

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) NO. OF 2019

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

1. SHIV SENA

(through its Authorised Signatory)

Shiv Sena Bhavan

C Kelkar Road, Shivaji Park-

Dadar West, Mumbai – 400028

... PETITIONER No. 1

2. ANIL DATTATRAY PARAB

Shiv Sena Bhavan

C Kelkar Road, Shivaji Park-

Dadar West, Mumbai – 400028

... PETITIONER NO. 2

VERSUS

1.

UNION OF INDIA

Through its Secretary,

Ministry of Home Affairs,

Central Secretariat,

North Block,

New Delhi – 01

CONTESTING
RESPONDENT NO.

1

2.

STATE OF MAHARASHTRA

Through its Chief Secretary,

Maharashtra Legislature,

Legislative Building,

Backbay Reclamation,

Legislative Building,

Mumbai - 19.

CONTESTING
RESPONDENT NO.

2

3.

NATIONALIST CONGRESS
PARTY

(through it is President)

10, Dr Bishambar Das Marg,

Baba Kharak Singh Marg Area,
New Delhi, Delhi 110001

PROFORMA
RESPONDENT NO.
3

4. Indian National Congress

(Through the General Secretary,
All India Congress
Committee)
24, Akbar Road,
New Delhi 110 001

PROFORMA
RESPONDENT NO.
4

WRIT PETITION UNDER ARTICLE 32 R/W ARTICLE 14 & 21 OF THE CONSTITUTION OF INDIA CHALLENGING THE ARBITRARY, UNCONSTITUTIONAL, UNREASONABLE, CAPRICIOUS AND MALAFIDE DECISION DATED 11.11.2019 OF THE HON'BLE GOVERNOR IN REJECTING THE PETITIONERS' REQUEST FOR THREE DAYS TIME TO SUBMIT LETTERS OF SUPPORT TO PROVE ITS MAJORITY FOR FORMING THE GOVERNMENT IN THE STATE OF MAHARASHTRA

TO,

HON'BLE THE CHIEF JUSTICE OF INDIA AND HIS
COMPANION JUSTICES OF THE HON'BLE SUPREME
COURT OF INDIA

THE HUMBLE PETITION OF
THE PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHEWETH:

1. The Petitioner No. 1, Shiv Sena, is a political party in the State of Maharashtra being represented through its authorized signatory, Shri Anil Dattatray Parab. It has emerged as the second largest political party securing 56 seats in the Fourteenth Maharashtra Legislative Assembly Elections, 2019. The Petitioner No. 2 is Shri Anil Dattatray Parab, currently an MLC in the State of Maharashtra from the Shiv Sena and has been duly

authorized by the Petitioner No. 1 to file and institute the instant writ petition. the Petitioner No. 2 is also personally aggrieved and is filing the present Writ Petition for enforcement of fundamental rights as guaranteed under Part III of the Constitution. The Petitioners are constrained to move the instant Writ Petition under Article 32 of the Constitution seeking urgent reliefs against the arbitrary and malafide actions of the Hon'ble Governor of Maharashtra who in hot haste has on 11.11.2019 refused to grant even three days' time to the Petitioner to demonstrate that it has the requisite majority to form the Government in Maharashtra. The impugned actions/decisions of the Hon'ble Governor is violative of Article 14 and Article 21 of the Constitution. It is ex facie arbitrary, unreasonable, capricious and a mala fide exercise of the power in order to ensure that the Petitioner No. 1 is precluded from getting a fair and reasonable opportunity of proving its majority on the floor of the House. True copy of the impugned action(s)/ order(s)/ decision(s) dated 11.11.2019 of the Hon'ble Governor is annexed hereto and marked as **ANNEXURE P-1**

2. The Respondent No. 1 is the Ministry of Home Affairs, which is responsible for the Centre-State relations,

including working of the constitutional provisions governing such relations, appointment of Governors, creation of new States, nominations to Rajya Sabha/Lok Sabha, Inter-State boundary disputes, overseeing the crime situation in States, imposition of President's Rule and work relating to Crime & Criminal Tracking Network System (CCTNS) etc.

