

ITEM NO.1502

COURT NO.1

SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition (Civil) No.493/2022

SUBHASH DESAI

Petitioner(s)

VERSUS

**PRINCIPAL SECRETARY, GOVERNOR OF MAHARASHTRA
& ORS.**

Respondent(s)

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

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

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

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

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

Date : 11-05-2023 **These petitions were called on for pronouncement
of Judgment today.**

For Petitioner(s) **Mr. Kapil Sibal, Sr. Adv.**
 Dr. Abhishek Manu Singhvi, Sr. Adv.
 Mr. Devadatt Kamat, Sr. Adv.
 Mr. Amit Anand Tiwari, Adv.
 Mr. Rohit Sharma, Adv.
 Mr. Rajesh Inamdar, Adv.
 Mr. Javedur Rahman, Adv.
 Mr. Nizam Pasha, Adv.
 Mr. Anish R. Shah, AOR
 Mr. Harsh Pandey, Adv.
 Mr. Revanta Solanki, Adv.
 Mr. Amit Bhandari, Adv.
 Mr. Sunny Jain, Adv.
 Mr. Nishant Patil, Adv.
 Ms. Devyani Gupta, Adv.
 Ms. Tanvi Anand, Adv.

Ms. Aprajita Jamwal, Adv.

Mr. Kapil Sibal, Sr. Adv.

Mr. Nishant Patil, Adv.

Mr. Abhishek Manu Singhvi, Sr. Adv.

Mr. Devadatt Kamat, Sr. Adv.

Mr. Rohit Sharma, Adv.

Mr. Amit Anand Tiwari, Adv.

Mr. Javedur Rahman, AOR

Mr. Rajesh Inamdar, Adv.

Mr. Sunny Jain, Adv.

Mr. Dharmendra Mishra, Adv.

Mr. Amit Bhandari, Adv.

Mr. Nizam Pasha, Adv.

Mr. Harsh Pandey, Adv.

Mr. Revanta Solanki, Adv.

Mr. Siddharth Kaushik, Adv.

Ms. Aparajita Jamwal, Adv.

Mr. Nikhil Purohit, Adv.

Mr. Ashok Kumar, Adv.

Ms. Devyani Gupta, Adv.

Ms. Tanvi Anand, Adv.

Mr. Siddharth Seem, Adv.

Mr. L. Nidhiram Sharma, Adv.

Mr. Aman Sharma, Adv.

Mr. Ashima Chauhan Singh, Adv.

Mr. Mudassir, Adv.

Mr. Neeraj Kishan Kaul, Sr. Adv.

Mr. Maninder Singh, Sr. Adv.

Mr. Siddharth Bhatnagar, Sr. Adv.

Mr. Abhikalp Pratap Singh, AOR

Mr. Abhay Anturkar, Adv.

Mr. Parbhas Bajaj, Adv.

Mr. Dhruv Sharma, Adv.

Ms. Ira Mahajan, Adv.

Mr. Raghav Agrawal, Adv.

Mr. Toshiv Goyal, Adv.

Ms. Manmeet Kaur Sareen, Adv.

Mr. Navneet R, Adv.

Ms. Shreya Saxena, Adv.

Ms. Yamini Singh, Adv.

Ms. Pritha Suri, Adv.

Mr. Rangsar An Mohan, Adv.
Mr. Ramchand Madan, Adv.
Ms. Vijetha Ravi, Adv.
Mr. Ajay Sabharwal, Adv.

Mr. Harish Salve, Sr. Adv.
Mr. Neeraj Kishan Kaul, Sr. Adv.
Mr. Mahesh Jethmalani, Sr. Adv.
Mr. Maninder Singh, Sr. Adv.
Mr. Siddharth Bhatnagar, Sr. Adv.
Ms. Malvika Trivedi, Sr. Adv.
Mr. Chirag J Shah, Adv.
Mr. Utsav Trivedi, Adv.
Mr. Ravi Sharma, Adv.
Mr. Himanshu Sachdeva, Adv.
Ms. Manini Roy, Adv.
Ms. Shivani Bhushan, Adv.
Mr. Piyush Tiwari, Adv.
Ms. Chaitali Jugran, Adv.
Ms. Kanjani Sharma, Adv.
Mr. Nihar Thackeray, Adv.
Ms. Mugdha Pande, Adv.
Mr. Ajay Awasthi, Adv.
Mr. Prabhash Bajaj, Adv.
Ms. Ira Mahajan, Adv.
Mr. Dhruv Sharma, Adv.
Mr. Navneet R, Adv.
Ms. Srishti Kumar, Adv.
Mr. Kumar Sumit, Adv.
Mr. Raghav Agarwal, Adv.
Ms. Pracheta Kar, Adv.
Mr. Aditya Sidhra, Adv.
Mr. Nadeem Afroz, Adv.
Ms. Sujal Gupta, Adv.
Mr. Wedo Khalo, Adv.
Mr. Biswaksen Panda, Adv.
M/s. Tas Law

