

**CHIEF JUSTICE'S COURT**

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

Subhash Desai

v.

Principal Secretary, Governor of Maharashtra and Ors.

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

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TRANSCRIPT OF HEARING

01-Mar-2023  
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Transcript to be read with video recording of hearing.



11:00 AM IST

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**MR. KAUL:** My Lords let me just complete the reading of Shivraj because there were four or five paras left. And then I'll go on to the timelines and the issues referred to Your Lordships. Para 78 . I know I read it yesterday, but just for the sake of...

**CHIEF JUSTICE CHANDRACHUD:** Para... judgment compilation 2.

**MR. KAUL:** Yes, yes. PDF 1388, Volume-one.

**CHIEF JUSTICE CHANDRACHUD:** Volume one?

**MR. KAUL:** Yes.

**CHIEF JUSTICE CHANDRACHUD:** Judgement compilations 1. PDF page?

**MR. KAUL:** 1388. The idea underlying the trust vote in the ultimate analysis is to uphold the political... I did My Lords. I just want to read it again because it gives a continuity to the next three paragraphs. The idea underlying the trust vote in the ultimate analysis is to uphold the political accountability of the elected Government to the state legislature. Assertion of accountability is a mirror image of the collective responsibility of the Government to the legislature. The requirement of the trust vote fulfils that purpose in the present case. The present controversy has shown a light on the often fluid allegiances of democratically elected representatives. This is a matter for their conscience, and the Court expresses no opinion on the matter. However, it is important to note that in directing a trust vote, the Governor does not favour a political, a particular political party. It is inevitable that the specific timing of a trust vote may tilt the balance towards the party possessing a majority at the time the trust vote is directed, all the political parties are equally at risk of losing the support of their elected legislatures just as the legislators are at the risk of losing the vote of the electorate. This is how the system of parliamentary governance operates, and the learned Senior Council on both sides of the dispute congenially admitted that the outcome of the trust vote is the ultimate litmus test for the legitimacy to govern. However, we note that where the evidence indicates that circumstances of violence and coercion exists, that would undermine a free and fair vote in the assembly, the Governor and the Court must take measures to ensure that the sanctity of the trust vote is maintained. In the circumstances as they have emerged in this case the exercise of the authority by the Governor was based on circumstances which were legitimate to the purpose of ensuring that the norm of collective responsibility is duly preserved. There existed

1 no extra ordinary circumstances for the Governor to determine the trust vote was not the  
2 appropriate course of action on 16-03-2020. A significant ground of attack by Dr. Singhvi,  
3 learned Senior Counsel appearing on behalf of the Speaker, on the decision by the Governor  
4 to call for the trust vote is that convening a trust vote at this stage will impinge on the discretion  
5 of the Speaker to determine whether the resignation should be accepted under proviso to  
6 section 190, sub-clause C, sub clause B, and at the second level, to decide upon the  
7 consequences of the resignation in terms of anti defection provisions of the Tenth Schedule.  
8 Short circuiting is the phrase which was used by Dr. Singhvi, implicit in the submission is the  
9 charge that holding the trust vote impinges upon the discretion of the Speaker on whether to  
10 accept the resignations and to decide whether these members have incurred the wrath of  
11 disqualification. While analyzing the submissions articulated by Dr. Singhvi, the cobwebs need  
12 to be cleared. Governor doesn't decide whether the resignations that were submitted by the  
13 members were genuine and voluntary. That is squarely a matter which lies within the domain  
14 of the Speaker. Similarly, whether a member of the House has incurred disqualification under  
15 the Tenth Schedule is a matter where the Speaker is the designated authority. Conscious as  
16 the Court has been of the fact that these are matters which lie within the domain of the  
17 Speaker, in the recent past a direction to the members to appear before the Speaker and for  
18 the Speaker to take a decision immediately was recalled by a three judge bench. Dr. Singhvi  
19 alluded to these orders. It is strike law that neither the Governor nor the, nor for that matter,  
20 this Court has the power to impinge upon the authority of the Speaker to take a decision on  
21 the above issues. The issue, however, is whether the convening of a trust vote has to be deferred  
22 until such time as the Speaker has taken a decision on whether or not to accept the resignations  
23 and if so, the consequence of the members departing from the fold of the party on whose ticket  
24 they were elected under the Tenth Schedule. Holding of a trust vote operates in a distinct field  
25 from the issue as to whether one or more individual member of the legislative assembly  
26 have embarked upon a voluntary act of resignation, or have incurred the wrath of the Tenth  
27 Schedule. Holding a trust vote is necessary to ascertain, whether the Council of  
28 Ministers headed by the Chief Minister has the confidence of the House.

29 The continuous existence of the confidence is crucial to the legitimacy and hence survival of  
30 the government. It is a matter which can brook no delay, since the authority of the Government  
31 presided over by the Chief Minister depends on the Council of Ministers continuing to have  
32 faith of the legislative body as a collective entity. Particularly where the members resigned in  
33 an expression of the lack of faith in the existing government, the convening of a floor test is  
34 the surest method of assessing the impact of designation on the collective bill of the House.  
35 The consequence of acceptance of resignation is to reduce the numerical strength of the House  
36 until the resignation are accepted. The members who have resigned continue to be affected in  
37 the strength...reflected in the strength of the house having regard to the language which has

1 been employed in Article 190s across sub clause 3 sub clause B, shall there upon fall vacant.  
2 Whether in a situation such a present... as the present, an elected government is entitled to  
3 continue despite the resignation of the 22 of its members has a significant bearing on the issue  
4 of confidence. Neither the Governor, not for the matter, neither the Governor nor for that  
5 matter the Court can entrench upon the power of the Speaker, but the pendency of the  
6 proceeding before the Speaker cannot be a valid basis to not have the confidence of the House  
7 in the Government determined by the convening of a floor test.

8 Added to this is the factual circumstance in the present case that the Speaker accepted the  
9 resignation tendered by six of the 22 members on 14-03-2020. All of the members sailed  
10 together. No explanation was, forthcoming in the submission of Dr. Singhvi. of what, if  
11 any, was the distinction between six members whose resignation was accept it with alacrity,  
12 and the remaining 16 on whose resignation no decision has been taken. None of the members  
13 who resign neither the six nor the 16 appeared before the Speaker. Therefore, not appearance  
14 before the Speaker is evidently not a ground of distinction. We have highlighted the above  
15 factual scenario only to emphasize that the convening of a trust vote of crucial importance to  
16 affirm the fundamental values of the Constitution, namely, abiding by the rules which govern  
17 a parliamentary democracy. The fundamental precept to parliamentary democracy is that the  
18 government owes collective responsibility to the Legislative Assembly and as a collective body,  
19 the Legislative Assembly is entitled to hold the government to account. The ultimate  
20 expression of accountability is the existence of or lack of confidence in the Council of Ministers.  
21 We are therefore unable to accept the submission of Dr. Singhvi, that the holding of a trust  
22 vote would short circuit the jurisdiction of the speaker on a matter of resignation and  
23 disqualification.

24 So My Lord, I just halt here for a minute Your Lordship.

25  
26 **JUSTICE SHAH:** Before that, in para 82.

27  
28 **MR. KAUL:** 82, yes. During the course of his summation, Dr. Singhvi fairly accepted that the  
29 holding of a trust-vote at this stage would ultimately only affect the ability of the resigning  
30 members to accept ministerial office in a new government, and that may be formed if the issue  
31 of disqualification is not been addressed in the meantime. Dr. Singhvi submitted that the  
32 effort in such cases is for resigning members to bring down a government on the allure of  
33 ministerial positions in a succeeding government as their disqualification may not be  
34 accepted in future if the government were to change. This is Dr. Singhvi submitted before the  
35 Court is how democratic politics operates in reality, The point of the matter, however, is that  
36 nothing prevents the Speaker from taking a decision either on matters of resignation or  
37 disqualification, despite convening of a trust vote. That Speaker has not yet done so is not a

1 ground to defer the convening of a trust vote. My Lords my respectful submission is that these  
2 two submissions are not being made for the first time before Your Lordships, that immediately  
3 when the Government is formed, a trust vote should only be held then and not later and that  
4 if there is a disqualification pending, there should be no trust vote. These two submissions and  
5 arguments were categorically taken in Shivraj Singh Chauhan and categorically rejected in  
6 there because, My Lords, ultimately, please see, who are we dealing with in this matter. We  
7 are dealing with three distinct constitutional authorities. We are dealing with the Speaker, who  
8 exercises and has the sole authority to exercise jurisdiction under the Tenth Schedule. We are  
9 dealing with the Governor, who's the sole authority to decide whether there should be a  
10 floor test or not. And we are dealing with the Election Commission, which under  
11 the Symbols Order read with Article 324 is the sole authority to decide whether within a  
12 political party a rival faction or a splinter group, as they say, has emerged or not. Now,  
13 repeatedly saying that there has been a split and you have not merged is of no consequence,  
14 because that is no one's case. I have never argued that I have split from the political party. We  
15 have never argued that we needed to merge with another parties. Those were defenses under  
16 the Tenth Schedule. Our consistent and continuous argument has been, that we within  
17 the Shiv Sena represent the rival faction which ought to be recognized as the political party  
18 and has now been recognized as the political party in question in this matter. Now, My Lords,  
19 if Your lordship will recollect then My Lord the Chief Justice also put a very pertinent question  
20 to me yesterday that could it be argued by someone to say that, because you expressed your  
21 dissatisfaction with the Government in question, or the Chief Minister in question, you would  
22 incur the wrath of the Tenth Schedule ex facie, automatically? My Lords Your Lordship in  
23 Yediyurappa, and those lines of judgement have categorically held that merely because a  
24 dissent is expressed within the party, that we have no faith in the Government in power does  
25 not mean that you're acting against the political party, and you do not incur the  
26 wrath of Article 2(1) subclause A. Because till 2nd July, My Lord 2(1)(b) does not get  
27 triggered. Both the disqualification petitions still 2nd of July 2022 are based on Clause....  
28 Para 2, Sub Clause 1, Sub Clause A - whether you have voluntarily given up the membership of  
29 the party or not. And there we have respectfully submitted that time and again, Your  
30 Lordships have interpreted it to say that there must be overt specific acts moving with MPs to  
31 say that we are joining someone else, merging with another party. Those are overt acts which  
32 are considered. My learned friend cited one judgment where they said, in the context to say  
33 that withdrawing support would also amount to the same. But please see the series of  
34 judgments what they say. Yediyurappa categorically says that merely because you go and say  
35 - I have no faith in the Chief Minister. In fact, there it was the Chief Minister. In our case, we  
36 don't even say that. Our case was not that we did not have the faith in the then Chief  
37 Minister to continue with the Government. Our argument was that you cannot continue in

1 the Government in an MVA coalition with the NCP and the INC because My  
2 Lords our resolution of 21st June 2022 categorically said that your pre poll alliance was with  
3 the BJP, your post poll alliance in this era of competing ideologies is with a person and a party  
4 with whom we have had serious differences for decades. And there is a vast  
5 discord and discontent amongst the cadres of the political party and the workers of the Shiv  
6 Sena and thus, and thus we said that this is a case where there is internal dissent within the  
7 party. So right till 2nd July 2022, it was only a case of 2(1)(a) which  
8 the Yediyurappa squarely covers and says that merely because you express internal dissent,  
9 which is the essence of democracy. It cannot be treated to mean that you have voluntarily given  
10 up the membership of the party under 2(1)(a). As far as the Whip issue is concerned, My Lord,  
11 which is a 2(1)(b) issue on 21st there was a Whip appointed by us. They reiterate their faith  
12 in another way. Both give their own categorical direction, which only comes into action..

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14 **CHIEF JUSTICE CHANDRACHUD:** You appointed your Whip on...

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16 **MR. KAUL:** On the 21st.

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18 **CHIEF JUSTICE CHANDRACHUD:** There was already an existing Whip, right?

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20 **MR. KAUL:** No My Lords, There was an existing Whip but then overwhelming  
21 legislature and I'll come to that. I will just develop that argument.

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23 **JUSTICE NARASIMHA:** So that we are flagging for you to answer that Whip arising out of  
24 a legislative party, non the political party. That you answer.

25

26 **MR. KAUL:** Absolutely My Lords. I have because that's one of the issues also framed  
27 by Your Lordships. And when I'll deal with the issues, I'll deal with that as well. But it's  
28 important, My Lord, let me just revisit some of the timelines because a lot has been said on  
29 these timelines. And it's important for Your Lordships to keep in mind these timelines. My  
30 Lords, it is our contention and now I'll just go through some of the important dates, just seven  
31 or eight of them My Lords, to say, that the very act of filing a disqualification petition was in  
32 fact an attempt to stifle dissent in the party after a resolution is passed. and we express no  
33 confidence in this Deputy Speaker. Suddenly a disqualification petition is filed. So, our  
34 respectful submission is that Tenth Schedule cannot be used to stifle dissent within the party  
35 and definitely internal descent does not amount to voluntarily giving up the membership of  
36 the party under Article-218. So, leading up to the 2019 elections My Lords, there was a pre-  
37 poll alliance between the Shiv Sena and the BJP.

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**JUSTICE NARASIMHA:** Those timelines, you are reading from somewhere or...?

**MR. KAUL:** These are just five, six dates, I jotted down. I'm so sorry. I just jotted the relevant dates.

**CHIEF JUSTICE CHANDRACHUD:** No problem. Why did you give us those dates, first take down those dates, and then you can make your submission on that.

**MR. KAUL:** Yes.

**CHIEF JUSTICE CHANDRACHUD:** If you can just give us those dates straight away, and then you can make your submission.

**MR. KAUL:** Yes, what I'll also do by the end of the day, I'll have a page typed out, which I should have done.

**CHIEF JUSTICE CHANDRACHUD:** No problem, you can just straight away, it's five dates, so we can take it down.

**MR. KAUL:** Five or six dates My Lords. 21-06-2022, 22-06-2022.

**CHIEF JUSTICE CHANDRACHUD:** What happened on 21-06-2022?

**MR. KAUL:** My Lords, I just, should I?

**CHIEF JUSTICE CHANDRACHUD:** Oh, you are giving a...

**MR. KAUL:** Whichever way Your Lordships want that.

**CHIEF JUSTICE CHANDRACHUD:** I'm saying it is easier to type it out...

**MR. KAUL:** I must confess, I thought Your Lordship said first give the dates that explained what happened...I'll just give with the event that happened. Very grateful. So, My Lords, on 21st of June 2022, the first meeting of the majority of the Shinde faction of 34 MLAs takes place. 34 MLAs were present in this. Mr. Gogawale was appointed as the Chief Whip and Mr. Prabhu's appointment as the Whip was cancelled with immediate effect.



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**JUSTICE SHAH:** This Chief Whip was appointed by the legislative party?

**MR. KAUL:** That just, yes. Park it, I'll show to Your Lordships that this is not only the convention, this has the authority of the political party. So this whole argument that this is only the legislature party and not the political party, I'll demonstrate that. That is how it's been right through, this whole artificial distinction which has been drawn that it is the legislature party who did it and the political party had nothing to do with it. I'll come to it, that's a specific issue.

**CHIEF JUSTICE CHANDRACHUD:** Let's go through the dates first then we can then focus on that. Dates and events, I mean whatever.

**MR. KAUL:** Dates and events My Lords. So, on 21st Mr. Gogawale is appointed as the Chief Whip, Mr. Prabhu's appointment as the Whip is cancelled with immediate effect and a resolution is passed which categorically provided that there is enormous discontent amongst the carders of the party for forming a Government with NCP and INC, who are ideologically opposed to the Shiv Sena. The resolution also said that the act of entering into a coalition had a tremendous negative impact on the voters and the party cadres at large and that there was hue and cry towards the party leaderships for the act of aligning with the opposing parties. And then it categorically says that the MLAs, as well as the leaders and workers throughout the country are facing a lot of humiliating questions on this count. So this is what we did. On the same day the minority faction within the party, which at that stage was 24, now is of course less than 14, 24 of them on that day.

**CHIEF JUSTICE CHANDRACHUD:** On 21st June, itself?

**MR. KAUL:** 21st June itself, met and passed the following resolutions. One, removing Mr. Shinde as the leader of the party because Mr. Shinde also had been a leader since 2019 of the Legislature party. So they removed Mr. Shinde as the leader of the party and they appointed Mr. Ajay Chaudhary as the leader of the Legislature party. The resolution also recognizes Mr. Prabhu as having been appointed as a Whip previously. On 21st itself My Lords a notice was also sent by the majority faction, that is the Shinde faction, for removal of the Deputy Speaker. This notice was issued on behalf of and signed by 34 MLAs of the Shiv Sena Legislative party.

1 **CHIEF JUSTICE CHANDRACHUD:** So is it not therefore clear that on the 21st, there are  
2 really two clear...there are two clear factions. One you claim that well, there were 34 with you  
3 and the others say that well, they're 24. The 24 say that we're reiterating here Prabhu.

4

5 **MR. JETHMALANI:** 21 actually.

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7 **CHIEF JUSTICE CHANDRACHUD:** Right 21. Not 24.

8

9 **MR. KAUL:** Now on 21st itself the Deputy Speaker communicates to the minority faction that  
10 they have accepted Mr. Ajay Chaudhary as the leader and does not respond to our...

11

12 **CHIEF JUSTICE CHANDRACHUD:** Come again.

13

14 **MR. KAUL:** On 21st itself, the Deputy Speaker or the sorry the Under Secretary of the  
15 Maharashtra Secretariat communicates to the party that they have appointed Mr. Ajay  
16 Chaudhary as requested by the minority faction, and does not respond to our communication  
17 at all. On 22nd of June 2022, a notice is given by the minority faction to attend an emergency  
18 meeting on the same day at 05:00 PM. And the notice said if you fail to attend, it will be  
19 deemed to indicate your clear intention to voluntarily give up the membership of the party.  
20 That's been their only case of voluntarily giving up the membership.

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22 **CHIEF JUSTICE CHANDRACHUD:** Attend the meeting on?

23

24 **MR. KAUL:** 22nd of June, 2022.

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26 **CHIEF JUSTICE CHANDRACHUD:** Same day meeting. Meeting is to be held on?

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28 **JUSTICE KOHLI:** Same day meeting.

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30 **MR. KAUL:** My Lord, yes on the same day at 05:00 PM. On the very same day My Lords...On  
31 the very same day, the majority faction writes to say that Mr. Prabhu's, letter stating.. calling  
32 for a meeting. He had no authority to call for a meeting, and therefore the notice is invalid as  
33 he had been removed from his position as the Chief Whip.

34

35 **JUSTICE KOHLI:** No, writes to?

36

1 **MR. KAUL:** The majority faction replies to Mr. Prabhu's notice because he had called a  
2 meeting the same evening of the minority faction.. he was part of the minority faction, issued  
3 a letter calling for an emergency meeting at 05:00 P.M on the same day.