3. The Respondent No. 2 is the State of Maharashtra. The actions of the Hon'ble Governor as the Head of the State are being impugned in the instant Writ Petition and hence the State is a necessary party.
4. The Respondent No. 3 is the Nationalist Congress Party which has secured 54 seats in the Fourteenth Maharashtra Legislative Assembly. The Respondent No. 4 is the Indian National Congress ("**INC**"). The INC has secured 44 seats in the Fourteenth Maharashtra Legislative Assembly. The Petitioners are given to understand that Respondent Nos. 3 and 4 herein are principally willing to support the Petitioners in forming the government in the State of Maharashtra.
5. Brief facts relating to the filing of the present Writ Petition are as follows:

- a. Elections to the Fourteenth Maharashtra Legislative Assembly were carried out for 288 seats on 21.10.2019.
- b. Results to the Fourteenth Maharashtra Legislative Assembly as declared on 24.10.2019 are as follows:

Party	Seats
All India Majlis-E-Ittehadul Muslimeen	2
Bahujan Vikas Aaghadi	3
Bharatiya Janata Party	105
Communist Party of India (Marxist)	1
Independent	13
Indian National Congress	44
Jan Surajya Shakti	1
KrantikariShetkari Party	1
Maharashtra Navnirman Sena	1
Nationalist Congress Party	54
Peasants And Workers Party of India	1
PraharJanshakti Party	2
RashtriyaSamaj Paksha	1
Samajwadi Party	2

Shiv Sena	56
Swabhimani Paksha	1
TOTAL	288

- c. The Legislative Assembly comprises of 228 seats. The party having the support of at least 144 elected members would hold majority to form the Government. As can be seen, BJP though emerged as the single largest party with total elected members of 105, are short of majority by 40 seats.
- d. The Petitioner emerged as second largest party with 56 seats. Respondent No. 3 (NCP) emerged as the third largest party with 54 seats and Respondent No. 4 (INC) secured 44 seats.
- e. The Hon'ble Governor for almost 18 days did not take any action in inviting any political party to form the Government, but on 09.11.2019 the Hon'ble Governor invited the BJP to indicate its willingness to form the Government while giving it 48 hours to prove that it has the requisite majority. True and typed copy of the press release dated 08/09.11.2019 issued by the office of the Hon'ble Governor as downloaded from the website

of the Raj Bhavan of Maharashtra is annexed hereto and marked as **ANNEXURE P-2** [pages

- f. However on 10.11.2019 itself, BJP expressed its inability and declined to form the Government.
- g. With the BJP expressing its inability to form the Government, the Hon'ble Governor on the very same day itself i.e. on 10.11.2019, asked the Petitioner, to convey its willingness and ability to form the Government by granting it only 24 hours to demonstrate its majority. True copy of the press release dated 10.11.2019 issued by the office of the Hon'ble Governor as downloaded from the website is annexed hereto and marked as **ANNEXURE P 3**
- h. On 11.11.2019, the Petitioner staked claimed to form the Government while submitting that it has the majority support. The Petitioner has also *on* the same day i.e. on 11.11.2019 itself requested for three days time to give the letters of support to demonstrate that it has the requisite majority to form the Government. True and translated copy of the letters dated 11.11.2019 sent by the members/leaders of the Petitioner to the Hon'ble

