that to the Speaker of the Assembly. What is it that I'm trying
3 to say? The only identity of a legislature recognized in the House is that he is a member of the
4 party. He has no other identity. Two members, three members, 20 members, 34 members
5 can't have an identity outside of that. That's the basic constitutional conceptual question. Give
6 Your Lordships, an example, well, let's forget about 34. A small party in Goa has five members,
7 two of them go to the Speaker, to the Governor and say, you know I'm not going to support
8 this Government. And those two actually tilt the balance and the Government can fall. So
9 the Governor will call a floor test?

10

11 **CHIEF JUSTICE CHANDRACHUD:** Sorry?

12

13 **MR. SIBAL:** Will the Governor call a floor test? Forget majority, even the minority
14 cannot topple a Government if this is the procedure in law that we have to follow. We are back
15 to *Aaya Ram, Gaya Ram*. Why? Because you say now your political affiliation doesn't matter,
16 what matters is numbers. Democracy is not about numbers. It is numbers within a
17 constitutional framework. What the Legislators, the Speaker, the Governor,
18 recognizes are political parties and you are a member of a political party. Nothing less, nothing
19 more. You have no other identity. And I will tell Your Lordships, why I'm saying this. How
20 are Governments formed? Sarkaria Commission remember My Lords, largest single party
21 who has a majority on the floor of the House the Governor will call him to form the
22 Government, the Leader to form the Government. If that's not possible, comes the second and
23 that's political party now. Second pre-poll alliance of what? Of political parties. That's the
24 second. If they form the majority. Three, post-poll coalition.

25

26 **CHIEF JUSTICE CHANDRACHUD:** What is the first?

27

28 **MR. SIBAL:** Single largest political party. Second is pre-poll alliance. Of what? Of political
29 parties. It could be two, it could be three.

30

31 **JUSTICE KOHLI:** Which is a third one?

32

33 **MR. SIBAL:** Third is post-poll coalition, which is what the Uddhav Government was. Post-
34 poll coalition of political parties. And the fourth is post-poll alliance of political parties.
35 The Governor under Article 168 of the Constitution is not a member of the Legislative
36 Assembly, but he is part of the legislature. He can't recognize anybody other than political

1 parties. That is the Constitutional fundamental framework within which the House functions.
2 That's why we did away with *Gaya Ram, Aaya Ram*.

3
4 **JUSTICE NARASIMHA:** Lastly, the Governor is not part of the?

5
6 **MR. SIBAL:** He is part of the Legislature, but not a member of the Legislative Assembly.

7
8 **JUSTICE NARASIMHA:** Of course.

9
10 **MR. SIBAL:** So, he only recognizes because he is part of the Legislature, the political parties,
11 the legislature parties. That means my identity is associated with my party in the House. I have
12 no separate identity otherwise 10 from one party, two from another party, three from another
13 party will go to the Governor and make the Government fall. And then my learned friend's
14 argument, see the Governor is fully satisfied that you have lost the confidence of the House
15 because ten, two and three, along with the present dispensation make the majority. So you are
16 back to *Aaya Ram, Gaya Ram* days. The whole purpose of the Tenth Schedule is to get rid of
17 it. Numbers in the House will not make governments fall. It is the alliance of parties in the
18 House that will make the government fall. And that's the application of mind of the Governor
19 when he decides to ask for a trust vote. See the havoc it will cause. All you need to do is to cook
20 up numbers and they will say on public platforms that it is a call of conscience. We know the
21 extent of their conscience. So they will go to the Governor and say, see we give you the
22 numbers now, this is my letter to you, we are now the majority, this Government,
23 this Chief Minister has lost the confidence of the House, see the numbers and it will be argued
24 that look, it's demonstrated that he doesn't have the majority and therefore hold the floor test.
25 You see the consequences of this argument on the democratic polity of this country. That's one
26 issue I will deal with. I just wanted to point out.