For Respondent(s)

Mr. Pai Amit, AOR
Ms. Pankhuri Bhardwaj, Adv.
Mr. Abhiyudaya Vats, Adv.
Ms. Ranu Purohit, Adv.
Ms. Bhavana Duhoon, Adv.

Ms. Astha Prasad, AOR
Ms. Rukhmini Bobde, Adv.
Ms. Trishala Trivedi, Adv.
Mr. Ankit Ambasta, Adv.
Mr. Chirag Gupta, Adv.
Mr. Ajit Pravin Wagh, Adv.

Mr. Aaditya Aniruddha Pande, AOR
Mr. Bharat Bagla, Adv.
Mr. Sourav Singh, Adv.

Mr. Neeraj Kishan Kaul, Sr. Adv.
Mr. Maninder Singh, Sr. Adv.
Mr. Siddharth Bhatnagar, Sr. Adv.
Mr. Abhikalp Pratap Singh, AOR
Mr. Abhay Anturkar, Adv.
Mr. Prabhas Bajaj, Adv.
Mr. Dhruv Sharma, Adv.
Ms. Ira Mahajan, Adv.
Mr. Raghav Agrawal, Adv.
Mr. Toshiv Goyal, Adv.
Ms. Manmeet Kaur Sareen, Adv.
Ms. Manmeet Kaur, Adv.
Mr. Navneet R, Adv.
Mr. Shreya Saxena, Adv.
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Ms. Yamini Singh, Adv.
Ms. Pritha Suri, Adv.
Mr. Rangsan Mohan, Adv.
Mr. Ramchandran Madan, Adv.
Mr. Ramchandra Madan, Adv.
Ms. Vijetha Ravi, Adv.
Mr. Ajay Sabharwal, Adv.
Mr. Dhruv Tank, Adv.

Mr. Harish Salve, Sr. Adv.
Mr. Neeraj Kishan Kaul, Sr. Adv.
Mr. Mahesh Jethmalani, Sr. Adv.
Mr. Maninder Singh, Sr. Adv.
Mr. Siddharth Bhatnagar, Sr. Adv.
Ms. Malvika Trivedi, Sr. Adv.
Mr. Chirag J Shah, Adv.

Mr. Utsav Trivedi, Adv.
Mr. Ravi Sharma, Adv.
Mr. Himanshu Sachdeva, Adv.
Ms. Manini Roy, Adv.
Ms. Shivani Bhushan, Adv.
Mr. Nihar Thackeray, Adv.
Mr. Piyush Tiwari, Adv.
Ms. Ira Mahajan, Adv.
Mr. Dhruv Sharma, Adv.
Mr. Raghav Agarwal, Adv.
Ms. Mugdha Pande, Adv.
Mr. Ajay Awasthi, Adv.
Mr. Prabhash Bajaj, Adv.
Mr. Navneet R, Adv.
Ms. Srishti Kumar, Adv.
Mr. Kumar Sumit, Adv.
Ms. Chaitali Jugran, Adv.
Ms. Kanjani Sharma, Adv.
Ms. Pracheta Kar, Adv.
Mr. Aditya Sidhra, Adv.
Mr. Nadeem Afroz, Adv.
Ms. Sujal Gupta, Adv.
Mr. Wedo Khalo, Adv.
Mr. Biswaksen Panda, Adv.
M/s. Tas Law

Mr. Javedur Rahman, AOR

Mr. Ankit Yadav, AOR
Ms. Prakriti Rastogi, Adv.

Mr. Tushar Mehta, SG
Mr. K.M. Nataraj, ASG
Mr. Kanu Agarwal, Adv.
Mr. Rajat Nair, Adv.
Mr. Anirudh Bhat, Adv.
Mr. Akshit Pradhan, Adv.
Mr. Shreeyash U Lalit, Adv.
Ms. Ruchi Gour Narula, Adv.
Mr. Arvind Kumar Sharma, AOR

Mr. T. R. B. Sivakumar, AOR
Mr. Shreyas Gacche, Adv.