Governor is annexed hereto and marked as

ANNEXURE P 4

- i. The Petitioners are given to understand that Respondent Nos. 3 and 4 herein are principally willingly to support the Petitioners in forming the government in the State of Maharashtra.
- j. It is also pertinent to note that the Shiv Sena/Petitioner is in advanced talks for government formation with the Nationalist Congress Party (NCP) as well as the Indian National Congress (INC). Shri Sanjay Raut, leader of the Shiv Sena, has met Shri Sharad Pawar, leader of the NCP, and talks have been in a positive direction. To this effect Shri Arvind Sawant, the sole Union Minister from the Shiva Sena in the NDA Government has also resigned from the Union Cabinet on 11.11.2019. The Chief of the Shiv Sena, Shri Uddhav Thackeray, has also had a positive telephonic conversation with the President of the INC, Smt Sonia Gandhi, in this regard on 11.11.2019.
- k. The Petitioner has acquired the support of 8 independent MLA's, namely, Shri Narendra

Bondekar, Smt. Manjula Gavith, Shri Shankar Rao Gadak, Shri Chandrakanth Patil, Shri Ashish Jaiswal, Shri Bachhukadu, Shri Rajkumar Patel and Shri Rajendra Patel Vадraokar.

A copy of the acknowledgement of support by the eight independent MLA's to the Shiv Sena is annexed hereto and marked as **ANNEXURE P- 5**

[page]

1. Despite these developments and the talks of the Petitioner with the various stake holders in an advanced stage being communicated to the Hon'ble Governor on 11.11.2019, the latter has chosen to fast-forward the process, thereby depriving the Petitioner an opportunity to form the Government in the State.

m. The Hon'ble Governor has thereafter on 11.11.2019, for reasons best known to him, declined to accommodate the request for three days and has rejected the claim of the Petitioner to form the Government in the State and has proceeded to invite Respondent No. 3 instead.

[IMPUGNED ACTION/DECISION/ORDER]

6. Such action of the Hon'ble Governor is manifestly arbitrary, discriminatory and is a clear violation of Article 14 of the Constitution. It also betrays inherent malafide against the Petitioners herein in as much as it seeks to treat the Petitioners differently and adversely compared to the treatment that the Hon'ble Governor has meted out to the BJP.
7. In these circumstances the Petitioners are moving this Hon'ble Court under Article 32 of the Constitution beseeching it to intervene and direct the Hon'ble Governor to grant reasonable time to the Petitioner to prima facie demonstrate to the Governor that it has the requisite support to form the Government in Maharashtra.
8. That the Petitioner has not filed any other Petition on the same subject matter or seeking similar reliefs either in this Hon'ble Court or any other High Courts except this present petition.
9. That the Writ Petition has been filed without any delay or laches and there is no legal bar in entertaining the same. That the Petitioner has no other efficacious alternative remedy except to file the present Writ

Petition before this Hon'ble Court by invoking Article 32 of the Constitution.

10. That the Annexures are true and correct copies of their respective originals.
11. That in the circumstances mentioned hereinabove this Writ Petition is being preferred by the Petitioner *inter alia* on the following amongst other grounds without prejudice to each other:

GROUND

- a. FOR THAT, the decision of the Hon'ble Governor rejecting the claim of the Petitioner Shiv Sena which is the second largest party having 56 MLAs to form Government is *ex-facie* arbitrary, unconstitutional and violative of Article 14 of Constitution of India.
- b. FOR THAT the Petitioner was invited to form the Government on 10.11.2019 and the Petitioner had indicated its willingness to form the Government on 11.11.2019. The Hon'ble Governor, as per the law laid down in **Bommai (supra)**, ought to have invited the Petitioner to form Government and directed it to prove its majority on the floor of the house.

- c. FOR THAT the Petitioners are given to understand that Respondent Nos. 3 and 4 herein are principally willingly to support the Petitioners in forming the government in the State of Maharashtra.
- d. FOR THAT, the Hon'ble Governor failed to give an opportunity to the Petitioner to prove its majority on the floor of the house and the impugned action of the Governor as such is unconstitutional, illegal and against the law laid down in **Bommai's** case.
- e. FOR THAT, the impugned action of the Governor without even providing three days' time to handover the letters of support is ex-facie arbitrary and against Article 14 of Constitution.
- f. FOR THAT it is submitted that the factum of majority cannot be decided by the Hon'ble Governor in his own *ipsi dixit* and the floor of the House is the only 'constitutionally ordained forum' to the test majority.
- g. FOR THAT the government formation is a sacrosanct political process in a democracy and Hon'ble Governor cannot act as a stumbling block for thwarting/stalling a political party from forming the Government.

