



KAMARAJ IAS ACADEMY
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Supreme Court's verdict on Maharashtra

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Why in News: Passing a unanimous judgement on the various issues related to the split in Shiv Sena in June 2022, the Supreme Court recently made strong observations about the role of the then Governor of Maharashtra and the Speaker of the Legislative Assembly. The court, however, refrained from interfering with the proceedings related to disqualifying 16 MLAs, including Chief Minister Eknath Shinde.

Background

The 2019 assembly elections in Maharashtra, The BJP emerged as the party with the most seats (105), but it fell short of the majority mark of 145 in the 288-seat Assembly Shiv Sena (56) and the NCP (54) followed in terms of seats' share resulting in Hung assembly. Along with the Congress and support from some other parties, a government was formed.

Maharashtra Vikas Aghadi (MVA) formed after the 2019 state elections headed the Maharashtra government as part of the a three-party alliance consisting of the Shiv Sena, the Congress and the Nationalist Congress Party (NCP) led by Sharad Pawar.

The MVA was a result of the Shiv Sena's differences with its pre-poll alliance partner, the BJP. The two had earlier headed the state government, from 2014 to 2019. Allegedly, issues over power sharing led to the rift between the parties, and Sena then joined the MVA

On June 21, 2022, after it was suspected that MLAs took part in cross-voting during the Legislative Council elections, then CM Thackeray called for an urgent meeting of Shiv Sena MLAs.

In 2022, after suspicions of cross-voting, the Shiv Sena meeting on June 25 did not see the presence of leader Eknath Shinde and 11 MLAs. What followed was a week of 'resort politics', with the missing Sena leaders found camping in luxury hotels in Surat and Guwahati. That they were in BJP-ruled states led to allegations of horse trading from the MVA that were denied by the BJP.

Then Maharashtra Deputy Speaker Narhari Zirwal issued notice on pleas seeking the disqualification of these MPs from the Assembly. The rebels approached the top court against the disqualification proceedings, where a three-judge bench granted an extension of time to the rebels to respond to the notices.

A Brief about Shiv Sena case

Rival groups of Shiv Sena – the Eknath Shinde group and the Uddhav Thackeray group – petitioned the SC last year in relation to the political crisis in the state.

In August 2022, a three-judge bench of the top court referred to a five-judge Constitution bench on the issues involved, saying some of the questions raised as part of it may require a larger Constitution bench for consideration.

The Shinde group's plea also challenged the disqualification notices served on him and 15 MLAs supporting him

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Since then, the court has been hearing a batch of petitions filed by both groups from the Shiv Sena. The Shinde camp leaders first challenged the June 21 decision of Zirwal, recognising Ajay Choudhari as leader of the Shiv Sena Legislature Party (SSLP) in place of Shinde, calling it “illegal, unconstitutional” and taken with “bias”.

The Thackeray faction, in turn, pleaded before the apex court for setting aside then Maharashtra Governor BS Koshiyari’s June 2022 order to then CM Uddhav Thackeray to take a floor test, asserting democracy will be in danger if it is not overturned. On June 29, 2022, the top court gave a go-ahead to the floor test in the Maharashtra Assembly a day later.

The SC’s refusal meant that Thackeray had to prove his majority support on the floor of the House on the given date. After the court’s order, he announced his resignation as the Chief Minister and Eknath Shinde was later sworn in as the Chief Minister, with BJP’s Devendra Fadnavis as his deputy CM.

In February 2023, the Election Commission of India ruled that the Shinde faction had the right to use the name ‘Shiv Sena’ and the election symbol ‘Bow and Arrow’ that is reserved for the party under The Symbols (Reservation and Allotment) Order, 1968.

Key highlights of recent verdict

‘Speaker to decide disqualification’

Not intervening in the proceedings, the SC said the issue of disqualification ought to be decided as per established procedures in law and the Speaker is the appropriate authority for this under the Tenth Schedule of the Constitution, which lays down the anti-defection law.

The Bench said in the present case, there were “no extraordinary circumstances” warranting the court adjudicating in the matter.

It also clarified that an MLA has the right to participate in proceedings of the House regardless of pendency of any petitions for disqualification.

