

By Special Messenger



भारत निर्वाचन आयोग सचिवालय  
**SECRETARIAT OF THE ELECTION COMMISSION OF INDIA**

निर्वाचन सदन, अशोक रोड, नई दिल्ली-110001  
Nirvachan Sadan, Ashoka Road, New Delhi-110001

No.56/02/Dispute/PPS-II/2023

Dated: 6<sup>th</sup> February, 2024

To

<b>Sh. Ajit Anantrao Pawar,</b> Petitioner in Dispute Case No. 2 of 2023, 26, Gurudwara Rakab Ganj Road, New Delhi- 110001.	<b>Sh. Sharad Pawar,,</b> Respondent in Dispute Case No. 2 of 2023, 81, Lodhi Estate, New Delhi-110003.
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Subject: Dispute Case No.2 of 2023- Under Para 15 of the Election Symbols (Reservation and Allotment) Order, 1968, Dispute in Nationalist Congress Party, a recognized Party in the States of Maharashtra and Nagaland- Commission's Final Order- regarding.

Sir,

I am directed to forward herewith a certified copy of Commission's Final Order dated 6<sup>th</sup> February, 2024, passed in the matter of the Dispute Case no 2 of 2023.

Yours faithfully,

(Jusmeet Kaur)  
Under Secretary

Copy to:

1. Email to All Chief Electoral Officers;
2. Guard File.



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Election Commission of India

निर्वाचन सदन  
NIRVACHAN SADAN  
अशोक रोड, नई दिल्ली - 110 001  
ASHOKA ROAD, NEW DELHI-110 001

**DISPUTE CASE NO. 2 OF 2023**

**CORAM:**

**(ANUP CHANDRA PANDEY)**

**(RAJIV KUMAR)**

**(ARUN GOEL)**

ELECTION COMMISSIONER CHIEF ELECTION COMMISSIONER ELECTION COMMISSIONER

**IN RE: DISPUTE RELATING TO NATIONALIST CONGRESS PARTY UNDER  
PARAGRAPH 15 OF THE ELECTION SYMBOLS (RESERVATION AND  
ALLOTMENT) ORDER, 1968**

**For Petitioners**

Mr. Mukul Rohatgi, Sr. Advocate

Mr. Neeraj Kishan Kaul, Sr. Advocate

Mr. Maninder Singh, Sr. Advocate

Mr. Siddharth Bhatnagar, Sr. Advocate

Mr. Abhikalp Pratap Singh, Advocate

Mr. Shrirang Varma, Advocate

Ms. Yamini Singh, Advocate

Mr. Aditya Krishna, Advocate

Ms. Raavi Sharma, Advocate

Mr. Kartikey, Advocate

Ms. Pracheta Kar, Advocate

Ms. Devanshi Singh, Advocate

Mr. Bharat Bagla, Advocate

Along with others

**For Respondents**

Dr. Abhishek Manu Singhvi, Sr. Advocate

Mr. Devadatt Kamat, Senior Advocate

Mr. Amit Bhandari, Advocate

Mr. Pranjal Agarwal, Advocate

Mr. Muhammad Ali Khan, Advocate

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अवर सचिव / Under Secretary  
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“मजबूत लोकतंत्र - सबकी भागीदारी”  
“Greater Participation for a Stronger Democracy”

Mr. Harsh Pandey, Advocate  
Mr. Anubhav Kumar, Advocate  
Mr. Omar Hoda, Advocate  
Ms. Eesha Bakshi, Advocate  
Mr. Uday Bhatia, Advocate  
Along with others

**FACTUAL MATRIX:**

1. The Nationalist Congress Party (hereinafter, "**NCP**"), a recognised State Party in the states of Maharashtra and Nagaland, having the reserved symbol "Clock" was registered under Section 29A of the Representation of People Act 1951 on 05.07.1999. Subsequently, the NCP was conferred the status of a National Party on 10.01.2000. Based on the poll performance, the Commission *vide* its order dated 10.04.2023 withdrew its National Party status and the NCP is now a recognised State Party in Maharashtra and Nagaland.
2. On 01.07.2023, the Commission received a petition dated 30.06.2023 under Paragraph 15 of the Election Symbols (Reservation and Allotment) Order 1968 (hereinafter, "**Symbols Order**"), by Sh. Ajit Anantrao Pawar (hereinafter, the "**Petitioner**") wherein it was submitted that Sh. Sharad Pawar (hereinafter, "**Respondent**") who claims to be the National President is running the Party in total disregard of the Constitution and Rules of the same. The following submissions were made:
  - i. That the patently illegal manner in which the affairs of the NCP are being conducted by the Respondent have led to grave discord amongst various members both in the legislative and organisational wing of the NCP. That due to internal differences on account of the aforesaid reason has led to the existence of two rival factions with the NCP. One of the factions led by the Petitioner enjoys majority support in the legislative as well as organisational wing of the Party.

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- ii. That the faction led by the Petitioner enjoys support of the organisational wing in various committees. However, on the account of the Party being governed in an arbitrary manner, de hors the Constitution and the Rules, no elections of the organisational wing to various Committees have been conducted in various States. Thus, the figures and the numerical strength in the State of Maharashtra would in fact be more indicative.
- iii. That the Petitioner is constraint to approach the Hon'ble Commission under Paragraph 15 of the Symbols Order in as much as the faction led by the Petitioner does in fact constitute the real Nationalist Congress Party.
- iv. That the detailed procedure for election to various Committees and to the posts of National and State presidents given in the Constitution and the Rules of NCP, shows that democratic process is the essence of every such election and the conduct of the Party. That the Respondent is governing the Party in his alleged capacity as National President when infact such election is wholly illegal and void *ab-initio*.
- v. That the election of the Respondent conducted in the National Convention held on 10<sup>th</sup> and 11<sup>th</sup> September 2022 was de hors the Constitution and the Rules of the NCP. That there is no record of the persons who attended the National Convention and ratified the election of the President. The convention was attended by people whose names do not reflect in the permanent register to be maintained as per the Constitution. Further, the business of the National Convention was not carried out as per Article 18 of the Constitution of NCP and none of the motions passed were considered by the Subject Committee.
- vi. That Shri Jayant Patil, who is the State President of Maharashtra State NCP has been merely nominated by the Respondent, in the absence of any power to do so. That the Constitution and Rules of the NCP provide that the President of the State Committees is to be elected in the meeting chaired by the State Returning Officer with the voting rights vested in the members of the State Committee except the co-opted members. Such nomination of the

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State President in the absence of the legal sanction from the Constitution and Rules, is void *ab initio* and all consequential decisions taken by Shri Jayant Patil in his alleged capacity as the President of Maharashtra State Committee are also void *ab initio*. Further, it is submitted that as per Article 7 of the Constitution of NCP, the term of every Committee is 3 years. Thus, it follows that the term of the Committee President shall be co-terminus with the Committee itself. However, Shri Jayant Patil has been occupying the post for the last 6 years without any election of the State Committee being held as per the Constitution.

- vii. That the Respondent had appointed two Working Presidents when the Constitution and Rules of the Party make is clear that there is no such post and further there is no power in the National President to make appointments to such non existing posts.
- viii. That the Constitution of NCP provides for a pyramid structure for election of delegates to various Committees. The subordinate committees which elect delegates who in turn constitutes the Block/Constituency Committee. It is the members of the Block/Constituency Committee who are elected as delegates to the State Committee which in turn elect delegates to the National Committee. That the National Convention can only be called by the duly constituted National Committee or the Working Committee. In order to constitute a National Committee or a Working Committee, it is axiomatic, that the State Committee must be duly elected. That election of the State Committees is presently underway in the Maharashtra, Kerala and other states. In absence of duly constituted State Committee, it was impossible to constitute a National Committee, which infact elects 12 out of 23 members to the Working Committee. Thus, the initial step of the constitution of State Committees having not been completed, the election of the Respondent as the President in the National Convention is wholly illegal.
- ix. That the Hon'ble Supreme Court in the matter of **Sadiq Ali vs. Election Commission of India** [(1972) 4 SCC 664] has affirmed that the Commission

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shall decide on such party symbol dispute matters on the basis of the majority and numerical strength of such a group. This Hon'ble Commission in the plethora of judgments while applying the test of the majority has passed an order in favour of the group having the majority support from the members of the Organisational and Legislative wings. The same as been reaffirmed in the judgment of **Subhash Desai vs. Principal Secretary, Governor of Maharashtra & ors** [2023 SCC OnLine SC 607].

x. That the aforementioned facts and circumstances and the law laid down by the Hon'ble Supreme Court and this Hon'ble Commission, makes it evident that the Respondent does not anymore enjoy the support from the Organisational and Legislative wings of the party and that the members of the Legislative and Organisational wings of the Party have shown their unconditional support for the Petitioner.

xi. That in the facts and circumstances of the case; it was prayed as follows:

*"i. Declare and recognize the faction led by the Petitioner, Shri. Ajit Anantrao Pawar to be the real Nationalist Congress Party;*

*ii. Allot the Party symbol of "clock" of the Nationalist Congress Party to the group led by the Petitioner;*

*iii. Disqualify, disentitle and bar the Respondent from being office bearer of Nationalist Congress Party with immediate effects;*

*iv. Quash all the Acts, Orders, Directions, Commands and any other Official Communications issued by Respondent onwards to be illegal and invalid;*

*v. By way of an interim measure, be pleased to freeze the symbol of "Clock" and bar the Respondent & others from using the name Nationalist Congress Party till such time the present dispute is finally decided by this Hon'ble Commission;*

*vi. Pass any other order or further orders as this Hon'ble Commission deem fit in the facts & circumstances of the present case."*

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3. On 02.07.2023, the Commission had received a communication from Sh. Jayant R. Patil, intimating the Commission of the alleged anti-party activities being carried out by the 9 MLAs of Maharashtra who were elected on NCP's party symbol. It was submitted that these 9 MLAs, including the Petitioner, had been sworn in as Cabinet Ministers in the Government of Maharashtra, which is led by the Shiv Sena-BJP Alliance thereby violating the NCP's Constitution and Rules. That the State Disciplinary Committee of the NCP has passed a unanimous and urgent resolution recording the factum of disqualification and violation of Party constitution by the said 9 MLAs and they are no longer associated with the Party. It was further stated that NCP has appointed a new Leader of Opposition in the Legislative Assembly. Lastly, the disqualification petitions as per the Members of Maharashtra Legislative Assembly (Disqualification on Grounds of Defection) Rules 1986, had been initiated against the following 9 MLAs before the Hon'ble Speaker of Maharashtra Legislative Assembly:

- a) Ajit Anantrao Pawar (Petitioner), MLA from 209- Baramati Assembly Constituency;
- b) Chagan Chandrakant Bhujbal, MLA from 119- Yeola Assembly Constituency;
- c) Dilip Dattaray Walse Patil, MLA from 196- Ambegaon Assembly Constituency;
- d) Hasan Miyalal Mushrif, MLA from 273- Kagal Assembly Constituency;
- e) Dhananjay Panditrao Munde, MLA from 233- Parli Assembly Constituency
- f) Dharmaraobaba Bhagwantrao Atram, MLA from 69- Aheri Assembly Constituency;
- g) Aditi Sunil Tatkare, MLA from 193- Shrivardhan Assembly Constituency;
- h) Sanjay Baburao Bansode, MLA from 237- Udgir Assembly Constituency;
- i) Anil Bhaidas Patil, MLA from 15- Amalner Assembly Constituency.

4. On 03.07.2023, the Commission received a caveat petition from Sh. Rohit Sharma, Ld. Advocate on behalf of the Respondent, requesting the issue of notice to the Respondent in case any petition under the Symbols Order is filed in respect of

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the Nationalist Congress Party by Sh. Ajit Anantrao Pawar or any other person, before passing any directions or orders thereon.

5. Thereafter on 06.07.2023, another communication was received from Sh. Pranjal Agarwal and Sh. Rohit Sharma, Ld. Advocates on behalf of the Respondent, placing on record a formal objection on the petition dated 30.06.2023 filed by the Petitioner before the Commission under Paragraph 15 of the Symbols Order. It was further mentioned that the Commission, despite the caveats, failed to provide the aforementioned petition to the Respondent. The Commission was requested to provide them a copy of any such filings made before the Commission.

6. On 10.07.2023, the Commission received communication from Sh. Praful Patel, wherein it was stated that the Petitioner, Sh. Ajit Anantrao Pawar was elected as the National President of the Nationalist Congress Party on 30.06.2023 which was ratified in the Open National Convention held on 05.07.2023 in Mumbai. The Resolution passed in the aforesaid Convention ratified the following appointments of the Nationalist Congress Party:

- A. Sh. Ajit Pawar as National President;
- B. Sh. Praful Patel as National Working President;
- C. Sh. Sunil Tatkare as President of Maharashtra NCP.

Accordingly, all the decisions taken by the Petitioner after 30.06.2023, i.e., after assuming charge as National President of the Party, were also ratified by the members attending the convention.

7. On 10.07.2023, Sh. Abhikalp Pratap Singh, Ld. Advocate on behalf of the Petitioner, furnished the following seven individual affidavits of the MLAs of the NCP from the Nagaland Legislative Assembly, extending their support to the Petitioner:

- i. Shri Picto
- ii. Shri A. Pongshi Phom
- iii. Shri Y. Mhonbemo Humtsoe
- iv. Shri Y. Mankhao Konyak
- v. Shri S. Toiho Yeptho

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- vi. Shri Puthai Longon
- vii. Shri Namri Enchang

8. On 12.07.2023, the Commission received a communication on behalf of the Respondent, wherein it was stated that there was no 'split' or 'break' in the NCP as the 9 MLAs and 2 MPs, who are facing disqualification petitions, lacked support from the Party and represented only themselves. Accordingly, a table was annexed enumerating the members and the office bearers who had executed affidavits affirming their support for the Respondent. Furthermore, the Respondent-led leaders requested an audience with the Commission on or before 14.07.2023 to place on record the important facts regarding the party organisation and the defecting MLAs/MPs.

9. The Commission *vide* its letter dated 25.07.2023 exchanged the documents received in the Commission, between the Petitioner and the Respondent, and further advised them to submit a copy of all future documents to the other group. Thereafter, the Commission *vide* its letter dated 26.07.2023, directed the Petitioner and the Respondent to furnish their comments on the matter by 17.08.2023.

10. On 03.08.2023, the Commission received a memorandum on behalf of the Respondent, providing preliminary objections on the documents submitted by the Petitioner wherein it was stated as follows:

- i. That the Petitioner has not been able to demonstrate even *prima facie* that there exists a dispute under Paragraph 15 of the Symbols Order. Similarly, the Hon'ble Commission has also not made any *prima facie* determination that there exists any dispute in the NCP. That the Respondent has no legal onus to rebut the *mala fide* claims by an unrecognised group of motivated individuals.
- ii. That before 01.07.2023, the Petitioner neither raised any grievances against the leadership of the Respondent nor met the Respondent to avail any remedies available under the Party Constitution and, therefore, the petition was premature and liable to be rejected.

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- iii. That despite the service of caveat and clear intention to be informed of the petition filed by the Petitioner, the Commission initiated no action on this request of the Respondent. The Commission's delay aided in fomenting the dispute as well as giving time to Petitioner to secure a relatively advantageous position.

The Respondent also requested the Commission to provide the accurate date of filing of the petition and the documents provided by the Petitioner, to enable the Respondent to furnish a comprehensive reply.

**11.** In response to the above-mentioned request, the Commission *vide* its letter dated 14.08.2023, confirmed that all documents received by the Petitioner were forwarded to the Respondent *vide* the letter dated 25.07.2023, along with the Commission's receiving stamp with dates and the date on which the emails were read.

**12.** On 14.08.2023, the Commission received a communication from the Respondent, requesting for a 4-week extension from 17.08.2023 to submit a detailed response. The Commission granted the extension to both the Petitioner and the Respondent *vide* its letter dated 16.08.2023.

**13.** A batch of communications was sent to the Commission by Sh. Abhikalp Pratap Singh, Ld. Advocate for the Petitioner, wherein the affidavits of various MPs/MLAs/MLCs along with affidavits of party members and office bearers extending support for the Petitioner were enclosed.

**14.** On 07.09.2023, a preliminary response on behalf of the Respondent to the petition filed by the Petitioner under Paragraph 15 of the Symbols Order, was received wherein the following submissions were made:

- i. That present petition is legally misconceived and wholly devoid of merit. It deserves to be outrightly rejected by the Hon'ble Commission.
- ii. That at the outset the purported petition filed under Paragraph 15 of the Symbols Order is not maintainable. That it is *sine qua non* for the invocation

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- of Para 15 that there must exist rival factions of a recognised political party. However, the Petitioner has not been able to make out a *prima facie* case as on 30.06.2023 that there are rival sections or groups of the NCP, each of whom claimed to be real NCP.
- iii. That the petition was filed and supported by an affidavit of only the Petitioner and there is no evidence in the petition to suggest that were more persons other than the Petitioner claiming to be a faction of the NCP. That the relevant date for ascertaining where there is a faction/group is the date on which the petition is filed and if on that date, there is no evidence of any faction then petition is *ex facie* not maintainable. Any subsequent documentations cannot cure the non-maintainability of the petition as on 30.06.2023/01.07.2023.
- iv. That the Commission has rightly, till date, not formed an opinion that there are two rival factions within the Party. As per practice, the Hon'ble Commission before directing the parties to a Paragraph 15 petition to file responses/submissions, has always arrived at a *prima facie* opinion about the existence of the dispute as of the date of the filing of the petition. That the notices dated 25.07.2023, 26.07.2023, 14.08.2023 and 16.08.2023 sent by this Hon'ble Commission clearly show that the Petitioner has not been able to satisfy the Hon'ble Commission about the existence of a dispute within the meaning of Paragraph 15 of Symbols Order. That in these circumstances, the instant comments on behalf of the Respondent are only a preliminary response to the petition and the Respondent craves leave to satisfy this Hon'ble Commission through an oral hearing before the formation of *prima facie* opinion by the Commission that there is absolutely no case made out by the Petitioner even for issuance of a notice as was done in this Commission's order dated 22.07.2022 in Dispute Case No. 1/2022.
- v. That the Respondent denies all the statements, claims, representations and averments, as made in the Petition filed by the Petitioner, which are contrary to what is stated herein. Nothing may be deemed to be admitted unless the

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same is specifically admitted herein and should be treated as having been denied and disputed specifically. That the present petition is mischievous, motivated and false, and therefore the Hon'ble Commission should dismiss it at the threshold with costs.

- vi. That on 02.07.2023, the Petitioner in complete defiance of the NCP's political position decided to join the opposing alliance of BJP-Shiv Sena (Eknath Shinde). The Petitioner filed the present petition to pre-emptively create a justification for committing acts prohibited under the Tenth Schedule.
- vii. That it is well settled that Paragraph 15 proceedings are not a platform to agitate intra-party disputes. The petition only makes allegations about organisational elections and this by itself cannot lead to an inference that there is a 'dispute' for the purposes of Paragraph 15. That the Petitioner himself has participated in the election without a demurer and no proceedings have been initiated challenging the legally conducted elections in 2022.
- viii. That the Respondent's election was conducted in accordance with Articles 18 and 20 of the Constitution of NCP, where the Respondent was elected as the National President unopposed. During the National Convention held on 10<sup>th</sup>-11<sup>th</sup> September 2022, the Petitioner not only participated but was responsible for the Respondent's nomination as well as election. That subsequent to the filing of petition, on 03.07.2023 the Petitioner had publicly declared the Respondent to be the National Party President. Further, the Petitioner from 10.09.2022 to 03.07.2023 chose not to challenge the appointment of the Respondent as President. That on 02.05.2023 the Respondent announced his intention to step down as Party President, a committee including the Petitioner and Sh. Praful Patel unanimously rejected the resignation of the Respondent.
- ix. That prayers (iii) and (iv) of the petition are beyond the scope of the proceedings under Paragraph 15. The Commission has no jurisdiction to

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disqualify the Respondent or quash any actions taken or performed by him in accordance with law and the Party Constitution.

- x. That on 05.07.2023, the Petitioner had filed certain documents dated 30.06.2023, where one such document is a resolution signed by certain legislators electing the Petitioner as the president. Signatory no. 1 of the said resolution is Petitioner himself. That the action of the Petitioner by signing a resolution appointing himself as the National President is gross misconduct and a violation of the Party Constitution. Further, the said resolution is fabricated and back-dated as it contains no reference to any date on which the resolution is passed, mentions no venue, and is not proper letterhead. In the present petition, the Petitioner does not claim to be the Party President, although it is mentioned in subsequent documents that he was appointed as President on 30.06.2023.
- xi. That all the arguments and contentions of the Petitioner raised in the Petition are negated by his own actions viz., (a) He unilaterally appointed himself as National Party President on the basis of signatures of some legislators; (b) He allegedly held National Convention of NCP, where his appointment as President was allegedly ratified, without issuing any notice or appointing Chief Returning Officer; (c) He thereafter purported to appoint Sh. Praful Patel as National Working President which, as per his own admission, finds no mention in the Party Constitution.
- xii. That the present petition suffers gross suppression of facts and documentary evidence which shows that democratic organizational elections had taken place in 2018 and 2022. That there is a procedural yet serious infirmity that the Petitioner has signed the petition at New Delhi, whereas the petition has been notarised and attested at Mumbai. Moreover, despite the duly filing caveats on 03.07.2023, the Respondent was apprised of the petition after a delay of 20 days i.e. 25.07.2023.
- xiii. That on 30.08.2018, the elections and the results of the NCP organisational wing of the year 2018 was intimated to the Hon'ble Commission. Due to

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Covid pandemic, a letter dated 16.11.2021 was preferred by Shri S.R. Kohli, Permanent Secretary and Member of National Working Committee, to the Hon'ble Commission informing the delay in conducting the organisational elections. Thereafter, the schedule of elections to various committees was announced *vide* circular no. PS/CB/057 dated 17.06.2022 issued by Shri T.P. Peethambaran Master, Chief Returning Officer of NCP. In pursuance of conducting elections for State Committees of the NCP, he approved the constitution of State Election Authorities across 13 states.

- xiv. That On 20.06.2022 *vide* circular no. PS/CB/058, proposals for the appointment of the State Returning Officers were called. On 24.06.2022 *vide* circular no. PS/CB/059, Shri T.P. Peethambaran Master issued guidelines for Returning Officers. On 27.07.2022, a letter issued by Shri Praful Patel extended invitations for the 8<sup>th</sup> National Convention to be held on 11<sup>th</sup> September 2022 at Talkatora Stadium. Similarly, on 03.08.2022, a letter issued by Shri. T.P. Peethambaran Master stated that the National Convention of NCP will be held in New Delhi on 10<sup>th</sup>-11<sup>th</sup> September 2022. Thereafter on 05.08.2022, circular no. PS/CB/063 was notified by Shri. T.P. Peethambaran Master enumerating an itinerary of the schedule of elections of State Committee members on 29.08.2022.
- xv. That the Respondent was unanimously elected by the members of NCP State Committees as per the procedure of the Party Constitution wherein the Respondent enjoyed overwhelming support of 90 delegates for the nomination to the post including the Petitioner. That Shri Praful Patel *vide* circular dated 24.08.2022 notified the date of the National Convention. On 27.08.2022, Shri. T.P. Peethambaran Master notified the election of the National President of the NCP. Further, from perusal of the document dated "Proceedings of the Central Returning Officer, Nationalist Congress Party" dated 01.09.2022 issued by Shri. T.P. Peethambaran Master, it is evident that the Respondent was elected as National President on grounds that there was no other name proposed for the said post. The conclusion of the organisational elections of NCP was intimated to this Hon'ble Commission

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भारत निर्वाचन आयोग  
Election Commission of India  
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- vide letter dated 15.09.2022 issued by Shri. T.P. Peethambaran Master, along with the details of the elected National President and office bearers. That Shri Praful Patel vide notification dated 15.09.2022 published the names of the office bearers, Spokespersons, Working Committee Members, State Presidents, Frontal Organisation, Departments, Observers etc.
- xvi. That in the Maharashtra Legislative Assembly Election 2019, no party was able secure a clear majority and accordingly the President's Rule was imposed. On 22.11.2019, the NCP, the Shiv Sena and the Indian National Congress formed a post-poll alliance "Maha-Vikas Aghadi (MVA)". However, on 23.11.2019, the Governor of Maharashtra administered the oath of the Chief Minister to Shri Devendra Fadnavis of BJP, and the oath of Deputy Chief Minister to the Petitioner. This action was challenged before the Hon'ble Supreme Court by way of W.P.(C) No. 1393 of 2019, wherein the Petitioner was arrayed as Respondent no. 4. The Hon'ble Court vide its order dated 26.11.2019 noted that Petitioner did not have authorisation from NCP to form an alliance with BJP, and directed an immediate floor test. Thereafter, the Petitioner resigned and later served as the Finance Minister in the government formed by the MVA alliance. That on 30.06.2022, Shri Eknath Shinde was sworn in as the Chief Minister of Maharashtra and MVA alliance was now in the opposition.
- xvii. That on 10.09.2022-11.09.2022, the National Convention of the NCP was held where the Respondent was unanimously elected as the Party President for a period of 3 years. The delegates authorised the Respondent to appoint the names of the office bearers, the working committee members etc. and no dispute was ever raised by the Petitioner to the unanimous election of the Respondent.
- xviii. That disqualification petitions have been filed against certain MPs/MLAs/MLCs before the concerned Hon'ble Speaker/Chairman, for acting in violation of the Party Constitution.

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- xix. That the Respondent enjoys the majority support of 4 out of 5 members in Lok Sabha and majority support in Rajya Sabha. Furthermore, since the affidavits of 41 MLAs against whom the disqualification proceedings are pending cannot be taken into account, the 9 out of the remaining 12 members of Maharashtra Legislative Assembly support the Respondent. Similarly, out of 9 members of the NCP in the Legislative Council of Maharashtra, disqualification petitions have been filed against 5 MLCs, the Respondent enjoys the support of the remaining 4 MLCs.
- xx. That since several MLAs are facing disqualification proceedings, the legislative majority test insofar as the legislative assembly is concerned cannot be taken as the sole determinative factor for deciding who has majority in the political party. That the Respondent has overwhelming majority support in organisational wing. As of now, 47,283 members of NCP have deposed on affidavit that they support the Respondent.
- xxi. That a bare reading of the petition shows that the basic ingredients for maintaining a petition under Para 15 of the Symbols Order are completely conspicuous by their absence. However, in due deference to the notices dated 25.07.2023 and 26.07.2023, the Respondent has *prima facie* demonstrated that the Respondent enjoys overwhelming majority. Further, the Petitioner is not entitled to any relief under Paragraph 15 as the Petitioner is in flagrant breach of the Constitution by unilaterally seeking to anoint himself as the President by a resolution signed by certain legislators which is completely unconstitutional and legally impressible. In light of the above facts and circumstances, the petition may be rejected *in limine*.

Furthermore, affidavits of the office bearers and members of the Party extending support to the Respondent were also submitted.

15. On 12.09.2023, a communication from the Respondent requested for a grant of at least 8 weeks after the service of all affidavits to them from the Petitioner for verifying the veracity of all the affidavits and to collate additional affidavits who are

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communication dated 12.09.2023, cited **Sadiq Ali & Anr vs. Election Commission of India**, wherein it was held that petitions under Paragraph 15 of Symbols order ought to be decided with utmost promptitude and requested the Commission not to accede with the Respondent's request.

16. The Commission *vide* its letter dated 14.09.2023 addressed to the Petitioner and Respondent stated that on due consideration of the totality of the information available on record, the Commission is of the opinion that there are two rival groups in the Nationalist Congress Party, one led by the Respondent and the other led by the Petitioner, and each group is now claiming to be the party and therefore the matter requires a substantive determination by the Commission under Paragraph 15 of Symbols Order. Accordingly, the Commission directed both groups to be present personally and/or through authorised representative(s) for a personal hearing in the matter on 06.10.2023, at 1500 hours, for the Commission to take the next steps to conclude the substantive hearings under Paragraph 15.

17. The first hearing in the present dispute case took place on 06.10.2023. At the outset, Ld. Senior Advocate Abhishek Manu Singhvi, appearing on behalf of Sh. Sharad Pawar (hereinafter, "Respondent"), submitted as follows:

- i. That before the Commission hears the matter on merits, three preliminary issues have to be determined i.e., "what are the conditions precedent for arriving at Commission's satisfaction under Paragraph 15 of the Symbols Order"; "which is the test to be applied in determining the present dispute"; and "whether there are fatal infirmities in the affidavits filed by the Petitioner".
- ii. That any preliminary issue raised in such a proceeding have to be dealt with at the threshold and that this position has been affirmed by the Hon'ble Supreme Court in a catena of judgments.
- iii. That a caveat dated 03.07.2023 was filed on behalf of the Respondent against any potential filings by the Petitioner before the Hon'ble Commission. That when the Respondent, through counsel, had requested

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for a meeting with the Hon'ble Commission on 12.07.2023, the Hon'ble Commission had already been in receipt of the petition for 12 days without having informed the Respondent. That finally on 25.07.2023, i.e., 25 days after the receipt of the petition, the Hon'ble Commission forwarded the documents filed by the Petitioner and directed the Respondent to provide his "comments" on the same.

- iv. That thereafter on 14.09.2023, the Hon'ble Commission passed an order stating the existence of rival factions. That there is no reason given in the entire order showing how, why and when a dispute came into existence or exists.

**17.1** Ld. Senior Advocate Sh. Neeraj Kishan Kaul, appearing on behalf of the Petitioner, strongly objected to the aforesaid preliminary issues being raised by the Respondent and contended that it was a deliberate attempt to derail the hearing. The brief of submissions made by the Ld. Senior Counsel are as follows:

- i. That even though the Commission *vide* letter dated 29.09.2023 had directed the parties to serve any document three days prior to the hearing, an application raising the aforesaid preliminary issues was filed on the date of hearing itself at the last hour.
- ii. That the Commission has never laid out in advance the test to be applied in a given dispute case and that the Commission has applied the tests only after hearing the parties. That the Hon'ble Supreme Court has also held that the test to be applied in deciding a dispute case, after examining the peculiar facts of a case, is entirely the jurisdiction of the Commission.
- iii. That the preliminary issue of whether a dispute exists in NCP has already been determined by the Commission in terms of the order dated 14.09.2023 wherein it was categorically stated that "*on due consideration of the totality of information available with the Commission (as summarized above), the Commission is of the opinion that there are two rival groups in Nationalist Congress Party [...]*".

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- iv. That the issue of correctness and authenticity of affidavits has been raised before the Hon'ble Commission in many previous symbol dispute cases and the Commission in such instances has observed that it is impossible to verify the veracity of such affidavits and that it has to act with a degree of promptitude in deciding the dispute cases.
- v. That the application filed by the Respondent at the last hour is untenable and that the Petitioner should be allowed to open the arguments on merits of the case before the Ld. Counsels for the Respondent make their respective submission.
- vi. That the Commission has already given sufficient time to the Respondent to file his reply to the petition.

**17.2** Ld. Senior Advocate Sh. Maninder Singh, appearing on behalf of the Petitioner, added that in the Application pressed on 06.10.2023 by the Respondent "impugns" the order dated 14.09.2023 passed by the Commission. It was submitted that an order passed by the Commission cannot be impugned before it and that any appeal against the Commission's order should be raised before an appropriate judicial forum.

**17.3** Ld. Senior Advocate Sh. Devadatt Kamat, appearing on behalf of the Respondent, made the following submissions:

- i. That the Commission has failed to follow the "*principles of natural justice*" in the present case. That the Commission has followed a sequential procedure in dealing with such symbol dispute cases i.e., hearing the parties first, registering the dispute case and thereafter, comments/replies are sought from the parties. That the Commission in communications made with both the groups, before the order of 14.09.2023, was only seeking "comments" and the Respondent has thus only furnished his comments *vide* letter dated 07.09.2023.

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- ii. That the dispute was, thereafter, registered on 14.09.2023, after passing of the aforesaid order, and the Respondent, thus, have to be given a suitable time period for filing their detailed reply.
- iii. That the satisfaction of the Commission regarding the existence of a dispute in the Party should only be arrived at after a reply to the petition has been filed by the Respondent.
- iv. That the Commission at paragraph 40 of the order dated 14.09.2023 has not stated that a final hearing will take place on 06.10.2023 but only mentioned that both the groups were to appear for a personal hearing on the said date *"for the Commission to take the next steps to conclude the substantive hearing under Para 15"*.
- v. That in the preliminary reply dated 07.09.2023, the Respondent craved leave of the Commission to *"file a detailed reply to the petition and para-wise response"* and therefore, at least 8 weeks' time should be granted to the Respondent to file a detailed reply.

**17.4** After making of the aforesaid submissions by the Ld. Senior Counsels, the Commission passed the following directions:

- i. That the Commission, after considering the documents filed by both the parties, had already recognized the existence of a dispute in NCP *vide* order dated 14.09.2023 and that the said order could not be challenged before it. That the Commission in arriving at this decision followed the established procedures and past precedents.
- ii. That the Commission will take strong action under the relevant provisions of the law if any wrongdoing or illegality is found in the affidavits filed by the parties.
- iii. That the parties were directed to proceed ahead and make submissions on the merits of the case.

**17.5** Thereafter, Ld. Senior Advocate Sh. Neeraj Kishan Kaul made the following submissions on the merits of the case:

- i. That there are “three principle ingredients” that are considered by the Commission to arrive at a conclusion that a split has occurred in a political party i.e., “*the factions holding separate meetings of the organizational wing of the party*”; “*affidavits of support submitted by members of the organizational and legislative wing of the party in favour of the rival groups/ factions*”; “*rival factions passing resolutions declaring different Presidents of the Party*”. That in the present case, the aforesaid ingredients were already present before the Commission when the order dated 14.09.2023 was passed.
- ii. That as per the mandate of Section 29A(5) of the Representation of the People Act, 1951, the registered political parties have to uphold the constitutional principles and run the party on democratic lines. That a political party cannot be allowed to revolve around a sole individual but that it has to function as a conglomerate of many lakhs of party workers and supporters. That a political party should not be run by ad-hoc committees and appointed office-bearers or by individuals who treat the Party as family fiefdom.
- iii. That the application of the test of majority in the organizational wing may not be the appropriate test considering the facts of the present case. That the Commission in the matter of *Ek Nath Shinde vs. Uddhav Thackeray* (Shivsena Dispute Case) had held that where a political party is not being run in a democratic manner but by ad-hoc committees, then organizational majority may not be an indicator of which faction enjoys the majority support.
- iv. That in the present case, the Respondent was elected as the Party President in an arbitrary, illegal, and unconstitutional manner. That as per the Party Constitution, the National Convention is to consist of delegates of the State Committees of the Party.
- v. That as per the circular no. PS/CB/057 dated 17.06.2022 issued by Sh. T.P. Peethambaram Master, the then General Secretary of NCP, the

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election to the State Committee was to be held on 22.09.2022. Further, as per the proceedings of the Central Returning Officer, Nationalist Congress Party dated 01.09.2022, the Respondent had been unanimously elected as Party President on 01.09.2022. However, in the letter dated 15.09.2022, with the subject "*Report on the completion of Organizational Elections of the Nationalist Congress Party*" issued by Sh. T.P. Peethambaram Master, the then General Secretary-cum-Chairman, Central Election Authority of the Party, to the Secretary, Election Commission of India, it was stated that a National Convention had been held wherein the Respondent was elected as the Party President. That the latter communication contradicts the former as the state committee election was slated to be held on 22.09.2022.

- vi. That as per paragraph 38 of the preliminary reply dated 07.09.2023 filed on behalf of the Respondent, it has been stated that as per circular no. PS/CB/057 dated 17.06.2022 issued by Sh. T.P. Peethamabaran Master, the National Convention of the Party was slated to be held on 11.09.2022. That such discrepancy regarding the date of National Convention is an attempt on behalf of the Respondent to mislead the Commission.
- vii. That the aforesaid communicated dated 15.09.2022 also mentions that 558 delegates were present at the National Convention. That when the election of the State Committee was to be held later on 22.09.2022, who were the aforesaid 558 delegates present at the National Convention since it is the State Committee delegates who comprise the pool of National Convention as per the Party Constitution.
- viii. That the Hon'ble Commission in the order dated 08.03.2004 *in re: Nationalist Congress Party* had observed at paragraph 18 that the Party Constitution provided for the composition of the organizational side of the Party including the State Committee, the National Committee and the National Convention and the election of the Party President at such convention.

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- ix. That the aforesaid facts show that in a case like this, the organizational majority cannot be applied since the organization itself is being run in an undemocratic manner. Further, such style of undemocratic functioning led to calls for democratization of the Party and is therefore, one of the main grounds for the occurrence of the present split in the Party.
- x. That the contention made on behalf of the Respondent in their preliminary reply that the 2022 organizational election of the Party cannot be questioned by the Petitioner since he himself along with members of his faction was a part of the election process does not justify the illegal election of the Respondent as Party President.
- xi. That an attempt may be made by the Respondent to pray before the Commission that certain member of the Legislative Wing of the Party be excluded from the purview of the test of majority due to disqualification proceedings being pending against them under the Tenth Schedule of the Constitution. That the Hon'ble Supreme Court in the matter of **Subhash Desai vs. Principal Secretary, Governor of Maharashtra & Ors.**[WP(C) No. 493/2022] did not categorically rule out the application of the test of legislative majority and further held that there was no overlap in the jurisdiction of the Election Commission of India under Paragraph 15 of the Symbols Order and that of the Hon'ble Speaker of the House under the Tenth Schedule of the Constitution.
- xii. That the Petitioner enjoys an overwhelming majority of support among the MLAs and MLCs of the Party in Maharashtra as well as the MLAs of the Party in Nagaland. Further, the votes polled by the legislators supporting the Petitioner is more than those of the legislators supporting the Respondent. That a disqualification petition under the Tenth Schedule of the Constitution does not annul the votes cast by the electors in an election and thus, was a valid test to decide a dispute under Paragraph 15.

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xiii. That in the present case, the Party Constitution has been violated by the Respondent who is running the Party in an undemocratic manner and that all the appointments at all the organizational levels i.e., from blocks to the working committee, have been undertaken on the whims and fancies of the Respondent, thus violating Articles 7, 10, 12, 13, 17, 18 and 20 of the Party Constitution.

**17.6** The Ld. Counsels prayed for listing the matter on 09.10.2023 for making further submissions. Accordingly, the matter was listed next on 09.10.2023 at 4 pm.

**18.** The second hearing in the present dispute case took place on 09.10.2023. At the outset, Ld. Senior Advocate Sh. Neeraj Kishan Kaul, appearing on behalf of the Petitioner, continued with his submissions and gave a brief regarding his submissions made at the first hearing held on 06.10.2023 and further submitted as follows:

- i. That ad-hoc nominated committee formed in the party has a complete lack of internal party democracy and can never be representative of the organizational majority in a party, thus the application of the test of majority in the organizational wing may not be the appropriate test considering the facts of the present case. That no individual can be bigger than the nation or a political party and has to adhere to internal democracy which is enshrined both in the Constitution of the nation and the constitution of the party.
- ii. That the Hon'ble Supreme Court has held in a catena of judgments that the Commission has extreme powers to fashion a test to meet the peculiar circumstances of any case and the Commission's jurisdiction is enormous to devise a new test whenever required to decide who represents the real party. That the Hon'ble Supreme Court in the matter of **Subhash Desai vs. Principal Secretary, Governor of Maharashtra & Ors.** [WP(C) No. 493/2022] has categorically ruled that ECI is free to

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fashion a test that is suited to the facts and complexities of the specific case before it.

- iii. That the decision of the Commission under the Symbols order is not necessarily to be consistent with the decision of the speaker under the tenth schedule. That the Hon'ble Supreme Court in the matter of **Subhash Desai (supra)** has held that the decision of the Speaker of a Legislative Assembly and the Commission is based on different considerations and is made for different purposes.
- iv. That the Hon'ble Supreme Court has in a plethora of judgments starting from **Sadiq Ali (supra)** held that the legislative majority and the numbers who represent an MP/MLA and the Votes Poll has been recognized as a recognized indicator of the support that a party enjoys amongst the public and this test has not been interfered with or commented conversely upon by the Hon'ble Supreme Court and in this case, the overwhelming majority by the legislative wing and the votes poll has to be taken into consideration in deciding the dispute.
- v. That the Hon'ble Supreme Court in **Sadiq Ali (supra)** had consciously held that both legislative majority in terms of numbers of MP/MLAs and the votes polled are relevant considerations not only for recognizing a political party under Paragraph 6 of Symbols Order but also a relevant consideration under Paragraph 15 of Symbols Order. The relevant para is extracted as follows:

*“27. It may be mentioned that according to para 6 of the Symbols Order, one of the factors which may be taken into account in treating a political party as a recognised political party is the number of seats secured by that party in the House of People or the State Legislative Assembly or the number of votes polled by the contesting candidates set up by such party. If the number of seats secured by a political party or the number of votes cast in favour of the candidates of a political party can be a relevant consideration for the recognition of a political party, one is at a loss to understand as to how the number of seats in Parliament and State Legislatures held by the supporters of a group of the political party can be considered to be irrelevant.”*

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- vi. That the opinion formed by the Hon'ble Commission in its order dated 14.09.2023 regarding the existence of rival factions was after considering the available matter on record and was in consonance with the judgments of the Commission in the matters of ***In Re: Dispute relating to Kerala Congress(M)*** [Dispute Case No. 2 of 2019] and ***In re: Dispute relating to Samajwadi Party*** [Dispute Case No.1 of 2017] which holds that the three indicators to form an opinion regarding split are: "faction soldering separate meetings of the organizational committee of the political party", "affidavits submitted by the members of the party(both organizational and legislation wing) showing support for rival factions" and "rival factions passing opposite resolutions declaring different Presidents of the party". That the Commission since being satisfied with the existence of these three indicators, the Commission should proceed to hear who represents the party.
- vii. That the "Votes Poll test" has been a valid test since 1972 as devised by the Hon'ble Supreme Court and this is not a new test being devised since a member continues to vote till he is disqualified as an elected representative and such a disqualification under the Tenth Schedule of the Constitution does not annul an election that was held on vote poll and such election continues to be a valid election.
- viii. That the Hon'ble Election Commission has to act with promptitude while deciding a matter under Para 15 of Symbols Order and the sooner it is decided who actually represents the party is essential for democracy as was laid down in the ***Sadiq Ali (supra)*** as follows: *The Commission in deciding that matter under para 15 has to act with a certain measure of promptitude and it has to see that the inquiry does not get bogged down in a quagmire.*
- ix. That the cross-examination of even a few witnesses who have deposed on affidavits would undoubtedly lead the enquiry under Para 15 of symbols order into a quagmire and the affidavits of hundreds of MPs/MLAs and

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General Council of the party cannot be ignored or discarded merely because of allegations of falsity in some affidavits as was held by the Commission in the **AIADMK Dispute Case [Dispute Case No.2 of 2017]**.

- x. That in the present case, the Respondent was elected as the Party President in an arbitrary, illegal, and unconstitutional manner. That the Commission in the matter of **In re: Dispute relating to Nationalist Congress Party** had noted that as per the Party Constitution of NCP, the National Convention is to consist of delegates of the State Committees of the Party, and all the committees as per the Party Constitution have to consist of elected and not nominated members whereas all ad-hoc committees of this party consist of nominated persons who are all nominated by the Respondent without elections being held.
- xi. In his closing statement, Ld. Senior Advocate Neeraj Kishan Kaul, submitted the following points:
- a) A valid opinion is formed by the Commission based on sufficient materials that there are rival factions existing in the party.
  - b) The Commission is not required to check the veracity of affidavits as promptitude is a must-test under Para 15 of the Symbols order.
  - c) The Legislative Majority test is not diluted by the Hon'ble Supreme Court and the votes poll count is a valid test.
  - d) The Commission has extreme powers to devise a new test in each case depending on the facts and circumstances.
  - e) If the Organizational Majority test is to be applied in this case, then the affidavits of primary members should also be considered.

**18.1** Thereafter, Ld. Senior Advocate Sh. Maninder Singh, appearing on behalf of the Petitioner, made the following submissions:

- i. That the Commission has to keep in mind 3 P's while deciding a case under Paragraph 15 of Symbols order which are "Plenary Power", "Practicality" and "Promptitude".

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- ii. That the Paragraph 15 of Symbols order can be read in two parts, firstly dealing with satisfaction that there is existence of two rivals and secondly, to decide that one rival faction is that recognized political party based on the materials placed before it and the hearings.
- iii. That the power of the Commission under Para 15 of the Symbols Order is a plenary power and submitted that the scope of plenary powers is of widest amplitude and further drew an analogy that such power is similar to the power of legislature to form laws relying on the judgments of the Hon'ble Supreme court in the cases of **RC Cooper vs Union of India** [(1970)1 SCC 248], **Umeg Singh vs State of Bombay** [AIR 1955 SC 540 and **Parmar Samantsingh Umedsinh v State of Gujarat** [2021 SCC OnLine SC 138].
- iv. That the Commission has to act with promptitude while deciding a matter under Para 15 of Symbols Order as was laid down in **Sadiq Ali (supra)**.
- v. That the word "satisfaction " as used in Paragraph 15 of the Symbols Order means the satisfaction of a reasonably prudent person. Reliance was placed upon the judgments of **S.R.Bomma vs Union of India** [(1994) 3 SCC 1], **CIT v. Mahindra and Mahindra Ltd.** [(1983) 4 SCC 392] and the **State of Maharashtra v. Bhaurao Gawande** [(2008) 3 SCC 613]. That this satisfaction has been reached by the Commission vide its order dated 14.09.2023.
- vi. That sufficient opportunity was given to the respondents to provide comments and thus the principle of natural justice has been followed in the instant case. Reliance was placed upon the cases of **Hira Nath Mishra v. Principal, Rajendra Medical College** [(1973 ) 1 SCC 805], **Swadeshi Cotton Mills v. Union of India** [(1981) 1 SCC 664], **Telstar travels (P) Ltd v. Enforcement Directorate** [(2013) 9 SCC 549] and **Gorkha Security Services v. Govt.(NCT of Delhi)** [(2014) 9 SCC 105].
- vii. That no time should be given to the respondents to file a reply, since, they are making mockery of this Hon'ble Commission in garb of

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Principles of Natural Justice. That wide the communication dated 27.07.2023 from the commission copied to the respondent, they were asked to furnish further submissions/documents and they filed their submissions on 3.08.2023 before the Hon'ble Commission.

- viii. That this Hon'ble Commission should not stop the proceedings under Paragraph 15 of the Symbols Order, 1968 and on the contentions of the respondent seeking time to file reply as the same contentions raised in the **Shivsena Dispute Case (Dispute No.1 of 2023)** was not interfered by Single Judge bench, Division Bench of the Hon'ble High Court of Bombay and also by the constitution bench of the Hon'ble Supreme Court.
- ix. In his closing statement, Ld. Senior Advocate Sh. Maninder Singh submitted the following points:
- a) That the first stage under Paragraph 15 of the Symbols Order, 1968, i.e., "the stage of satisfaction", has been reached by this Commission *vide* order dated 14.09.2023.
- b) The Respondent has been given multiple opportunities to file their comments and the same has been filed by them and therefore, the *principles of natural justice* have been complied with.

**18.2** Ld. Senior Advocate Siddharth Bhatnagar, appearing for the Petitioner, asserted that the test of Legislative Majority is the only test that is reliable in deciding the present dispute and accordingly made the following submissions:

- i. That the Commission has established two factors for determining the "Test of Majority", namely, the legislative wing and the organisational wing. It is emphasized that the legislative wing's numerical strength is ascertainable and *yields an immediate reliable outcome*.
- ii. That when it comes to the organisation of the party, two fundamental questions need to be addressed. *Firstly*, whether the party possesses a democratic constitution and *secondly*, whether the office bearers of the

party are elected democratically in accordance with such constitution or merely appointed. That in the present case, the Respondent has failed to democratically elect the party officials.

- iii. That the Commission in paragraph 108 of the *Shivsena Dispute Case* has outlined as to why it could not reach a satisfactory conclusion when applying the “Test of Majority” in the organisational wing. This includes the undemocratic nature of the Rashtriya Karyakarini rendering the numerical strength in such a body unreliable. Additionally, in view of practicality and promptitude, the headcount of lakhs of primary workers cannot be taken into account. Relevant extract of the said order is reproduced below for reference:

**“108.** *The Commission attempted to apply the “Test of Majority” in the organisational wing. However, it could not come to a satisfactory conclusion inter alia because of the following reasons: [...]*

III. *The 2018 Party Constitution in Article XI provides that the Shiv Sena Pakhsa Pramukh has the power to appoint Sanghatak, Samanvayak, Rajya Sampark Pramukhs, Zilla Sampark Pramukhs, Rajya Pramukhs and Zilla Pramukhs as well to co-opt any member as Leader and Deputy Leader of Shivsena. Article XI(B) of the 2018 Constitution of the Party states that the Rashtriya Karyakarini shall be elected by the Pratinidhi Sabha. Thus, the Rashtriya Karyakarini is a body which is in fact 'elected' by a largely 'appointed' Pratinidhi Sabha. Consequently, this body of the Shivsena, ex-facie does not generate confidence of being a truly democratic body. Hence, numerical strength in such body cannot be relied upon with confidence while adjudicating a dispute case under Paragraph 15 of the Symbol Order.*

IV. *Both the factions mentioned the support of lakhs primary workers supporting them. But in view of the promptitude and practicality requirement as per Sadiq Ali case, the Commission did not go into the actual head count of the primary workers. [...]*

VIII. *Therefore by the time we reach the stage of assessing the varying and competing claims of exact numbers of support by either group, the foundational basis of holding organisational aspects as fundamental or valuable to Para 15 Disputes is shaken in the present case.”*

- iv. That the Commission in *Shivsena Dispute Case* highlights the importance of the legislative wing’s strength on the grounds that a political party

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gains recognition on the basis of votes polled or the number of seats won as per para 6A, 6B, and 6C of the Symbols Order. Relevant extract of the Order is given below:

*“109. The very basis of the recognition of a political party is in terms of percentage of votes polled in election to the legislative assembly and or to the House of People and number of elected members. The political party gains recognition on the basis of votes polled and or number of seats as prescribed in Para 6A, 6B and 6C of the Symbols Orders.”*

- v. That the Commission in paragraph 126 of the *Shivsena Dispute Case* placed reliance on legislative numerical strength as the highest quality of evidentiary value. Moreover, given the party’s status as a State Party, particular emphasis should be placed on the numerical strength within the state legislatures. Relevant extract of the order is given below for reference:

*“126. In view of the foregoing arguments made by the Petitioners and the Respondent a contestation can be discerned both with regard to the sequencing of the steps and invoking the normative significance of each test in relation to the other. Of the 3 tests laid down in Sadiq Ali; i.e. "Aims and Objects, "Test of Party Constitution" and "Test of Majority", it is the last test which consists of test of majority in organisational wing and legislative wing and is capable of yielding a numerical basis. In this regard it is noted that ECI has found that the organisational aspects are invariably falling short, in the absence of normative clarity a priori. Inner workings of the Political Parties which are to be transparent and well disclosed to rank & file and, to the citizens at large, should be 24x7 work in progress. Unfortunately, it not being so, creates a crisis of credibility in assessing claims of positional support. In comparison the legislative wing tests yield an immediately reliable outcome. The status of being a Lok Sabha MP or, a Rajya Sabha MP or, an MLA or, an MLC, follows from The RP Acts 1950 & 51. Thus, it, as a starting universe of a comparative count, posits itself as of highest quality evidentiary value”*

**18.3** Ld. Senior Advocate Sh. Abhishek Manu Singhvi, appearing on behalf of the Respondent, made the following submissions-

- i. That the Hon'ble Commission has to decide between the two courses of actions, i.e., either the Respondent should be given the time to file a reply or they should be given the opportunity to rebut the claim of the Petitioner that the principles of natural justice have been followed in the present matter.
- ii. That the Respondent has only filed the preliminary reply before the Hon'ble Commission and therefore sought time to file a detailed reply.
- iii. That given the amount of affidavits filed and the discrepancies spotted in them, it is futile to make any arguments at this elementary stage of the proceedings.

**18.4** Ld. Senior Advocate Sh. Devadatt Kamat, appearing on behalf of the respondent, made the submission that the procedure consistently followed in previous cases till date is that when the dispute is registered, the Commission subsequently sought replies from the parties and thereafter proceeds with the hearing. This was highlighted in the *Shiv Sena Dispute*, wherein after the dispute was registered, the Commission had directed the groups to furnish their written submission to support their claims. However, in the present case, the earlier communications from the Commission had only advised for comments. After the Commission was satisfied that there was a dispute *vide* its letter dated 14.09.2023, no opportunity was given to the Respondent to file a reply. Since this is not the procedure or precedent followed in the past, therefore time is sought to file a substantive reply.

**18.5** After making of the aforesaid submissions by the Ld. Senior Counsels, the Commission granted time to the Respondent to file their reply before the end of the month, i.e., 30.10.2023, and further granted liberty to the Petitioner to file a rejoinder, if any, before the next date of hearing.

**18.6** The Ld. Counsels prayed for listing the matter on 09.11.2023 for making further submissions. Accordingly, the mater was listed next on 09.11.2023 at 4 pm.

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19. In compliance of the aforesaid order of the Commission, a reply dated 01.11.2023 was filed on behalf of the Respondent wherein the following submissions were made:

- i. That the Petition has been filed by a former member of Nationalist Congress Party and that disqualification proceedings are pending against him in the Maharashtra Legislative Assembly.
- ii. That while the Petitioner has questioned the election of the Respondent as Party President, he remained silent with regard to raising any such complaints and actively participated in all the processes without showing any reservation. That the Respondent's own alleged election as Party President *de hors* the Party Constitution.
- iii. That it is indisputable that there was no election of the Party President on 30.06.2023, nor any notice was given by the Petitioner of holding of any such election. That for the election of the Party President, it is *sine qua non* that the same is held under the aegis of the Chairman of the Central Election Authority who is also the *ex officio* Central Returning Officer responsible for the conduct of such election as per the Party Constitution.
- iv. That on 05.07.2023, the Petitioner through his advocate filed certain documents with a covering letter dated 30.06.2023 which was enclosed with a resolution purportedly signed by the members of the Legislature Party appointing the Petitioner as Party President. That the Party Constitution does not in any manner provide for election of the Party President by group of party legislators. That the legislature party is only the species of the larger genus of the political party and the legislators cannot arrogate to themselves the title of a political party which is a much wider concept.
- v. That while the petition alleges that no working President could be appointed, the Petitioner himself has filed documents before the Commission indicating that in a purported open National Convention held on 05.07.2023, Sh. Praful Patel was appointed as a Working

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President. That the purported resolutions passed fail to show as to when the notices for such open National Convention were given, to whom it was given and how many persons/ delegates attended the same.

- vi. That the organisational elections of a political party cannot be challenged in a Dispute Case under Paragraph 15 of the Symbols Order and that when the Petitioner had himself participated in the election process which he is questioning, he cannot be allowed to approbate and reprobate the same as per his whims and fancies.
- vii. That the Respondent, during the 2022 organizational election, received the support of 90 delegates of the NCP including that of the Petitioner, and was thereafter elected to the post of National Party President following the due procedure for such election as provided under Article 20 of the Party Constitution. That subsequently a resolution was passed at the National Convention held on 10th-11th September, 2022, as required under the Party Constitution, recording the election of the Respondent as the Party President. That the details of this convention of intimated to the Commission *vide* letter dated 15.09.2022 issued by Sh. T.P. Peethambaran Master, Chairman of the Central Election Authority. That from 16.09.2022 onwards, the Petitioner has not raised any objection to the elections, appointments and decisions of the National Party President and other office- bearers of NCP.
- viii. That on 03.08.2023, the Respondent after perusing the documents/ submissions of the Petitioner had filed a preliminary response (without prejudice) to the petition whereby it was submitted that the claim of the Petitioner did not make a case for “dispute” in Nationalist Congress Party.
- ix. That on 07.09.2023, without prejudice to the rights and contentions, the Respondent had filed a preliminary response/ comment in respect of the documents submitted by the Petitioner in relation to Paragraph 15 of the Symbols Order. In the said response, the Respondent challenged the

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maintainability of the petition and submitted evidence which proves that the Petitioner's case was not maintainable.

- x. That the present petition under Paragraph 15 of the Symbols Order was a fallacious attempt to avoid disqualification on the ground of defection.
- xi. That out of the 10,000 affidavits examined, gross and fatal infirmities have been identified including affidavits filed by dead person, unsigned affidavits as well as by alleged office-bearers at posts that did not exist as per the Party Constitution.
- xii. That certain prayers made by the Petitioner in the petition were legally untenable under the Symbols Order. That it is well settled that Paragraph 15 adjudication is limited to deciding which of the factions (if any) is to be declared as the political party and the disputes *inter-se* political parties and the validity of the actions taken prior to the existence of the dispute are not within the purview of the adjudication under Paragraph 15.
- xiii. That if the Commission moves to determine the test of be applied in the present dispute case, then the appropriate test to be applied is not that of the legislative majority but instead of the organizational majority. That the Petitioner has himself given up his reliance on organizational majority. Reliance was also placed on the constitutional bench judgment in **Subhash Desai (supra)** where it was held that:

*"[...] when legislators are disqualified under the Tenth Schedule, the basis of recognition of the political party under the Symbols Order and correspondingly, one of the reasons for using the test of legislative majority itself becomes diluted. Thus, it is not appropriate to confine the ECI to the singular test of legislative majority in such situations."*

- xiv. That it is an admitted position that disqualification proceedings are pending against the Respondent and legislators supporting him. That while in the Maharashtra Legislative Council and Maharashtra Legislative Assembly, the Petitioners ostensibly claim to have a majority, nevertheless, this is subject to the Tenth Schedule proceedings pending against the MLAs/ MLCs whose support has been relied upon by the

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Petitioner. That the Respondent enjoys majority support in the Lok Sabha, the Rajya Sabha and the Kerala Legislative Assembly.

- xv. That even the votes polled by the legislators supporting a faction cannot conclusively determine the majority support enjoyed by that faction of the political party. That the votes polled by a legislator may not be reflective of the exact support as several considerations weigh with the voter while voting for the legislator and that one of the primary considerations which weigh with the voter is the personality of the leader of the political party. That the MLAs have got elected primarily on the strength of the persona and charisma of the Respondent. That during the Maharashtra Legislative Assembly Elections, 2019, NCP was in alliance with Indian National Congress against BJP and Shivsena and therefore, the votes polled cannot be an accurate reflection of NCP voters as common candidates were fielded.

20. The third hearing in the present Dispute Case took place on 09.11.2023. At the outset, Senior Advocate Abhishek Manu Singhvi, on behalf of the Respondent, made the following submissions:

- i. That a sample analysis of the affidavits filed by the Petitioner has been done and grave discrepancies have been found. It was also submitted that through media reports, it had come to their knowledge that almost 2 lakhs affidavits of support had been filed by the Petitioner but only 1.3 lakhs were served upon the Respondent.
- ii. That, with regard to the affidavit submitted by the Petitioner, it was seen that affidavits had been given by persons who had passed away whereas some deponents had affirmed that they had not signed or executed any affidavit in support of the Petitioner. Emphasis was placed on three legislators whose affidavits were used to validate the alleged election of the Petitioner as Party President but who affirmed that they did not depose or execute any such document in favour of the Petitioner.

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- iii. That certain affidavits were not signed by the deponent but were still found to be notarized.
- iv. That a large number of affidavits were allegedly signed by office-bearers of the Party although no the offices/positions mentioned therein did not exist in the Party Constitution. These included "Taluka Mahamantri", "Taluka Treasurer", "Branch Head", etc.
- v. That a number of affidavits were signed by the deponents at one place but notarized at a different place.
- vi. That in view of the aforesaid infirmities, the petition itself was non-maintainable.
- vii. That the petition should be rejected at the threshold on the grounds of false affidavits and unclean hands of the Petitioner. The Hon'ble Supreme Court in **Dhananjay Sharma v. State of Haryana [1995 (3) SCC 757]** held that the filing of false affidavits in judicial proceedings in any court of law exposes the intention of the party concerned in perverting the course of justice. Similarly in **Gokaldas Paper Products v. Lilliput Kidswear Ltd. &Anr [CCP Co. 9/2013-DHC]** the Hon'ble High Court of Delhi held that when one signs an affidavit before the court, they are making a solemn declaration to tell the truth, and filing of false affidavit is a serious offence that undermines the very foundation of the legal system.
- viii. That the Hon'ble Supreme Court in a catena of judgments has held that the individuals approaching the courts with unclean hands lose their right to demand equity. In **Kishore Samrite v State of U.P & Ors [(2013) 2 SCC 398]** it was held that the person seeking equity must do equity. It is not just clean hands but clean mind, heart and objective that are equi-fundamental of the judicious litigation. Careful exercise is necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and impose an obligation upon the litigation to disclose the true facts and approach the court with clean hands. In **K.D.**

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**Sharma v. Steel Authorities of India Ltd. [(2008) 12 SCC 481]** , the Hon'ble Supreme Court held that it is of utmost importance that the petitioner approaching the writ court must come with clean hands and if there is no candid disclosure of relevant and material facts or petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.

**20.1** The Ld. Counsels prayed for listing the matter on 20.11.2023. The Commission directed that the matter would be listed on the aforesaid date and that day-to-day hearings would commence thereon till the conclusion of arguments.

**21.** The fourth hearing in the present dispute case took place on 20.11.2023. At the outset, Ld. Senior Advocate Abhishek Manu Singhvi, appearing on behalf of the Respondent, continued with submissions whereby the following was stated:

- i. That in continuation with the previous submission on false affidavits and misrepresentations, one such example was of Sh. Pratap Chaudhary, an office bearer of the NCP who claims that his affidavit was wrongfully obtained by the Petitioner and that he confirms his allegiance with the Respondent.
- ii. That in the **Indian National Congress (I) v Institute of Social Welfare & Ors**, the Hon'ble Supreme Court has laid down triple test on the issue of de-registration of political parties by ECI, wherein political parties may be de-registered if they obtain registration by fraud and forgery. Therefore, the Petitioner cannot claim the symbol of the party based on the forged and fraud affidavits.
- iii. That a judgement or decree from this Hon'ble Commission based on such fabricated affidavits would be null and void.
- iv. That there is a difference in the cause of action which is claimed and the cause of action which is argued by the Petitioner. The petition is mainly

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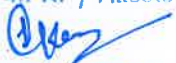


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challenging the election of the Respondent as a Party President, thereby seeking to invoke Paragraph 15 of the Symbols Order. That the Petitioner has repeatedly and publicly acknowledged the Respondent as the Party President, contrary to his cause of action advanced. That if an election is flawed, one can resort to civil suit and not approach the this Commission under Paragraph 15 of Symbols Order. Therefore, the Petitioner has placed jurisdictionally flawed arguments.

- v. That no grievances or complaints were ever raised against the Respondent by the Petitioner till 30.06.2023. The petition was reverse engineered to raise arguments against the elections to obtain the party symbol.
- vi. That in the affidavits provided by the Petitioner, there is categorically nothing deposing against the Respondent. That support for Petitioner in the affidavit doesn't necessarily nullify the support for the Respondent. However, the affidavits filed by the Respondent categorically claim support for the Respondent and not the Petitioner.
- vii. That the prayer for the direction to disqualify, disentitle and bar the Respondent from being office bearer of NCP and to quash all acts/orders/commands issued by the Respondent, is beyond the scope of Paragraph 15 of Symbols Order. That the prayer for recognising the faction of the Petitioner as real NCP and to allot them the party symbol, is not in consonance or connect with the present petition.
- viii. That the submissions by the Respondent are for the threshold dismissal of the petition since the same is not maintainable and must be visited with the strongest penalty for being false, frivolous and vexatious.
- ix. That this Commission must provide the test which it intends to apply in the present matter. That the parties should be aware of the legal test and accordingly provide the relevant submissions and arguments for its satisfaction.

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- x. That the Hon'ble Supreme Court in the case **A.V Papayya Sastry vs Government of Andhra Pradesh** [(2007) 4 SCC 221] held that it is a well-settled principle of law that if any judgement or order is obtained by fraud, it cannot be said to be a judgement or order in law. As Chief Justice Edward Cook proclaimed, "Fraud avoids all judicial acts, ecclesiastical or temporal", and that such a judgement, decree or order has to be treated as nullity by every court, superior or inferior.
- xi. That the petition can be dismissed at threshold, if the same is vexatious or based on fraud. In **Dahiben vs. Arvinbhai Kalyanji Bhansai** [2020 SCC On line 563], the Hon'ble Supreme Court held that if on a meaningful reading of the plaint it is found that the suit is vexatious and without merit and does not disclose the right to sue, the court would be justified in exercising the power under Order 7 Rule 11 of CPC, at any stage of the suit. If the court finds that the plaint does not disclose a cause of action or is barred by any law, the court has no option but to reject the plaint. Similarly in **M. Somasundaram & Anr vs V. Srinivasan** [(2009) 8 MLJ 1284], it was observed by the Hon'ble High Court of Madras, by referring to **Mayar H.K Ltd &Ors vs Owners Parties, Vessel M.V Fortune Express** [(2006) 3 SCC 100], that a "cause of action" is a bundle of facts which are required to be proved for obtaining relief, and the material facts are required to be stated but not the evidence except in certain cases where pleadings relied on are in regard to misrepresentation, fraud, wilful default etc.
- xii. That the uninterrupted and constant tide of thousands of affidavits being filed on 26.10.2023, just three days prior to the deadline by the Hon'ble Commission, is against the principle of natural justice.
- xiii. That the false affidavits filed by the Petitioner is a separate crime and for this perjury, the Hon'ble Commission being a *custodia legis*, may initiate action against such false affidavits as per Section 195 of the CrPC. In this regard the judgments by the Hon'ble Supreme Court in **Iqbal Singh**

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**Marwah v Meenakshi Marwah** [2005 (4) SCC 370] and **Bhima Razu Prasad v State** [2021 SCC OnLine SC 210] may be referred.

**21.1** Sh. Mukul Rohatgi appearing on behalf of the Petitioner, submitted that any discrepancies/forgery in the affidavits must be taken on the face value and a cross-examination/verification of the same may not lead to any substantial conclusion.

**21.2** Thereafter, Sh. Devadatt Kamat, Ld. Senior Counsel appearing on behalf of the Respondent, made the following submissions:

- i. That the instant petition under Paragraph 15 of the Symbols Order is based on two grounds – one, that there is a dispute regarding the election of the party President and two, that the organisational elections were not held properly. Since there were no factions and disputes in the party prior to 30.06.2023, the jurisdictional fact necessary for triggering Paragraph 15 of the Symbols Order is absent. That in all the Paragraph 15 related matters decided by this Commission, disputes already existed between the factions, which is lacking in the present petition.
- ii. That there is a preliminary objection raised against challenging the election of the Respondent as Party President. That in the past disputes wherein allegations were made against the conduct of elections, this Commission had observed that participation in such elections precludes the relief under Paragraph 15 of the Symbols Order.
- iii. That the election of the Party President was held strictly in accordance with the Party Constitution and the holding of a National Convention and an election of the president, are two completely distinct procedures. That the election of the Party President initiated on the nomination of the Petitioner, after which the Respondent was unanimously elected.
- iv. That the result of the election of the Respondent as Party President was communicated to this Commission on 15.09.2022, which highlights the sanctity of the election procedure. Consequently, the Petitioner cannot

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claim the same election to be void, after a lapse of several months, once the results have already been conveyed to this Commission.

- v. That before approaching the Commission, the Petitioner should have exercised the remedies provided under the Party Constitution. Such a leap frog to Paragraph 15 of the Symbols Order necessitates the exhaustion of all the remedies. Moreover, no grievances related to the election or organisational matters were communicated to the Respondent by the Petitioner.
- vi. That there has been a blatant violation of the Party constitution by the Petitioner, particularly on 05.07.2023 when a document signed by some MLAs proclaimed the Petitioner as president. Such an act is unheard of and in contravention of the party Constitution. Relying on **NCP Dispute Case of 2004**, it is asserted that holding such a parallel National Convention is null and void. Additionally, there is no evidence supporting the occurrence of the National Convention as claimed by Petitioner.
- vii. That traditionally three tests are applied by the Commission under Paragraph 15 of the Symbols Order, namely the Test of the Party Constitution, the Test of the Aims & Objects of the Party Constitution and the Test of the Majority. Regarding the first test, the Petitioner cannot urge for the application of this test, and rather it is the Respondent that has never acted against the party Constitution. Similarly, the Petitioner has violated the aims & objects of the Party constitution by holding an election in contravention of the party Constitution. Lastly, the legislative majority test alone cannot be made applicable, which has been clarified in the **Subhash Desai (supra)**. Even if applicable, the Respondent can show its majority in the Parliament and the Maharashtra Legislative Council. The organisational strength of the party is also overwhelmingly in favour of the Respondent.

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**21.3** After making the aforesaid submission, the Ld. Counsels for the Respondent prayed for listing the matter on 24.11.2023 for making further detailed submissions. Accordingly, the matter was listed next on 24.11.2023.

**22.** The fifth hearing in the present dispute case took place on 24.11.2023. At the outset, Ld. Senior Advocate Devadatt Kamat, appearing on behalf of the Respondent, continued with his submissions which were part heard at the previous hearing. The submissions made were as follows:

- i. That the existence of a dispute or impasse prior to approaching this Commission is a *sine qua non* for invoking the jurisdiction of Paragraph 15 of the Symbols Order. In order to show the same, a sequence of events preceding 30.06.2023, i.e., when the petition was filed, was presented.
- ii. That ultimately what the Commission decides is who essentially represents the Party and for the same, one of the factors to be kept in mind is the role played by the heads of the respective parties in the growth of the NCP. The Respondent is the founder of NCP and its undisputed president, under whose aegis the party has grown tremendously. On the other side, the Petitioner has never held a single organisational post in the Party since its inception, thereby, the Petitioner no role in the development of the Party.
- iii. That, on 10.06.1999, the NCP was founded by the Respondent along with Shri P.A. Sangma and Shri Tariq Anwar. Later, on 03.04.2001, the Commission declared the NCP as a recognised National Political Party with the "Clock" symbol. From 1999 to 2015, regular organisational elections were held as per the Party Constitution, without any dispute.
- iv. That, the results of the 2018 election of the Party President and office bearers were intimated to the Commission *vide* letter dated 30.08.2018. The letter also stated that the date of the next election would be due in May, 2021. However, in the letter dated 16.11.2021, it was intimated to the Commission that due to COVID-19, organizational elections were delayed.

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- v. That in 2019, elections to the Maharashtra Legislative Assembly were held wherein the Nationalist Congress Party (NCP) and Indian National Congress (INC) contested as an alliance (UPA) winning 54 seats and 44 seats respectively. The argument in the **Shiv Sena Dispute Case** was that the people voted for the Shivsena-BJP alliance and therefore, switching over to the other side belied the trust of voters. Similarly, in the present matter, the voters elected for the NCP-INC Alliance and so the NCP MLAs who defected to join the other political spectrum also belied the faith reposed in the alliance and they cannot be set to represent the Party.
- vi. That no party was able to secure a clear majority and the Shiv Sena joined the NCP and INC in a post-poll alliance called the Maha-Vikas Aghadi (MVA). However, on 23.11.2019, the Petitioner was sworn in as Deputy Chief Minister with Sh. Devendra Fadnavis as the then Chief Minister by the Hon'ble Governor of Maharashtra, despite being a part of the NCP-INC alliance and thereby breaching the faith of the voters in the lure of power.
- vii. The aforesaid action of the Hon'ble Governor of Maharashtra was challenged before the Hon'ble Supreme Court, wherein the Petitioner was arrayed as one of the Respondents. In the hearing, the Petitioner claimed to represent the real NCP. Subsequently, the Hon'ble Supreme Court *vide* its order dated 26.11.2019 directed for a floor test, following which the Petitioner resigned. Thereafter, from November 2019 to June 2022, the MVA formed a government in the State wherein the Petitioner was made the Deputy Chief Minister and Finance Minister. Moreover, on 04.07.2022, after Sh. Eknath Shinde formed the government, the Petitioner was made the Leader of Opposition with the blessings of the Respondent.
- viii. That on 17.06.2022, the organisational elections of NCP were announced wherein the elections to the State Committee was scheduled on

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22.09.2022. However, later this schedule was amended and the said State Committee election was preponed on 29.08.2022, before the holding of the National Convention.

- ix. That on 27.07.2022, Shri Praful Patel (who is now on the Petitioner's side) addressed a letter to all State/UT President, NWC Members etc. extending invitation for the National Convention to be held on 11.09.2022, thereby countering the claim of the Petitioner that the said National Convention was a farce.
- x. On 27.08.2022, Shri T.P. Peethambaran Master, Central Returning Officer, notified the election of the National President. Article 20(iv) of the Party Constitution lays down that if there is only one candidate whose name has been proposed for the President post, he/she shall be declared duly elected as the President of the Party. Thus, it may be noted that all the nomination papers have unanimously proposed the name of the Respondent, with the Petitioner himself as one of the proposers. Thereby, the Respondent was declared the elected as the National President, following the due procedure for such election under the Party Constitution. However, on 05.07.2023, a document was filed by the Petitioner annexing an undated resolution signed by some MLAs, electing the Petitioner as the President. It is asserted that such an election has brazenly offended the provisions of the Party Constitution.
- xi. That this Commission has always taken the view that one cannot directly approach the Commission on the slightest pretext of a dispute within the Party. One has to demonstrate that the exercise of rights/remedies were exhausted before coming to Paragraph 15 of the Symbols Order. The proceedings under Paragraph 15 of the Symbols Order cannot be used as a trigger to create an illusion of dispute in a party.
- xii. That during the period between 10.09.2022 to 11.09.2022, the National Convention of NCP was held with 558 delegates sent from the State Committees. That an attempt is sought to be made by the Petitioner to

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confuse the concept of National Convention and election of the Party President. As per Article 18 of the Party Constitution, the National Convention is held to decide the broad future, program and policies of the Party and not to hold the election of the President. As per Articles 18 and 20 of the Party Constitution, the Party President presides over the National Convention held after his/her election. The Resolution passed in the said National Convention stated that Respondent was authorised to announce the names of national office bearers of the Party, the working committee members etc, in consonance with Article 21 of the Party Constitution.

- xiii. On 11.09.2022, after the conclusion of the National Convention, the Petitioner gave a media interview stating that the Respondent was re-elected unanimously and also depositing the authority given to the Respondent to appoint the office bearers of the party.
- xiv. On 15.09.2022, Shri T P Peethambaran Master intimated the result of the election including that of the President, to the Commission. Therefore, upon the Petitioner's acceptance of the election results, without any challenge in the civil court or through the internal mechanism of the Party, and subsequent official communication to the Election Commission, such result of the election is sealed and cannot be claimed to be tainted by the Petitioner. That on the same date, Shri Praful Patel also sent out a letter enclosing the list of the all the national office bearers, members of working committee, national secretaries etc. along with the decision taken during the National Convention.
- xv. That on 02.05.2023, the Respondent announced his intention to step down as Party President. Thereafter, a committee comprising of the Petitioner himself, unanimously rejected this resignation and requested him to continue as the President.
- xvi. That in order to create a smokescreen of dispute and to hide the consequence of disqualification, the present petition was filed on

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30.06.2023 because, as planned, the Petitioner along with 8 other rebel MLAs defected and they were sworn in as ministers in the Government of Maharashtra on 02.07.2023. That on the same date, Shri Anil Deshmukh addressed a letter to the Respondent informing him of the anti-party activities of the aforementioned MLAs. Thereafter, the Disciplinary Committee of the Party passed a resolution to take action against the Petitioner and 8 other MLAs and disqualification petitions were filed against them. Therefore, the semblance of a friction within the party can be seen from 02.07.2023 and not on 30.06.2023. Furthermore, on 03.07.2023, it was published in news articles that the Petitioner has accepted the leadership of the Respondent in an interview by the press, even after the filing of the present petition.

- xvii. The Ld. Counsels of the Petitioner filed certain documents on 05.07.2023 before the Commission. These documents were devoid of the details of the date and venue of the meeting or the official letterhead and these documents claim that the Petitioner was elected as National President by MLAs, which is in contravention to the provisions of the Party Constitution. Accordingly, the Commission cannot rely upon such documents.

**22.1** Thereafter, Sh. Devadatt Kamat, Ld. Senior Counsel, placed a written submissions before the Hon'ble Commission on behalf of the Respondent wherein the following was submitted:

- i. That the factum of a 'pre-existing dispute' before the filing of the petition is a *sine qua non* for maintaining a petition under Paragraph 15 of the Symbols Order. The petition must disclose a pre-existing factum of rival sections.
- ii. That the relevant portion of the Commission's order dated 25.01.1978 (later upheld by the Hon'ble Supreme Court), as quoted in **Arjun Singh v The President Indian National Congress (Dispute No. 1 of 1996)**, wherein at the time of the second split in the Congress in 1978 when a

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group led by Smt. Indira Gandhi approached under Para 15, such a contention was repelled by the Commission in its order. Relevant extract of the order is as follows:

*“From this, it could easily be inferred that it is not humanly possible to lay down any particular test as a litmus test which and which alone would govern a matter which has to be determined by a judicial or quasi-judicial body or authority. To take the view that the Commission, while deciding cases falling under paragraph 15 of the Symbols Order should not be concerned with the party constitution would be to introduce utter chaos in the functioning of the political parties in the country and the operation of the Symbol Order would be rendered a plaything between the various shades opinion or groups in the political party”*

- iii. Moreover, the Commission also observed the following in the aforementioned order:

*“The Commission considers that a group or section which wants to form a rival group within a party must declare itself a rival group and assert that there has been a split in the party. It must show that it has exhausted all the remedies available to it under the constitution of the party to assert its majority, but that the other group has frustrated its efforts whimsically or capriciously and is not itself functioning in accordance with the provision of the constitution of the party or democratic norms. The rival group must also show that it has no alternative but to come to the Commission to establish its majority in the party. In the present case no such situation has been shown to exist.”*

- iv. That in the **Shivsena Dispute Case**, the petition was filed on 19.07.2022 and the holding of separate meetings of Legislature party, along with letters mentioning the “anti-party activities” committed by the Petitioner therein along with some MLAs were prior to the filing of the petition and therefore was indicative of a split in the party. However, in the present petition, no such dispute existed prior to 30.06.2023 and no evidence of the same has been produced.

**22.2** After making the aforesaid submission, the Ld. Senior Counsel for the Respondent prayed for listing the matter on 29.11.2023 for continuing with the submissions. Accordingly, the matter was listed next on 29.11.2023.

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**23.** The sixth hearing in the present dispute case took place on 29.11.2023. At the outset, Ld. Senior Advocate Devadatt Kamat, appearing on behalf of the Respondent, continued with his submissions which were as follows:

- i. That the sequence of events presented in the previous hearing was to demonstrate that – *one*, there was no pre-existing dispute or split in the NCP required for Paragraph 15 of the Symbols Order and *two*, even in the presence of such disputes, the Party has to show that it acted as per the Party Constitution and exhausted all remedies before approaching the Commission.
- ii. That in the whole content of the petition, there is no mention of the Petitioner being elected as the Party President, as stated in the resolution dated 05.07.2023. This shows that the present petition is an afterthought and a made-up document.
- iii. That the second heading of the written submission conveys that the Petitioner without exhausting the remedies available under the Party Constitution cannot leapfrog under Paragraph 15 of the Symbols Order. The said provision cannot be a substitute for avoiding the democratic process within the Party to become the President. Moreover, no representation has been made for availing the remedy on election dispute provided under Article 25 of the Party Constitution. Even the affidavits filed by the Petitioner lack the mention of the illegality of the organisational election of the Respondent.
- iv. That the third heading of the written submission conveys that prayers to disqualify, disentitle and bar the Respondent from being office bearer of NCP and to quash all acts, order, directions issued by Respondent, and that such prayers are outside the jurisdiction of Paragraph 15 of the Symbols Order.
- v. That the fourth heading of the written submission states that the validity of the election of the President cannot be challenged due to certain reasons i.e. one, intra-party disputes cannot be part of Paragraph 15.

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Second, that the Petitioner himself nominated the Respondent in the Party President election. And lastly the Petitioner gave a media interview acknowledging the Respondent's election. In **Arjun Singh vs The President of Indian National Congress (Dispute no.1 of 1996)**, this Commission held that the Petitioner had actively participated in the meetings of the other group and therefore, the Petitioner could not have called such meetings illegal. Similarly, in **Chhotubhai Amarsang Vasava vs Nitish Kumar (Dispute no.5 of 2017)**, it was held that elections attain finality, if not called in question before the competent authority, within the prescribed time limit.

- vi. That the fifth heading of the written submission conveys that the election of the Respondent was fully in accordance with the Party Constitution. That the Petitioner has confused the National Convention with the election of Party President, as per Articles 18 and 20 of the Party Constitution.
- vii. That the sixth heading of the written submission mentions that the results of the election of the President was duly communicated to the Commission on 15.09.2022.
- viii. That the seventh heading of the written submission states that the Petitioner having violated the Party Constitution with impunity is precluded from maintaining the instant petition. *First*, the purported election of the Petitioner as Party President by some MLAs is *ex-facie* violation of the Party Constitution. *Second*, no one from the Petitioner's side asked for a National Convention or Special National Convention as per the Constitution, and therefore, the Open Convention held on 05.07.2023 by the Petitioner is violative of the Party Constitution. *Third*, the legislative party is not equal to the political party and the legislators cannot arrogate to themselves the title of a political party. In **Subhash Desai (supra)**, the Hon'ble Supreme Court held that political party and legislature party cannot be conflated. *Fourth*, Shri Praful Patel is

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appointed as National Working President, the post which as per his own admission finds no mention in the Party Constitution. In contradistinction, the National Convention held on 11.09.2022 was attended by delegates of various states committees, which reflects the organisational majority support for the Respondent.

- ix. That in the order dated 25.01.1978 passed by the Commission, the Petitioner therein had failed to provide the agenda of the Convention as well as details of who all were invited and which delegates attended it etc. The entire exercise of holding the purported National Convention by the Petitioner was only to create a paper trail for the Commission.
- x. That in **K.P. Unnikrishnan vs Sarat Chandra Sinha (Dispute no. 4 of 1995)**, this Commission held that any meeting called for appointing a new President and removing a validly elected President contrary to the party Constitution is null and void. Moreover, **NCP Dispute Case of 2004**, this Commission rejected the claim of Shri P.A Sangma that a National Convention was held wherein Shri Sharad Pawar was expelled from the post of Party President. It was held that such a convention was against Article 18 of the Party Constitution. That such a Convention could at best be treated as a private meeting. Therefore, it is respectfully submitted as far as the test of adhering to party constitution is concerned, Petitioner has failed miserably.
- xi. That to determine which test to apply in the present case, the Petitioner suggests the application of legislative wing majority test. However, in *Sadiq Ali (supra)*, it was opined that if there is a clear indicator that a group has majority in both legislative and organisation, the symbol may be granted to them. However, when there is a difference in the majority in the legislative and organisational wing, it is nowhere mentioned that the legislative wing will have precedence over the organisational wing. In such a situation, the Commission has to fashion its own test. Moreover, it is pertinent to highlight that the emergence of the Tenth Schedule is a

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watershed moment. In the present case, since the Petitioner and his group of MLAs have committed defection and a batch of defection petitions are pending against these legislators, an issue arises that whether the Commission can rely on the numerical strength of the legislature.

- xii. That the aforementioned issue was raised before the Hon'ble Supreme Court in **Subhash Desai (supra)** wherein it was observed by the Hon'ble Court that the contentions of the petitioners that the outcome of the dispute before the ECI may change depending on the outcome of the disqualification petitions, cannot be brushed aside. If the faction which enjoys majority in the House is disqualified under Tenth Schedule after being adjudicated to be the political party, the very foundation of their claim no longer subsists. This is *not a constitutionally desirable* outcome. And therefore, in such cases, it would be *futile to assess* which group enjoys a majority in the legislature. Rather the Commission must look to other tests to reach a conclusion under Paragraph 15.
- xiii. That, it is further relevant to highlight an illegal act committed by the Petitioner's group wherein, the legislators in a document filed by the Petitioner have made Petitioner as leader of the legislature party. This is in contravention to the Supreme Court's judgement in the *Subhash Desai (supra)*, which asserts that the legislature party has no power or authority to appoint its leader or whip and such appointment is made by the political party.
- xiv. That another reason as to why the legislative majority cannot be applied in the instant case is because it is difficult to ascertain the vote percentage when parties contest elections as alliances. The 2019 Maharashtra Assembly was fought by the NCP in alliance with Indian National Congress, where NCP got 54 seats and INC got 44 seats. Therefore, it will be difficult to determine and deduce whether the MLAs were elected on the strength of NCP votes or INC votes.

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xv. Lastly in an election, the voters see the candidate and the political party's aims and objectives. However, most often the voters tend to consider the persona of the leader of that party. Therefore, it is submitted that the voters elected these 54 members on the strength of the Respondent's persona and charisma. That the Petitioner had also relied on the pictures of the Respondent to garner political support and when unsavory comments were made against the Respondent in the ongoing hearing, the Petitioner denounced such statements.

**23.1** After making the aforesaid submission, the Ld. Senior Counsel for the Respondent prayed for listing the matter on Monday, 04.12.2023 for continuing with the submissions. Accordingly, the matter was listed next on 04.12.2023.

**24.** The seventh hearing in the present dispute case took place on 04.12.2023. At the outset, Ld. Senior Advocate Devadatt Kamat, appearing on behalf of the Respondent continued with his submissions which were as follows:

- i. That in the present case, another ground as to why the legislative majority test cannot be applied is that a political party goes to the voters with a particular agenda and alliance and based on the same the voters cast their mandate. However, the Petitioner has acted contrary to the manifesto and the agenda of their political party, and thus, there arose two factions— one group, which has fought against the BJP and stuck to its ideals of the political party, and the second group, which has fought on the same platform but has acted against the promises made to the voters.
- ii. That there is also a convergence with the Tenth Schedule of the Constitution. The Tenth Schedule lays down that if a legislator or a group of legislators act contrary to the wishes of their political party, they are considered to voluntarily give up their membership of that political party, and so they cannot represent that political party. Therefore, the present petition under Paragraph 15 of the Symbols Order is not maintainable.

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The Hon'ble Supreme Court in **Dr Mahachandra Prasad Singh vs Chairman, Bihar Legislative Council & Ors** [(2004) 8 SCC 747], observed the underlying object and purpose of the Tenth Schedule was explained in the *Kihoto Hollohan* case. It is further submitted that though disqualification proceedings against the Petitioner and his supporters are pending, nevertheless the Hon'ble Supreme Court judgements of **Ravi S. Naik vs Union of India** [1994, Supp (2) SCC 641], **Mahachandra Prasad Singh vs. Chairman, Bihar Legislative Council, Ram Chandra Prasad Singh vs Sharad Yadav** [(2021) 13 SCC 794] and **Shrimanth Balasaheb Patil vs Karnataka Legislative Assembly** [(2020) 2 SCC 595], will be relevant in ascertaining 'who the political party is' under Paragraph 15 of the Symbols Order. In **Subhash Desai (supra)**, the Hon'ble Supreme Court held that the Tenth Schedule guards against the outcome where legislators appeal to the voters based on their affiliation with the party, but later they disconnect entirely from that very party and function as a group of MLAs which no longer owes even a hint of allegiance to the political party. This is not the system of governance that is envisaged by the Constitution.

iii. That even if the legislative majority test is to be applied, the Respondent has a clear majority. If the votes polled by the Respondent and his supporters in the last elections are taken into consideration, the total votes polled by the legislators supporting the Respondent comes to 2,30,26,635 whereas the votes polled by legislators supporting the Petitioner comes to 1,20,72,598. This is demonstrated by the following:

a) That the strength of the membership of the Rajya Sabha and Legislative Council cannot be ignored. The criteria adopted for valuing each seat in the Rajya Sabha and Legislative Council is based on the formula provided by the Respondent in Paragraph 88 of the written submission

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- b) That the test of the number of votes cast in favour of the candidate, even if they haven't won, is a relevant consideration. In the **Shiv Sena Dispute Case**, the Hon'ble Commission relied on the provisions of Para 6A,6B and 6C of the Symbols Order for ascertaining the total votes commanded by the MLAs and MPs.
- c) That if the legislative majority relies only upon the number of elected legislators, then adhering to the law laid down in the **Subhash Desai (supra)**, the legislators against whom disqualification is not pending can be considered.

**24.1** Thereafter, Ld. Senior Advocate Abhishek Manu Singhvi, appearing on behalf of the Respondent, submitted the following:

- i. That Article 14 of the Party Constitution creates the National Committee of the NCP as the apex body, whereas Article 21 creates the Working Committee. The Respondent is the founder and insignia of the NCP and claims majority support in both these bodies. As per the figures provided in the written submission, 337 out of 592 members of the National Committee and 20 out of 28 members of the Working Committee support the Respondent. Moreover, 70 out of 86 office bearers of NCP support the Respondent. There are also 801 affidavits across the various state bodies supporting Respondent.
- ii. That both the *Sadiq Ali Case* and *Subhash Desai case* make it clear that organisational support is of vital importance and it will be futile to assess which of the group enjoys the majority in the legislature. Rather, the Commission may include an evaluation of the majority in the organisational wings of the political party, an analysis of the provisions of the party constitution, or any other appropriate test. The Commission has also examined the organisational strength of the party in **NCP Dispute Case of 2004, Samajwadi Party Dispute Case** and **Janata Dal (United) Dispute Case**.

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- iii. That the Petitioner is confronted with shameless estoppel and hypocrisy. The Petitioner's group of legislators particularly questioned the appointment of Shri Jayant Patil, yet these legislators had their Form A and Form B signed by the same Shri Jayant Patil, based on which they were elected in the legislature.
- iv. That the Commission should consider the unimaginable scenario where NCP is without the Respondent. The NCP is not real without Shri Sharad Pawar and there must be an over-compelling reason in law for the NCP to exist without him.

**24.2** Ld. Senior Advocate Mukul Rohatgi appearing on behalf of the Petitioner submitted the following rejoinder:

- i. That the purpose of the first argument deals with the Respondent's argument that the present petition is not maintainable under Paragraph 15 of the Symbols Order since there is no split or dispute in the Party. That Paragraph 15 is divided into two parts, the first of which is related to the Commission's satisfaction wherein no hearing is required. The Commission gets relevant material and information, based on which the Commission makes itself satisfied that there are rival groups. One of these groups is the real Party and the Commission accordingly grants the party symbol to it. The fact that the Commission is satisfied that a split has occurred in the NCP under Paragraph 15 of the Symbols Order cannot be challenged at this point.
- ii. That in this regard, the Commission *vide* order dated 14.09.2023 conveyed that on due consideration of the totality of information available on record, the Commission is of the opinion that there are rival groups in the NCP and the matter requires a substantive determination under Paragraph 15 of the Symbols Order. Such a decision is final and not tentative. Moreover, the communications dated 06.10.2023 and 09.10.2023 provide a reiteration of the conclusion that two rival groups

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have emerged in the Party and the two groups can proceed with the submission on merit.

- iii. That the Ld. Senior Counsel for the Respondent used terms like fraud, forgery and coercion with reference to the affidavits provided by the Petitioner. It is admitted that there are some defects in those affidavits. However, there are similar defects in the affidavits submitted by the Respondent. These affidavits are collected from the mass party workers in a frenzy and over-exuberance, and such defects may happen but it is not fraud and forgery.
- iv. That a bundle containing the various infirmities in the affidavits provided by the Respondent has been submitted.
- v. That reference was made to three particular provisions of Sections 195, 196 and 340 of the Code of Criminal Procedure. However, these provisions are not attracted for these affidavits on two grounds (for both the Petitioner and Respondent). One is that these affidavits are not forged or obtained by fraud since they are duly executed by the deponents. These are merely defective and accordingly can be rejected by the Commission. Two, these provisions are meant for the court and do not apply to any Commission or Tribunal unless there is a law equating such a tribunal with the court.
- vi. That the conclusion should be that these affidavits are defective and in view of the *Sadiq Ali* case, the Commission will not have time to examine these affidavits for purposes of decision. Moreover, it is important to note that these affidavits unambiguously indicate that there are two groups in the Party.
- vii. That the Commission has to keep in mind the 3 P's while deciding a case under Paragraph 15 of Symbols order which are "Plenary Power", "Practicality" and "Promptitude". In addition, the Commission must also not get involved in the "Quagmire".

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viii. That there are three aspects of dispute in the present case namely, affidavits, different conventions held by the groups and disqualification petitions filed. In **Sadiq Ali (supra)**, it was stated that the Commission framed four points for discussion out of which point numbers 2 and 4 are important:

*“2. Has the Election Commission, for the purpose of undertaking the inquiry to come to a decision as aforesaid, been satisfied on information in its possession that there are two rival sections or groups of the said Indian National Congress each claiming to be that Congress ? [...]”*

[...]

*“4. Whether, on the facts and circumstances available to the Election Commission, any of the alleged rival sections of the said Indian National Congress is that Congress for the purposes of the Election Symbols (Reservation and Allotment) Order 1968; if so, which is that rival section, or, whether on the facts and circumstances referred to above, none of the rival sections of the said Indian National Congress is that Congress?”*

ix. That the affidavit in support of the Petitioner does not categorically withdraw support for the Respondent. This argument is flawed since the dispute between the Petitioner and Respondent is out in the open. Moreover, since there is no statutory form for such affidavits, it is clear that the affidavits supporting Petitioner do not support the Respondent.

**24.3** After making the aforesaid submission, the Ld. Counsel for the Petitioner prayed for listing the matter on 05.12.2023 for continuing with the submissions. Accordingly, the matter was listed next on 05.12.2023.

**25.** The eighth hearing in the present dispute case took place on 05.12.2023. At the outset, Ld. Senior Advocate Mukul Rohatgi, appearing on behalf of the Petitioner continued with his submission and submitted the following:

i. That there were rumblings in the party which is evident from the affidavits and the present petition. However, the major evidence of rumbling was in the year 2019 when the Petitioner, along with all the Maharashtra MLAs, walked away and joined the BJP and was sworn in as the Deputy Chief

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Minister of Maharashtra, and the Respondent was completely unaware of such action.

- ii. That referring to Paragraph 3 of the present petition, it was submitted that the NCP was run in an undemocratic manner and there were never any elections in the organisation. That there are different levels in the party – with the lowest level being the panchayat, second level being the block, and progressing to state level, national level, working committee, and at the top is the President. The President is elected at a National Convention on a proposal by 10 delegates and these 10 delegates are in turn selected from state committees through election. Therefore, it is clear that the fundamental premise of the party is based on democracy, but there is nothing to show that there was any election in the organisation including the elections of those 10 delegates. The Respondent appointed all the office bearers at all levels. This has been in violation of Section 29A(5) of the Representation of People Act 1951.
- iii. That the Petitioner is not asking for an injunction or a relief for the annulment of the election of the Respondent as the President. The Petitioner instead seeks relief under Part 2 of Paragraph 15 of Symbols Order. Such a relief can only be granted by this Commission and not by any court or internal remedy of the party.
- iv. That in the order dated 26.11.2019 in the case of **Shiv Sena & Ors vs Union of India & Ors** [W.P.C No. 1393 of 2019] before the Hon'ble Supreme Court, it is mentioned that in 2019, the Governor of Maharashtra had accepted a letter, allegedly signed by 54 elected members of the NCP put forth by the Shri Ajit Pawar. Therefore, this is a clear position that there were rumblings within the NCP.
- v. That a sequence of events commencing on 30.06.2023 with the submission of the affidavits and the present petition followed by the Petitioner and others joining the cabinet, subsequent filing of disqualification petitions on both sides and communication from Shri Anil

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Deshmukh to the ECI for taking action against the Petitioner, all reflect the wide dispute in the Party.

- vi. That Articles 2,5,7,10,11,12,13,14,18 and 20 of the Party Constitution contemplates the procedure of elections within the Party. Although the 10 delegates who proposed the name for the post of President should also be elected, it was not done in the present case. Therefore these 10 delegates do not constitute a valid electoral college.
- vii. That the letter dated 17.06.2022 gave a schedule of the organisational elections of six Committees. The election to the State Committee, state executive and National Committee was originally scheduled on 22.09.2022, however it was preponed to 29.08.2022. However, no information on the elections of the other Committees were provided. In a letter dated 01.09.2022 by T.P. Pecthambaran Master, it was stated that the nomination papers proposing the name of the Respondent as President were received from nine states and accordingly the Respondent was unanimously elected as the president of NCP. However, no election was conducted in these states. Moreover, the names of the 558 delegates who attended the National Convention were not disclosed till 01.11.2023.
- viii. That the Respondent as the President has nominated every state president and so the whole organisation is being run by one patriarch. A protest against the same may not be in writing or public, but it was evident from the rumblings as mentioned earlier. Therefore, this factual background leads to a conclusion that the relevance of organisational majority test is not present in the present case since there is no democracy in the party.
- ix. That much hue and cry was made from the Respondent side for seeking internal/alternate remedy within the NCP before approaching the Hon'ble Commission. It is submitted that alternate remedy in jurisprudence means when a normal remedy is available, one should not use an extraordinary remedy. But in the present petition, the relief which the Petitioner seeks is not something which can be granted in the Party

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Constitution, hence there is no remedy. Moreover, the Constitution and the Rules of the NCP gives absolute power to the President and creates an autocratic system. Therefore, the Petitioner cannot approach the President seeking relief of being declared as the real NCP.

- x. That the Petitioner enjoys an overwhelming majority support in the Legislative wing of the NCP which includes 42 out of 53 MLAs in Maharashtra, 7 out of 7 MLAs in Nagaland, 1 out of 1 MLA in Jharkhand, 6 out of 9 MLCs in Maharashtra, 1 out of 5 MP in Lok Sabha and 1 out of 4 MP in Rajya Sabha. Therefore, the legislative majority test is a safe test since it is specific and such a test is commonly employed by the Hon'ble Commission in most disputes. The Respondent's support is not fashioned on simple numerical strength. Moreover, in an alliance if a candidate is elected, his votes cannot be divided amongst the parties in the alliance and one cannot go to the reasons/ grounds as to why a voter has voted for that candidate.
- xi. That the Commission in the *Shivsena Dispute Case*, considered the votes polled in the Legislative Assembly and Lok Sabha Elections. The Commission observed that in that case, the organisational aspects were invariably falling short, in absence of normative clarity a priori. And in comparison, the legislative wing tests yield an immediately reliable outcome.

**25.1** After making the aforesaid submission, the Ld. Senior Counsel for the Petitioner prayed for listing the matter on 08.12.2023 for continuing with the submissions. Accordingly, the matter was listed next on 08.12.2023.

**26.** The ninth hearing in the present dispute case took place on 08.12.2023. At the outset, Ld. Senior Advocate Mukul Rohatgi, appearing on behalf of the Petitioner continued with his submission and submitted the following:

- i. That a chart showing the legislative strength of the Petitioner has been prepared. The highest body in the NCP is the Working Committee

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consisting of 25 members including the President which has to be elected from the National Committee, which itself is also elected. However, no such elections were held and the Working Committee members, the State presidents and various party functionaries were appointed/nominated by Respondent in one go, contrary to the party constitution.

- ii. Even if the Petitioner had signed the nomination of the Respondent as Party President, there is no estoppel against the Petitioner for becoming the leader of the Party. Moreover, it also does not authorise the Respondent to make the aforementioned appointments. There is a complete loss of confidence in the Respondent.
- iii. That in dispute cases of *Janata Dal (United) Dispute Case*, *Nationalist Congress Party Dispute Case (2004)* and *Samajwadi Party Dispute Case*, the Commission had not discarded or discounted the legislative majority test. As per the judgment in the *Subhash Desai (supra)*, it is established that the Commission is a high-powered Commission which cannot be limited to the three tests and may frame new tests for determining disputes. In the *Shivsena Dispute Case*, it has been observed that if the foundation of the party is shaky, an organisational majority test cannot be applied.
- iv. That the conclusions enumerated by the Hon'ble Supreme Court in *Subhash Desai (supra)* are binding and akin to a decree. It is a fallacy to say that the legislative test has been done away with since it has not been mentioned in the conclusion.
- v. That the chart of the legislative strength of the Respondent in their written submission which multiplies the votes polled by 37 is mischievous and inaccurate. That the Petitioner's numerical strength has followed the Hon'ble Commission's words in the *Shivsena Dispute Case* (Paras 124 & 125) and juxtaposed the Petitioner's legislative figures with the figures given in the case.

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**26.1** Thereafter, Ld. Senior Advocate Maninder Singh, appearing on behalf of the Petitioner, presented the following supplementary submissions before the Commission:

- i. That organisational majority test cannot be applied in the present case because the heart and soul of the NCP is its Constitution which is founded on the principle of election and democracy. Election ensures the security of the term, contrary to nomination, which represents the pleasure of the term. Since the constitutional rules of elections were never carried out or applied, the test of constitution or organisational majority cannot be used for determining the present dispute as it will compound the illegality.
- ii. That the principle in law "*sublato fundamento, cadit opus*" means that once the foundation is destroyed, the entire structure collapses. Reliance in this regard is placed on the decisions of the Hon'ble Supreme Court in **Coal India Ltd. vs Ananta Saha** [(2011) 5 SCC 142], **State of Punjab vs Davinder Pal Singh** [(2011) 12 SCC 770] and **Devendra Kumar vs State of Uttaranchal** [(2013) 9 SCC 363].
- iii. That the test of organisational structure under such circumstances, when no elections are held in any level, does not at all remain credible to be followed as per the principle of law laid down by the Hon'ble Supreme Court on non-adherence and break down of the rules. In **O.P. Singhla vs Union of India** [(1984) 4 SCC 450], in a situation of break-down of the 'quota-rota' rules, the Hon'ble Supreme Court adopted the practical, logical and equitable approach of fixing the seniority from the actual date of officiation by discarding the prescribed quota-rota rule laid down in that behalf. Presently, rules of party constitution have also broken down and thus the only test that remains is the legislative majority test.
- iv. Where there is a breakdown of the organisational structure and constitution of the party, a dispute cannot be resolved within the confines of the organisational structure of the political party. No purpose would be

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served by utilising the remedy of internal redressal as it would amount to appealing from “Caesar to Caesar’s wife”.

- v. A pre-poll or post-poll alliance does not have a separate symbol other than the symbol of individual political parties. Therefore, the votes polled for a candidate is only his and his party’s.

**26.2** Ld. Senior Counsel Siddharth Bhatnagar appearing on behalf of the Petitioner, submitted that as per the Symbols Order, a political party is granted recognition on the basis of a certain percentage of votes polled. However, if the arguments of the Ld. Counsels of the Respondents on pre-poll alliances are considered, then no party which is a part of an alliance can ever be recognised because the votes polled for each party could not be determined.

**26.3** Thereafter, Ld. Senior Counsel Neeraj Kishan Kaul appearing on behalf of the Petitioner, submitted the following the closing arguments:

- i. That the democratic structure of the Party is in complete tatters because the organisational elections were never held and the democratic principles were flouted. Moreover, the party Constitution itself suffers from a democratic deficit for vesting authoritative power with the Respondent. Such centralisation of power is anathema to the rule of law. Voices of individual party workers were being stifled which was ultimately the cause of the split.
- ii. That as far as splits are concerned, three fundamental issues/ingredients are to be considered — filing of separate affidavits, holding of separate conventions and filing of the disqualification petitions – all of which are satisfied in the present case.
- iii. That legislative majority test is reliable because it includes the number of elected representatives and the number of votes polled. In the *Subash Desai (supra)*, the Hon’ble Supreme Court did not comment on the number of votes polled because it is a well-known test held in the *Sadiq Ali (supra)*. Moreover, in the present dispute the petition under Para 15 of

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the Symbols Order preceded the disqualification petitions unlike in the *Subash Desai (supra)*, where the disqualification petitions preceded the Para 15 petition.

- iv. That as per the Subhash Desai judgement, the Hon'ble Commission is vested with the widest plenary power to apply and adapt any tests which are suited to the facts and complexities of the case. Furthermore, the number of votes polled is a great indicator in democratic set up because unlike an election petition, under the Tenth Schedule if a legislator is disqualified, his election is not questioned or annulled and all his actions up until the disqualification are considered valid.
- v. That as far as affidavits are concerned, many people may have filed them in a great enthusiasm with defects. However, the Petitioner has not perjured these affidavits and the Hon'ble Commission may not fall into a quagmire of cross-examining them.

**26.4** Lastly, Ld. Senior Advocate Abhishek Manu Singhvi, appearing on behalf of the Respondent, made the following closing arguments:

- i. That Ld. Counsels for the Petitioner have conceded to a vital legal gap in the case, of specifically avoiding the organisational majority test. That it will be a grave legal error if the Hon'ble Commission relies heavily on the legislative test while reducing the organisational structure of a party to a vanishing point, as suggested by the Petitioner.
- ii. That it is a double whammy wherein the Petitioner has asserted to not apply the organisational majority test because the Respondent is not validly elected, yet the Petitioner never approached any court against these bad elections. The judgment in ***Swami Chakrapani vs Election Commission of India (LPA 363/2020)*** directly say that if one has a problem with elections, they must go for civil proceedings and adjudication. Moreover, the Ld. Counsels for the Petitioners have selectively read the judgment of the Subhash Desai case.

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- iii. That the Ld. Counsels for the Petitioner argued that the basis of dispute in the present case started way back in the year 2019. However, it is pertinent to note that between 2019 and 2023, the Petitioner along with his supporters were given the ministerial posts and party posts by the Respondent.

**26.5** After the conclusion of the aforesaid submissions by the Ld. Counsels, the Hon'ble Commission directed both the parties to file their final written submissions within a week and to submit other test(s), if any, in addition to those mentioned in Sadiq Ali judgment, which may be applied in determining the present dispute.

**27.** In compliance of the aforesaid direction, a final written submission dated 15.12.2023 was received from the Respondent wherein the submissions made in their earlier replies as well those made at the time of oral hearings were reiterated. The brief of the submissions made herein are mentioned here below for ease of reference:

- i. That primarily the case of the Petitioner is that organizational elections in the Party were improperly conducted. That the Commission has never in the past intervened in the outcome of such elections and it is for the civil courts to adjudicate upon the same.
- ii. That the test of majority should be applied in the organizational wing along with the legislative wing.
- iii. That with regard to any other "tests" that may be suggested by the parties for adjudicating the present dispute, the following could be considered:

*"First, the Hon'ble Commission must take into consideration the larger party organization's wishes. To this point the law and facts are on record and are not being repeated here.*

*Second, the legislative test may be applied in addition to but not in substitution of the above, and even then it may only be limited to counting those elected representatives against whom no disqualifications are pending. The law and facts are on record and are not being repeated herein for the sake of brevity.*

**Third,** the NCP is a party where the very founder is still absolutely and wholly active in the party functioning. Therefore, any test cannot ignore or cleave his contribution, his inextricable association, his ceaseless years of service which have seen the party grow exponentially across the nation, all of these are a factor in this Para 15 determination. This consideration arises from the stipulation in Subhash Desai's judgment which states a Para 15 dispute requires a look at which faction forms the "lifeblood" of the political party. Simply put, a consideration that is unique to NCP is that the founder cannot be separated from the party."

- iv. That there were fatal infirmities in the affidavits filed by the Petitioner which included various sub-categories such as "forged/ false affidavits", "affidavits in violation of NCP Constitution", "affidavits in violation of law", etc. That the Commission ought to initiate criminal action against the authors of these affidavits under the relevant provisions of IPC & CrPC.
- v. That the petition itself was not maintainable as the claim of the Petitioner was based upon such affidavits which suffered from the aforesaid infirmities. Further, that the petition is also not maintainable on the grounds that it seeks to challenge an organizational election i.e., a ground which cannot be raised in a petition under Paragraph 15 of the Symbols Order.
- vi. That this was a case of "post facto manufactured cause of action" as no dispute existed on 30.06.2023 i.e., when the petition was filed.
- vii. That none of the affidavits relied by the Petitioner condemn or even mention the Respondent and that these affidavits indicate that the deponents were misled by the Petitioner.
- viii. That the Petitioner himself has elected himself as the Party President in total violation of the Party Constitution. Further that the appointment of working presidents by him itself shows that his faction is violating the Party Constitution.

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- ix. That the Respondent's challenge to the petition is in the nature of Order 7 Rule 11 of CPC. That the cause of action in the present is not only vexatious but that the claim of the Petitioner is reliant on fraud, misrepresentation and perjury.
- x. That the Respondents enjoys overwhelming majority in the organizational wing of the Party. That in the National Committee, the Respondent has the support of 337/ 592 members, whereas in the National Working Committee, the Respondent has the support of 20/28 members. That the Respondent enjoys majority support at other levels of the organizational hierarchy as well including State Committees and National Office Bearers.
- xi. That on merits, any petition filed under Paragraph 15 of the Symbols Order, must show the factum of a "pre-existing dispute" in the Party and that in the present case, the petition dated 30.06.2023 does not show the existence of any rival groups existing prior to 30.06.2023.
- xii. That the Petitioner has not exhausted the remedies provided under Paragraph 15 of the Symbols Order and leapfrogged to filing of a petition under Paragraph 15 of the Symbols Order.
- xiii. That with regard to the application of the test of majority in the legislative wing in the present case, it was relevant to refer to the judgment of **Subhash Desai (supra)** wherein the Constitution Bench categorically held that if the faction which claims a majority is facing disqualification, the 'legislative majority test' cannot be said to be a constitutionally desirable outcome. That in the aforesaid judgment, the Hon'ble Supreme Court held that the Election Commission of India in such cases must look to other tests in order to reach a conclusion under Para 15 of the Symbols Order. That in view of the disqualification petitions pending against the legislators supporting the Petitioner, the reliance upon the test of legislative majority cannot be a safe and a reliable test as the result of the disqualification petitions can vitally affect any decision being taken in these proceedings.

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- xiv. That the application of the test of legislative majority was not a safe test in the peculiar facts of the present case as NCP had fought the last legislative assembly elections as part of the United Progressive Alliance (UPA) and thus, the MLAs elected on the symbol of NCP were elected so with the support of alliance members.
- xv. That even if the legislative majority test is applied, the Respondents enjoys majority support. That the votes polled by the legislators supporting the Respondent would come to 2,30,26,635 in comparison to 1,20,72,598 votes polled by the legislators supporting the Petitioner. In terms of percentage, the votes polled by the Petitioner are only almost 52% percent of the votes polled by the Respondent. Further that in terms of the votes polled by candidates supporting either of the factions i.e., including winning as well as losing candidates, the Respondent has 2,57,99,297 number of votes and the Petitioner 1,93,85,801 number of votes and that the votes polled by the Respondent are nearly 33% percent higher than the votes polled by the Petitioner.
- xvi. That disqualification petitions are pending against all the legislators supporting the Petitioner whereas the same is not the case for the legislators supporting the Respondent. That disqualification proceedings under the Tenth Schedule is not pending against Sh. Sharad Pawar (Rajya Sabha MP), Smt. Supriya Sule (Lok Sabha MP), Sh. Amol Kolhe (Lok Sabha MP), Sh. Ashok Pawar (MLA), Sh. A.K. Saseendran (MLA), Sh. Thomas K. Thomas (MLA).
- xvii. That the Respondent has always abided by the party constitution and conducted the affairs of the party strictly in adherence with the constitution. On the other hand, as to adherence to the provisions of the party constitution by the Petitioner is concerned, the foundation of the present petition is based on the documents which are created in blatant violation to the provisions of the constitution and its aims and objectives. That the undated resolution purportedly signed by the members of

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Legislature Party appointing Shri Ajit Pawar as the President of the NCP is in the teeth of the provisions of the constitution. That even going by the test of party constitution and its aims and objectives, it is clearly evident that the Petitioner has based the present petition on the documents which are in clear violation of the provisions of the party constitution and, therefore, the same ought to be dismissed on this ground.

**28.** Further, a final written submission dated 18.12.2023 was received from the Petitioner wherein the submissions made in their petition and earlier rejoinders as well those made at the time of oral hearings were reiterated. The brief of the submissions made herein are mentioned here below for ease of reference:-

- i. That a holistic reading of Paragraph 15 of the Symbols Order would make it clear that the essential ingredients of the same are that: (i) There must exist rival sections or groups of a recognized political party and (ii) each of the rival group must claim to be that party. These are the only two conditions which have to be satisfied in order to lead to an adjudication under Paragraph 15 of the Symbols Order.
- ii. That there was enough material in the present case indicating existence of rival groups in the NCP. That, despite the existence of a written Constitution which is intended to govern the working of the NCP, the Respondent has been administering the affairs of the Party at his whims and fancies and was virtually running the party as a fiefdom. That, having tried to ventilate their grievances through various intraparty challenges, the overwhelming majority of members of the Legislative and Organizational Wing decided to repose their faith in Shri. Ajit Anantrao Pawar as the National President of the Party.
- iii. That a Resolution was signed by 42 out of 53 MLAs and 6 out of 9 MLCs in the Maharashtra Legislative Assembly electing Shri. Ajit Anantrao Pawar as the National President. Additionally, State Office Bearers in the States of Maharashtra, Bihar, Haryana, Nagaland, Madhya Pradesh,

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Assam, Chhattisgarh, Meghalaya, Tamil Nadu, Uttarakhand, Telangana, Rajasthan, Gujarat, Uttar Pradesh, West Bengal have also extended support to Sh. Ajit Anantrao Pawar by way of Affidavits.

- iv. That, at any rate, all of the aforesaid material was considered by this Hon'ble Commission in its order dated 14.09.2023 wherein, a categorical finding has been recorded by this Commission that on consideration of the information available on record, it is of the opinion that there are two rival groups in the NCP one led by Sh. Sharad Pawar and the other led by Sh. Ajit Anantrao Pawar. It is further recorded, that each group is now claiming to be the party and therefore, the matter requires a substantive determination by the Commission under Paragraph 15 of the Symbols Order. That this Order has not been challenge by the Respondent and therefore the Respondent is now estopped from contending that rival groups do not exist within the NCP.
- v. That the contention of the Respondent that the factum of a "Pre-Existing Dispute" before the filing of a petition under Paragraph 15 of the Symbols Order is a sine qua non for maintaining the said petition, is misconceived interpretation of Paragraph 15. That the internal discontent or ramblings within a party are seldom documented and there cannot be clear proof of pre-existing discontent within a party. That the internal dispute within a party ought to be inferred on the basis of attending circumstances evaluated in the context of the factual position obtaining then.
- vi. That the criteria of tests to be applied by the Commission in the present case are as below:-
- (a) Test of Aims and Objects would not prove to be of much significance in deciding a dispute under Paragraph 15 of the Symbols Order.
- (b) Test of Party Constitution becomes inapplicable in the present case for the reason that the Petitioner has been able to show that the Constitution was never adhered to or followed by the Respondent in administering the party. That the Constitution of NCP only provides for

raising a dispute vis-à-vis election to various posts of the party and a petition under Paragraph 15 is essentially to claim that the rival faction approaching the Commission is the real political party.

- (c) Test of organisational majority is not applicable in the present case as there is a complete breakdown in the organization wing of the NCP. That the Respondent has completely destroyed the democratic nature of the NCP Constitution by appointing/nominating his favoured coterie of people to various important committees including the State Committees and the Working Committees. A perusal of the Articles 9, 10, 11, 12, 13, 14, 20 and 21 of the party Constitution would show that the NCP Constitution provides for pyramidal structure which starts from election to the Block / Constituency Committee and leads up to the election of the Working Committee. That the organizational wing of the NCP including the highest executive body namely, the Working Committee is a body appointed entirely by the Respondent from his select coterie of people.
- (d) Test of Majority in the legislative wing is the only test which ought to be applied in the present case. That the petitioner enjoys overwhelming support of MLAs and MLCs in the Maharashtra Legislative Assembly and the Petitioner also commands the support all the MLAs in the Nagaland Legislative Assembly. Additionally, the Petitioner also enjoys the support of Members of Parliament.
- vii. That, the group led by the Petitioner Sh. Ajit Anantrao Pawar enjoys maximum support within the party and therefore the present petition deserves to be allowed and the name Nationalist Congress Party (NCP) along with the Symbol 'Clock' be granted to the Petitioner.

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## ISSUES FRAMED:

29. This Commission, after careful consideration of the submissions made on behalf of both the parties framed the following issues for determination of the present dispute case:

- A.** Whether the petition dated 30.06.2023 filed by the Petitioner is maintainable under Paragraph 15 of the Symbols Order;
- A.1** Whether jurisdiction of the Commission under the Symbols Order and that of the Speaker under the Tenth schedule overlap;
- A.2** Whether a petition filed by a single person under the provision of Paragraph 15 of the Symbols Order is not maintainable;
- A.3** Whether a dispute under Paragraph 15 of the Symbols Order ought to be decided solely on pleadings made in the petition;
- A.4** Whether furnishing of “comments” satisfies the requirements of principles of natural justice;
- A.5** Whether there are fatal infirmities in the affidavits filed by the Petitioner warranting the dispute case to be dismissed at the threshold;
- A.6** Whether the Commission can revise its own order and;
- A.7** Whether the Commission can determine the tests to be applied in a dispute case in advance;
- B.** Whether a split has occurred in Nationalist Congress Party;
- C.** If issue (B) is answered in the affirmative, then which test is to be applied for adjudication of the present dispute case;
- C.1** Test of aims and objects of the Party Constitution
- C.2** Test of Party Constitution
- C.3** Test of Majority

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D. Which group/ faction is entitled to use the symbol "clock", the recognized symbol of the Nationalist Congress Party?

**ISSUE A. WHETHER THE PETITION DATED 30.06.2023 FILED BY THE PETITIONER IS MAINTAINABLE UNDER PARAGRAPH 15 OF THE SYMBOLS ORDER**

30. On behalf of the Respondent, it has been contended by way of written and oral submissions that- (a) the said petition has been filed to pre-emptively to avoid the inevitable disqualification under the Tenth Schedule of the Constitution, (b) the petition has been filed solely by Sh. Ajit Anantrao Pawar and that there was no evidence whatsoever to show that rival groups had emerged in NCP prior to the filing of the petition on 30.06.2023 and the dispute was registered only on 14.09.2023 after passing of the order by the Commission and too without following the Principles of Natural Justice and they should be given an opportunity to reply as they have only submitted their 'comments' in response to the communication of the Commission prior to the passing of the aforesaid order. (c) there are fatal infirmities in the affidavits filed by the Petitioner warranting it to be dismissed at the threshold, (d) the test to be applied, in determining the dispute should be ascertained prior to commencement of hearing on merits.

31. On behalf of the Petitioner, it has been contended that the preliminary issue of whether a dispute exists in NCP has already been determined by the Commission in terms of the order dated 14.09.2023 and that the jurisdiction of the Commission under the Symbols Order and that of the Speaker under the Tenth Schedule does not overlap and therefore, the petition is maintainable.

***A.1 Whether jurisdiction of the Commission under the Symbols Order and that of the speaker under the Tenth Schedule overlap:***

32. This Commission had faced the aforesaid question in the matter of **Shivsena Dispute Case** and had given finding in its order dated 17.02.2023 as

extracted below:

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“54. It is also noteworthy to mention that both the groups have filed disqualification proceedings against the legislators supporting the other group under Rule 6 of the Maharashtra Legislative Assembly (Disqualification on ground of Defection) Rules, 1986 r/w the Tenth Schedule of the Constitution. However, the jurisdiction of the Hon’ble Speaker with respect to disqualification proceedings under the Tenth Schedule is separate from that of the jurisdiction of the Commission in deciding disputes under Paragraph 15 of the Symbols Order and does not overlap.”