- h. FOR THAT as per the constitutional conventions and practices, the Governor is duty bound to allow reasonable time for political parties to conclude their negotiation on government formation and not act as an agent/mouthpiece of the Central Government and /or the Ruling party at the Centre and has to allow reasonable time to political outfits to present the conclusion of their negotiations before taking a decision to reject any claim to form the Government.
- i. FOR THAT the instant is a classic case where the constitutional conventions which have the force of law have been followed by the Hon'ble Governor in sheer breach.
- j. FOR THAT the forming of the Executive Government post the Assembly Election is not a race. The forming of the Government is a reflection of the will of the people, a sacrosanct act involving various political stake holders.
- k. FOR THAT the Hon'ble Governor has been mandated under the Constitution to provide a reasonable opportunity to various stakeholders to lay claim to form the Government.

1. FOR THAT the Hon'ble Governor cannot act in a manner so as to only suit the majority political party at the Centre, or act on the diktats of the Central Government.
- m. FOR THAT there is ample constitutional convention to show that the next largest party has been invited to form the Government and to demonstrate its strength on the floor of the House.
- n. FOR THAT in the *Ninth General Elections*, no party secured an absolute majority and the President invited the Leader of the single largest party (INC) to form the Government and they declined the offer. Subsequently, the leader of the next largest party (the Janata Dal) was invited by the President to form the Government and a minority Government at the Centre was formed with the outside support of other parties.
- o. FOR THAT the process of arriving at a political consensus to form government among the stakeholders has to be given fullest opportunity.
- p. FOR THAT the Governor cannot act as a stumbling block and scuttle a possible formation of Government.
- q. FOR THAT the Governor and/or the President cannot act as a facilitator for formation of the Executive

Government, at the same time it is a well accepted convention that the Governor and/or the President cannot by their actions deter/prevent and or act as a stumbling block in the formation of Government.

- r. FOR THAT in a hung legislature, political stakeholders have to be given adequate opportunity and time to explore the possibility of forming the Government.
- s. FOR THAT the actions of the Hon'ble Governor in giving hardly 24 hours to the Petitioner to show the letters of support and the action of the Hon'ble Governor on 11.10. 2019 declining to grant even a reasonable time of three days to the Petitioner is *ex facie* arbitrary and in breach of the constitutional convention to give the political parties the necessary 'elbow room' to conclude negotiation on government formation. It is relevant to note that the decision of the Hon'ble Governor on 10.11.2019 to give 24 hours to the Petitioner was taken on a gazette holiday.
- t. FOR THAT the Petitioner has been associated with the BJP in the State of Maharashtra for the last thirty years, however, owing to certain fundamental political differences that have evolved over the last few

weeks/months the association has come to a staggering end

- u. FOR THAT the Shiv Sena/ Petitioner has been in advanced talks for government formation with the Nationalist Congress Party (NCP) as well as the Indian National Congress (INC).
- v. FOR THAT, it is submitted that all the three major stakeholders ie. The Shiv Sena, NCP and INC are in the process of evolving a common minimum programme and it is for this reason that three days' time was sought from the Governor.
- w. FOR THAT, the constitutional premise on which the Governor is obliged to act under the Constitution, is towards formation of a stable government. A genuine and serious attempt to provide such a government requires the Governor to take all possible steps in furtherance of that constitutional premise. This further requires that the Governor give reasonable time to the political party that seeks to form the government.
- x. FOR THAT, what is a reasonable time depends on the facts and circumstances of each case. In the facts of this case what is required is a common minimum programme for the people of Maharashtra. The formulation of this

common minimum programme would require a minimum period of three days, and therefore the request of three days was made by the Petitioner which was illegally rejected by the Hon'ble Governor.