27
28 Number two, even more important. Which is something that I mentioned earlier also, and in
29 detail My Lord in my note in which they did not comment on at all. All the Counsel have not
30 commented on the concept of the Whip. In fact, I was really surprised when my learned
31 colleague, Mr. Kaul, gave to Your Lordships a letter of Mr. Sanjay Raut, My
32 Lords will remember that, saying no, actually it is the legislative. It is the leader of the House
33 who appoints. It is the leader of the House who appoints the Whip. My Lord, just kindly have
34 a look at that letter. It is the last page of the submission, that was, I will just hand it to Your
35 Lordships.

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37 **JUSTICE NARASIMHA:** 6th July, 22.

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MR. SIBAL: Yes. Just see this. Very interesting letter. Now Your Lordships see this. This is to the Speaker of the Lok Sabha. Your Lordships see that? And 13th June 2019, which was handed over.

Kindly now see, what is the last page at page 44. Sanjay Raut writes to the Speaker of the Lok Sabha. That's what he pointed out. It says, "Respected sir, it is to inform you that Shiv Sena Parliamentary Party has nominated Rajan Vichare MP as Chief Whip in Lok Sabha in place of Bhavana Gawali. Bhavana Gawali with immediate effect". Signed Sanjay Raut, Leader of Shiv Sena Parliamentary Party. Correct, My Lords? Now just see the previous page. Sanjay Raut is a member of the Rajya Sabha. Not a member of Lok Sabha. He is appointing the leader in the Lok Sabha. Appointment of Shiv Sena Parliamentary Party leader for both Houses Lok Sabha and Rajya Sabha. Dear sir, Shiv Sena has the strength of so much in the Lok Sabha. Vinayak, Bhaurao Raut is a Shiv Sena group leader in Lok Sabha and Sanjay Raut represents Shiv Sena as group leaders in Rajya Sabha. In addition to the above, I hereby appoint, Sanjay Raut member of Rajya Sabha Shiv Sena Parliamentary Party leader for both the Houses of Parliament. Lok Sabha, Rajya Sabha as the facilitative measure. May I therefore request your esteemed office to take note of the same and communicate accordingly. My Lord I gave to Your Lordships chapter and verse. Erskine May all the authorities merge as to how it is the political party that appoints the Whip in the House. Paksh Pramukh. And this whole argument was jettisoned by showing this document saying, see Sanjay Raut has appointed. He is not even a member of the Lok Sabha. He is empowered by the party. So this whole argument that I sat in Assam, appointed Gogawale as the Whip. Where does that come from in Constitutional terms? 34 of you sitting in Assam in the lap of the BJP will appoint Gogawale as the Whip and then come to court and say, look, we have already removed you. Under what power?

MR. MEHTA: Sorry to interrupt this may not be relevant for the...

MR. SIBAL: Sir, if you don't mind, Sir I really will appreciate you people have... my colleagues have argued for 5 days. I have not uttered a word. throughout. So please allow me to argue in my own way.

MR. MEHTA: My Lord appointment of Rajya Sabha and Lok Sabha will never be over. We curtailed our arguments. In a rejoinder appointment of Whip in Lok Sabha and Rajya Sabha.

1 **MR. SIBAL:** If you want, I can sit down and the court can decide since you are the master of
2 the ceremonies here. So My Lords, because that was an argument made, My Lord, because
3 that justifies what they say, that justifies the fact that Gogawale is the Whip and he issued
4 directions and he has to be obeyed. Till the 4th who was a political party recognized in
5 the Assembly? Shiv Sena. That was the political party. Who was the Whip My Lords? Sunil
6 Prabhu. So the second submission that I wish to make to Your lordships.

7

8 **JUSTICE NARASIMHA:** First and second are more or less both basically saying that Whips
9 are actually appointed only by the political part. It's a simple point.

10

11 **MR. SIBAL:** They're simple, very simple points. Appointed so, a Whip has overheard obeyed.
12 Sunil Prabhu had to be obeyed.

13

14 **JUSTICE NARASIMHA:** You made this point.