Speaker must consider Shiv Sena constitution’

The SC said that while deciding disqualification pleas, the Speaker must consider the constitution of the Shiv Sena, which was submitted to the Election Commission (EC) with the consent of both the factions. It said that as the Tenth Schedule’s third paragraph has been removed, the ‘split’ in the party will no longer be a defence available to MLAs facing the proceedings.

Paragraph 3 of the Tenth Schedule protected defectors as long as one-third of the members of a political party formed a separate group.

It was removed by the Constitution (91st Amendment) Act, 2003, which came into effect on January 1, 2004. The Court asked the Speaker to first determine which of the factions constitute the political party and take the call without being influenced by the ECI order in that regard.

The Bench said the Speaker must not decide which faction constitutes the political party on the “blind appreciation” of which group had a majority in the Assembly. “This is not a game of numbers, but of something more. The structure of leadership outside the Legislative Assembly is a consideration which is relevant to the determination of this issue,” the court stressed.

‘Governor didn’t act in accordance with law’

The court said that then Maharashtra Governor Bhagat Singh Koshiyari was not justified in calling for a floor test on June 30, 2022, as he did not have objective material to show that the incumbent government had lost the confidence

of the House.

The court said the Governor had acted upon an inference that a section of the Shiv Sena wished to withdraw their support to the government, even though the communication by some of the MLAs only expressed discontent about the Maha Vikas Aghadi alliance.

It said that the power of the Governor to act without the aid and advice of the Council of Ministers is of an extraordinary nature, and must be exercised with circumspection within the limits of law. It also said that the Governor is not empowered to enter the political arena and play a role in inter or intra party disputes

‘Can’t reinstate Uddhav govt as he resigned’

The Thackeray group had sought to restore the situation prior to June 29, 2022, seeking a ruling that Uddhav Thackeray’s government be reinstated. However, the court said Thackeray did not face the floor test on June 30 and resigned.

The SC held that despite the Governor not having reasons to reach the conclusion that Thackeray had lost the confidence of the House, it could not quash a resignation submitted voluntarily. The court said had Thackeray refrained from resigning, it could have considered a remedy to reinstate his government.

‘Appointment of whip from Shinde group illegal’

As the Shiv Sena MLAs’ rebellion was unfolding, on June 21, 2022, the party chief whip, Sunil Prabhu, issued a whip directing all the MLAs to attend a meeting at CM Uddhav Thackeray’s residence. Those in attendance passed a resolution to remove Eknath Shinde as Group Leader of its legislative party.

The Shinde-led faction then issued its own resolution, removing Prabhu as the whip and appointing Bharat Gogawale in his place. After assuming office, Speaker Rahul Narvekar recognised Gogawale as the whip. The SC said the Speaker did not attempt to identify which of the two persons were authorised by the political party, adding the Speaker should have conducted an independent inquiry based on the rules of the party.

It deemed the Speaker’s decision recognising Gogawale as the whip to be illegal, as he had not verified if it was the decision of the political party.

‘Legislature party, political party distinct’

While the Shinde-led faction argued that the legislature party and the political party are inextricably intertwined, the court said the two could not be conflated.

The court said that as per provisions of the Representation of the People Act, an association of individuals calling itself a political party has to be registered with the EC.

The court said that Parliament had recognised the independent existence of a legislature party to the limited extent of providing a defence to actions of legislators of the political party. For instance, the freedom of expression of legislators in the House, or intra-party dissent, cannot fall within the purview of anti-defection laws.

The court said that a whip interacts with members of the legislature party to communicate the directions of the political party. It held that “it is the political party and not the legislature party which appoints the Whip and the Leader of the party in the House”.

Therefore, it said the Speaker must recognise only the whip and leader who are duly recognised by the political party.

‘Speaker and EC can adjudicate issues concurrently’

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The court said it could not accept the Thackeray group's contention that the EC was barred from deciding on the party symbol dispute until the Speaker decided the disqualification pleas before him.

The court said this would amount to "indefinitely staying proceedings before the ECI", as the Speaker's decision would attain finality only after the appeals against his decision were disposed of.

Referral of Nabam Rebia case to larger bench

The five-judge Bench referred certain issues related to its 2016 judgment in the Nabam Rebia case to a larger Bench. One of the issues is whether a notice for removal of a Speaker would restrict the powers of the Speaker to issue disqualification notices to MLAs.