- y. FOR THAT Shri Sanjay Raut, leader of the Shiv Sena, has met Shri Sharad Pawar leader of the NCP and the talks have been in a positive direction.
- z. FOR THAT Shri Arvind Sawant, the sole Union Minister from the Shiva Sena in the NDA Government has also resigned from the Union Cabinet on 11.11.2019
- aa. FOR THAT the Chief of the Shiv Sena, Shri Uddhav Thackeray, has also had a positive telephonic conversation with the President of the INC, Smt Sonia Gandhi, in this regard on 11.11.2019.
- bb. FOR THAT the Hon'ble Governor has chosen to fast-forward the process depriving the Petitioner of the opportunity to form the Government in the State of Maharashtra despite staking claim for the same.
- cc. FOR THAT the process of Government formation cannot be fast forwarded, paused or played at the behest of the political party ruling at the Centre.

- dd. FOR THAT the Hon'ble Governor is duty bound to at the least give a reasonable time to the political party staking claim to show its majority.
- ee. FOR THAT the BJP acting through the Hon'ble Governor has penalized the Petitioner for having severed ties with it by ensuring that the request for three days time is refused by the Hon'ble Governor.
- ff. FOR THAT it is also in public domain that all the other major stakeholders except the Petitioner had publicly refused to stake claim to form the Government.
- gg. FOR THAT the Petitioner having asked for three days time, it could not be said that it was unreasonable. The action of the Hon'ble Governor even denying this time is *exfacie* arbitrary, contrary to Article 14.
- hh. FOR THAT the test as to whether a political party has the requisite majority or not cannot be determined by the Raj Bhavan, and can only be tested on the floor of the House.
- ii. FOR THAT once the Petitioner had staked claim, the Hon'ble Governor ought to have invited the Shiv Sena/Petitioner to prove its majority on the floor of the House.

- jj. FOR THAT the Hon'ble Governor cannot arrogate to himself the privilege of the House and make a subjective decision on whether a political party enjoys the support or not.
- kk. FOR THAT such action is completely beyond the purview and scope of the Governor's powers during Government formation. This issue is no longer *res integra*.
- ll. FOR THAT this Hon'ble Court in **SR Bommai vs UOI, (1994) 3 SCC 1**, has categorically held that the only constitutionally ordained forum for assessing the strength of a political formation is on the floor of the House, and that the assessment of majority is not a matter of private opinion of the Governor or the President.
- mm. FOR THAT the proper course for testing the strength of a claim to form the Government is on the floor of the House.
- nn. FOR THAT The assessment of the strength of the political formation to command majority in the house is not a matter of private opinion of any individual be he the Governor or the President.

- oo. FOR THAT it is not open for the Governor to bypass the Constitutionally ordained forum of a floor test and arrive at a subjective satisfaction that the political formation does not have the majority.
- pp. FOR THAT any private assessment by the Governor of the strength of the claim to form the Government without giving an opportunity to the party staking claim to prove it on the floor of the House is an anathema to democratic principles, apart from raising questions about malafides regarding the actions of the Governor.
- qq. FOR THAT the Hon'ble Governor has acted in stark violation of the law laid down by this Court in **SR Bommai's case**.
- rr. FOR THAT the Hon'ble Governor in his *ipsi dixit* has proceeded to reject the claim of the Petitioner to form the Government more so without even giving a reasonable time to the Petitioner to showcase that it has the majority support.
- ss. FOR THAT the subjective assessment done at Raj Bhavan by the Hon'ble Governor, and rejecting the claim of the Petitioner without asking it to prove its majority on the floor of the House, is *ex facie* violative of

the solemn duties cast upon the Governor and in complete defiance and violation of the well settled law laid down by this Hon'ble Court in **SR Bommai's case**.