15

16 **MR. SIBAL:** Yes. On 3rd, Sunil Prabhu issued a Whip that you cannot vote for the BJP
17 candidate as Speaker. Whip was disobeyed. He cannot appoint himself as a leader because
18 Ajay Chaudhary became the leader on the 21st of June itself when we removed Eknath Shinde.
19 That removal of Eknath Shinde and appointment of Ajay Chaudhary was conveyed to the
20 Speaker of the House. The Speaker of the House recognized it. So how could the Governor call
21 Eknath Shinde? Who is Eknath Shinde? I am talking in constitutional terms. Argument is
22 Eknath Shinde was the group leader. Where was, under which law? Which group? You can't
23 arrogate yourself the powers of the party sitting in Assam, being entertained by another party,
24 publicly saying that another party is fully supporting me and changing the Constitution of the
25 House as if you are the political party. That's the second, I will argue. I won't take too long, it's
26 just so that we reduce the level of controversy.

27

28 Now, number three. My Learned Friend, my colleague, Mr. Kaul, argued that I am the party.
29 He says I am the party. I am the Shiv Sena. On what constitutional basis can people with 34
30 members say they are the Shiv Sena? Are they recognized by the Election Commission as the
31 Shiv Sena? Shiv Sena is a registered political party with a political leadership intimated to the
32 Election Commission under Section 29(A), of the Representation of People's Act. The moment
33 the recognition takes place under Section 29(A), that is the decision of the Election
34 Commission, which is final. That decision was not overturned by anybody when all this
35 happened till the 4th of July. So My Lords, how can Eknath Shinde's group of 34 say I am the
36 political party? It has no constitutional basis. And for five days, we have heard this. I am not

1 saying that I have split. I am not saying that I am the faction. I am saying I am Shiv Sena. So
2 if I say I am Shiv Sena, I am Shiv Sena in constitutional terms. It cannot be.

3

4 Next point, My Lords, which is even more important. Your Lordships will remember that
5 under paragraph three of the Tenth Schedule, which was deleted later by the 91st
6 Constitutional Amendment, the expression is, that if there is a faction in the legislative party,
7 a rising out of a split in the political party and that faction represents one third of the legislative
8 party then that will be a valid defence against a disqualification petition. So what is the
9 expression used there, I am a faction of the legislative party, resulting from a split in
10 the political party. Right My Lords? Now he says that we 34 are the political party. That is his
11 case. He says, I'm not a faction. There's no split. But My Lords when he goes to the Election
12 Commission what does paragraph 15 say? That if there are two factions of a political
13 party, who claim to be that political party. He doesn't use the word split. Then the Commission
14 will decide which is that political party. So before you they say, I am the political party and
15 before the Election Commissions, they say, I am a faction. Because if he is the political
16 party he need not go to the Election Commission. Why is he going to the Election Commission?
17 He says there is no difference between the legislative party and the political party, which is My
18 Lords a mockery of the Tenth Schedule itself. Where the whole purpose of differentiating what
19 that members of the legislative party will not do, acts which amount to voluntarily giving up
20 membership of the party or vote against the Whip which will result in defection. The whole
21 purpose of the Tenth Schedule is to differentiate between the legislative party and the political
22 party. And the whole argument is, there is no difference between the legislative party and the
23 political party, I am the political party. But if you are the political party, why did you move the
24 Election Commission? My Lords take for example, three people out of five belonging to the
25 Congress Party. They are a majority. They go to the Governor of Goa and say, I am the political
26 party. We are the majority, topple this Government. Numbers are stacked
27 against, Government will be toppled. They will never go to the Election Commission. Why?
28 Because there is a Congress party outside. What will the Governor do? Governor, you think My
29 Lords, on their logic Governor will have to call trust vote because the best
30 way Bommai says, the best way is to find out from a trust vote. My Lords all judgments of law
31 are contextual unless there is an underlying basic principle like basic
32 structure, otherwise all judgement are contextual. When Your Lordships decided on
33 Shivraj Chauhan, the context was what? 22 resignations. Context was...

34

35 **CHIEF JUSTICE CHANDRACHUD:** And six were accepted.