Mr. Rajsaheb Patil, Adv.
Mr. Supriya Wankhede, Adv.
Mr. Sudarshan Kute, Adv.

Mr. Ashok Kumar Gupta Ii, AOR

Mr. Kailash Prashad Pandey, AOR
Mr. Mahendra Kawchale, Adv.
Mr. Vijay Pal, Adv.
Mr. Pramod Kumar Singh, Adv.
Mr. Anil Kumar, Adv.
Mr. Umang Tripathi, Adv.
Mr. Deepankar, Adv.
Ms. Rekha Agarwal, Adv.
Mr. Karunesh Kumar Shukla, Adv.
Mr. Amit Garg, Adv.
Mr. Firasat Ali Siddiqi, Adv.
Mr. Kundan Lal Gupta, Adv.
Mr. Vimal Kishore Rastogi, Adv.

Dr. A.P. Singh, Adv.
Mr. V.P. Singh, Adv.
Mrs. Richa Singh, Adv.
Mrs. Geeta Chauhan, Adv.
Mr. Sadashiv, AOR

Mr. Aaditya Aniruddha Pande, AOR
Mr. Bharat Bagla, Adv.
Mr. Sourav Singh, Adv.

Mr. Pankaj Kuma Singh, Adv.
Mr. Mukesh Verma, Adv.
Mr. Pawan Kumar Shukla, Adv.
Mr. Kamal Kumar Pandey, Adv.
Mr. S.C. Tripathi, Adv.
Mr. Gaurav Belsare, Adv.
Mr. Manindra Dubey, Adv.
Mr. Raj Singh Rana, AOR
Mrs. Pragya Verma, Adv.

- 1 Hon'ble Dr Justice Dhananjaya Y Chandrachud, Chief Justice of India pronounced the judgment of the Bench comprising His Lordship, Hon'ble Mr

Justice M R Shah, Hon'ble Mr Justice Krishna Murari, Hon'ble Ms Justice Hima Kohli and Hon'ble Mr Justice Pamidighantam Sri Narasimha.

- 2 In terms of the signed reportable judgment, the Court passed the following order:
 - a. The correctness of the decision in Nabam Rebia (supra) is referred to a larger Bench of seven judges;
 - b. This Court cannot ordinarily adjudicate petitions for disqualification under the Tenth Schedule in the first instance. There are no extraordinary circumstances in the instant case that warrant the exercise of jurisdiction by this Court to adjudicate disqualification petitions. The Speaker must decide disqualification petitions within a reasonable period;
 - c. An MLA has the right to participate in the proceedings of the House regardless of the pendency of any petitions for their disqualification. The validity of the proceedings of the House in the interregnum is not "subject to" the outcome of the disqualification petitions;
 - d. The political party and not the legislature party appoints the Whip and the Leader of the party in the House. Further, the direction to vote in a particular manner or to abstain from voting is issued by the political party and not the legislature party. The decision of the Speaker as communicated by the Deputy Secretary to the Maharashtra Legislative Assembly dated 3 July 2022 is contrary to law. The Speaker shall recognize the Whip and the Leader who are duly authorised by the Shiv Sena political party with reference to the provisions of the party constitution, after conducting an enquiry in this regard and in keeping with the principles discussed in this judgement;

- e. The Speaker and the ECI are empowered to concurrently adjudicate on the petitions before them under the Tenth Schedule and under Paragraph 15 of the Symbols Order respectively;
 - f. While adjudicating petitions under Paragraph 15 of the Symbols Order, the ECI may apply a test that is best suited to the facts and circumstances of the case before it;
 - g. The effect of the deletion of Paragraph 3 of the Tenth Schedule is that the defence of 'split' is no longer available to members facing disqualification proceedings. The Speaker would prima facie determine who the political party is for the purpose of adjudicating disqualification petitions under Paragraph 2(1) of the Tenth Schedule, where two or more factions claim to be that political party;
 - h. The Governor was not justified in calling upon Mr. Thackeray to prove his majority on the floor of the House because he did not have reasons based on objective material before him, to reach the conclusion that Mr. Thackeray had lost the confidence of the House. However, the status quo ante cannot be restored because Mr. Thackeray did not face the floor test and tendered his resignation; and
 - i. The Governor was justified in inviting Mr. Shinde to form the government.
- 3 In terms of the signed reportable judgment, this batch of Writ Petitions is disposed of in terms of the conclusions and directions recorded in the reportable judgment.

4 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)

A.R. -cum-P.S.

(Signed Reportable Judgment is placed on the file)

(SAROJ KUMARI GAUR)

Assistant Registrar