- tt. FOR THAT the impugned decision being exfacie unconstitutional is liable to be interfered with and set aside. In this background, the present Writ Petition is being filed.
- uu. FOR THAT the discretionary powers exercised by the Governor are not beyond the pale of judicial review and any illegal and arbitrary decision taken against the constitutional provisions and conventions is liable to be interfered with and struck down by this Hon'ble Court in exercise of its jurisdiction as a *sentinel on the qui vive* of the Constitution.
- vv. FOR THAT the Petitioners verily apprehend that given the break neck speed with which the events have unfolded over the last couple of days, it is likely that the impugned action of the Hon'ble Governor in refusing to allow the Petitioners to form the Government and rejecting even a minimum of three days days time to the Petitioner to demonstrate the majority is a part of the well concerted plan of the BJP to invoke Article 356.

- ww. FOR THAT the impugned action is a desperate attempt to create a non-existent case for imposition of Presidents Rule. It is submitted that the Petitioners will be put to grave and irreparable loss if this Hon'ble Court does not hear the instant Petition at its earliest convenience. The Petitioner respectfully submits that the actions of the Hon'ble Governor apart from being arbitrary, illegal and against the law laid down in ***Bommai's case*** is also an attempt to frustrate the will of the people and pave way for New Delhi to rule Maharashtra.
- xx. FOR THAT, It is submitted that any imposition of Presidents Rule would also result in horse trading by the BJP and to somehow cobble up a majority by using unconstitutional means. It is submitted that in these circumstances any precipitative action by the Governor to enable the BJP to acquire the MLA's by poaching would be an anathema to democracy and cannot be countenanced.
- yy. FOR THAT that discretionary powers under the Constitution conferred on the Governor are not the *ipsi dixit* of the Governor but have to be exercised within the constitutional norms and conventions guiding the exercise of such discretion.

- zz. FOR THAT the impugned action of the Hon'ble Governor being *ex facie* unconstitutional is liable to be interfered with to protect democracy and federalism.
- aaa. FOR THAT the impugned action is brazenly opposed to the spirit of the Constitution as is reflected in Constitutional convention and practice having the force of law.
- bbb. FOR THAT the Petitioners crave leave of this Hon'ble Court to amend/alter its grounds at appropriate stage, as and when required.

PRAYER

In these facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:-

- a. pass an appropriate writ/order/direction quashing the decision of the Hon'ble Governor dated 11.11.2019 rejecting the claim of the Petitioner to form the Government in the State of Maharashtra and declare the action of the Hon'ble Governor as unconstitutional, arbitrary, illegal, void-ab-initio, and violative of Article 14 of Constitution of India; and

- b. pass an appropriate writ/order/direction quashing the order of the Hon'ble Governor dated 11.11.2019 declining three days' time to the Petitioner for providing letters of support in support of its claim to form the Government in the State of Maharashtra; and
- c. pass an appropriate writ/order/direction to the Hon'ble Governor granting reasonable time to the Petitioner to prima facie demonstrate to the Governor that it has the requisite support to form the Government in Maharashtra; and
- d. pass an appropriate writ/order/direction declaring that the assessment of the majority in support of the Petitioner in the Maharashtra Legislative Assembly has to be ascertained only on the floor of the house and cannot lie only with the subjective satisfaction of the Governor.
- e. Pass such other order or direction as it deems fit in the facts of the present case and in the interest of justice.

AND FOR THIS ACT OF KINDESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY

DRAWN BY:

- i. NIZAM PASHA
- ii. RAJESH INAMDAR
- iii. JAVEDUR RAHMAN
- iv. ADITYA BHAT
- v. ASHWIN G. RAJ

ADVOCATES

SETTLED BY:

DEVADATT KAMAT
SR. ADVOCATE

RESETTLED BY:

KAPIL SIBAL,
SR ADVOCATE

FILED BY

SUNIL FERNANDES

ADVOCATE FOR THE PETITIONERS

PLACE: NEW DELHI

DRAWN ON:

