

ITEM NO.301

COURT NO.1

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(Civil) No.493/2022

SUBHASH DESAI

Petitioner(s)

VERSUS

PRINCIPAL SECRETARY, GOVERNOR OF MAHARASHTRA & ORS.Respondent(s)

(FOR ADMISSION and IA No.92215/2022-STAY APPLICATION, IA No.92217/2022-EXEMPTION FROM FILING O.T., IA No.92216/2022-PERMISSION TO FILE LENGTHY LIST OF DATES, IA No. 100297/2022 - APPROPRIATE ORDERS/DIRECTIONS AND IA No. 101776/2022 - INTERVENTION/IMPLEADMENT)

WITH

W.P.(C) No. 469/2022 (X)

(FOR ADMISSION and IA No.88601/2022-STAY APPLICATION, IA No.88602/2022-EXEMPTION FROM FILING O.T. and IA No.88964/2022- APPROPRIATE ORDERS/DIRECTIONS, A No. 89960/2022 - INTERVENTION APPLICATION & IA No. 88601/2022 - STAY APPLICATION)

W.P.(C) No. 468/2022 (X)

(FOR STAY APPLICATION ON IA 88603/2022 & FOR EXEMPTION FROM FILING O.T. ON IA 88604/2022)

W.P.(C) No. 470/2022 (X)

(FOR EX-PARTE STAY ON IA 88697/2022)

W.P.(C) No. 479/2022 (X)

(FOR EX-PARTE STAY ON IA 90188/2022 & FOR EXEMPTION FROM FILING O.T. ON IA 90189/2022)

W.P.(C) No. 538/2022 (X)

(IA No. 100285/2022 - APPROPRIATE ORDERS/DIRECTIONS, IA No.98578/2022 - EXEMPTION FROM FILING O.T. & IA No. 98577/2022 - STAY APPLICATION)

Date : 23-08-2022 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE KRISHNA MURARI

HON'BLE MS. JUSTICE HIMA KOHLI

For Petitioner(s)

Mr. Kapil Sibal, Sr. Adv.

Mr. Devadatt Kamat, Sr. Adv.

Mr. Rajesh Inamdar, Adv.

Mr. Amit Anand Tiwari, Adv.

Mr. Anish R. Shah, AOR
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 Mr. Rohit Sharma, Adv.
 Mr. Harsh Pandey, Adv.
 Mr. Revanta Solanki, Adv.
 Mr. Sunny Jain, Adv.
 Mr. Nishanth Patil, Adv.
 Mr. Nizam Pasha, Adv.
 Ms. Devyani Gupta, Adv
 Ms. Tanvi Anand, Adv.

Mr. Gaurav Belsare, Adv.
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Mr. Neeraj Kishan Kaul, Sr.Adv.
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 Ms. Gunjan Mangla, Adv.
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 Ms. Aarzoo Aneja, Adv.
 Mr. Dhruv Sharma, Adv.
 Ms. Ira Mahajan, Adv.
 Ms. Pracheta K., Adv.
 Mr. Aditya S., Adv.

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 Mr. Chirag Shah, Adv.
 Mr. Utsav Trivedi, Adv.
 Mr. Nihar Thakeray, Adv.
 Mr. Abhinay, AOR
 Ms. Manini Roy, Adv.
 Mr. Himanshu Sachdeva, Adv.
 Ms. Shivani Bhushan, Adv.
 Mr. Pooran Chand Roy, Adv.

Ms. Malvika Trivedi, Sr. Adv.
 Ms. Siya, Adv.
 Mr. Nadeem Afroz, Adv.
 Mr. Aditya S., Adv.
 Ms. Pracheta Kar, Adv.

For Respondent(s)

Mr. Pai Amit, AOR
 Ms. Pankhuri Bhardwaj, Adv.
 Mr. Rohit R. Saboo, Adv.
 Mr. Abhiyudaya Vats, Adv.

Ms. Astha Prasad, AOR

Mr. Abhikalp Pratap Singh, AOR

Mr. Rahul Chitnis, Adv.

Mr. Sachin Patil, AOR

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Ms. Shwetal Shepal, Adv.

Mr. Durgesh Gupta, Adv.

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Mr. Ankit Yadav, AOR

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Mr. Rajsaheb Patil, Adv.

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Mr. Amit Sharma, Adv.

Mr. Dipesh Sinha, Adv.

Ms. Pallavi Barua, Adv.

Mr. Ashok Kumar Gupta II, AOR

Mr. Mahendra Vishwanath K., Adv.

Mr. Vijay Pal, Adv.

Mr. Rakesh Kumar, Adv.

Mr. Pramod Kr. Singh, Adv.

Mr. Kundal Lal, Adv.

Mr. Arvind Kumar, Adv.

Kajal Singh, Adv.

Mr. Kailash Prashad Pandey, AOR

UPON hearing the counsel the Court made the following
O R D E R

This Court finds that these matters merit reference under Article 145(3) of the Constitution to a 5-Judge bench, as they raise other substantial questions of law as to the interpretation of the Constitution, in terms of the signed order, which are:

- a. Whether notice for removal of a Speaker restricts him from continuing with disqualification proceedings

under Tenth Schedule of the Constitution, as held by this Court in *Nebam Rebia* (*supra*)?

- b. Whether a petition under Article 226 or Article 32 lies, inviting a decision on a disqualification petition by the High Courts or the Supreme Court, as the case may be?
- c. Can a Court hold that a member is "deemed" to be disqualified, by virtue of his/her actions, absent a decision by the Speaker?
- d. What is the status of proceedings in the House during the pendency of disqualification petitions against the members?
- e. If the decision of a Speaker that a member has incurred disqualification under the Tenth Schedule relates back to the date of the action complained of, then what is the status of proceedings that took place during the pendency of a disqualification petition?
- f. What is the impact of the removal of Paragraph 3 of the Tenth Schedule?
- g. What is the scope of the power of the Speaker to determine the Whip and the leader of the house legislature party? What is the interplay of the same with respect to the provisions of the Tenth Schedule?
- h. Are intra-party decisions amenable to judicial review? What is the scope of the same?
- i. What is the extent of discretion and power of the Governor to invite a person to form the Government, and whether the same is amenable to judicial review?
- j. What is the scope of the powers of the Election Commission of India with respect to determination of a split within a party?

The Registry is directed to place the matters before the Constitution Bench on 25-8-2022 and the issue whether the proceedings before the Election Commission of India should go on or

not or can be taken up by the said Bench which is going to hear the matters on the said date.

(VISHAL ANAND)
ASTT. REGISTRAR-cum-PS

(R.S. NARAYANAN)
COURT MASTER (NSH)

(Signed Order is placed on the file)