36

1 **MR. SIBAL:** Yes. Six accepted. Not only that, 13th of March, Governor tells him to hold the,
2 to call the Assembly. Which is called on 14th March and hold the trust vote on the 14th. The
3 Chief Minister says no, I adjourned it. He didn't put it in the agenda, he adjourned it to 26th
4 of March, if Your Lordships will remember. So he adjourns it to 26th of March. Then the
5 petitions are filed, saying how have you adjourned it to 26th of March? Because the Governor
6 told you, matter comes to this court and Your Lordships says, look, this is the best because all
7 those 22 letters of resignation are with the Governor. Then Your Lordship said another thing,
8 which I will read later to Your Lordships. Your Lordships said, as far as the disqualification is
9 concerned, who stopped you from disqualifying? That's paragraph 82, of Your Lordship's
10 judgment, where Your Lordships have said this. Nothing stops the Speaker to disqualify if he
11 wanted to disqualify. But once people have resigned, so it was in the context of 22 resignations,
12 context of six of them having been accepted on the 14th of March itself, on the advice of the
13 Chief Minister. Speaker accepts them. And Your Lordships asked the question, what's the
14 difference between those six and the other 16? There's no difference. They have come, the
15 signatures are there, they have given to the Governor. What else can we do? And who stopped
16 you from disqualifying? My Lords, what does Shivraj Chauhan got to do with this? This
17 matter? There is no bearing. We are dealing with what? We are dealing with 34 people which
18 is a faction. They cannot now say they're not a party, that they are the party because they can't
19 be the party. It's a faction. How does the Governor recognize the factions? Under what
20 constitutional parameters does the Governor say I recognize you and therefore I'll call a floor
21 test? It's not a game of numbers. So, if you actually hold their submissions to be correct you
22 are bringing back the regime of *Aaya Ram Gaya Ram*, because anybody can collect the
23 numbers in the manner that they are collected nowadays, whisk them away to any other state,
24 keep them in comfort. I don't want to use a stronger word. And then My Lords come back and
25 topple the Government. And you will have no recourse.
26 Next is even more important.

27

28 **JUSTICE NARASIMHA:** You're saying three fourths is also split?

29

30 **MR. SIBAL:** Exactly.

31

32 **JUSTICE NARASIMHA:** Even three fourth will be split.

33

34 **MR. SIBAL:** That's correct. That's still a faction. That's why three was eliminated. You can't
35 have sort of factions moving out because we know how these numbers are collected. And I
36 remember I showed you Kuldeep Nayar's case where all the act was set out. More important
37 they have only on today in court argued that they are the party. Not a single document right

1 from the 21st of June till they filed the petition. Even there, they do not say till the 19th of July.
2 Whole argument is I am the party, where have you said ever that you are the party. Never, not
3 a single document. This is a mockery that's happening in our country. And I said, My Lords, I
4 repeat it. It's not about, it's not about Maharashtra. It's about Meghalaya. It's about Manipur.
5 It is about tomorrow Uttar Pradesh. It is about anything can happen anywhere. If you allow
6 this to happen. It's about our future. They never say that they are the party even if that Your
7 Ladyship will remember that document on the 28th of June that is read. First of all, let me
8 disabuse you of this whole thing about violence, violence, violence. On the 27th, when we
9 moved this court, they moved this court. My learned friend was there. I was not there. On 27th
10 My Lords a statement was made by Mr. Kaushik. Who was it? Mr. Chitnis. Mr. Chitnis Learned
11 Counsel for the State of Maharashtra states that adequate steps have already been taken and
12 the state government has further ensured that no harm is caused to the lives, liberty and
13 properties of the 13 MLAs their families. This on the 27th and the Governor is arguing on the
14 28th, there was a danger, there will be dead body, there will be post mortem. When on 27th
15 the statement has been made by Mr. Chitnis, who represents the Maharashtra government
16 under the supervision of the Supreme Court. Can anybody My Lord says that dead bodies will
17 be sent for post mortem? This is a 27th June order and that was repeated again and again and
18 again. My Lords If I were to go to the newspaper reports and what they have said in Assam
19 that Your Lordships are not going to enter into that. The unfortunate part of it and I see
20 unfortunate My Lords deliberately, the very thing that we wanted to prevent happened. When
21 your Lordships did not grant us stay. Fine. No issue. But we went to the Election Commission.
22 We told the Election Commission that, look, these are the very 39 people whose candidature
23 as a member of the Legislative Assembly is subject to the Supreme Court. So please don't
24 decide this matter till that is this decided. No stay did not mean that you decide no matter what
25 happens. They misinterpreted that order deliberately not the Commission, but the other
26 side and said no, Supreme Court has said no stay you have to decide. And then what did the
27 Election Commission do? On the basis of these 39 they've got the symbol. Only on the basis of
28 these 39. So what are we here today? Today they argue now we are the party because we've got
29 the symbol. So My Lord on 27th of June, we are put in difficulty. 29th of June we are put in
30 difficulty. And then in September, when Your Lordships passed this order they misinterpret
31 it. 27 September.

32

33 The next point My Lordships will have to consider and I'll be very short My Lord's tomorrow
34 so that we can finish this quickly. Next point is My Lords, they have been saying that under
35 the mandatory rules, seven days' notice ought to be given. Correct? How many days' notice
36 have they got now? They've not filed reply till date. Nine months. I asked myself this question
37 when this court said, don't file your reply till the 12th of July. Was it seven days? Is it fair of

1 the court? I'm sorry to say. If that is the mandatory rule then you should have said seven days
2 from the date. Shorter period. 12th date and that also in the interim. And nine months have
3 passed. And then argument is, this is a fait accompli. See the arithmetic. Even if the 16 had
4 been disqualified, you would still be at minority. And I think Mr. Salve was right, that's all
5 speculation. What would have happened, what would not have happened, maybe the others
6 would have voted in our favour. But that's all speculation. Your Lordships are not concerned
7 about that, what the arithmetic is. And see the injustice caused to us in this process. So, they
8 don't file a reply. Now they say, go back to the Speaker. And there is no one fact which is not
9 admitted on both sides. That they have 34 majority in the legislative party, admitted. We don't
10 deny it. That they were sitting in Assam. They admit. That they sent that resolution throwing
11 out Sunil Prabhu, they admit. That they appointed Gogawale, they admit. And what's
12 interesting is in that resolution that they sent where Your Lordships have said that only two
13 prayers that are made are that Gogawale is appointed. But see the language as far as Eknath
14 Shinde is concerned. He continues to be the leader. The word continues, how did they realize
15 that the word continue has to be used. Because we had removed him on 21st. And on 22nd
16 they dated the letter 21st and sent it to the Speaker received by the Speaker on the 22nd at
17 11:30 AM. So they knew that Eknath Shinde had been removed. Otherwise, they would have
18 said that the Eknath Shinde is the leader. But they said no, Eknath Shinde continues to be the
19 leader and they backdated that document. So, that's not disputed? That we call a meeting on
20 the 21st, 22nd, not disputed. We told them if you don't attend, consequences will follow. Not
21 disputed. On 24th, we had a Council meeting. Not disputed. They said, but you are nobody to
22 call the Council meeting. We will hold a parallel meeting of our own. Not disputed. What is
23 disputed? That on the 28th, the Governor receives these documents, which have been placed
24 before Your Lordships, not disputed. That he called for a floor test, not disputed. That he
25 resigned, the Chief Minister, then Chief Minister resigned, not disputed. That he went to the
26 Governor along with Mr. Fadnavis not disputed. That he was sworn in, not disputed. That
27 there was a trust vote and we issued a Whip, not disputed. That they voted against
28 the Whip, not disputed. What is disputed? Nothing is disputed. From the beginning to the end
29 the whole process is clearly political. Clearly political. And My Lords I want to know, Your
30 Lordship knows about it that a Whip is appointed at the instances of political party and
31 conveyed to the Speaker. That's conveyed to the Speaker. How is the Governor talking about
32 the Whip being Gogawale? He is talking about Gogawale being the Whip in his
33 communications. He is not concerned with it. That's a matter of the House.

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35 **JUSTICE NARASIMHA:** Governor spoke of...

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37 **MR. SIBAL:** Gogawale being the Whip.

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JUSTICE NARASIMHA: Spoke of the Leader of the House, right?

MR. SIBAL: That also. How is he?

CHIEF JUSTICE CHANDRACHUD: ...Is the Whip.

MR. SIBAL: I think also Leader of the House.

CHIEF JUSTICE CHANDRACHUD: Leader of the House, Shinde?

MR. SIBAL: Yes. How is he concerned with it? He is not there to appoint the leader of the House or to recognize. He says a purported appointment of Ajay Chaudhary is illegal. How is he concerned with this? See all this, the letter that he is sending to Uddhav Thackeray.

JUSTICE NARASIMHA: Governor's letters.

MR. SIBAL: Yeah, the Governor is saying all this.

JUSTICE KOHLI: You are referring to para three?

MR. SIBAL: Yes, para three.

CHIEF JUSTICE CHANDRACHUD: That is his letter to Uddhav Thackeray.

MR. SIBAL: Yes, yes.

CHIEF JUSTICE CHANDRACHUD: For holding the trust vote.

MR. SIBAL: Why is he...correct. And he is saying all this. How is he concerned? And if they continue to be, I am grateful to Your Lordships, when Your Lordships asked, if he's the Shiv Sena, then where is the loss of confidence? There is no loss of confidence then. What he is doing is, he is recognizing 34 people to be a faction and on the basis of that recognition then determining that there should be a trust vote. That's what he's doing. The fact of the matter is in law, he cannot recognize. And neither Bommai nor Shivraj Chauhan, nor any of those judgments will come in the way.

1 **CHIEF JUSTICE CHANDRACHUD:** The Solicitor argued towards the later part. He said
2 that what they said in their letter was that we wanted to withdraw support from the
3 MVA Government. So he said this in effect, was therefore a withdrawal of support to
4 the Government.

5

6 **MR. SIBAL:** Let's assume My Lords. I will assume that against me. That can happen in any
7 situation. Any two people, four people, seven people, twelve people, 30 people can withdraw
8 support. They may be members of the legislature. That is why the whole purpose of the
9 Constitution Article 170 onwards into only recognize political parties. Whole purpose is that.
10 That's why Kihoto says that you cannot, you don't have any other identity, integrity of the
11 political party in the political process. That's why. I will accept all that My Lords. That's exactly
12 the *Aaya Ram Gaya Ram* test, that anybody can walk out.

13

14 **JUSTICE NARASIMHA:** The difficulty arises in an emerging situation, just putting this is
15 the question that's been troubling. In an emerging situation suddenly, during the process of
16 the existence of the Legislative Assembly there is this kind of a dissension. Take for example,
17 this very case. So what is very apparent so far as the House is concerned, 34 have come on to
18 one side. This doesn't definitely, there's no material that it reflects what happened
19 outside, there's no doubt about that.

20

21 **MR. SIBAL:** Yes.

22

23 **JUSTICE NARASIMHA:** But in a situation, perhaps one, is it possible, how does one, let us
24 say the Speaker when such a thing is placed before him, would he also take into account or
25 merely adjourn the case asking the parties to go back to the Election Commission and get it
26 proved?

27

28 **MR. SIBAL:** Yes, I was going to come to that. My Lord. Let's forget this case. Let's take a case
29 where people... My Lords I don't take for granted what that letter says on the 22nd that the
30 electorate is unhappy. Your Lordship knows My Lords, there's not a single instance of any of
31 them making any statement prior to the 21st of June that anybody is unhappy. This is all their
32 statement made because they are now sitting in Guwahati and they know what the
33 consequence is. They didn't go to Surat and Guwahati on the 21st. This must have been pre-
34 arranged. My Lords these things don't happen overnight. But be that as it may, I don't want to
35 enter into the politics of it. But Your Lordship is right, it is correct that these things will
36 happen. But what is to be done? What is to be done is, if you are a faction and you go to
37 the Governor, the Governor would say, I can't recognize you. You want to say you are the

1 political party, My Lords. Now forget this case. You go to the Election Commission. You say
2 you are a faction, I am the political party. Suppose he had gone to the Election Commission
3 and done that and then attempted to change no problem. First, the Commission would have
4 decided, in the meantime disqualification petitions would have been heard.

5

6 That's the constitution and don't connect one with the other. Then the disqualification would
7 have been decided. Then they wouldn't have been able to go to the Commission because you
8 are deemed to have given up membership of the party. And forget there may be no dispute at
9 all. Why do you say there's a faction of the Legislation Party. There may be if two factions
10 within the political party, each claiming that they are the party. Forget about disqualification.
11 What's the procedure? Go to the Election Commission. Can the procedure ever be that you
12 claim as a faction of the Legislative Party to be the political party, get recognition from the
13 Governor, topple the government, then go to the Commission and say these are the 36 or 38
14 members of the Legislative Party. We are dominant in the Legislature. Now we must get the
15 symbol. Cannot be. By any standards of constitutional law, this cannot happen.

16

17 **JUSTICE NARASIMHA:** What happens in the interregnum?

18

19 **MR. SIBAL:** Sorry?

20

21 **JUSTICE NARASIMHA:** What happens in the interregnum? Suppose Speaker takes the
22 prima facie view and says that go to the Election Commission and come back to me and tell
23 me who actually is the political party.

24

25 **MR. SIBAL:** No My Lords the Speaker will not do that with great respect.

26

27 **JUSTICE NARASIMHA:** Then he proceeds with Tenth Schedule. Then all the 34 will be
28 disqualified.

29

30 **MR. SIBAL:** Yes. Why not?

31

32 **JUSTICE NARASIMHA:** I am just asking you.

33

34 **MR. SIBAL:** Yes they will be.

35

36 **JUSTICE NARASIMHA:** So therefore that is the consequence.

37

1 **MR. SIBAL:** Yes, let me tell you this is also very important aspect of the...

2

3 **JUSTICE NARASIMHA:** With the advent of Tenth Schedule in a situation like this where
4 more than three fourths of the legislators have, let us call it a not a not a split. Let's call it a
5 faction in terms of Symbols Order. Let us call it as three fourths are in one group.

6

7 **MR. SIBAL:** Yes.

8

9 **JUSTICE NARASIMHA:** Then in which case, it is the inevitable consequence, that the
10 faction which is in control of the government would have the Speaker with them and would
11 disqualify them. There is no other alternative according to....

12

13 **MR. SIBAL:** There can't be for the reason the third paragraph has been deleted. The whole
14 purpose of it is that you cannot have...see they will still be disqualified for their acts for having
15 voluntarily giving up membership of the party, even if they are the party.

16

17 **JUSTICE NARASIMHA:** One-fourth Mr. Sibal, that's why I was asking them repeatedly.

18

19 **MR. SIBAL:** One-third, one-third.

20

21 **JUSTICE NARASIMHA:** One third right? You are talking of a three fourth....

22

23 **MR. SIBAL:** Doesn't matter, My Lords, because one third could have been two thirds also.

24

25 **JUSTICE NARASIMHA:** Isn't there a difference between split and overwhelming majority
26 of legislature.

27

28 **MR. SIBAL:** That is not recognized by the Tenth Schedule My Lords. Tenth Schedule doesn't
29 recognize it.

30

31 **JUSTICE NARASIMHA:** What does Kihoto say about it?

32

33 **MR. SIBAL:** No, Kihoto doesn't say either. Kihoto doesn't say either.

34

35 **JUSTICE NARASIMHA:** Why don't you just helps us from this?

36

1 **MR. SIBAL:** I will. Tomorrow I'll help you. But just one last thing I just wanted to
2 mention My Lords, that...anyways we will do it tomorrow. It is better.

3

4 **CHIEF JUSTICE CHANDRACHUD:** Sorry?

5

6 **MR. SIBAL:** I will do tomorrow My Lords. It is better we will do it tomorrow.

7

8 **JUSTICE NARASIMHA:** Give a thought.

9

10 **MR. SIBAL:** Yes. I've now given your Lordships the entire argument. Now it won't be take
11 very long. Obligated.

12

13 **JUSTICE NARASIMHA:** That prima facie stand that they have argued that also just tell us
14 about that. Just tell us that work...

15

16 **MR. SIBAL:** Sure. Deeply obliged.

17

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END OF DAY'S PROCEEDINGS