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5 **JUSTICE KOHLI:** It is stated that he has no right.

6

7 **MR. KAUL:** Because he had been removed on 21st as the whip by the majority faction. On  
8 23rd June, the first disqualification petition, on 23rd June the first disqualification petition is  
9 filed before the Speaker...before the Deputy Speaker against 16 MLAs by Mr. Prabhu on the  
10 grounds that they had voluntarily given up the membership of the party to attend the meeting  
11 as they did not attend the meeting on the 22nd.

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13 **CHIEF JUSTICE CHANDRACHUD:** First disqualification petition is filed before the  
14 Deputy Speaker...

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16 **MR. KAUL:** On the grounds...

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18 **CHIEF JUSTICE CHANDRACHUD:** By Mr. Prabhu?

19

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

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22 **CHIEF JUSTICE CHANDRACHUD:** That they had voluntarily given up membership.

23

24 **JUSTICE NARASIMHA:** When was your notice to the Speaker for removal of Speaker  
25 given?

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27 **MR. KAUL:** On 21st June 2022.

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29 **JUSTICE NARASIMHA:** So therefore that's the one first day of your...

30

31 **MR. KAUL:** Prior in time.

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33 **JUSTICE NARASIMHA:** So that date hasn't come. So 21st is the notice given by your group  
34 for removal of the Speaker.

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36 **MR. KAUL:** Of the Deputy Speaker. Because there was no Speaker. For the removal of  
37 the Deputy Speaker.

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**CHIEF JUSTICE CHANDRACHUD:** So that 21st is a cancellation of Prabhu's appointment as a Whip and for also the removal of the Deputy Speaker.

**MR. KAUL:** It My Lord has first, Mr. Gogawale appointed as the Whip.

**CHIEF JUSTICE CHANDRACHUD:** Right.

**MR. KAUL:** Mr. Prabhu cancelled with immediate effect.

**CHIEF JUSTICE CHANDRACHUD:** Right.

**MR. KAUL:** The resolution that there is widespread discontent passed on the same day.

**CHIEF JUSTICE CHANDRACHUD:** That we took

**MR. KAUL:** And also the note... separate notice issued to the Deputy Speaker.

**CHIEF JUSTICE CHANDRACHUD:** Yaa.. That.. you are right. Separate notice for removal of the Deputy Speaker.

**Mr. KAUL:** Under Article 179C. My Lords may I? Now on 25th of June 2022, disqualification notices are issued to 16 MLAs by the Deputy Speaker asking the MLAs to file their replies by 05:30 p.m. On 27th June 2022.

**CHIEF JUSTICE CHANDRACHUD:** Before that 23rd June, the first disqualification petition is for how many people?

**MR. KAUL:** For 16.

**JUSTICE KOHLI:** For 16 MLAs.

**CHIEF JUSTICE CHANDRACHUD:** Okay. Then the next one was 25th, you said?

**MR. KAUL:** Yes, 25th. Disqualification notices issued to the 16 MLAs by the Deputy Speaker asking them to file their replies by 05:30 p.m. on 27-06-2022 and 26th and 27th were the weekend. So these two non-working days are given to file a reply.

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**JUSTICE KOHLI:** 26th or 27th. Which one Mr. Kaul?

**Mr. KAUL:** 25th is when they are given a notice to file their replies by 27th. So intervening are two non-working days which are 26th and 27th, are both nonworking days. It's the weekend. Now on 25th, it's an important event My Lords, even the Thackeray faction writes to the Election Commission. The minority faction writes to the Election Commission. So they go to the Election Commission to say that there is a rival faction, which may set up a political party and we are the Shiv Sena, they write to the Election Commission invoke the jurisdiction of the Election Commission. And that order is not the subject matter before Your Lordships, the EC order which Your Lordships are dealing in are other matter, where I've been recognized as the political party categorically says that this rival factions had emerged on 21st and maybe was the culmination of dissent for a long time, culminated in the resolution of 21st June 2022. It is in this background that on 27th of June 2022, we come to the...to this Honourable Court to say that (a), there has been a serious violation of principles of natural Justice because instead of the scheduled period of seven days, a two day period over the weekend is provided to us and we need more time to file a reply. We also argued Nabam and I repeatedly said, so I'm not for a minute ever suggested that we did not ask argue Nabam. We also argued Nabam to say that quite unlike the cases of Kihoto, and this was heard at length where it says that you will not interfere at an interim stage. Nabam, which is much later in time, takes note of it and says but where there is a petition pending for the very removal of the Speaker, it would be constitutionally and ethically not proper for him to continue, he can always in the meantime prove his majority on the floor of the House and then continue with the disqualification petition. Because as Justice Mishra in detail said that no harm is caused. That the earliest prove your majority, you can lay down the timeline, show that you have the confidence and proceed with that disqualification. But the reversal would be disastrous because you would then set the pool and composition of the House to suit yourself so that no one can remove you in the meantime. And those entire arguments that Your Lordships have heard on the 14 days, 7 days etc., would be utilized and that has to be seen, the then members, have to be seen in the context of the Notice on the date which was given to you. Your conflict of interest starts on that date when the Notice is given to you. And you would utilize that time. This is what Justice Mishra dealt with in that judgment in Nabam to say that, look at the reverse. Nothing happens in the meantime. If you are...tomorrow you win the confidence, you come back and you win the confidence. But as far as the other party is concerned, it's lost an opportunity to vote against you. Now My Lords, after this, it was keeping this in mind after hearing arguments of this, the Court consciously still only extended, did not

1 injunct the Speaker, gave time till the 12th. And of course, My Lords, we had also in this  
2 raised as a justification for coming in an Article 32 to the Supreme Court was that there was a  
3 threat to our lives. Homes were being burned and we read out the press statement of Mr. Rout  
4 and others and saying that you will see a series of dead bodies coming etc. And we said it's  
5 not safe for us to go and that is why we are out of the state. So these are the principle three  
6 grounds, that we came on. The Court consciously on that day said only time is extended  
7 because the period provided as for us was seven days, which was not complied with. On 27th  
8 of June 2022, the second disqualification petition is moved. This time against  
9 22 MLAs, is filed by Mr. Prabhu.

10

11 **JUSTICE NARASIMHA:** That's also 27th, is it?

12

13 **MR. KAUL:** 27-06-2022.

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15 **CHIEF JUSTICE CHANDRACHUD:** Yes, how many MLAs?

16

17 **JUSTICE KOHLI:** 22.

18

19 **MR. KAUL:** Till date My Lords, subject to correction, I am instructed to say that no Notice  
20 has been received or was received unlike in the case of the first 16, by any of the people against  
21 whom disqualification was alleged.

22

23 **JUSTICE KOHLI:** Out of these 22?

24

25 **MR. KAUL:** Against these 22. On 28th of June 2022, leader of the opposition  
26 Mr. Fadnavis went to meet the Governor and requested him to hold a floor test, as the  
27 Coalition Ministry had lost the confidence of the House.

28

29 **MR. JETHMALANI:** My Lords, may I just say one thing. On the second it's very  
30 important, reasons I'll point out later that as far as the second disqualification is concerned,  
31 allegedly on 27th, First, as my learned friend pointed out, there was no notice but for the first  
32 time the disqualification petition of the remaining 22 MLA's is concerned, it's only on this 8th  
33 of July petition. Up to 8th of July, it is never alleged that there was  
34 any disqualification petition pending. In fact, in all the averments, as I point out when I come  
35 to it. In all the averments in every period it has always been said that there are only 16 MLAs  
36 disqualified. On the 8th of July, when they filed their petition in this court, for the first time  
37 they alleged that there was a 27th July notice or petition for disqualification of 22 MLAs.

1 Actually the factual matter is, there has never been any disqualification petition to my  
2 knowledge, filed till 8th July.

3

4 **MR. KAUL:** Now on 28th of June 2022.

5

6 **CHIEF JUSTICE CHANDRACHUD:** That's when the leader of the opposition meets the  
7 Governor and seeks a floor test.

8

9 **Mr. KAUL:** The leader of the opposition yes, meets the governor My Lord, that Chief  
10 Justice is absolutely right. And the Governor then issues a communication on 28th June 2022  
11 to Mr. Thackeray directing him to face a floor test on the 30th of June 2022.

12

13 **JUSTICE KOHLI:** So both events of the same day?

14

15 **MR. KAUL:** Yes, Yes and as I had read out the letter to Your lordships yesterday, it  
16 specifically refers in detail to three things. One is 7 MLAs, who are part of the government,  
17 including two ministers withdrawing their support. The letter of the leader of the opposition  
18 saying that it has lost its majority and the resolution of 21-06-2022 passed by 34 of the 55  
19 MLAs saying that there is a huge discontent within the party. And he calls upon, he calls upon  
20 Mr. Thackeray to face the floor test on 13th. Now immediately after that on 29th of June  
21 2022, Mr. Prabhu filed a writ petition before the Supreme Court, seeking a stay on the  
22 direction calling for the floor test. On the ground, the disqualification petitions of 42 MLAs  
23 was pending consideration.

24

25 **CHIEF JUSTICE:** That stay was refused by our courtrooms.

26

27 **MR. KAUL:** And My Lord argument were heard till late evening and our contention right  
28 through was that how can any Chief Minister ever say that I will not face a floor test? Because  
29 your lordships have said time and again that Floor test should brook no delay. It's the litmus  
30 tests of democracy, a floor test should be held the moment and the words used in Bommai by  
31 your lordships are, the Governor, as the constitutional authority is entitled by any means or  
32 process the words used are .. by any means of process in para. 121 to say to come to a  
33 conclusion that this necessitates a floor test. So when you Lordship put that question to me  
34 yesterday, my respectful submission was that what else is a Governor expected to do? He is  
35 not concerned with the Tenth Schedule legislator party versus political parties. His only  
36 concern is does the government enjoy the majority on the floor of the House or not? Now...

37

1 **CHIEF JUSTICE CHANDRACHUD:** Did you complete the dates?

2

3 **MR. KAUL:** Sorry I digressed. Let me complete the dates.

4

5 **CHIEF JUSTICE CHANDRACHUD:** Complete the dates.

6

7 **MR. KAUL:** Yes. Yes. So the court then says the floor test of the 30th and categorically only  
8 says the floor test of 30th is subject to the outcome of the proceedings but that floor test on  
9 30th never happens because on 29th Mr. Thackeray within ten minutes of this stay being  
10 refused, resigns as the Chief Minister. On 30th June 2022 My Lords, Mr. Shinde and  
11 Mr. Fadnavis approached the Governor as a coalition staking claim to form the government  
12 and on 30th, the Governor swore in Mr. Shinde as Chief Minister, and Mr. Fadnavis  
13 as Deputy Chief Minister, and directed the new coalition to prove its majority on 4-07-2022.

14

15 **CHIEF JUSTICE CHANDRACHUD:** They are sworn in on the 30th itself?

16

17 **MR. KAUL:** Yes, My Lords.

18

19 **CHIEF JUSTICE CHANDRACHUD:** Through the majority on the 4th.

20

21 **MR. KAUL:** Yes, on the 4th. Now on 30th, even the minority faction claims that they sent a  
22 letter which is as per the Election Commission received on 1st in their office, again bringing to  
23 the notice of the Election Commission, as they did on 25th, a change in organizational setup  
24 of the party, including Mr. Shinde's removal as the leader of the Legislature party.

25

26 **JUSTICE KOHLI:** Mr. Kaul, will you repeat yourself?

27

28 **MR. KAUL:** Yes so lady, on 30th even the minority faction claims which of course, as for the  
29 Election Commission, is a letter received on 1st of July, they write to the Election  
30 Commission intimating change in the organizational setup of the party including Mr. Shinde's  
31 removal as a leader of the Legislative party. He is not removed as a member of the party, but  
32 as the leader of the Legislature party, is their letter. The purpose that I'm emphasizing is that  
33 both on 25th and 30th they themselves invoke and go to the EC, knowing very well that for  
34 any dispute intra-party is a dispute exclusively within the jurisdiction of the Election  
35 Commission. Now on 2nd of July 2022 Mr. Prabhu purportedly acting as a Shiv Sena  
36 Chief Whip issues a whip to the members of Shiv Sena Legislative Party regarding the election  
37 of the Speaker and the confidence motion. As for us on 21st, he stood removed. He had no



1 authority to issue any such Whip. On 2nd he issues this Whip and this is the first date when  
 2 their argument of 2(1)(b) of the Tenth Schedule emerges because till now it is only 2(1)(a)  
 3 voluntarily giving up the membership of the party while not attending the meeting on 3rd  
 4 of July 2022 at 12:01 p.m. Mr. Rahul Narvekar is elected as the Speaker with a total of 164  
 5 votes. The same day My Lords at 12:02, and the rival candidate only gets, I'm grateful to my  
 6 learned friend, gets only 107. At 12:01 Rahul Narvekar is elected as the Speaker with a total of  
 7 164 votes. On the same day on 3rd, 2022 at 12:02 p.m. certain MLAs from the former MVA  
 8 coalition issued a notice for the removal of Mr. Narvekar is Speaker after him having won his  
 9 election. And after this on the 3rd itself they file a fresh disqualification proceeding against all  
 10 the 39 MLAs purportedly for voting against the party Whip regarding the election of the  
 11 Speaker. And this they now alleged 2 (1)(b). On 3rd itself My Lords Mr. Narveker recognizes  
 12 Mr. Gogawale as the Chief Whip, and Mr. Shinde as the Leader of the Shiv Sena party, which  
 13 in any case, as for us, on 21st, Mr. Gogawale was appointed and Mr. Shinde, who had been the  
 14 Leader since 2019. We had reiterated our faith in his content.

15

16 **CHIEF JUSTICE CHANDRACHUD:** Yes.

17

18 **Mr. KAUL:** Now they thereafter also challenged Mr. Narvekar's recognition of Mr.  
 19 Gogawale and Mr. Shinde before the Supreme Court, which is one of the petitions pending  
 20 before Your Lordships. And this time on the ground on Nabam Rebia, saying that he cannot  
 21 proceed with the disqualification as there is a petition against him for removal pending. On  
 22 4th of July 2022, the House reaffirmed its confidence in the newly elected  
 23 Speaker Mr. Narvekar. So My Lords, on 3rd he wins. You again move after his winning. Two  
 24 minutes later he again.. the House reposes its confidence on the 4th. And on 4th then the  
 25 confidence motion called for on the floor of the House, wherein Mr. Shinde's Government  
 26 proves its majority in the House. 164 for, 99 against. Now for a minute, My Lord, because  
 27 there's been so much confusion as I'm reading this timeline, please have this chart as well. It's  
 28 important. My Lords I've had copies made. Sorry because this otherwise will be an endless  
 29 exercise on the numbers which...

30

31 **CHIEF JUSTICE CHANDRACHUD:** Where is the second page?

32

33 **MR KAUL:** My Lords, I'm so sorry we have printed the...

34

35 **JUSTICE SHAH:** On 2nd when Mr. Prabhu, issued the Whip...fresh Whip.

36

37 **Mr. KAUL:** Yes, My Lord yes,

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**JUSTICE SHAH:** On 2nd July. He issued the fresh Whip.

**Mr. KAUL:** Yes.

**JUSTICE SHAH:** Though according to you he could not do because he was his Whip was already removed on 21st June.

**Mr. KAUL:** Right.

**JUSTICE SHAH:** That was with respect to the election of the Speaker as well as the trust vote on 4-7.

**Mr. KAUL:** Yes.

**JUSTICE SHAH:** Can it not be said that by issuing the fresh Whip they have accepted the calling of the trust vote on 4 -7.

**Mr. KAUL:** Yes.

**JUSTICE SHAH:** So you can very well and your submission can.

**MR. KAUL:** I'm grateful. I'm grateful.

**JUSTICE SHAH:** Your submission can...they cannot challenge.

**MR. KAUL:** I'm grateful. I'm grateful.

**JUSTICE SHAH:** Subsequent calling the trust vote on 04-07. Otherwise they could not issue the Whip on 04-07.

**MR. KAUL:** I'm grateful. I'm grateful. Your Lordships are right.

**JUSTICE SHAH:** But we wanted to, at least I wanted to know that it was with respect to both. Speaker's election as well as...[UNCLEAR]

**MR. KAUL:** Yes, yes. Now, My Lord.

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**JUSTICE SHAH:** Trust vote.

**MR. KAUL:** Yes. Now My Lords, kindly have this chart. Now, first, is the election of the Speaker, Mr. Rahul Narvekar on 3rd of July 2022. My Lords has that?

**CHIEF JUSTICE CHANDRACHUD:** Yes.

**MR. KAUL:** Now, please see, this is, I've done the exercise both with 42 and without 42. I've done both the exercises on both the Speakers and the confidence. So first it says, voting in the election of the Speakers so and so, including the 42 members against whom disqualification petition was pending. Now please see My Lords, Shiv Sena 39, BJP 105, others 20 total votes received by Mr. Rahul Narvekar 164, total votes against Rahul Narvekar 107, abstain absent members 16, total strength of the House 287, strength minus the abstain is 271, majority mark 136, votes secured by Speaker 164. Now please have the one where we remove the 42. Shiv Sena zero, BJP 105, others 17, total votes received by Rahul Narvekar 122. That is 164-42. Total votes against Rahul Narvekar 107, abstained Absent 16, total strength 245, strength minus abstain 229, majority mark 115, votes obtained 122.

Now please have My Lords, on the back of the page. Voting in the floor test of the Government on 4-07-2022, including 42 members against whom disqualification petitions were pending. Shiv Sena 39, BJP 105, others 20, votes in favour of Eknath Shinde 164, votes against Mr. Eknath Shinde 99, abstain 24, total strength 287, strength minus abstained votes 263, majority mark 132, majority votes obtained by Eknath Shinde 164, against 107. Now kindly have where 42 are removed. Shiv Sena, so BJP 150, others 20, votes in favour of Eknath Shinde 122, votes against Eknath Shinde 99, abstain 24, total strength 245, strength minus abstained votes 221, majority mark 111, vote secured by Mr. Shinde discounting 42 MLAs is 122.

Now, I'll come to the issues, and I will proceed issue wise, because I have to deal with as My Lords have said, not only each of those issues plus also the issue of legislature party versus political party. But just before that there is one submission that I wanted to make which is, we are dealing with three constitutional authorities. An attempt is to confuse issues as far as the exclusive jurisdiction of each of the three is concerned. The Governor, all that he is concerned with is, do you in a democracy, have the confidence of the House or not? Now what better way to test that confidence than a floor test, having said that I am not for a minute suggesting that it's not subject to judicial review or you can just ask for a floor test for the asking and there can be...there has to be material, there has to be due application of mind. But when an overwhelming number of MLAs write to you for various reasons and say that the

1 concerned Government or the Ministry does not enjoy confidence, what is wrong with  
2 the Governor having taken the decision of just given the opportunity to the then Chief Minister  
3 to face a floor test. In fact, rather than dissolving or sending a report to the Governor and at  
4 which Supreme Court repeatedly frowned upon by saying that there used to be a huge misuse  
5 of Article 356, where reports to the President was said dissolving the House. They said the first  
6 thing is let them face the floor test. What is wrong with it? That is one. Secondly, My Lord,  
7 comes the issue of the Election Commission. The Election Commission, under the Symbols  
8 Order decides on...what the words use are splinter group/rival faction. Those are the words  
9 used in para 15 of the Symbols Order. This whole argument that I have split, I have not merged  
10 is not my argument at all. I have never claimed a split. I am claiming a rival faction within the  
11 party which according to us represents the Shiv Sena and has now been recognized as the Shiv  
12 Sena. Because Your lordships have held that ultimately went two rival factions emerged within  
13 a party you can't recognize both is what Your Lordships judgements have held. Because a  
14 symbol can't be split into two, a name can't be split into two. It ultimately has to go to one or  
15 the other rival factions. In this case, that is a separate petition. But the competent body has  
16 decided to say that I represent the rival faction, which would be recognized as the political  
17 party and that's a decision exclusively vested in the Election Commission. Sadiq Ali  
18 downwards, including on interim orders, including on deciding whether political majority,  
19 legislative majority, two to be taken together. What's the cut-off date when disputes have  
20 arisen. What numbers will be seen? They say that the only party...only body entitled to an  
21 equipped to deal with it.

22

23 **CHIEF JUSTICE CHANDRACHUD:** Mr. Kaul for the purposes of the Tenth Schedule it  
24 makes no difference as to whether the rival faction which has emerged, claims to still be within  
25 the fold of the strived political party or forms a new political party in the Legislature. It makes  
26 no difference at all. Once the Tenth Schedule attaches a disqualification the moment you have  
27 a rival faction unless you make out one of the defences, and it makes absolutely no difference  
28 whether you are saying that well we are in the same party. We are only saying that we represent  
29 the same party. Here all the dates you have given us make it very clear that there is a rival  
30 faction. From the 21st, 34 MLAs represent a rival faction. They say, well we are the Shiv Sena.  
31 There was a great deal of discontent because you teamed up with the Indian National Congress  
32 and the NCP when you were ideologically opposed to them, that we had a pre poll alliance with  
33 the BJP. They're fair enough that's their contention. But does that oblivate the fact that this  
34 is a rival faction within the meaning of the Tenth Schedule and a split within the meaning of  
35 the Tenth Schedule.

36

1 **MR. KAUL:** And I was just coming to that matter. That's why I said three different  
2 authorities, three different provisions. I am not for a minute suggesting that Tenth Schedule  
3 has a bearing there at all as far as Election Commission is concerned, the third issue I  
4 just touch on My Lords.

5

6 **CHIEF JUSTICE CHANDRACHUD:** And you know, a split does not postulate that people  
7 who are party to a split leave the party. It maybe that the people who split sometimes leave the  
8 party, but otherwise the Tenth Schedule will also operate where, a group of persons, whether  
9 minority or majority say that we belong to the same party. And though you've constantly said  
10 that you know the Eknath Shinde faction was the majority, and the Uddhav Thackeray faction  
11 represented a minority after the 21st. It makes no difference to the application of the  
12 Tenth schedule as to whether what who remains is in the minority.

13

14 **Mr. KAUL:** I will answer that. So one My Lords the Governor as far as the floor test, the  
15 Election Commission which looks at everything including the Legislature party, the political  
16 party which according to us are integral. You can't segregate them and come to a conclusion  
17 which rival factions or splinter group should be recognized as the party. Then comes the issue  
18 of the scope of the Tenth Schedule. As far as the Tenth Schedule is concerned an attempt is  
19 being made to place before Your Lordships to say that this was only the legislature party. This  
20 was not the political party, and in 2(1)(b) what is mentioned is the political party and not the  
21 legislature Party. And in Mayawati Your Lordships say that it is not the legislature Party, it's  
22 the political party which is mentioned in 2(1)(b) and it can only be read as the political party.  
23 This is what is your what your Lordships are told. Now My Lords, I have never ever said that  
24 the two are different. Our argument right through has been that this decision of the  
25 Legislature Party has the authority of the political party and the only interaction that a Speaker  
26 has while deciding on whether 2(1)(b) has been violated or not is his interaction with the  
27 leader of the legislature party and the Whip appointed. Because conventions have also shown  
28 and I will come to those specific Maharashtra Assembly rules that have not been shown to  
29 Your Lordship. The members of the legislature party appoint the leader of the legislature party.  
30 The leader, in turn informs the Speaker about all posts, all designations, which necessarily  
31 implies also about the Whip who is appointed in any change in that. Even when the defence of  
32 Para 3 existed, when the defence of Para 3 existed, there were only two defences, Para 3 and  
33 merger in 4. Even when the defense of Para 3 and split in the state. The Supreme Court in  
34 Rana said that the Speaker cannot embark on any independent inquiry as to what has  
35 happened within the power Political Party in a split within. He will only for purposes of  
36 disqualification take up prima facie view. In any case that is today academic because Para 3  
37 has gone. Now what will the Speaker today look at? The Speaker under 2(1)(b) will look at who

1 has issued the Whip? what is the direction? Now as per us, the Whip as on 21st is not Mr.  
2 Prabhu and we are not obliged to follow any direction of his. We are not for a minute  
3 suggesting, in fact, our contention has been that the Speaker cannot determine, Your Lordship  
4 are absolutely right. The Speaker under Tenth Schedule is not required to go and determine  
5 whether a political party is split or not. That is the EC's jurisdiction. All that they look at is  
6 which are the set mode. The set mode is a Speaker doesn't embark on finding out in the lack  
7 of membership, who is the political party, who was expelled, who was not expelled. His  
8 interaction is with the essentially the legislature party. Now the problem which comes in the  
9 argument of the other side, is to say - No. The word mentioned is political party and since the  
10 two are separate, you are only relying on the legislature party. That is not our argument. The  
11 Symbols Order Para 6 and 6A, categorically provides that even for the continued recognition  
12 of a political party, it's vote percentage, it's elected representative, it's elected members of  
13 Parliament are all important to determine the existence and continuance of a political party.  
14 So when you say this is legislature, this is political, that's an artificial distinction you are  
15 drawing. According to us, according to us, that legislature party has the political authority of  
16 the political party and that has been the convention right through. And I will show two letters.  
17 One is on record, one is not. Every time that a Whip is communicated to the Speaker  
18 it's the legislature party which communicates the Whip...to the Speaker. So this argument,  
19 which is sought to be made, is that Mayawati said it's only the political party. You are the  
20 legislature party. Thus you incur the wrath of 2(1)(b).

21

22 **CHIEF JUSTICE CHANDRACHUD:** Can we see the rules of the Maharashtra Legislature?

23

24 **Mr. KAUL:** Yes. I'm very grateful for that. I'm very grateful.

25

26 **CHIEF JUSTICE CHANDRACHUD:** Those rules are very, very important.

27

28 **MR. KAUL:** Yes. Yes. Statute compilation My Lord on PDF Page 4 starting at 6. Rule 2F.

29

30 **JUSTICE NARASIMHA:** First compilation? Statutes?

31

32 **CHIEF JUSTICE CHANDRACHUD:** Page? What page?

33

34 **MR. KAUL:** PDF Page 6.

35

36 **JUSTICE NARASIMHA:** This contains the entire rules or only part of them?

37

1 **Mr. KAUL:** My Lord, these are the entire rules I am told. Yes., the disqualification rules My  
2 Lords. My Lord they were framed under Para 8 of the Tenth Schedule. First My  
3 Lords 2 (G) page 7. Then I'll go to the earlier section, but first have 2, sub-clause G. Member  
4 means, My Lord has that? Member means a member of the Maharashtra Legislative  
5 Assembly. It says nothing else. Now please have 2, sub-clause F. Leader in relation to  
6 a legislature party means a member of the party chosen by it as its leader and includes any  
7 other member of the party authorized by the party to act in the absence of the leader as or  
8 discharge the functions of the leader of the party for purposes of these rules. And now kindly  
9 have rule 3, sub-clause 1. My Lords have rule 3(1)? May I My Lords? My Lords the Chief  
10 Justice, may I? Rule 3, information to be furnished by leader of a legislature party. The leader  
11 of each legislature party other than the legislature party consisting of only one member shall  
12 within 30 days, after the first sitting of the House or where such legislature party is formed  
13 after the first sitting, within 30 days after its formation or in either case within such further  
14 period as the Speaker may for sufficient cause allow furnish the following to the Speaker,  
15 namely:

16 a) A statement in writing containing the names of the members of such legislature party  
17 together with other particulars regarding such members as informed one and names of  
18 designations of the members of such party who have been authorized by, for communicating  
19 with Speaker for purposes of the rules.

20 And now kindly have rule 3, sub-clause 4, page 8. Whenever any change takes place in the  
21 information furnished by the leader of the legislature party under sub-rule one or by a member  
22 under sub-rule two, he shall as soon as may thereafter, and in any case within 30 days from  
23 the date on which such change takes place or within such further period as the Speaker may,  
24 for sufficient cause allow, furnish writing information to the Speaker with respect to such  
25 change. So it's the leader of the legislature party who communicates, points out the  
26 designations, the posts and the people who are appointed. And today clearly within two rival  
27 factions are claiming that their leader is the leader of the legislature party and the Whip. Now  
28 the Speaker at this stage only goes by what the leader communicates. The Speaker,  
29 as Your Lordships have held, has no independent tools at his disposal to go and find out  
30 within a political party where lakhs of taluka, district level party organizations members  
31 constitutions are involved. That is how we interacts. Now they attempt to get out of it by saying  
32 that you only had a meeting of 34 legislatures so thus you're only the legislature party. So our  
33 contention, it says, is who? You decide on your own that I have disqualified under 2(1)(a), you  
34 decide I'm disqualified under 2(1)(b). And without a speaker deciding on either of the two.  
35 And you want and you tell the court that this is x-ray shy evident that you have lost your  
36 membership, your hit by the Tenth Schedule and so you should be declared disqualified.

37

1 **JUSTICE NARASIMHA:** So this form one should include Whip also?

2

3 **MR. KAUL:** I not to sure whether it does. It does.

4

5 **JUSTICE NARASIMHA:** It normally does, but...

6

7 **MR. KAUL:** It does. It does. Such members as inform one and names and designations of  
8 members who have been authorized.

9

10 **JUSTICE NARASIMHA:** Who have been authorized by...

11

12 **MR. KAUL:** Who have been authorized by it for communicating with the speaker. So which  
13 includes My Lords communicating in any form, including the views. Now please see.

14

15 **JUSTICE NARASIMHA:** Yes, the communication.. it talks about the Speaker for the  
16 purpose of these rules. These rules also relate to....

17

18 **Mr. KAUL:** Now kindly have 3(5) where a member where a member belonging to any  
19 political party votes or abstains from voting in the assembly contrary to any direction issued  
20 by such political party, or by any person or authority authorized by it in this behalf, without  
21 obtaining in either case the prior permission of such political party. A person or authority, the  
22 leader of the legislature party concern or where such member is the leader or is the case, may  
23 be the sole member of that legislator party. Such members shall as soon as maybe thereafter,  
24 and in any case within 30 days from the date of such voting, or abstention inform the Speaker  
25 as informed to whether such voting or abstention has or has not been condoned by such  
26 political party, person or authority. But today the limited issue before Your Lordships as far as  
27 the Tenth Schedule is, how does the speaker determine it? They want today the speaker to  
28 embark upon and decide what the EC is meant to decide. The Legislature party, the political  
29 party, according to us, are not distinct. They are conjoined, integral and organically connected  
30 with each other. That is...

31

32 **CHIEF JUSTICE CHANDRACHUD:** The bar, Who have who's not gone paperless.

33

34 **MR. KAUL:** May I, may I would respect say from the day this hearing has started, I've been  
35 praying that you lordships doesn't ask me this question, but finally it was inevitable and it has  
36 fallen on me today. But your Lordships can be reassured. I'm trying very hard and I have this



1 with me and I'm taking some classes and lessons in it. Give me some time. Hopefully I'll be  
2 there.

3

4 **CHIEF JUSTICE CHANDRACHUD:** Before the next CB.

5

6 **MR. KAUL:** For sure My Lords.

7

8 **JUSTICE NARASIMHA:** Your other two colleagues have coped up.

9

10 **MR. KAUL:** Yes they are far more able, My Lord in all fairness, I've read out a few judgments  
11 from this. In fairness and in my defence I've read out at least a few judgements from this.

12

13 **CHIEF JUSTICE CHANDRACHUD:** Your navigation is being done by your junior you  
14 have to also do the navigation yourself. That's also the essence of being paperless, you see.

15

16 **Mr. KAUL:** Well Your Lordships time is precious if I start doing the navigation at the  
17 moment.

18

19 **CHIEF JUSTICE CHANDRACHUD:** Alright.

20

21 **MR. KAUL:** So if that is the layout, please see how have parties understood these rules in  
22 terms of communicating to the speaker.

23

24 **JUSTICE NARASIMHA:** Now we also...if you can show us some kind of a practice which is  
25 being followed.

26

27 **MR. KAUL:** Yes. That's what I'm coming to. That's exactly what I'm coming to. So, please,  
28 immediately. Now have...

29

30 **JUSTICE NARASIMHA:** Mr. Kaul this only answers half of the contentions raised by the  
31 other side only to show that these names will be forwarded by the Leader of the House to the  
32 Speaker.

33

34 **MR. KAUL:** Yes. No, no My Lords I.... absolutely. When I deal with the issue, My Lords, I'll  
35 deal with it squarely. Since the question fell from My Lords, I just attempted to....My Lords  
36 one letter is on record. This other letter I don't think is on record My Lords. We've just got  
37 copies made. And give one to the other side as well. Court Master, if there's an extra copy could

1 you return it? Because I need to give it to the other side. Very grateful. Now My Lords as late  
2 or recent as 6th July, 2022 Mr. Sanjay Raut, as Leader of the Shiv Sena Parliamentary  
3 party writes to the Speaker to say - this is to inform you that Shiv Sena Parliamentary Party  
4 has nominated so and so as the Chief Whip in Lok Sabha in place  
5 of Shrimati Bhavana Gawali MP with immediate effect and also My Lords, the earlier letter  
6 which is convenience compilation Volume 2, PDF 728.

7

8 **JUSTICE KOHLI:** That letter of 25th of November 2019 is the one?

9

10 **MR. KAUL:** Yes, Ma'am, Yes My Lady.

11

12 **JUSTICE KOHLI:** Which you have already highlighted.

13

14 **MR. KAUL:** It was read out, but I now want to read it in the context of the rules. May I with  
15 Your Lordship's permission?

16

17 **CHIEF JUSTICE CHANDRACHUD:** Yes.

18

19 **MR. KAUL:** To the Honorable Speaker, Shiv Sena's newly elected MLAs meeting was  
20 convened at Shiv Sena Bhavan, Dadar, Mumbai on Wednesday 31-10-2019. The meeting was  
21 chaired by Shri Uddhav Thackeray, Shiv Sena Paksh Pramukh. All the newly elected MLAs of  
22 the Shiv Sena Party unanimously resolved that all the decisions of today's meeting be decided  
23 by Shri Uddhav Thackeray and authorized Shri Uddhav Thackeray to take all the decisions in  
24 the meeting. In the meeting, thus Shri Eknath Shinde and Shri Sunil Prabhu are appointed as  
25 Group Leader and the Chief Whip of the Shiv Sena legislature party in  
26 the Maharashtra Legislature Assembly. The resolution passed in this regards as follows.

27 Resolution One, it is resolved in the newly elected MLA's meeting of Shiv Sena party that Shri  
28 Eknath Shinde is appointed as the group Leader of the Shiv Sena legislature party in the  
29 Legislature. It is resolved in the newly elected MLA's meeting of the Shiv Sena party  
30 that Shri Sunil Prabhu is appointed as the Chief Whip of the Shiv Sena legislature party, and  
31 then all the MLAs.

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33 **JUSTICE NARASIMHA:** Who writes this?

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35 **MR. KAUL:** This doesn't have a....

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37 **JUSTICE KOHLI:** This is signed by all the MLAs.

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**MR. KAUL:** But it has the signature of all the MLAs,

**JUSTICE KOHLI:** So it's collectively written.

**MR. KAUL:** Collectively written. I'm grateful. By all the MLA's. And that is why I said My Lords to that question when we come under the Tenth Schedule, what you are seeking to do is today creating distinction which does not exist. We have never argued the legislature party is separate or the party under the Tenth Schedule under 2(1) means only the legislature party and does not mean the political party. That's not our argument. It is always done through the legislature party, at least in majority of cases, My Lords. It's never the Party President, who writes to the Speaker.

**JUSTICE SHAH:** Mr. Kaul, please read para one of that, this communication, wherever.

**MR. KAUL:** Shiv Sena's newly elected ?

**JUSTICE SHAH:** Yes.

**MR. KAUL:** Newly elected MLAs meeting was convened at the Shiv Sena Bhawan, Mumbai. The meeting was chaired by so and so, Shiv Sena Paksh Pramukh.

**JUSTICE SHAH:** Now these four lines are very important because what was the resolution passed? It is only a communication, of the resolution passed. Correct? It is the communication.

**MR. KAUL:** Yes.

**JUSTICE SHAH:** It is not that, that the leader is decided by the legislative party. Please read the next resolution. The meeting was chaired by so and so, so and so. All the newly elected members of this so and so, so and so, unanimously resolved that all the decisions of today's meeting be decided by this so and so, so and so.

**MR. KAUL:** My Lords, I have right through said, the legislature party has the authority of the political party to do so. I am not for a minute suggesting that, that is not so. They have the authority to do so. That communication is through the legislature party and the Speaker's interaction is through them, doesn't mean the political party is not involved.

1 **JUSTICE SHAH:** Naturally the decision is always communicated whatever is only by  
2 the legislature party or the leader of the legislative party.

3

4 **MR. KAUL:** Yes, that is all that I am saying. Now, My Lords, let me straight away now...,

5

6 **JUSTICE SHAH:** Otherwise you will communicate? As far as the Speaker is concerned, only  
7 the leader of the legislative party will communicate.

8

9 **Mr. KAUL:** Absolutely. Now, when I come to the case law and distinguishing case laws. Once  
10 I am through the rules, I'll distinguish Mayawati. Mayawati is in a completely different  
11 context. And I'll deal with that Rana, Mayawati all those line of judgment cited, I'll distinguish  
12 each one of them. But let me now My Lords, at least let me start with the issues at hand which  
13 have been referred to Your Lordships.

14 My Lords, kindly come first to the second issue because Nabam, Your Lordships heard  
15 arguments at length. On Nabam, Your Lordships have heard arguments at length and I  
16 need not trouble Your Lordships again until unless called upon. Please have issue B, and I'll  
17 go issue wise and deal with.

18

19 **JUSTICE SHAH:** B?

20

21 **MR. KAUL:** Yes.

22

23 **JUSTICE NARASIMHA:** Where are you reading B from?

24

25 **MR. KAUL:** From that order as well.

26

27 **JUSTICE NARASIMHA:** The earliest order?

28

29 **MR. KAUL:** I'll just give, I should have actually pointed the...The referral order  
30 is 23rd of August 2022.

31

32 **JUSTICE NARASIMHA:** It is there in the orders compilation?

33

34 **MR. KAUL:** My Lords, Orders Compilation, PDF page 34.

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36 **CHIEF JUSTICE CHANDRACHUD:** Yes. What's the meaning of, should be inviting a  
37 decision?

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**MR. KAUL:** That is the question, may I read out?

**CHIEF JUSTICE CHANDRACHUD:** Yes.

**MR. KAUL:** Whether a petition under Article 226 or Article 32 lies inviting a decision on a disqualification petition by the High Courts or the Supreme Courts, as the case may be. Now, My Lords our respectful submission is...

**CHIEF JUSTICE CHANDRACHUD:** Lies inviting a decision? Possibly a direct.

**MR. KAUL:** My Lords, I think the inference was that could Your Lordships directly decide it. That is my...

**JUSTICE NARASIMHA:** We can directly decide what the Speaker should have decided.

**MR. KAUL:** Yes, yes. So, My Lords, on that our respectful submission is that this is in the teeth of Kihoto. The argument of the petitioner is in the teeth of Kihoto because ultimately, My Lords, under the Constitution Para six of the Tenth Schedule, the Speaker is the sole constitutional authority to decide the issue of disqualification. It is the constitutionally designated authority to decide the issue and even the proceedings before the Speaker have been stated by your Lordships to be proceeding under 122 and 212 as score as proceedings of the House. And even the interference with such decisions except for violations of fundamental rights or substantive or gross illegality of unconstitutionality etc. Ordinarily is not interfered, but not to say that it cannot be challenged. I am not for minute saying that it cannot be challenged. Now, what your Lordships have been today asked to do is to bypass the entire constitutional machinery, not only for the Speaker, even earlier an attempt was made as far as the Election Commission was concerned which Your Lordship's refuse to grant stay and said, let the Election Commission, take a stand on it and then let the petition come here. And that is why at that stage I had submitted that Your Lordships can't act as the court of first instance. These are coordinate constitutional authorities vested with exclusive and sole jurisdictions. Their decision attains a finality. Their decision attains a finality. These are restricted grounds of challenge. You can't today come to the Supreme Court and say the Supreme Court should decide this issue because according to you, these are extraordinary circumstances and the entire machinery should be bypassed. So you decide I'm ex facie. I've incurred the wrath of 2(1)(a) and 2(1)(b). The speaker is biased. Nothing else remains to be decided. And thus, under Article 32, the Supreme Court of India must act as the court of first instance. That is effectively

1 what Your Lordships are being told in this matter to do. And which my respectful  
2 submission is, My Lords, that quite apart from the Shrimant Balasaheb Patil case where Your  
3 Lordships also held at ordinarily go in a 226 and then come to this court. That is another that's  
4 another facet. But in any case definitely not straight to any court whether 226 or 32. And say  
5 that you decided as the court of first instance. Now the same party also relies on Nabam when  
6 it suits them but the reason we came in a 32 that's important today My Lordships is we came  
7 in a 32 because Kihoto does not deal with the issue we canvassed. Which is a Nabam, which is  
8 post Kihoto. Where a five judge bench of this court and is today still holds the field says, that  
9 it would be improper and inadvisable for a speaker to proceed, continue or conclude a  
10 disqualification petition while his own disqualification is pending. It is for this reason that he  
11 came in a 32 to say that a). Our lives were in danger. We couldn't go to Maharashtra. b). The  
12 Speaker cannot assume jurisdiction. So to say that we are hit by Kihoto. We were not hit by  
13 Kihoto, and that is a distinction we drew. Whereas your contention is clearly hit by Kihoto.  
14 Because in your case, you are wanting the Court to do something without the Speaker even  
15 exercising its jurisdiction on the matter. Secondly, My Lords, the Speaker has won the  
16 confidence once. The House has again reaffirmed its faith. And we keep going back to the same  
17 argument to say that if that disqualification had been decided then it would go back to the date  
18 what Justice Shah put to me yesterday. And I'll come to that argument because even if a  
19 disqualification relates back to the date of the event, doesn't mean any action taken in the  
20 meantime gets annulled. In Rana what Your Lordships said that when the speaker decides he  
21 only look that the event on the day that this qualification prediction was moved and at no event  
22 post that, that's what Rana said. But those series of judgments that you not choose are given  
23 on the point that there is no bar to an MLA or an MP is disqualification petition is decided  
24 from participating in the proceedings of the House, because a constituency can't go  
25 unrepresented. He has to be there, can't mean that all those decisions will be annulled because  
26 the argument thought to be raised at in the process, the trust vote, everything else will get  
27 annulled and that's Your Lordships should restore status quo ante because your  
28 Lordships created... and order created and toppled the government. That's the argument  
29 being made to Your Lordship. My respectful submission is, My Lord, is legally and  
30 constitutionally and an unsustainable proposition. It's an unstable proposition in law.

31

32 **JUSTICE NARASIMHA:** Disqualification under the Constitution is vested in the Governor  
33 who takes issues of disqualification are vested in the Governor and he if he chooses state  
34 advice of the Election Commission,

35

36 **MR. KAUL:** Yes, Yes that's 191 (1) and 191 (2) as Your Lordships rightly said, is the Speaker.

37

1 **JUSTICE NARASIMHA:** No 192 talks about [UNCLEAR]

2

3 **MR. KAUL:** Your Lordships are absolutely right.

4

5 **JUSTICE NARASIMHA:** Whether a member of the House 191(1) It will be referred to the  
6 Governor.

7

8 **Mr. KAUL:** Yes, Yes.

9

10 **JUSTICE NARASIMHA:** In any event decision of the Speaker, the judicial review is only  
11 decision making process but asking the Court to decide what the Speaker is to decide is a leap.

12

13 **MR. KAUL:** Yes. yes absolutely. I'm grateful. I'm very grateful. Now  
14 would Your Lordships be kind enough to now move to the next question?

15 Can a Court hold that a member is deemed to be disqualified by virtue of his or her actions,  
16 absent a decision by the Speaker? My Lords, my respectful submission is how can  
17 the court ever deem MLA to be disqualified pending a decision. Would that not necessarily  
18 circumvent the entire Constitutional authority My Lords? And would the functioning of the  
19 Legislature not be put in jeopardy by imposing temporary disqualifications? And would it  
20 not hamper electoral democracy, that a whole constituency goes unrepresented? Especially  
21 when Your Lordships have time and again held, time and again held that he is entitled to  
22 participate, pending his disqualification and it is sought to be argued that you should be  
23 deemed to be disqualified. Without the Speaker exercising his jurisdiction or the Governor in  
24 consultation with the Election Commission under 191(1) or 191(2), how can the Court say  
25 that to MLA or an elected representative of the people is deemed to be disqualified till the  
26 decision is taken. It is like annulling the mandate of the people, My Lords and by the Supreme  
27 Court, as the Court of first instance in an interim order. Would Your Lordships be kind  
28 enough to have the next question? May I, My Lords with Your Lordships permission?

29

30 **CHIEF JUSTICE CHANDRACHUD:** Yes.

31

32 **MR. KAUL:** What is the status of the proceedings in the House during the pendency of  
33 disqualification petitions against the members?

34 Now, My Lord, right from Kuldeep Bishnoi, Pratap Gouda Patil, Shivraj Chauhan, and  
35 Nabam Rebia. Your Lordships have time and again said that pending  
36 disqualification he participates with all the vigour and robustness and legality as his command  
37 in the proceedings of the House. There is nothing which disentitles him from participating in

1 the proceedings of the House and can it be said that tomorrow, if he is disqualified, all those  
2 proceedings that he participated in..

3

4 **JUSTICE NARASIMHA:** Article 100.

5

6 **MR. KAUL:** Are null and void? Suppose they have a decision by his vote a decision turned, so  
7 that will be annulled. Now, My Lords, will be kind enough in this context to have Article 189  
8 for a minute.

9

10 **JUSTICE NARASIMHA:** 189 and 100, go together.

11

12 **MR. KAUL:** Yes, My Lords, 189 is the mirror assembly. Great, great.

13

14 **JUSTICE NARASIMHA:** Sub-article 2?

15

16 **MR. KAUL:** Yes My Lords. My Lords, the Chief Justice has?

17

18 **CHIEF JUSTICE CHANDRACHUD:** Yes.

19

20 **MR. KAUL:** Justice Shah, has? A House of the legislature of a State shall have power to act,  
21 notwithstanding any vacancy in the membership thereof, and any proceeding in the legislature  
22 of a State shall be valid, notwithstanding that it is discovered subsequently, that some person  
23 who was not entitled so to do sat or voted or otherwise took part in the proceedings. Quite  
24 apart from the provision, the law is laid down by our Lordships. The moment Your  
25 Lordships permit and say that a MLA is entitled to participate. The necessary corollary is that  
26 whatever he has exercise in terms of his vote, the proceeding, tomorrow, he votes in a  
27 budget, there are appropriation bills. There could be any other decision taken. So will we say  
28 that every just because he has participated in a trust vote, Your Lordships are told  
29 annul everything. Because had he been disqualified, he could not have voted. And we have  
30 presumed he will be disqualified, or he is already incurred the wrath of Tenth Schedule. And  
31 thus the entire process is initiated. That's the argument being made to Your Lordships and  
32 that Your Lordships today should annul everything from the resignation, swearing in of a  
33 new Government, Speaker, winning the vote of confidence, the Government winning the trust  
34 vote. Everything should be annulled because everything was caused by Your Lordship's order  
35 and Your Lordships are responsible for the toppling, that's only Your Lordships can correct it.  
36 That is the argument being made.

37



1 **JUSTICE NARASIMHA:** Which are the judgments?  
2

3 **MR. KAUL:** My Lords the judgments are Speaker Haryana Vidhan Sabha versus  
4 Kuldeep Bishnoi, 2015. 12-SCC, 381, para 46 and 47. And I will also later give the compilation  
5 numbers of, it's part of the compilation. Then Pratap Gouda Patil versus the State of  
6 Karnataka, 2019, Volume-seven, SCC 463, para 4 and 7.  
7

8 **CHIEF JUSTICE CHANDRACHUD:** 2019, Volume?  
9

10 **MR. KAUL:** Seven, SCC 463, para 4 and para 7. Then Shivraj Singh Chauhan versus MP  
11 Legislative Assembly, 2020, Volume 17, SCC, Page 1, para 79 and para 80. Then Nabam Rebia  
12 versus Arunachal Pradesh Legislative Assembly, 2016, Volume 8, SCC Page 1, para 188, 189  
13 and para 191 to para 194.  
14

15 **CHIEF JUSTICE CHANDRACHUD:** Yes.  
16

17 **MR. KAUL:** My Lords, quite apart that it is absolutely obvious from these judgments  
18 that it retains the right to participate, also see the danger My Lords. If such MLAs against  
19 whom the disqualification is pending and they are suspending during pendency of  
20 their disqualification petitions, it would open up serious possibilities of misuse of the Tenth  
21 Schedule. And I'll give some instances. The participation of course gets affected. So you in a  
22 way fix the eligible voters who will fix... Who will vote in the House. And major decisions to  
23 which some of the MLAs could have been inconvenient, do not participate now in. And  
24 also My Lords a quick...  
25

26 **CHIEF JUSTICE CHANDRACHUD:** That's very clear actually. It is a matter of first  
27 principle because of mere pendency of the disqualification petition doesn't affect the....  
28

29 **MR. KAUL:** Absolutely. And My Lords, the moment Your Lordships have said they  
30 have every right to participate quite apart from Article-one is, that's the end of it.  
31

32 **JUSTICE SHAH:** Article 181 also. Article 181. When the Speaker against took  
33 the decision, only in the particular meeting, he can order. Otherwise he can speak even that  
34 meeting also he can speak.  
35

36 **MR. KAUL:** Yes, absolutely right. But, My Lords, this point, Your Lordships are absolutely  
37 right, is very clear, but it acquires some significance because the argument being raised is that

1 if his disqualification, he is held to be disqualified, Rana says it will relate back to that day and  
2 thus any action taken with his vote with the crutches aid of his vote stands vitiated and suffers  
3 from a constitutional sin. That's why I said it's important. Because your argument is that it  
4 relates back and because it relates back every vote given by him, including the trust vote  
5 goes and thus Your Lordships in exercise of Your Lordships' extraordinary jurisdiction must  
6 overturn everything that has happened and act as a court of first instance. Then My Lords....

7

8 **JUSTICE SHAH:** It could be very serious consequences according to you. Suppose the  
9 budget is passed, and he has participated and cast his votes. If it is to be restored back  
10 correct, to its original one, then all these budgetary provisions, all these.....

11

12 **MR. KAUL:** My Lords, I can't put it better. Absolutely. And that is what is being sought to be  
13 argued. And this is Rana, never said this. Rana, when I come in, I'll distinguish the judgments.  
14 Rana is in a different context. Mayawati is in a different context, and you pick them up and  
15 apply them to a situation where they have no application at all. A line here, a line there, and  
16 you say that's the settled law on the point. Now My Lords ground E with Your  
17 Lordships permission.

18

19 **JUSTICE NARASIMHA:** The number of legislators' emolument [UNCLEAR] there is a  
20 provision, let me just check-up. What is the consequence of an MLA or an MP disqualified  
21 upon his emolument? There is a separate paragraph on that, it's also an indication....

22

23 **MR. KAUL:** Your Lordships said that the MLA emolument.

24

25 **JUSTICE NARASIMHA:** Haan, emolument. Just check that up. There is a provision....

26

27 **Mr. KAUL:** I will. I'll look it up, I'll look it up today. Now My Lords has ground E.  
28 Sorry, question E. My Lord the Chief Justice.

29

30 **CHIEF JUSTICE CHANDRACHUD:** Yes.

31

32 **MR. KAUL:** If the decision of a Speaker that a member has incurred disqualification under  
33 the Tenth Schedule relates back to the date of the action complained of, then what is the status  
34 of proceedings that took place during the pendency of a disqualification petition? That's  
35 why My Lords I have put this because that's been what they've been arguing right through .

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37 **JUSTICE KOHLI:** Mr. Kaul, D & E can be collectively[UNCLEAR]

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**MR. KAUL:** Yes, yes. But the reason I'm laying so much emphasis on is because a large part of this argument where Your Lordships order of 27th and 29 becomes according to them the cause of all that has happened. Only Your Lordships can rectify and the solution lies in this because it relates back to that day, and because it relates back to that day and trust vote also falls in between everything should be annulled.

**JUSTICE NARASIMHA:** So will you explain on the base of Rana and other judgments that they have cited?

**MR. KAUL:** My Lords, what I'll do is....

**JUSTICE NARASIMHA:** No. Whenever.

**MR. KAUL:** I'll in one go explain each of those judgments. Because I'll explain Ramareddy, Rana... Each one of them I will distinguish.

**CHIEF JUSTICE CHANDRACHUD:** So you will take up the judgments in one lot at the end?

**MR. KAUL:** In one lot. Because My Lord I have to cite my own judgments and I have to distinguish the judgments cited by them.

**CHIEF JUSTICE CHANDRACHUD:** Alright. Fair enough. That should be more coherent.

**JUSTICE NARASIMHA:** Right all this relating to relating back

**MR. KAUL:** Yes. So one of all those issues of Mayawati on political party versus Legislature party in the Tenth Schedule. Rana status quo. Ex post facto and the others I will...as I go along I will deal with them. So My Lords, again, as far as this question is concerned, my argument remains the same as I just addressed Your Lordships on the provisions of the law, the provisions of the Constitution. It cannot be any other way. This is the only way it can be, because the consequences for an electoral democracy are disastrous. Constituencies go unrepresented. No one is there just because a disqualification petition is pending and he will not participate, especially when Your Lordship this is no longer *res integra*. Then Your Lordships have ruled on it on judgment after judgment. Now, My Lords would Your Lordships be kind enough to have....

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2 **CHIEF JUSTICE CHANDRACHUD:** That's why, in the context of the judicial function  
3 you've developed, we have developed the concept of the de facto doctrine. So even if the  
4 appointment of a judge is found to have suffered from an invalidity, that will not render all  
5 the judicial acts as invalid.

6

7 **MR. KAUL:** Absolutely, I bow down to it. I bow down to it. Now the next question is Question  
8 F. What is the impact of removal of Paragraph 3 of the Tenth Schedule?

9

10 **JUSTICE NARASIMHA:** Mr. Kaul, I have one small doubt. How are we going to deal with  
11 the situations which is emerging from time to time? Disqualification application is  
12 filed, Speaker doesn't decide, and then the matter goes on. He participates in the Assembly  
13 and disqualified member continues. At what time and what is the time limit within which he  
14 needs to decide? Because till a decision is taken, disqualification issue is not decided. So  
15 therefore it's pending. This problem has been arising in a number of cases. Meghachandra is  
16 one judgment where Nariman had to say that within a time limit, he has to decide. But that's  
17 referred to a larger bench saying that you can't direct the Speaker to decide. But where are we  
18 going to deal with the situation like this where Speakers doesn't... don't decide and events  
19 overtake that and either matters become infructuous or the House is dissolved by flux of time.

20

21 **MR. KAUL:** Your Lordships are right. This will have to be considered. Should there be a  
22 timeline? Should there be a time bound process? Should it be decided within a time bound  
23 process or not? As Your Lordship said that issue whether such a direction could be given to  
24 Speaker...

25

26 **JUSTICE NARASIMHA:** Can you just pick up that order where it's referred to larger bench?

27

28 **CHIEF JUSTICE CHANDRACHUD:** Meghachandra.

29

30 **JUSTICE NARASIMHA:** Meghachandra is referred to a larger bench. Can you just pick that  
31 up?

32

33 **MR. KAUL:** I'll get hold of it My Lords. Let me just also apply my mind to this. It's fallen  
34 from My Lord. But quite apart from the fact, My Lords, when we were arguing Nabam where  
35 we said that as far as the Speaker's own removal is concerned, the Assembly and the  
36 Constitution itself provided a reasonably strict timeline on how it could be followed. In terms

1 of when the notice to be given, when is it to be decided. Possibly some kind of a  
2 timeline as Your Lordship said I'll have a look at the issue.

3 Now My Lords as far as the removal of the Tenth Schedule is concerned, My Lords, firstly, this  
4 was only a defence against incurring a wrath under the  
5 Tenth Schedule. 3 and 4, Para 3 and 4 are only defences under the Tenth Schedule. That  
6 defence of one-third having split from the party is no longer available. But to me it  
7 is wholly inconsequential, because my case has never been that I have split or gone anywhere  
8 else. My whole argument has been that I represent the majority rival faction within the party.  
9 Neither have I given a support to any other political party, nor have I said I will not support  
10 a Government as far as my own political party is concerned. As long as the coalition is  
11 something that we have expressed are concerned with. I have not gone anywhere. So this  
12 whole line of merger, split. It is not a case of a split My Lords. It is a case of a rival faction  
13 or what the rule...Para 15 of the Symbols Order says of a splinter group within the party.

14

15 **JUSTICE NARASIMHA:** What is the difference between a split and a...

16

17 **MR. KAUL:** My Lords split is...

18

19 **JUSTICE NARASIMHA:** Split on the one hand and what you are suggesting?

20

21 **MR. KAUL:** My Lords the difference between the two is that split is an issue where you as a  
22 defence say that I will not incur the wrath of the Tenth Schedule. I have not even voluntarily  
23 left the party. In the case of a rival faction, I claim that I am the political party and recognize  
24 me as the political party under the Symbols Order. Please have that Symbols Order for a  
25 minute. It's a question that Your Lordship has to me a pertinent question and this will answer.  
26 Please have statute compilation PDF page 155.

27

28 << BREAK >>

29

30 **MR. KAUL:** Would Your Lordships be kind enough to have para 15 of  
31 the Symbols Order? Statute compilation PDF...

32

33 **JUSTICE SHAH:** Para 15 of?

34

35 **MR. KAUL:** Symbol's Order.

36

37 **CHIEF JUSTICE CHANDRACHUD:** This is in the context of the same issue, right?

1

2 **MR. KAUL:** Yes, we were at F, and also in the light of the question that My Lords, posed to  
3 me before lunch, of split under Tenth Schedule vis-à-vis rival faction. I just needed to answer  
4 that. So I just need to show two provisions to Your Lordships. Para 15, PDF 103,  
5 Statute Compilations. With Your Lordship's permission. Power of the Commission in relation  
6 to splinter groups or rival sections of a recognized political party. When the Commission is  
7 satisfied on information in its possession that there are rivals sections of groups of a  
8 recognized political party each of whom claims to be that party, the Commission may, after  
9 taking into account all the available facts and circumstances of the case and hearing such  
10 representatives of the sections or groups and other persons as desired to be heard, decide that  
11 one of the such rival section or group, or none of such a rival section or group is that recognized  
12 political party. And the decision of the Commission shall be binding on all such rival sections  
13 or groups. Now kindly compare this My Lords with para 3 of the Tenth Schedule, as it existed.  
14 PDF page 50 of the same compilation.

15

16 **CHIEF JUSTICE CHANDRACHUD:** PDF Page 50?

17

18 **MR. KAUL:** PDF Page 50 My Lords.

19

20 **CHIEF JUSTICE CHANDRACHUD:** Yes.

21

22 **MR. KAUL:** Justice Narasimha has that? 'Disqualification on ground of defection not to  
23 apply in case of split where a member of a House makes claim that he and any other, and any  
24 other members of his legislature party constitute the group representing a faction which has  
25 arisen as a result of a split in his original political party, and such group consists of not less  
26 than one-third of the members of such legislature party.' - And now please have b). From the  
27 time of such split, such faction shall be deemed to be the political party to which he belongs,  
28 for the purposes.... for purposes of sub-paragraph 1 of paragraph 2 and to be his original  
29 political party for the purposes of this paragraph.' So when you split and form a group that  
30 becomes your original political party within 2(1)(b), and saves you from disqualification  
31 under 2(1)(b). Whereas, under para 15 of the Symbols Order within the party itself a rival  
32 faction emerges, goes to the Election Commission and says, I am the recognized political party.  
33 And as Your Lordships have held, there can't be two recognized political parties within the  
34 setup, the symbol can't be split. The name can't be split. So either none of them get it, or one  
35 of them emerges as the recognized political party within para 15 of the Symbols Order.  
36 Whereas here after a one-third split, it calls itself. It's like saying if Eknath Shinde or Uddhav  
37 Thackeray, one of them had split and called themselves the Shiv Sena Thackeray, the other

1 would have called themselves the Shiv Sena Shinde. The one-third split would have become  
2 the new original party. That's not our case. We've never claimed that we have a new original  
3 political party. Our political party remains the same.

4

5 **JUSTICE NARASIMHA:** As the first part of the section, member of the House makes a  
6 claim that he or any other member of his legislative party constitute the group representing a  
7 faction which has arisen as a result of a split, which is prior in point.

8

9 **MR. KAUL:** Right. Right.

10

11 **JUSTICE NARASIMHA:** So what is the.... as a result of this split, as a result of the split in  
12 his original party,

13

14 **MR. KAUL:** Right.

15

16 **JUSTICE NARASIMHA:** That must occur prior in point. In the political party, there must  
17 be a split, a consequence of which will be recognized in the legislation.

18

19 **MR. KAUL:** Right. Right. And you will call yourself the original, new original political party  
20 for purposes of 2(1)(b). Now My Lords, in terms of the question that I was addressing Your  
21 Lordships on which was F, what is the impact of the removal of paragraph 3 of the  
22 Tenth Schedule?

23 My respectful submission, My Lords, is that a). A defence which was available is gone. Is no  
24 longer available to disqualification under the Tenth Schedule. Only merger as a defense now  
25 remains. b). It doesn't concern me at all because my case has never been or never have I  
26 sought the... nor can I seek the protection. But it's not in the Constitution as a as a  
27 protective Clause. Nor is this ever been my case. My case is that I, as a faction within the party  
28 represent the recognized political party. And My Lords, when I come to the judgment, I'll show  
29 to Your Lordships that this issue when it arose, and this in itself can never be a 2(1)(a) case  
30 either.

31 Merely because a faction says that I am the recognized political party and goes to the EC, for a  
32 relief under para 15 of the Symbol's Order doesn't mean he incurs disqualification  
33 under 2(1)(a), by saying that I have lost the majority. Because in Yediyurappa, this was the  
34 exact case which arose. MLAs there went and said, we do not have faith in Mr. Yediyurappa  
35 and ultimately the Speaker disqualified them. The Supreme Court said that they have only said  
36 we do not have faith in Mr. Yediyurappa. They have not said that they don't have faith in the  
37 political party or they formed another political party. And such the drastic step taken by

1 the Speaker to disqualify them under 2(1)(a), was far beyond what the facts necessitated in the  
2 fact of that case. So to say that merely because I go to the Governor and I say that here today,  
3 given the ideology of the party, the overwhelming cadres don't want to go along with the MVA.  
4 Our entire contention has not been that the Shiv Sena should not form the Government. At  
5 that stage, our contention wasn't even that the Chief Minister could not have formed  
6 the Government with any other political party. Our lack of faith in the Ministry was because  
7 you were carrying on with a party whose ideology did not match our ideology. We had been in  
8 loggerheads for very long. And going along with them was creating a huge discord and  
9 discontent amongst the cadres and party workers. Now, can this be treated by this logic  
10 My Lords, any form of internal dissent? Anyone raises any voice of dissent, which is  
11 the essence of democracy within a political party, would be said that he's incurred  
12 the wrath under 2(1)(a). And I will show cases of 2(1)(a), what overt acts have been done in  
13 those cases. You go with another rival faction. You go there and say, I'm helping them form  
14 the Government. I don't have any longer any faith in the political party that I belong to which  
15 is ruling. Those are the kind of overt acts which are 2(1)(a) cases. Here the only allegation  
16 against me at that stage was, you have not attended two meetings. In fact, at that stage the  
17 allegation was only that you have not attended the two meetings which have been called on  
18 21st and 22nd, and thus you have voluntarily given up the membership of the party, the first  
19 disqualification petition and the second disqualification petition, as on 2nd of July 2022. And  
20 then came the issue of Whip by when both factions that appointed their Whips, leaders, all  
21 that dispute arose. That's a separate 2(1)(b) issue. So, according to us, My Lords, as far as  
22 paragraph 3 of the Tenth Schedule is concerned,

23 (a) Had it been on the statute book still, it's not something that I would have relied on, because  
24 according to me I am the majority, I constitute the recognized political party and today I have  
25 an order also. Which is the subject matter of another petition. In my whole case was that under  
26 the 15 of the Symbols Order, I am the faction which represents and ought to be recognized as  
27 the original political party. That was my case.

28

29 **JUSTICE NARASIMHA:** So, what does the Speaker do in such situations where you raise a  
30 claim that you are the political party?

31

32 **MR. KAUL:** My Lords, the Speaker is only concerned as far as involuntary membership is  
33 concerned. According to My Lords, this does not constitute an act on 2(1)(b)...

34

35 **JUSTICE NARASIMHA:** Where on the Tenth Schedule violation, they say that there is  
36 violation of Tenth Schedule and you take the plea that it is not a case of a split, but it's a case  
37 of reorganization or realignment of the party and I have the majority of the party. What is



1 the Speaker supposed to do there? What is the inference that he is supposed to  
2 draw? Will he say that it is not a Tenth Schedule case?

3

4 **MR. KAUL:** My Lords, what he will say in such a case is, and that has been our case, that his  
5 link is with the Whip and the leader of the legislature party. That is why I read out those rules  
6 of the Maharashtra Legislative Assembly to Your Lordships that the members elect the leader.  
7 The leader intend informs the Speaker of all the designated posts, the people who will hold  
8 various posts. And even when the Tenth Schedule existed, in Rana's judgment, the Supreme  
9 Court said the Speaker cannot embark on an independent inquiry to find out whether there  
10 has been a split within the political party at all. Even the prima facie view that he forms, even  
11 when there was there, was only on the question of prima facie, there has been a split. Today  
12 the split is an inconsequential issue, because para three, is not there. Today the question is of  
13 a rival faction, and under 2(1)(b), not obeying the orders as communicated through the Whip.  
14 Now not communicated by the Whip, is the issue of which Whip do you follow. Now, if the  
15 majority of the members of the legislature party, with the political authority of the political  
16 party, appoint a leader and appoint a Whip, naturally, the speaker will be in touch with  
17 that Whip.

18

19 **JUSTICE NARASIMHA:** Your answer is that the Speaker has no option except to go by the  
20 majority of the legislature.

21

22 **MR. KAUL:** Rule of majority as far as the Legislature party for....

23

24 **JUSTICE NARASIMHA:** The context of it and schedule.

25

26 **MR. KAUL:** In the context of Tenth Schedule.

27

28 **JUSTICE NARASIMHA:** Only majority.

29

30 **MR. KAUL:** Majority. And but the mistake which is being sought to be made is to segregate  
31 a legislature party and a political party. That Legislature party necessarily carries with it the  
32 political authority of a political party. And that is where My Lords, para 6A and 6B of  
33 the Symbols Order becomes important because 6A and 6B of the Symbols Order, both say that  
34 for the continued recognition of a political party the vote percentage, the MLAs, the MPs are  
35 all essential for even a political party to survive and continue. So this distinction which is being  
36 drawn to say that you've only brought about something in the legislature party and you don't  
37 have the support in the political party is wrong, and the Speaker's inquiry is limited in such a

1 case. If the Speaker could do the same thing which the Election Commission could do, then all  
2 those lines, My Lords where Your Lordships said even when para 3 existed, will not embark  
3 on an independent inquiry will only take a primer facie view whether one-third is split or not  
4 because the Speaker does not have the wherewithal, My Lord. It's the Election Commission.

5

6 **JUSTICE NARASIMHA:** In other words, to simplify, sorry for asking you repeatedly the  
7 question. Leave aside their argument of drawing a distinction between political party  
8 and a legislative party. Leave that aside.

9 As you are arguing the only method that the Speaker can adopt in a case where somebody sets  
10 up a case of he garnering the entirety of the party is to just go by the number of legislators that  
11 he has, that group, that's all.

12

13 **MR. KAUL:** And be in touch with the Whip and the leader of the Legislature Party as to what  
14 are the instructions.

15

16 **JUSTICE NARASIMHA:** There is a problem because there are two Whips.

17

18 **MR. KAUL:** Sorry, My Lords?

19

20 **JUSTICE NARASIMHA:** There will be two Whips.

21

22 **MR. KAUL:** Right.

23

24 **JUSTICE NARASIMHA:** So in the teeth of two whips, the decisions that he has to take is a  
25 majority decision.

26

27 **MR. KAUL:** Because My Lord, Your Lordships are absolutely right because the rules say the  
28 members of the Legislative Assembly will appoint the leader. If the majority of the members  
29 of the Legislative Assembly appoint the leader and that leader in turn is in touch with  
30 the Speaker and communicates all the decisions to him, they are presuming that what is done  
31 there does not have the support of the political party. But there is no basis to say so because  
32 they make the mistake of saying that the two are separate. And because the two are separate  
33 you have done all that you had to do within the legislature party, but you did not have the  
34 support in the political party. What is actually proved is quite to the contrary because today it  
35 is shown even by the competent constitutional body which is the Election Commission of  
36 India, that I am the political party. The Speaker's interaction My Lords, is with the Whip, with  
37 the leader what are the directions given. He will not embark in to find out what has been the

1 political division in the political party. For that under 15..... Otherwise My Lords that all could  
2 be done under 15A.... sorry under 15, the power for determining this very question has been  
3 given to the Election Commission and Your Lordships have said it is the exclusive jurisdiction.  
4 And the reason is because when that is done, Talukas, Districts, MLAs, MPs, percentage of  
5 votes, Constitution on the date when disputes arose between parties, what was the stated  
6 position of various factions? Everything is taken into account. Then My Lords...

7

8 **CHIEF JUSTICE CHANDRACHUD:** Did para 15 of.... Does para 15 of the Symbols Order  
9 also necessarily implicate a split within the meaning of Para 3 of the erstwhile provision of the  
10 Tenth Schedule or no?

11

12 **MR. KAUL:** No My Lords, no.

13

14 **JUSTICE KOHLI:** What is a splitter group mean, in the Symbols Order vis-à-vis the split in  
15 three, which is now....

16

17 **MR. KAUL:** Because there are two rival factions within a party, who emerge and both claim  
18 that we are the... or we are entitled to be the recognized political party. So one of the two who  
19 it is accepted, carries on with the party and the symbol. Then...

20

21 **JUSTICE KOHLI:** So Mr. Kaul since that order just to understand 15 once it applies and you  
22 say the EC's decided that's also perspective right. It obviously can't.... The clock can't be put  
23 back to what the situation was on 21st.

24

25 **MR. KAUL:** The EC says that the split, as I said, that order is not just, says that the split  
26 occurred on 21st. The rival faction emerged on 21st.

27

28 **JUSTICE KOHLI:** It relates back to....

29

30 **MR. KAUL:** Right. And My Lady, that's why I pointed out, even on the 25th and 30th their  
31 side for whatever reasons, on issues which were emerging or simmering within the political  
32 party were already writing to the Election Commission, recognizing the authority of the  
33 Election Commission on 25th and 30th. I'll revisit some of those.

34

35 **JUSTICE KOHLI:** What you are saying is that the pot was boiling. It's just that it  
36 was rectified by the Election Commission.

37

1 **MR. KAUL:** Yes. That's another issue. I'll touch when I come to that particular issue.  
2 According to us, it's for simmering for a while. It culminated in the rival factions, ultimately  
3 by way of a resolution expressing themselves on the 21st June. Led to the events which  
4 happened and ultimately, a petition was filed before the Election Commission around the 18th  
5 of July. And even that order recognizes all this had started earlier. I don't have to...

6

7 **CHIEF JUSTICE CHANDRACHUD:** Mr. Kaul, para. 15 does not expressly reuse the  
8 expression split at all.

9

10 **Mr. KAUL:** Right My Lord. I'm very grateful.

11

12 **CHIEF JUSTICE CHANDRACHUD:** Just says which of the factions of the original  
13 political.. of the political party represent the political party? That's the function of the Election  
14 Commission. Let's go back to para 15 because one needs to look at what is the relationship  
15 between para 15 to the erstwhile para 3.

16

17 **MR. KAUL:** Yes.

18

19 **JUSTICE KOHLI:** Rival section.

20

21 **CHIEF JUSTICE CHANDRACHUD:** The marginal note refers to splinter group. The  
22 expressions 'splinter groups' is not used in the text of the provision at all.

23

24 **MR. KAUL:** Yes, yes.

25

26 **CHIEF JUSTICE CHANDRACHUD:** It says that... the text says - the rival sections or  
27 groups of recognized political party each of whom claimed to be that party. Para 15 applies in  
28 a situation where you have different groups within a party. Each says, I represent the Party. I  
29 am the Congress. I am the Shiv Sena, I am the BJP, so on and so forth. None of them  
30 have, none of them have professed to leave the fold of the party.

31

32 **MR. KAUL:** Right.

33

34 **CHIEF JUSTICE CHANDRACHUD:** So the Election Commission then has the power to  
35 determine which of those rival factions represents that party.

36

37 **Mr. KAUL:** Right.

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**CHIEF JUSTICE CHANDRACHUD:** Now para 3 operated in a very different realm. Para 3 applied in a situation where there is a split within a political party, in which case, provided you had not less than one-third of the total membership of the party that would be deemed to be the original political party for the purpose of the House.

**MR. KAUL:** My Lords, may I just add to what Your Lordship is saying? The one-third leaves... one - third leaves under the Tenth Schedule and says, now, treat us as the original political party for purposes of 215.

**CHIEF JUSTICE CHANDRACHUD:** Right.

**MR. KAUL:** That other political party continues and the other political party continues from which they split.

**CHIEF JUSTICE CHANDRACHUD:** So therefore, they're deeming faction that therefore the one-third, then, is the original is deemed to be the original political party to which the group belongs for the purpose of para 2(1).

**MR. KAUL:** And for their purpose.

**CHIEF JUSTICE CHANDRACHUD:** Right.

**MR. KAUL:** Or taking any direction as far as they are concerned.

**CHIEF JUSTICE CHANDRACHUD:** Para 3 has gone.

**MR. KAUL:** Right. Right.

**CHIEF JUSTICE CHANDRACHUD:** Now in a situation where the Election Commission recognizes, under Para 15 of the Symbols Order that one particular faction represents the political party, can this at all be within the purview of the Tenth Schedule, then?

**MR. KAUL:** According to us, not at all, My Lords. According to us not at all. In all humility I say so. And My Lords....

1 **JUSTICE KOHLI:** ...of the person as a representative of a constituency vis-a vis that of  
2 a person....

3

4 **MR. KAUL:** My Lady, what happens is when you participate as an elected representative and  
5 vote on the floor of the House....

6

7 **JUSTICE KOHLI:** Can you draw a line?

8

9 **MR. KAUL:** You can't. Any, anything which comes up on the floor of the House, where you  
10 exercise your right as an elected representative is saved. The Constitution says so, 189.  
11 And Your Lordship's judgment say so.

12

13 **JUSTICE KOHLI:** It is saved, but the act per se, of doing something which is not  
14 contemplating....

15

16 **MR. KAUL:** So you will lose, you will become, you will be disqualified. There is a difference.  
17 If ultimately these, some disqualification petition is allowed, that person will stand  
18 disqualified.

19

20 **JUSTICE KOHLI:** So disqualified for acts which were supposed to be done by a person as a  
21 member of the party...

22

23 **MR. KAUL:** So, you are disqualified in your status as a member of the House. But your acts  
24 done during the pendency of the disqualification petition remain untouched.

25

26 **JUSTICE KOHLI:** No. No issues on that. But can you go beyond it and say  
27 that disqualification qua, his say not abiding by the Whip relating to the internal affairs of  
28 the party would still, the clock would be put back to where it was. The status quo ante...

29

30 **MR. KAUL:** If the clock is put back and he has ultimately held to be, suppose Your  
31 Lordships not choose to hold against and say that you did not follow the Whip, you did not  
32 represent the majority of the party, and you have incurred the wrath of Schedule Ten.  
33 The person concerned will stand disqualified. But to say that the consequence of that is that  
34 even before he was disqualified and an order was passed by the Speaker, all actions that he  
35 participated in which are as per the settled law by Your Lordships to say that he is fully entitled  
36 to participate in will stand annulled, is wrong.

37

1 **JUSTICE KOHLI:** So, you are saying it can't be sifted, the act what is done by a...

2

3 **MR. KAUL:** Your Lordships, have time and the Constitution says so and Your  
4 Lordships have said that pendency of a disqualification petition is no ground to say that an  
5 MLA will not participate and under various circumstances. It arose in the case of a  
6 disqualification petition pending. It happened in the case of resignation letters. It happened  
7 in the case of Nabam Rebia to say where a removal was pending of the Speaker. They said you  
8 can't stop them from participating in the removal of the Speaker, merely because there is  
9 a disqualification petition pending against them. And especially in Shivraj Singh Chauhan,  
10 para 78, deals with these situations. You can't say because it was pending, thus it tilted in  
11 favour of one party? The court says these are matters which happen at any given timing of any  
12 vote for anything trust or otherwise, someone will benefit or the other. But you can't trace it  
13 back to say had we treated on that day as disqualified, you would have not been  
14 entitled. Thus, any vote that you've given in the trust vote or anywhere else, all stands  
15 annulled.

16

17 **JUSTICE KOHLI:** So, the consequences will flow prospectively.

18

19 **MR. KAUL:** Yes.

20

21 **CHIEF JUSTICE CHANDRACHUD:** Para 2(1)(a), of the Tenth Schedule can have no  
22 application? Right? Because para 15, postulates that the claim is that I represent a political  
23 party and the Election Commission will then decide which of the factions is representing the  
24 political party. So in a situation which is governed by para 15, there is no question of having  
25 voluntarily given up membership of the party. Right?

26

27 **JUSTICE NARASIMHA:** That's what it comes to. In other words, a majority..... Then again,  
28 it goes into the question of but then in the facts of this case, the majority based on the para  
29 15, as it turns out in the Assembly is based only on the legislators. So you have the majority of  
30 the legislators to support you in the Legislative Assembly and therefore you can attempt, you  
31 can appoint the leader of the House who can only give the Whip. So therefore, the question of  
32 anti-defection would not apply at all.

33

34 **MR. KAUL:** One, our case.... absolutely right. In our case, an addition is also that the decision  
35 which the legislature party took had the political authority also to take that decision. I'm going  
36 a step further, it is wrong to say. The legislature party elects the leader, the legislature party as  
37 the rule brings and appoints the Whip, conveys it to the Speaker, but doesn't mean the

1 political authority is not there. The problem is they tend to segregate the two and say, you only  
2 had the majority of the legislative party. The EC says, when we go through the whole  
3 thing, percentage of votes polled and the number of members who have is also a ground to  
4 recognize a political party apart from the membership of the political party.

5

6 **CHIEF JUSTICE CHANDRACHUD:** Mr. Kaul, para 2(1)(b), still poses a little bit of a  
7 problem. Forget this case, we are now analysing it as pure doctrine. As I said, once a para 15  
8 of the Symbols Order situation arises, para 2(1)(a), on the Tenth Schedule can never  
9 operate here, right? Because once you are deemed to be the political party, there is no question  
10 of you having given REM. Even that faction, which is not recognized as the political party, they  
11 have not voluntarily given up membership. That's a little complicated. We'll keep that aside.  
12 But para 2(1)(b) still poses a problem, because the order of the Election Commission is  
13 prospective because it determines which of the two factions is the political party. Right? If the  
14 order of the Election Commission is prospective then we will necessarily have to hold that  
15 though it does not date back to the defiance, the defiance of the Whip, once this is recognized  
16 as the political party then para 2(1)(b) will also not operate because if once your faction is  
17 recognized as the political party then where is the question of a defiance of the whip? The  
18 defiance of the Whip of that political party, right? So willy-nilly, it will impact.... it may not be  
19 retrospective, the declaration by the Election Commission but it will certainly have a  
20 retroactive effect in the sense, in the sense that then there can't be a defiance of a whip, isn't  
21 it? Otherwise it will be anomalous.

22

23 **MR. KAUL:** And then the question will arise, then the question.... then the question will  
24 arise the speaker will look at which Whip and which leader. I am sure my learned friend will  
25 have his chance to argue and I'm sure you have but all that I am saying we very patiently heard  
26 you for three and a half days. All that I am respectfully submitting is, all that I am respectfully  
27 submitting, is that what is to be seen and that is why what is to be seen is those three rules.  
28 The members of the Legislative Assembly appoint the leader, the leader conveys....

29

30 **CHIEF JUSTICE CHANDRACHUD:** That you have made a note.

31

32 **MR. KAUL:** ....and because, and that is why, even with para 3 exists My Lords, then at the  
33 cost of repetition, I'm just troubling Your Lordships with it. Rana said, and I'll read those  
34 paras, you can't, the Speaker can't embark into an independent inquiry in the affairs of of the  
35 political party.

36



1 **CHIEF JUSTICE CHANDRACHUD:** Mr. Kaul, let's do this, now you've come up to issue  
2 number F. You can quickly go through I..G.. GHIJ. So you can finish the four, and then go  
3 straight to the judgments which we are..... Now we need to observe the clock. There's no  
4 clock here.

5

6 **JUSTICE KOHLI:** Right there actually.

7

8 **MR. KAUL:** My Lords we removed it. All that I am saying is I need some time  
9 tomorrow. I don't think I can cover so much... an hour tomorrow. I need an hour.

10

11 **CHIEF JUSTICE CHANDRACHUD:** We have to wrap up by tomorrow because we don't  
12 want to keep this part heard beyond Holi. I mean, we have to finish this.

13

14 **MR. KAUL:** Let me. I'll go as fast as.....

15

16 **JUSTICE KOHLI:** They take 2 hours.

17

18 **MR. KAUL:** Three and a half days plus 2 hours.

19

20 **JUSTICE SHAH:** We have to wrap up today, and Mr. Jethmalani and Mr. Maninder  
21 Singh all....

22

23 **MR. KAUL:** My Lords, I'm trying my best to cover as fast as I can.

24

25 **CHIEF JUSTICE CHANDRACHUD:** Alright, so long as your side completes by 02:00  
26 tomorrow we are on schedule. 01:00. In Bombay, we used to rise... anyway so we started  
27 at 11:00.

28

29 **MR. KAUL:** Yes. So my lords. Now next, kindly have what is the scope and power of  
30 the Speaker to determine the Whip and the leader of the House Legislature Party? What is the  
31 interplay of the same with respect to the provisions of the Tenth Schedule?

32

33 **CHIEF JUSTICE CHANDRACHUD:** Yes.

34

35 **MR. KAUL:** Again My Lords, the submissions, which I have already made, this whole  
36 presumption that a Whip appointed by a legislature wing does not represent the authority of  
37 the political party is entirely misconceived and it is misconceived, as I said, My Lords, that you

1 cannot segregate at the cost of repetition. 6A and 6B of the Symbols Order categorically  
2 provides that percentage, number of votes, Poll, MLAs, MLCs, Members of Parliament, all  
3 are part and integral and organically committed, connected to a political party.

4

5 **CHIEF JUSTICE CHANDRACHUD:** So how do you answer G, then?

6

7 **MR. KAUL:** Then, so my answer to G is that we will go back to the rules again, the  
8 Maharashtra Assembly rules. And the question is what is the scope of the power of the Speaker  
9 to determine the Whip and the leader of the House Legislature Party? What is the interplay of  
10 the same with respect to provisions of the Tenth Schedule. If under the rules members are  
11 members of the Legislature party, they appoint the leader, naturally, the majority will appoint  
12 the person, whoever they do will prevail over a minority, appointing the leaders. Naturally,  
13 that would prevail by the simple rule of majority. And that leader, in turn, will convey  
14 the Whip. Now there to say that the Speaker will be directly in touch, will determine on his  
15 own, that's where Rana comes in that you're not embarking on some independent inquiry.  
16 Your prima facie view is limited to the issue of disqualification. It says you will take a prima  
17 facie view under the Tenth Schedule. A prima facie view qua disqualification. But you are not  
18 embarking like the Election Commission on an independent inquiry into who  
19 represents, who's the Whip of the party, who's there. The assembly rules provide and the  
20 interface and the interaction of the Speaker is with the Leader and the Whip and the Whip  
21 is communicated by the Leader. The Leader can only be appointed by the members of  
22 the House. In fact, My Lords Rule 5, which I had ...Rule 3, Sub-Clause 5 of the rules I had  
23 shown specifically says that it's the Leader of the legislature party who also informs about the  
24 disobedience of the....

25

26 **CHIEF JUSTICE CHANDRACHUD:** Rule 3 we saw.

27

28 **MR. KAUL:** Yes, Rule 3, sub-clause 5. My Lords, I am also now trying to rush through as  
29 much as I can. As far as the Tenth Schedule is concerned My Lords, this may not be directly  
30 arising out of this question but My Lords, it is a serious question that you can effectively stifle  
31 in a party democracy has happened here. Because the resolution is passed on the 21st, on the  
32 23rd, disqualification notices are given. You know, in the resolution of 21st, where people have  
33 said that we are not with this coalition continuing. Naturally, there is a good chance of a trust  
34 vote coming. Look at it, the way it is always been said that this is how you will hamper, harm  
35 democracy. The moment you know there is internal dissent. The moment you know you will  
36 not within the party be able to survive or overwhelming majorities not with you. The easiest  
37 thing is suppose there are 105 elected members. They know 100 here and the overwhelming

1 cadre of the party are not with them. 5 of them go and file a disqualification petition and that  
2 disqualification petition is not decided by the Speaker because there's no timeline, unlike the  
3 removal of a Speaker where there are timelines under the rules provided for and he keeps  
4 sitting on that. So a trust vote which ought to happen immediately and a Government which  
5 has gone into minority or a Ministry which does not any longer enjoy the confidence of the  
6 House continues, because there can be no trust vote, because what was sought to be argued  
7 was that a trust vote can only be when the Government is formed and not later. So the abuse  
8 of that is enormous. And that is why this was a reason in Nabam Rebia My Lords when the  
9 Justice Mishra dealt with that issue. And I keep coming back to say that let's balance the two  
10 and see. A Speaker can definitely in such a situation wait with the disqualification. He should  
11 be keen to immediately establish his majority and then take up disqualifications. Because if an  
12 MLA misses out on the vote or an MP misses out on the vote to remove the Speaker, there is  
13 no second chance on that. There's no judicial review of that. But there's a judicial review of  
14 disqualification which can happen. And he specifically dealt with it in Para 248, this very issue.  
15 Then My Lords, and again the... as far as the party is concerned, the Election Commission  
16 order is there. There they've already said that there were no even internal roots available for  
17 dissent. That we are arguing in the other petition, which the petitioners have filed. The  
18 Election Commission has said we've gone through the Constitution. How does someone  
19 dissent here? How does someone express it, dissent in a matter like this? You've left nothing.  
20 The same Party President is elected by a body which is the electoral college and he appoints  
21 the electoral College, which is there the subject matter. So ultimately there was no other option  
22 left and that is the totality which the Election Commission took into account and took into  
23 account percentage MLA's, MPs, votes polled and then said, we recognized you as the party.  
24 Then My Lords as far as the conduct is concerned, for instance, in Rajendra Singh Rana, I'm  
25 not distinguishing, but I'm giving instances of 2(1)(a). I'm giving instances of 2(1)(a). There on  
26 27th August 2003, 13 MLAs from the BSP met the Governor, asking the Governor to invite  
27 the Leader of the Samajwadi Opposition Party to form the Government. It was actions like  
28 these, which are regarded as *ex facie* voluntarily giving up the membership of the party  
29 under 2(1)(a).

30

31 Here the only allegation against me is that under 21, on 21st we held a meeting of which I say  
32 I never received any notice. They say we sent you a Notice. We haven't received any notice.  
33 And the other notice at 05:00 P.M., the same day. And they say you voluntarily given up the  
34 membership of your party because you did not attend a meeting. That's the overt act they're  
35 talking about which goes on and is the basis of the first two disqualification petitions. In Ravi  
36 Nayak's case My Lords, there were photographs showing the MLAs of the political party with  
37 the opposition party and they approached the Government saying that they no longer support

1 the original political party. These are overt cases of 2(1)(a), where when the Chief  
 2 Justice yesterday put the question, nothing more requires to be done, but your whole basis of  
 3 the case is that you've not attended the meetings. Out of which I don't receive a notice or not  
 4 the other. You hold it an emergency meeting the same evening. And it was in that context on  
 5 27th, when Your Lordships said, give them more time to reply to this. To which Your  
 6 Lordships have come and told, that Your Lordships have toppled the Government. It's the  
 7 judicial order which led to toppling of the Government. In G. Vishwanathan's case, two  
 8 members of the AIDMK were expelled. After that they joined MDMK. When they  
 9 joined MDMK, a motion for disqualification was moved. So these are acts of leaving a political  
 10 party, joining another political party, supporting an opposition party to form  
 11 the Government. Here the same political party continues. The Cabinet  
 12 Ministers were the Cabinet Ministers, in the old regime as well. The Election Commission has  
 13 recognized them as the recognized political party. So this whole split, no merger, Tenth  
 14 Schedule, where does it come in? Then My Lords, please come to question H. My Lord, have  
 15 H?

16

17 **CHIEF JUSTICE CHANDRACHUD:** Yes.

18

19 **MR. KAUL:** Are intra-party decisions amenable to judicial review? What is the scope of  
 20 the same? Now, My Lords, from Sadiq Ali downwards, Your Lordships have said that it is the  
 21 Election Commission. Of course, the Election Commission's order is subject to judicial review  
 22 within the known parameters. And Your Lordships have held that under Article 324, and  
 23 the Symbols Order, the power to recognize a political party, the power to recognize the rival  
 24 faction within a political party is the exclusive jurisdiction of the Election Commission,  
 25 including interim orders, including awarding interim symbols and interim names which it did  
 26 in this matter till the dispute was being heard. And it is the only body which has the necessary  
 27 requisite expertise and wherewithal to go and look at the larger picture of majority. Not  
 28 the Speaker. Not the Governor.

29

30 **JUSTICE NARASIMHA:** 16A.

31

32 **MR. KAUL:** Please, My Lords?

33

34 **JUSTICE NARASIMHA:** Section 16A?

35

36 **MR. KAUL:** Yes, yes, yes My Lords. Next, My Lord, is the question (I). What is the extent of  
 37 the discretion and power of the Governor to invite a person to form the Government and

1 whether the same is amenable to judicial review? Apart from Bommai, Shivraj etc. which we've  
2 already argued, Your Lordships in Rameshwar Prasad went to the extent of saying that when  
3 a majority is claimed, merely because the Governor is of the view that the majority has been  
4 cobbled by illegal and unethical means.

5

6 **JUSTICE NARASIMHA:** That is the converse case? That's a converse case.

7

8 **MR. KAUL:** Yes. So I am saying...

9

10 **JUSTICE NARASIMHA:** Here that's a dissolution of the dissolution House by the  
11 Governor because I think I'm not really sure, I think before a coalition could be formed, the  
12 Governor dissolves the House and the plea taken is that if we give more time there could  
13 be horse trading and buying up more legislators to form the Government.

14

15 **MR. KAUL:** Absolutely. My Lords, but look at the extent to which the Supreme Court goes.  
16 It says that look, a governor is not some autocratic political Ombudsman. Those are the words  
17 used in Rameshwar Prasad.

18

19 **JUSTICE NARASIMHA:** Rameshwar Prasad it was Buta Singh.

20

21 **MR. JETHMALANI:** Your Lordships knows that only too well.

22

23 **MR. KAUL:** Firstly, according to us, it's a legitimate resolution pass representation made to  
24 the governor. I am saying even to the extent where the Supreme Court has said that even if you  
25 think in your personal view that something was by unethical means, even then, you can't refuse  
26 a majority government to be sworn in. That's not for you to decide. But here there is a  
27 resolution which is conveyed. Seven members supporting the Government have said so. And  
28 to that, My Lord, their argument was that your resolution that you talked about. And I want to  
29 read that resolution to My Lords -- Talks about the leader being changed and the Whip being  
30 changed. It doesn't specifically say it's withdrawing support. And even the letter to the  
31 Governor did not specifically say you are withdrawing support. Now My Lords with utmost  
32 respect the Governor takes note of the resolution. The resolution says the leader,  
33 the Whip are being changed. There is huge discontent amongst the party  
34 with MVA continuing and we are not happy with this coalition with the MVA continuing.  
35 Given this fact, given that seven other MLAs say that we are withdrawing support, if the  
36 words in 121 of Bommai para 121, saying that the Governor will use all processes and means  
37 to come to a conclusion, if the Governor on the totality of it comes to a conclusion that it's a fit

1 case and I'm not talking about violence etc. As Your Lordships said right, let's keep that aside.  
2 But surely if the leader of the opposition 7 MLAs supporting the party and a resolution of the  
3 majority of the MLAs within the party says we are not happy, even if that one word as they said  
4 was not present saying that we are withdrawing support. Is the Governor not within his rights  
5 to come to a decision that this is a fit case where a floor test should be proved by the Chief  
6 Minister? It's not a case, my Lord. Does someone misusing this process? Someone, just one  
7 person walks in and says, I don't have any faith. I could understand that it can't be d  
8 one lightly. But you have seven members who are part of the government. You have 34 of 55  
9 MLAs giving a resolution that you are not happy with this coalition. Is the decision of  
10 the Speaker such that Your Lordships in exercise of Your Lordships jurisdiction under 32 will  
11 interfere with it? Is it so bereft of any application of mine or smacks of non-application of  
12 mine?

13

14 Please have that My Lords that resolution which My Lords the Chief Justice also yesterday  
15 asked me to read because the letter I had read out. Convenience Compilation, Volume 2, pdf,  
16 page 55. Resolution or meeting of Shiv Sena in a Maharashtra Legislative Assembly, 2019 to  
17 2024: 'We the following members of the 14 Maharashtra Legislative Assembly belonging to  
18 the Shiv Sena. We are notified as the members of the Maharashtra Legislative Assembly as  
19 members of the Shiv Sena Legislature Party. We had unanimously elected Mr. Eknathrao  
20 Sambhaji Shinde on 31st October 2019 as Group Leader of Shiv Sena Legislature Party. There  
21 was pre poll alliance between the Bhartiya Janta Party & Shiv Sena party for the 14  
22 Maharashtra Legislative Assembly 2019. There has been great dissatisfaction prevalent  
23 amongst the members of our party that is Shiv Sena and our party carder at large on account  
24 of corruption in the Government administration regarding police posting, corruption by the  
25 then Home Minister Anil Deshmukh, who is in jail and setting Minority Minister Mr.  
26 Nawab Malik, who is also in jail for involvement in underworld don Dawood Ibrahim. Apart  
27 from the above regions, our party cadre faced tremendous harassmt and distress on political  
28 as well as personal grounds from the opposition. Ideological parties who are now a part of the  
29 government were using their office and power to undermine the basis and foundation of our  
30 Shiv Sena cadre. There is enormous discontent amongst the cadre of our Party, Shiv Sena  
31 from forming government with NCP in Indian National Congress who are ideologically  
32 opposed to our party the Shiv Sena. There has been a compromise on the principles  
33 of our party Shiv Sena which has been a party with fierce ideological base and was formed for  
34 fighting for the rights of local Marathi people. For the last two and a half years, our party and  
35 its leadership have compromised party principles by aligning with contrasting ideologies for  
36 the sake of achieving power in the State of Maharashtra. The ideology of our Party Leader  
37 Late Balasaheb Thackeray was to give a clean and honest Government to the people

1 of Maharashtra and also without compromising on the principles of Hinduvaad, which was  
2 defeated by the first day itself by aligning with the opposition ideologies. Shiv Sena had forged  
3 the pre poll alliance for 2019 Assembly elections. They fought the... they sought the  
4 blessings of the voters for this Sena BJP alliance which the voters accepted and voted in favour  
5 of this alliance. After that results were out and Shiv Sena severed its ties with the  
6 BJP and formed an alliance with the opposing parties which they had fought against the 2019  
7 assembly elections. This Act of our party leader had a tremendous negative impact upon the  
8 voters and party cadre at large. There was a continuous hue and cry towards the party  
9 leadership for the act of aligning with the opposite opposing parties. Ignoring this, the party  
10 leadership went ahead and formed a Mahavikas Aghadi Government for the last two and a half  
11 years, we, the Shiv Sena legislative party members were facing tremendous pressure from  
12 their electorates voters. We, the members of the legislative party as well as all the leaders and  
13 workers throughout the country were facing a lot of humiliating questions from our voters on  
14 account of our support to leader of the opposition. Our leader Shri Balasaheb Thackeray was  
15 always a strong nationalist. We have also been subjected to a lot of criticism for being a part of  
16 this corrupt Maharashtra Government. In view of the above, the members of the Maharashtra  
17 Shiv Sena legislature party met today and resolved. It is hereby resolved and reaffirmed that  
18 Eknathrao Sambhaji Shinde who was appointed as the leader of Shiv Sena legislature party is  
19 in continues to be the leader of the Maharashtra Shiv Sena legislature party.

20 2). It is here by further resolved that Mr. Bharat Gogawale be elected and appointed as of the  
21 Chief Whip of the 14th Maharashtra Shiv Sena legislative party. Appointment of Mr. Sunil  
22 Prabhu is cancelled with immediate effect.

23

24 Now My Lords, two things emerge from this. One, it is not a reference to the legislature party.  
25 It is a reference to the political party and the disquiet amongst the political party. The only  
26 ground taken is that your specific letter to the Governor did not specifically, or the resolution  
27 specifically mentioned that you have withdrawn or you will be withdrawing support to this  
28 Government. Now, if the essence of this resolution and the letter written is we have no faith in  
29 this coalition Government and independently independent MLAs are writing to say that we  
30 have no faith. They have lost the confidence. Is the decision of the Governor who is seized of  
31 this resolution, who has told that the MLAs have no faith in the, have no faith in the in the  
32 coalition Government. 7 independent MLAs, who are part of the Government where two being  
33 ministers writing the same thing and also the leader of the opposition. It's not that the leader  
34 of the opposition, what he writes cannot be taken into account. He takes all this into account  
35 and comes to a conclusion. The impression is given to Your Lordships as if the Governor has  
36 acted without any application of mind or any material on record. This is according to me, My  
37 Lords, more than sufficient material in all humility, because at the end of the day, if the

1 principal concern of the Governor is majority on the floor of the House, what better, what  
2 better indicator of a majority on the floor of the House than MLAs in substantial numbers  
3 writing to them to say that we do not support and we have no faith in this coalition  
4 Government. And it is this with the Yediyurappa judgment dealt with. There in fact they went  
5 a step further where they said, we have no faith in the Chief Minister of their own political  
6 party. My Lords in Yediyurappa matter, there were MLAs of the BJP writing to the Governor  
7 to say we have no faith in Mr. Yediyurappa continuing in that Government. And there should  
8 be some other person from the party who should lead. And the Supreme Court said they have  
9 not said they are forming another political party. They have not said we are supporting another  
10 political party. This is not a case to attract 2(1)(a).

11

12 **CHIEF JUSTICE CHANDRACHUD:** All right.

13

14 **MR. KAUL:** Then My Lords, is the next question which is J. What is the scope of the powers  
15 of the Election Commission of India with respect to determination of a split within a party?

16

17 **CHIEF JUSTICE CHANDRACHUD:** Question (J), will arise in the other matter which  
18 pertains to the Election Symbols Order.

19

20 **MR. KAUL:** But yes. But now that it's there, may I take you to....

21

22 **JUSTICE KOHLI:** That's, if you don't want to hold that today...

23

24 **MR. KAUL:** ..the only thing that I wanted to say was that, right from Sadiq Ali downwards,  
25 it is settled that the Election Commission has the exclusive jurisdiction to decide the issue and  
26 the correctness of Sadiq Ali has not been questioned. The correctness of Sadiq Ali is nowhere  
27 questioned.

28

29 **JUSTICE SHAH:** That you reserve your energy for....

30

31 **MR. KAUL:** Very well, very well. But My Lords, one factual thing that I wanted to point out,  
32 as far as the Governor is concerned, on 21st itself, that resolution was sent to the Governor.  
33 On 21st itself of June, it was sent to the Governor. On 25th, a letter was written to the Governor  
34 of June, saying that our lives are in under threat. And even in that letter My Lords, which is  
35 at Convenience Compilation Volume 2, PDF page 287. Para 2, says as is common knowledge,  
36 we no longer want to be part of the corrupt Government or MVA government. All I'm saying  
37 is My Lords, other than the resolution on the 25th, then we asked for the security also, we



1 again reiterate that we do not want to be part of the Government. So to say that we never  
2 communicated this to the Government is... to the Governor is factually incorrect.  
3 Now My Lords...

4

5 **JUSTICE KOHLI:** Mr. Kaul, just for our information, there are 34 signatures on this  
6 document, resolution. Are any of these 34 members of Ministers in the House?

7

8 **MR. KAUL:** Yes.

9

10 **JUSTICE KOHLI:** How many?

11

12 **MR. KAUL:** At that time or now?

13

14 **JUSTICE KOHLI:** When this was signed, 21st?

15

16 **MR. KAUL:** Eight out of this 34.

17 As Your Lordship, you said I'm saving my.... I'm not then addressing Your Lordships on the  
18 last question on the Election Commission issue.

19

20 **CHIEF JUSTICE CHANDRACHUD:** Yes. I think....anyway, does the law from Sadiq Ali  
21 there is jurisdiction of the ECP.

22

23 **MR. KAUL:** Not only that very Interestingly just note Convenience Compilation 1, PDF page  
24 82 ground D of Mr. Subhash Desai's own writ Petition 493, of 2022 he says, Can I just read  
25 that line? Ground D. Because the Constitution of a political party under the Tenth  
26 Schedule and the action of the Governor legitimizes what is expressively prohibited by the  
27 Constitution, the Governor has sought to recognize what the Constitution prohibits.  
28 The Governor is also not empowered under the law to recognize who is the Shiv Sena. That is  
29 the domain of the Election Commission. Admittedly recognition of Shiv Sena and in its  
30 leadership has been endorsed by the Election Commission, and there is no dispute whatsoever  
31 to a challenge before the appropriate authority. Now, if that is the domain of the Election  
32 Commission, and when a petition is moved that there is a rival faction in which is the party  
33 within para 15 and the Election Commission now takes a decision on it and Your  
34 Lordships were addressed for 4 hours on that day to say that Election Commission should not  
35 proceed with it because Your Lordships are seized of this matter before a Constitution bench.  
36 Till Your Lordships dismiss that stay application moved by them and they said the Election  
37 Commission should not go on with them with the same convoluted argument *status quo*

1 *ante* relates back to the day they were disqualified. Thus everything else suffers from the sin  
2 of unconstitutionality and thus Election Commission should not proceed because  
3 any writ petition before the Election Commission would be tainted by what these MLAs have  
4 done.

5

6 **CHIEF JUSTICE CHANDRACHUD:** As a matter of propriety, should the Governor have  
7 invited Mr. Shinde to form the government?

8

9 **MR. KAUL:** My Lords, may I, with respect say that if Chief Minister resigns and a  
10 combination emerges in the matter, what is wrong with it? This was a pre poll alliance also. In  
11 fact the change which came about later was with a party they had opposed all their lives and  
12 this was a pre poll alliance that the Governor at that stage feels that this combination can form  
13 the government. You can't have a headless state of affairs. You can't have no one there. And he  
14 asked them to face the floor test. It's not at... as if the governor after that gave them 20 days.  
15 Your Lordships have very often even frowned upon that when a long leeway is getting to form  
16 governments. He immediately said in a day from...prove your majority. Speaker the next day,  
17 the government the day after.

18 So when we are testing the action of the Governor, there could be two views. By hindsight  
19 people may be wiser on some issues. But as I respectfully submitted, is this a case merely  
20 because the petitioner feels the only way out was a vote of no confidence. Which law says  
21 for My Lords? From Bommai downward Your Lordship has said floor test is the best way to  
22 do it. what was the need for him to ask for the Leader of the opposition to move the vote of no  
23 confidence? Why could he have not asked the existing Chief Minister to face a floor test? And  
24 why was the Chief Minister so scared of facing a floor test that he resigned within ten minutes  
25 of the order being passed? Because he knew he did not have the majority. Now, if you can't  
26 leave aside your party, that's why I said My Lords you exclude all those MLAs. You still don't  
27 have the majority on the floor of the House. Can such a Chief Minister have any moral or  
28 political authority to continue after that? And today wants all these actions to be annulled.  
29 From Governor, calling a Government, floor test, everything to be annulled and *status quo*  
30 *ante* to be restored. You refuse to face the floor. Firstly, My Lords, I respectfully submit these  
31 39 MLAs cannot be excluded because the day on 27th, when the interim order was passed  
32 here, firstly, of course, we said it was not based on Nabam, but even I take it was based on  
33 Nabam. What was wrong on it My Lords? That was the stated constitutional position it held  
34 the judicial field, till date holds the judicial field. If a bench of this Honourable Court relies on  
35 a Constitution Bench decision, which says that a Speaker whose own removal is pending  
36 cannot proceed with disqualification. What is wrong with it? If they had recorded that. It was  
37 a very.. it was an absolutely valid order. They are questioning now in a reference. But it is still

1 the judicial.... It has held the judicial field. It's the accepted position today of five judges of this  
2 Honourable Court. Till Your Lordship comes to a conclusion that it doesn't lay down the  
3 correct law, if at all. So even if the 27-06-2022 decision was based on Nabam, it was only on  
4 principles of natural justice. Suppose that also...,  
5

6 **CHIEF JUSTICE CHANDRACHUD:** There's another way of looking at it also. There is  
7 another way of looking at it. Suppose the interim order was not passed on the 27th, which  
8 according to them effectively had the consequence of staying the action by the Speaker to  
9 disqualify these people and take it at its worst that therefore, the Speaker would have  
10 disqualified these persons. If the Speaker had disqualified these persons they would  
11 have... they would have ceased to be members of the House. They would individually stand  
12 disqualified. But would the Governor have still been justified in calling for a trust vote?  
13

14 **Mr. KAUL:** Yes.  
15

16 **CHIEF JUSTICE CHANDRACHUD:** Because he would have then said that 39 members  
17 16 plus 22, 39 members have been disqualified from out of the ruling three party coalition. I  
18 still want to have a trust vote. Would he have been justified in doing that? If we say in the  
19 affirmative, then you have an answer really of how the voting has taken place,  
20

21 **MR. KAUL:** Right.  
22

23 **CHIEF JUSTICE CHANDRACHUD:** Excluding these people.  
24

25 **MR. KAUL:** But My Lords, 2(1)(a) which they rely on, there is no case of 2(1)(a) made  
26 out. Apart from everything because I do not attend two meetings.  
27

28 **CHIEF JUSTICE CHANDRACHUD:** That is a separate issue. But on the point as to  
29 whether this court's order,  
30

31 **MR. KAUL:** Yes. My Lords I bow down. My Lords are absolutely right.  
32

33 **CHIEF JUSTICE CHANDRACHUD:** Assume for a moment that is Court had not passed  
34 the order, what would have been the consequence at the highest? The Speaker would have  
35 disqualified the people, right?  
36

37 **MR. KAUL:** Yes.

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**CHIEF JUSTICE CHANDRACHUD:** If they had been disqualified then they would have gone out. The Speaker would have... the Governor would have then called for a trust vote with the one change that Shinde would have not been called upon to be the Chief Minister then. Then the Governor would have called upon perhaps.....

**MR. KAUL:** And my Lords you take it forward.

**CHIEF JUSTICE CHANDRACHUD:** the BJP to form the Government.

**MR. KAUL:** There are too many hypothetical assumptions, presumptions on [UNCLEAR] part.

**CHIEF JUSTICE CHANDRACHUD:** [UNCLEAR]

**MR. KAUL:** So and so would have happened. Thus this would have happened. Then there's a Constitutional saying everything would have been annulled in the process. That's not how...

**CHIEF JUSTICE CHANDRACHUD:** They are right in to this extent that the request to Shinde to become and to swear in Shinde as a Chief Minister and the opportunity given to him to establish his majority on the floor of the House on the 30th came into being only because in the meantime that Speaker could not disqualify Shinde. Because if he had disqualified him, all the 39 would have gone out. It would have not made a difference. The Shiv Sena probably that coalition wouldn't have come back to power. possibly, possibly because these 39 go out. But with the 39 going out, the composition of the Government today would have been entirely different.

**MR. KAUL:** As I respectfully submitted these are....

**CHIEF JUSTICE CHANDRACHUD:** Hypothetical.

**MR. KAUL:** too many hypothetical. But all I'm saying is the Speaker could not continue with the disqualification.

**CHIEF JUSTICE CHANDRACHUD:** Not exactly hypotheticals, because you know what is happening and what would have happened.

1 **MR. KAUL:** No My Lords, what I am saying is...

2

3 **CHIEF JUSTICE CHANDRACHUD:** Because the Speaker was acting in post-haste. That's  
4 why, you know, the writ petition...

5

6 **MR. KAUL:** My Lords, the Speaker was acting in post-haste in every which way, on the same  
7 day he approves a new leader. On the same day, he says, you file your replies within two days.

8

9 **CHIEF JUSTICE CHANDRACHUD:** Of course, the 39 would have come to this Court and  
10 said, well, we have been disqualified without giving us even sufficient notice.

11

12 **MR. KAUL:** My Lords, that's why I...

13

14 **CHIEF JUSTICE CHANDRACHUD:** In which case stay the order of disqualification is  
15 contrary to law...

16

17 **MR. KAUL:** My Lords, that's why I wanted to point out...

18

19 **CHIEF JUSTICE CHANDRACHUD:** That is in different stream then.

20

21 **MR. KAUL:** One, timeline, which is important which I forgot when I was reading the timeline  
22 and it has some relevance here. On 21st when the notice to the Deputy Speaker was sent for  
23 removal, on 21st was sent to the Speaker it was signed by 34 MLAs, and it is admitted by  
24 the Deputy Speaker in his...

25 Actually the chart I gave quite apart from removing the 39 or whatever the three  
26 independents they were actually running away from actuals. 13 of the people who are  
27 supporting them also abstained. 16 abstentions were there. 13 of them were their own people  
28 who were supporting them abstained. That is how they came to 99 on that day.

29

30 **JUSTICE NARASIMHA:** What are you saying sorry?

31

32 **MR. KAUL:** Please My Lords?

33

34 **JUSTICE NARASIMHA:** You were saying something?

35

1 **MR. KAUL:** My Lords, the second page where if Your Lordships were to see the first chart  
2 votes against Mr. Eknath Shinde: 99. These are my lords at 13 people of the 16 who have seen  
3 24 abstained, 13. 13 were from Aghadi, the NCP.

4

5 **JUSTICE NARASIMHA:** Of the 24 who abstained, 13 of the other group.

6

7 **MR. KAUL:** Yes. So quite apart from the 42 being deleted, your own people were not there  
8 to support your government. Yes that is why this number comes to 99.

9

10 **JUSTICE SHAH:** 13 from MVA abstained?

11

12 **MR. KAUL:** So your leave aside disqualification I have even given charts that if you exclude  
13 the disqualified member still, we win. But here are people who are supporting you even they  
14 abstained because you had lost the support. Yes. [INAUDIBLE] Now My Lord just to answer  
15 what My Lords put to me My Lord, the Chief Justice to say that Mr. Shinde would not have  
16 made it, is wrong for the simple reason, My Lord and I say this in humility, that a). Till he is  
17 disqualified, he continues to be a member of the House.

18

19 **JUSTICE SHAH:** No, no what the Honourable Chief Justice says is if he would have been  
20 disqualified then in that situation....So he was one of the person against whom the  
21 disqualifying.....

22

23 **MR. KAUL:** My Lord, as I respectfully... But the speaker could not have gone ahead with that  
24 disqualification in view of Nabam Rebia. So how do we presume had he been disqualified than  
25 had he been annulled?

26

27 **JUSTICE SHAH:** That is not pressed at all. That is argued according to you.

28

29 **MR. KAUL:** But My Lords I said so I said so. And I've been right through saying from the  
30 beginning because I argued I'm not for a minute suggesting that I did not argue Nabam.  
31 Maybe I did argue Nabam Rebia.

32

33 **CHIEF JUSTICE CHANDRACHUD:** No but, Even if you look at it from a demurrer, that  
34 suppose Nabam was not there, the consequence of Nabam not holding the field would be that  
35 the Speaker would be entitled to decide the disqualification, notwithstanding the pendency of  
36 a notice for his own removal. If he had decided that disqualification then these 39 would have  
37 gone out. In which case still the government had to fall on the numbers which.....

1

2 **MR. KAUL:** Right. Absolutely. That's why I have given the charts with 42. I consciously make  
3 these charts with 42, minus 42 and now I'm going a step further. Mr.  
4 Jethmalani rightly pointed out to me. He said that these 13 also the ones who were supporting  
5 them abstained. There were 16 abstentions. So whichever way we look, the numbers were not  
6 there. And that's why this Chief Minister, the then Chief Minister, resigned within ten minutes  
7 because he knew he did not have the majority. And he was not confident to face the floor.

8

9 **JUSTICE SHAH:** Because he was aware.

10

11 **Mr. KAUL:** He was aware what was happening. So everything we go back to say that because  
12 of disqualification, this was fait accompli. You can't even take care of people  
13 who were supporting you the 13.

14

15 **JUSTICE SHAH:** Mr. Kaul, you can consider from this angle also So far as Nabam Rebia is  
16 concerned, the order dated 27-06 you might have pressed Nabam Rebia. At that time you  
17 might have argued also and according to you, you argued also. But this court correct, did not  
18 injunct Speaker. Correct? Maybe technically till 12th. Correct? He was restrained  
19 from.... it can be said he was restrained. But there was no restrain at all. Correct? Against  
20 the Speaker exercising the powers.

21

22 **MR. KAUL:** My Lords, I bow down to it.

23

24 **JUSTICE SHAH:** Otherwise if the Nabam Rebia would have been considered by this Court.  
25 Then there....

26

27 **MR. KAUL:** Then he could not have continued.

28

29 **JUSTICE SHAH:** Then it would have...

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31 **MR. KAUL:** Then no proceeding should have been stayed before him. My Lords I said so  
32 repeatedly. The entire argument was heard. Ultimately, the Court considered because the  
33 same argument made. There are problems, Nabam Rebia applies, doesn't apply. The Court  
34 said only on pure principles of natural justice give them more time because the rules provide  
35 for seven days and on a weekend you've given them two days. There was to say, that Your  
36 Lordships order was the result and then Your Lordships are told because of that rewind  
37 everything.

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**JUSTICE SHAH:** On a lighter side everything went so fast.

**MR. KAUL:** My Lords, that is politics.

**JUSTICE SHAH:** No. No. We are not....That is why...

**MR. KAUL:** In fact My Lord, that's why in para 78, Your Lordship's say of Shivraj Singh Chauhan, timing... on a particular date what happens? In whose favour what tilts? That's Politics. And they said that's none of the concern of the Court. That's what Your Lordship records in para 78 of Shivraj Singh Chauhan.

**JUSTICE SHAH:** You want to show some....

**MR. KAUL:** Yes, yes, yes My Lords. My Lords I'm not bothering Your Lordships with this. But another argument which was made was that even in our notice to the Speaker, we had not mentioned anything about majority. There was specific paragraph in the letter to the Deputy Speaker that he has lost the majority. So to say that we had not mentioned it is factually incorrect. And as far as notice to the Speaker is concerned, My Lord, that's the last point before I go to the case law. 21st I give a notice. The Deputy Speaker files an affidavit in this Court that that notice was received. Secondly on 22nd of June a hand delivered copy is given. On 24th of June, an email is sent to which apparently the Speaker comes and that day Dr. Dhawan appeared. He appeared in court and said that to this it was not from an authorized email. So I pointed out that there is Rule 18 of the Maharashtra Legislative Assembly Rules, which just talks about a signed notice being given. There's no other restriction on it. So even if we exclude the 24th, 21st we sent, the Deputy Speaker accepted that such a notice was given. 22nd, a hand delivered copy is given with a stamp, which we showed to the court when we went. So we said, what are you talking about not receiving a copy? This is a hand delivered with a stamp and on 23rd is the disqualification petition. And that is why My Lords, I said the scope for misuse of disqualification is enormous. And that is exactly what was sought to be done. You knew there was discontent, you knew it was simmering. You knew it reached its culmination on 21st, with a resolution being passed at the meeting that overwhelmingly the cadres were not happy with this coalition. And you knew that the next sequitur to this will be a trust vote. You immediately move a disqualification petition and the Speaker on the very same day accepts your person. And then two days later I am told file a reply. It is under those circumstances that I came because repeatedly your Lordships are told constitutional propriety, morality abused. If at all there is been abuse on this matter My Lords, it has been



1 by the regime then in power and the then Deputy Speaker with the hurry that they moved, that  
2 they did not even follow the basic norms of natural justice. If the seven days were required,  
3 what was the hurry in giving two days? And the only argument the other side had was  
4 that in one of the matters Your Lordships have held that even two days was enough. So I will  
5 also cite five judgments to say that two days were not enough where Your Lordships have said  
6 there's no straight jacket formula. It has to be seen in the facts of every case. That takes us  
7 nowhere. But given the facts what was this great hurry? that over a weekend you wanted  
8 replies to be filed. That's what led to our 32 being filed right apart from the fact that Kihoto  
9 was not a bar to us because Kihoto works if you are seized of a matter, you know, Speaker  
10 is seized of the matter. You do not go to Court, not in a case when Nabam applies. That  
11 the Speaker has a disqualification pending against him, removal pending against him, and he  
12 cannot proceed at all. It was in those circumstances that I came by way of a 32. Now, My  
13 Lords I'll come to the case law.

14

15 **JUSTICE NARASIMHA:** Case law on the point?

16

17 **MR. KAUL:** Yes, yes My Lords. My Lords, I will start by distinguishing Mayawati's  
18 judgment.

19

20 **CHIEF JUSTICE CHANDRACHUD:** Why don't you do this? You can actually cite the  
21 judgments in chronological order and then distinguish whatever they have cited along the way.  
22 So that perhaps we can do that in a chronological order, whichever judgments you are citing,  
23 you can cite them chronologically and then if they have relied on a particular judgment, you  
24 can distinguish it along with the way. That's one way of doing it or you can cite, Mayawati.

25

26 **MR. KAUL:** I thought My Lords, there are four or five crucial judgments that they relied on  
27 for their case and then I'll come to.....

28

29 **CHIEF JUSTICE CHANDRACHUD:** Alright, fair enough. And then you can cite your  
30 judgements.

31

32 **MR. KAUL:** Yes, My Lords.

33

34 **CHIEF JUSTICE CHANDRACHUD:** Mayawati is at, where is that?

35

1 **MR. KAUL:** In fact, if Your Lordships permit, I'll just very briefly tell Your Lordships about  
2 the facts. I won't bother Your Lordships with the paras at all. I'll just give the facts. I've  
3 summed up the facts.

4

5 **CHIEF JUSTICE CHANDRACHUD:** Just give us the reference in the compilation, that's  
6 all. So if we have to...

7

8 **MR. KAUL:** Convenience compilation, Volume-2, PDF page 1080. (1998), Volume-7, SCC  
9 517. In 1996, in the general elections to the UP Legislative Assembly, no political party  
10 obtained an absolute majority case. So there was an agreement between the Bhartiya Janata  
11 Party and the Bahujan Samaj Party. BSP at that stage had 67 MLAs and the BJP had 179...175  
12 members in it's fold. On 21-09-1997, Mr. Kalyan Singh of the BJP was sworn in as the Chief  
13 Minister. On 19-10-1997, the appellant, that is Mayawati announced withdrawal of  
14 participation in support of the BSP to the coalition Government, all the BSP members resigned  
15 from the Government. Immediately, the Governor of the State convened a special session of  
16 the Assembly at 11:00 A.M. on 21-10-1997 -- That date is important -- And told Mr. Kalyan  
17 Singh to prove his majority on the floor of the House after that. On 28-10-1997, appellant  
18 issued a Whip directing all BSP MLAs to remain present in the House throughout the  
19 proceedings on the next date and vote against the motion. That was the Whip issued. On 21-  
20 10-1997, 222 members of the Assembly voted in favour of the Government. There was no vote  
21 opposing it. On 24-10-1997, 13 petitions were filed seeking disqualification of those members  
22 of the BSP of violating the Whip given on 28-10-1997, the Whip, which had been given. And  
23 the petitions invoked only Clause 2(1)(b), of the Tenth Schedule. Your Lordships may note  
24 that, the allegation was 2(1)(b) of the Constitution. On 25-11-1997, the concerned MLAs  
25 against whom disqualification petitions had been filed, filed their written statements and  
26 pleaded that a split took place between the members of the BSP on 21-10-1997 and more than  
27 one-third legislators of the BSP got separated, and thus they relied on the protection of para 3  
28 of the Tenth Schedule. The Speaker on 23-03-1998, dismissed the disqualification petitions  
29 and recognized the MLAs as a separate political party. In this background is what the appellant  
30 said, and in this background what the appellant said is that this..... that it is the Whip, which  
31 is issued by the erstwhile Legislature Party of the BSP and not the new political party which  
32 had been formed as used in para 2(1)(d) is the legislature party of the original political party  
33 of those MLAs is what is to be read into 2(1)(b). The court said nothing doing. Political party  
34 as mentioned there in 2(1)(b) cannot be read as a legislature party. So this was a split. A new  
35 party had been formed and they were bound by the directions of the new party, and protected  
36 by that.

37

1 **CHIEF JUSTICE CHANDRACHUD:** What were they relying upon in Mayawati in  
2 particular?

3

4 **MR. KAUL:** That a Whip of the Legislative Party of the BSP, of which they were a member  
5 before splitting had told them not to vote.

6

7 **JUSTICE NARASIMHA:** That is 20th October Whip.

8

9 **MR. KAUL:** Yes had told them not to vote in favour of the motion. So they said you violated  
10 the Whip of the Legislature Party, and because you violated the Whip of the Legislature party  
11 you are disqualified. They said we have split and we formed the new party and our new original  
12 political party told us what to do. We did it in compliance with that. So Ms. Mayawati, argued  
13 that you read Legislature Party into 2(1)(b), and that Whip ought to be obeyed of the old party.  
14 The court said no, we will read it as the political party and they are protected by para 3 of the  
15 Tenth Schedule. Now. My Lords, in our case, A) There is no rival faction which is split. The  
16 rival faction is within the party. No new political party has been formed. The question is not of  
17 an erstwhile legislature party of a party that you belong to vis-à-vis the new original political  
18 party that you formed. The judgement at no point, says that when a Whip is whom the Speaker  
19 interacts with, the Whip as appointed as per the rules conveyed by the leader, etc. should be  
20 ignored and we should look at some deeper, other Whip which the political party  
21 has appointed. That's not what it says. All it says is in the given fact and circumstances that  
22 that legislature Whip of the party is not applicable because they are protected by the sanction  
23 as given by the formation of the new political party. So Mayawati, according to us, My Lords  
24 has no application at all. And in any case My Lords, as I have said, it's never been our case that  
25 it's only the Legislature Party and not the political party. We have right through said both are  
26 co-joined, organic, integrated, and any action of the Legislature Party has the political  
27 authority of the political party to say what it says.

28 Now My Lords Rajendra Rana, Volume 1, PDF page 834.

29

30 **CHIEF JUSTICE CHANDRACHUD:** 834?

31

32 **MR. KAUL:** Yes. So My Lords Rana is relied on by them. I relied for a different purpose. They  
33 rely on Rana for two essential purposes. One is disqualification is ex-post facto, so everything  
34 goes back to the date of disqualification. And secondly, your Lordships in an appropriate case  
35 decided the issue of disqualification as a court of first instance, rather than remanding the  
36 matter or letting the Speaker decide. That is the two..... Those are the two grounds taken to  
37 rely on Rana. Now My Lords just some facts. Quite apart from the second issue My Lords a

1 straight answer would be the matter was pending for three years in the High Court. The High  
 2 Court then remanded it back. The Supreme Court said the assembly elections are at the end of  
 3 the year. Rather than remand it, decide the matter. These are peculiar facts. Not that in every  
 4 case you bypass the constitutional authority and come to the Supreme Court as  
 5 a court of first instance. But on the first part, My Lords some crucial facts. After the  
 6 2002 UP elections My Lords to the UP State Assembly, a coalition government was  
 7 formed headed by the Bahujan Samajwadi Party. In 2003 My Lords, the Cabinet  
 8 recommended dissolution of the Assembly. And now this is important. Before the resignation  
 9 of the Cabinet on 27-08-2003, 13 MLAs of the BSP Party met the Governor and requested him  
 10 to invite the leader of the Samajwadi Party to form the Government. The opposition to form  
 11 the Government. The Governor acceded to the request and thereafter, Mr.  
 12 Swami Prasad Maurya who was with the BSP, filed a disqualification petition saying that they  
 13 had voluntarily given up the membership of the party by supporting Samajwadi Party and  
 14 going to the Governor. On 06-09-2003, 13 members, those 13 MLAs who had gone to the  
 15 Governor with Samajwadi Party MLAs, fortified by another 24 MLAs requested the Speaker  
 16 to recognize a split in the party and the Speaker recognized the split in the party. The Supreme  
 17 Court said that split and to be entitled to the benefits and protection of Para 3 of the Tenth  
 18 Schedule is an event which happened later. The Governor is only concerned with the day when  
 19 those 13 BSP MLAs met the Governor and requested him to invite the leader of the Samajwadi  
 20 Party to form the Government. And the Speaker should have only looked at the facts on that  
 21 day and said not at subsequent event and in that context said *ex post facto*, it will go back to  
 22 the day they were disqualified or incur disqualification under the Tenth Schedule. It could  
 23 have never been the intent of the Court and it did not say so that on one hand, the Supreme  
 24 Court says that till disqualification petitions are pending, you participate in all proceedings.  
 25 On the other hand the moment you're disqualified all your actions are annulled. So *ex post*  
 26 *facto* was specific because the Speaker started looking at subsequent events. The Speaker  
 27 started looking at the split, which had not happened on that day. And they said, this is an overt  
 28 2(1)(a) Act where you go to the Governor, request him to get the Samajwadi Party to form  
 29 the Government. It was in that context. The other part of Rajendra Rana, I pointed out  
 30 to My Lords that.... now, My Lords another judgment.....

31

32 **CHIEF JUSTICE CHANDRACHUD:** Mr. Kaul why don't you do this? Tomorrow morning,  
 33 just give us in two pages of small note on how you distinguish each of those judgements. It will  
 34 be very much helpful.

35

36 **MR. KAUL:** Very well, very well, no, no, I'll do that. I'll get for all those four or  
 37 five judgements a distinguishing note tomorrow.

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**CHIEF JUSTICE CHANDRACHUD:** Just two or three pages as a bulletin.

**MR. KAUL:** And what I'll do My Lords, tomorrow is I have also prepared a written note of the various propositions and judgments that I'm relying on.

**CHIEF JUSTICE CHANDRACHUD:** Right.

**MR. KAUL:** I'm in the process. I'll take Your Lordships through that. And wherever Your Lordship wants me to really read any particular paragraph, I can do that.

**CHIEF JUSTICE CHANDRACHUD:** All right. That'll be much quicker then. Just so that you know....How long would you take? Will you finish in about an hour or so tomorrow?

**MR. KAUL:** Yes.

**CHIEF JUSTICE CHANDRACHUD:** So we target starting by 11 o' clock tomorrow. So by 12:00 If you finish, then between Mr. Jethmalani ..

**MR. MANINDER SINGH:** What I am respectfully submitting My Lords....

**CHIEF JUSTICE CHANDRACHUD:** if you can Mr. Jethmalani and Mr. Maninder Singh can give us a brief note of a page or so...

**MR. MANINDER SINGH:** I was about to say that [UNCLEAR] we will furnish a note by today evening. And My Lord very 10-15 minutes, we will just make...

**CHIEF JUSTICE CHANDRACHUD:** If both of you can just give us, email the note to the Court Master so he will circulate it in the night to us and give it to Mr. Sibal because Mr. Sibal will also be then and you can also email your....

**MR. SIBAL:** My Lord the problem is Solicitor General is to argue, please remember that.

**CHIEF JUSTICE CHANDRACHUD:** Yes, of course. Now, what about the Solicitor? So maybe Mr. Kaul, is it possible for you to sort of confine complete by say 11:45. We will start at 11:00 because we have mentioning. You can try and compress it by 11:45. In between Mr.

1 Jethmalani and Mr. Maninder Singh by 12:15 that leaves 45 minutes to the Solicitor General.  
2 If we can do that... I mean entirely...

3

4 **MR. JETHMALANI:** We'll try our best. As succinct as we possibly can will try.

5

6 **MR. SIBAL:** Otherwise it will be difficult.

7

8 **MR. KAUL:** Otherwise the rejoinder could be restricted to 1 hour. They've argued for  
9 three and half hours My Lor.

10

11 **MR. SIBAL:** Otherwise it will be difficult if they don't finish by 01:00.

12

13 **JUSTICE SHAH:** Rejoinder depends on the how the other side has done.

14

15 **CHIEF JUSTICE CHANDRACHUD:** So how long is the Solicitor likely to take, any idea?

16

17 **MR. SIBAL:** He said one to one and a half hours to me. One to one and a half hours to me he  
18 told.

19

20 **CHIEF JUSTICE CHANDRACHUD:** Alright, try and make your arguments as  
21 compressed, but we'll wrap up with this cite before lunch... No, no only because we are  
22 heading towards a week long break. And we don't want to keep this beyond the break.

23

24 **MR. SIBAL:** The one thing the Learned Chief Justice, is he never gets tired of anybody. He  
25 never shows it at least.

26

27 **MR. JETHMALANI:** That's the theory.

28

29 **CHIEF JUSTICE CHANDRACHUD:** But that's a fact in my mind as well. Because if you  
30 have an understanding about how vast the field of knowledge is, you can never tire of the  
31 arguments which the lawyers are making because the last word is never said until the last  
32 word is over.

33

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

35

36 **MR. KAUL:** Very grateful My Lords. Very grateful.

37

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