“55. Moreover, disqualification of a legislator from membership of the Legislature by the Speaker is different from removal of a person from membership of a political party. The former situation is governed by the Tenth Schedule of the Constitution, whereas the latter is governed by the constitution of the political party. The disqualification under the Tenth Schedule results in the member ceasing to be a member of the House. This does not necessarily mean that he ceases to be a member of that political party.”

(Emphasis supplied)

33. Further, the constitution bench of the Hon’ble Supreme Court in the matter of **Subhash Desai (supra)** had also examined the possible inter-play between the jurisdiction of the Commission under the Symbols Order and that of the Hon’ble Speaker under the Tenth Schedule of the Constitution. The observations of the Hon’ble Court recorded in the judgment dated 11.05.2023 are reproduced here below for ease of reference:

**“e. Harmonising the Tenth Schedule with Paragraph 15 of the Symbols Order**

148. This Court cannot accept the solution proposed by the petitioners and lay down a constitutional sequence. To hold that the ECI is barred from adjudicating petitions under Paragraph 15 of the Symbols Order until the “final adjudication” of the disqualification petitions under the Tenth Schedule would be, in effect, to indefinitely stay the proceedings before the ECI. This is because an order of the Speaker attains finality only after all avenues for appeal have been exhausted or are barred by the passage of time. The time that it would take for an order of the Speaker to attain finality is uncertain. The ECI is a constitutionally entrenched institution which is entrusted with the function of superintendence of and control over the electoral process. The ECI, which is a constitutional authority, cannot be prevented from performing its constitutional duties for an indefinite period of time. Proceedings before one constitutional authority cannot be halted in anticipation of the decision of another constitutional authority.

**149.** This Court must also be alive to the possibility of the death of a political party in the intervening period, or further complications that may arise if elections are announced during the period when proceedings before the ECI are stayed, if a stay were to be granted. When a dispute under Paragraph 15 of the Symbols Order is pending adjudication, it is standard practice for the ECI to freeze the symbol reserved for that political party and allot interim symbols to the rival groups. If the reserved symbol is frozen for an inordinately long period of time and the interim symbols must be resorted to for every by-election and election, it may well end the association between the reserved symbol and the political party in the minds of the electorate. This will no doubt be a blow to the political party which is lawfully entitled to the symbol reserved for its use. Therefore, the ECI must render a decision as to which group constitutes that political party.”

[...]

**154.** At this stage, a question may arise as to whether the decision of the ECI under the Symbols Order must be consistent with the decision of the Speaker under the Tenth Schedule. The answer is no. This is because the decision of the Speaker and the decision of the ECI are each based on different considerations and are taken for different purposes.

**155.** The decision of the ECI has prospective effect. A declaration that one of the rival groups is that political party takes effect prospectively from the date of the decision. In the event that members of the faction which has been awarded the symbol are disqualified from the House by the Speaker, the members of the group which continues to be in the House will have to follow the procedure prescribed in the Symbols Order and in any other relevant law(s) for the allotment of a fresh symbol to their group.

**156.** The disqualification proceedings before the Speaker cannot be stayed in anticipation of the decision of the ECI. In cases where a petition under Paragraph 15 of the Symbols Order is filed after the (alleged) commission of prohibitory conduct, the decision of the ECI cannot be relied upon by the Speaker for adjudicating disqualification proceedings. If the disqualification petitions are adjudicated based on the decision of the ECI in such cases, the decision of the ECI would have retrospective effect. This would be contrary to law.

**157.** When the conduct prohibited under the Tenth Schedule is (allegedly) committed, there is only one political party. As discussed in the preceding segments of this judgement, this necessitates the Speaker prima facie determining who the political party was at the time of the act which is alleged attract the provisions of the Tenth Schedule. The decision of the Speaker that a member of the House is disqualified for voluntarily giving up the membership of the political party would only disqualify them from the House. It would not lead to an automatic expulsion of the member from the political party. It follows that the

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*submission of the petitioners that a legislator who has incurred disqualification under Paragraph 2 of the Tenth Schedule has no locus to institute a petition under Paragraph 15 of the Symbols Order, cannot be accepted. We accordingly answer the question referred to us as noted in Paragraph 32(j) of this judgment.”*

(Emphasis supplied)

34. In view of the observations made by the Commission in order dated 17.02.2023 in Shivsena Dispute Case and the findings recorded by the constitution bench of the Hon'ble Supreme Court in judgment dated 11.05.2023 in **Subhash Desai (supra)**, it is a settled position of law that pendency of a disqualification proceeding against a legislator does not bar such person from instituting a petition under Paragraph 15 of the Symbols Order.

***A.2 Whether a petition filed by a single person under the provision of Paragraph 15 of the symbols order is not maintainable:***

35. As mentioned above, the Respondent made a contention that the petition under consideration was solely on behalf of a single person, i.e., the Petitioner, which did not indicate the emergence of a rival faction. On behalf of the Petitioner, it was submitted that a dispute within a political party can be brought to Commission's cognizance by any person and that in the present case, the petition was supported by a large number of legislators' affidavits who belonged to the Party.

36. In his petition, the Petitioner at paragraph 30 stated that:

*“30. The Petitioner is in a position to show that he enjoys the overwhelming support of the Leaders, and the members of the various committees namely State Committees, District Committees and other subordinate committees along with Secretaries and the party's elected members of State Legislature and Parliament as well as Mayors and Presidents of Zila Parishad.”*

37. Further, after filing of the aforesaid petition and passing of the order dated 14.09.2023, a plethora of communications were received from both the sides which were carefully perused by the Commission. On behalf of the Petitioner in particular, the affidavits of members of the legislative wing of the Party were

submitted which indicated that the Petitioner enjoyed a considerable support in the legislative wing of the Party.

**38.** The Commission vide order no. 509/05/2023/PPS-II/1909,1910 dated 14.09.2023 mentioned the submissions made in the petition, the preliminary responses received from the Respondent and the affidavits of support filed on behalf of both the groups. Considering the above facts, the Commission came to the following opinion:

*“39. On due consideration of the totality of information available on record with the Commission (as summarized above), the Commission is of the opinion that there are two rival groups in Nationalist Congress Party, one led by Shri Sharad Pawar and the other led by Shri Ajit Anantrao Pawar, and each group is now claiming to be the party and therefore the matter requires a substantive determination by the Commission under Para 15 of the Election Symbols (Reservation & Allotment) Order, 1968.”*

**39.** Paragraph 15 does not prescribe a format or check-list or a mechanism in which a dispute must manifest itself for consideration of the Commission. If a person files a vexatious petition under Paragraph 15 without having any numerical support or without showing emergence of rival groups, the same will not succeed the test applied for adjudicating the dispute.

***A.3 Whether a dispute under Paragraph 15 of the Symbols Order ought to be decided solely on pleadings made in the petition:***

**40.** It is also pertinent to refer to the submissions made on behalf of the Respondent that the primary prayer made in the petition i.e., of recognizing the faction led by the Petitioner as the NCP and allotting it the symbol “clock” was not supported by the pleadings made therein and that the pleadings in fact referred mainly to the alleged irregularities in the 2022 organizational election as well as to the conduct of the Respondent as not being as per the Party Constitution.

**41.** In response to the above contention, it was submitted on behalf of the Petitioner that the petition sufficiently demonstrated the emerge of split in the

Party and that it was for the rival factions thereafter to prove their support by way of documents/ affidavits as to which faction is the Party and entitled to use the recognized symbol.

42. Paragraph 15 gives wide latitude to the Commission to arrive at a satisfaction regarding existence of rival factions in the party. In this regard, this Commission is of the view that the existence of rival factions in the Party was not recognized by the Commission only in terms of the petition. As a matter of practice, the Commission considers *inter alia* the petition, the documents made available before it by both the groups, the claims and counter-claims of leadership and such consideration depends on the facts and circumstances of each case. At this juncture, it is relevant to reproduce Paragraph 15 of the Symbols Order which states as follows:

***“15. Power of the Commission in relation to splinter groups or rival sections of a recognized political party-When the Commission is satisfied on information in its possession that there are rival sections or groups of a recognized political party each of whom claims to be that party, the Commission may, after taking into account all the available facts and circumstances of the case and hearing such representatives of the sections or groups and other persons as desire to be heard, decide that one such rival section or group or none of such rival sections or groups is that recognized political party and the decision of the Commission shall be binding on all such rival sections or groups.”***

(Emphasis supplied)

The aforesaid provision clearly states that the Commission has to be satisfied of the existence of rival groups based on the information made available before it. The satisfaction of the Commission is not restricted only to the scrutiny of the petition but it may also consider other relevant information in its possession. Even in the present case, the facts presented before the Commission by both the groups led the Commission to form an opinion that there were two rival groups in NCP and the matter required determination under Paragraph 15 of the Symbols Order.

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**A.4 Whether furnishing of “comments” satisfies the requirements of principles of natural justice:**

43. The Respondent vehemently contented that the Commission in communications made with both the groups, before the order of 14.09.2023, was only seeking “comments” and the Respondent had thus only furnished his comments *vide* letter dated 07.09.2023 and the same cannot be treated as a reply. On behalf of the Petitioner, it was contended that the aforesaid argument of the Respondent was only a tactic to delay the proceedings and that the Commission had given ample opportunity to the Respondent to file its reply/response to the petition.

44. As per Black’s Law Dictionary, the word ‘comment’ has been defined as “*The expression of the judgment passed upon certain alleged facts by a person who has applied his mind to them, and who while so commenting assumes that such allegations of fact are true.*” Thus, when the Commission asked for comments from both the groups, it was expected of them to place their views/response to the contentions raised in the petition and the ‘comments’ furnished by the Respondent cannot be construed in any other manner. Further, the Respondent was given multiple opportunities to file their comments and the same has been filed by them and therefore, the principles of natural justice have been complied with.

45. Before arriving at the satisfaction on 14.09.2023 on the basis of information in its possession that there are rival sections or groups, the Commission wrote to the Petitioner and the Respondent *vide* letter dated 25.07.2023 to exchange their respective letters written to the Commission along with the documents. Lastly, the Commission also allowed the request by the Ld. Senior Counsels representing the Respondent to file a reply to the petition and consequently, a reply dated 01.11.2023 was filed before the Commission. Later, the Commission also provided opportunity to both the factions to file their final written submission which was also availed of. Thus, the principle of “*audi alteram partem*” was followed by this Commission and sufficient opportunity was

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given to both the parties to counter each other's claim and bring all the material facts on record of the Commission.

***A.5 Whether there are fatal infirmities in the affidavits filed by the Petitioner warranting it to be dismissed at the threshold:***

46. This issue of maintainability raised by the Respondent revolved around the affidavits of support filed by the Petitioner. It was strongly argued that the affidavits contained glaring defects including affidavits signed by deponents who had in fact passed away, deponents being under age, and deponents claiming to hold party position which did not exist. Sh. Abhishek Manu Singhvi, Ld. Senior Counsel for the Respondent, took almost one hearing to bring to the Commission's knowledge the aforesaid discrepancies and prayed that the petition be dismissed on this count alone as the Petitioner had approached the Commission with unclean hands and he has cited several judicial pronouncements to plead that the petition be dismissed at the threshold. Sh. Mukul Rohatgi, Ld. Senior Counsel for the Petitioner, in response to these allegations submitted that the defects pointed out may be taken on their face value but even then, the examination of the affidavits will not lead to any outcome. Moreover, it was contended that when rival factions arise in a Party, the warring groups in exuberance begin to collect affidavits in multitudes and during this, certain irregularities in preparation of affidavits is bound to occur. It was further submitted that these affidavits were not "forged" but merely suffered from "defects" and that it was the Commission's prerogative now to accept or reject them. It is also pertinent to mention herein that the Petitioner also brought to the Commission's knowledge the same category of defects in the Respondent's affidavits of support.

47. The Commission carefully considered the above allegations made with respect to the affidavits of support filed by both the factions. Out of the lakhs of affidavits submitted by both the groups, many of them suffer from defects and thus are not amenable to be checked, and verified. Further the process cannot

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guarantee of a reliable outcome. This Commission is, therefore, of the view that the Commission in disputes under Paragraph 15 of the Symbols Order, based on a case to case assessment, normally takes on record and examines only those affidavits of support which relate to members of the legislative wing as well as the organizational wing, the latter of which is usually pertain to the apex representative body of the Party. In this regard, it is relevant to mention the observations of the Hon'ble Supreme Court in **Sadiq Ali (supra)** wherein it was held that:

*"28. It is no doubt true that the mass of Congress members are its primary members. There were obvious difficulties in ascertaining who were the primary members because there would in that event have been allegations of fictitious and bogus members and it would have been difficult for the Commission to go into those allegations, and find the truth within a short span of time. The Commission' in deciding that matter under paragraph 15 has to act with a certain measure of promptitude and it has to see that the inquiry does not get bogged down in a quagmire. This apart, there was practical difficulty in ascertaining the wishes of those members. The Commission for this purpose could obviously be not expected to take referendum in all the towns and villages in the country in which there were the primary members of the Congress. It can, in our opinion, be legitimately considered that the members of, AICC and the delegates reflected by and large the views of the primary members."*

(Emphasis supplied)

48. Thus, the Commission cannot go into the validity of each and every affidavit submitted by the warring factions in this symbol dispute case or else, it will get "bogged down in a quagmire" of affidavits which will not only result in wastage of time but will also fail to lead to any conclusion since the affidavits which this Commission is required to take on record and examine is restricted to a smaller circle consisting of members of the legislative and the organizational wings of the Party.

49. Furthermore, whenever such symbol dispute cases have come before the Commission, the rival factions have often ended up filing affidavits which run

into thousands if not lakhs. Although there is never a direction from the Commission to any of the factions in such dispute cases to file such plethora of affidavits, but in the frenzy of showing loyalty to either of the factions, the Party members end up signing these affidavits without paying attention to the technicalities and the same are then forwarded to the Commission. Thereafter, when proceedings under these symbol dispute cases begin, the rival factions raise allegations that the affidavits filed by the other faction suffers from technical defects, irregularities, forgeries, etc. In the **AIADMK Dispute Case**, the Commission had made the following observations on the issue of technical discrepancies in the supporting affidavits:

*“The Commission is also of the view that for the purposes of Paragraph 15 adjudication under the Symbols Order, it is a quasi-judicial authority and a tribunal within the meaning of Article 136 of the Constitution, as held by the Hon’ble Supreme Court in the case of APHLC (supra). Thus, the provisions of Civil Procedure Code and Evidence Act do not apply with the same rigor as they apply in judicial proceedings before the courts of law. The affidavits under reference have been filed in this case only to show that the deponents of those affidavits support a particular group and not by way of evidence in a judicial proceeding, in this strict sense in which it is understood under the provisions of the Evidence Act and the Civil Procedure Code. It is pertinent to point out here that the Respondents have not questioned the veracity of the statements made by the deponents of those affidavits and have merely pointed out certain technical defects therein. They have not claimed that the deponents of those affidavits are in fact supporting their cause.”*

50. The above observation was also reiterated in the final order passed in **Kerala Congress (M) Dispute Case**. Even in the recent order passed by this Commission in the **Shivsena Dispute Case**, the Commission reiterated the above position with regard to consideration of affidavits and made the following observation:

*“115. Therefore, the Commission is not required to go into the technicalities of the affidavits, and it only needs to see from the language of the affidavits to arrive at the conclusion that their authors are supporting or swearing allegiance to a faction. In the present case, though the Respondents have raised doubts over certain affidavits filed in support of the Petitioner, they have not contended that any of the deponents therein are in fact supporting the Respondent.”*

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51. This Commission carefully considered the above issue of alleged discrepancies in affidavits filed by the Petitioner. Largely, the defects pointed out relate to persons who are being claimed to part of NCP's organization at the district/ taluka level and even lower. The Commission cannot go into the validity of each and every affidavit submitted by the warring factions in this symbol dispute case or else, it will get "bogged down in a quagmire" The Commission for determination of any dispute under Paragraph 15 of the Symbols Order examines and takes onto record affidavits which are filed by members of the legislative and the apex representative body of the Party. The members of the legislative wing can easily be ascertained as they are Members of the Parliament or State Assemblies and are found to be comparatively lower in number than members of the organizational wing. On the other hand, the members of the organizational wing of the Party require ascertaining as to which body of the Party is to be taken as its organizational wing for the purpose of adjudicating a dispute under Paragraph 15 of the Symbols Order. Once this determination is made, the Commission may take onto record the affidavits filed by members of the organizational wing and ascertain which faction has the majority support. In the present case, the affidavits of support filed by both the factions ran into lakhs even though there was no direction from the Commission to file them. In view of practicality and promptitude, the headcount of lakhs of primary workers cannot be considered as held in **Sadiq Ali (supra)** and reiterated in **Shiv Sena Dispute case (supra)**.

52. In view of the above settled position with regard to the affidavits of support, this Commission will follow the precedent and thus, take into record those affidavits which are required for determination of the present symbol dispute case.

#### **A.6 Whether the Commission can revise its own order:**

53. At the first hearing held on 06.10.2023, it was contended on behalf of the Respondent and pressed by way of an application that the order dated 14.09.2023 was passed without affording the Respondent an opportunity to

reply to the petition and that the said order had recognized a split in the Party without providing any reasoning. This was opposed by the Ld. Counsels representing the Petitioner who submitted that “stage of satisfaction” in terms of Paragraph 15 of the Symbols Order had been reached by this Commission *vide* order dated 14.09.2023 and the same had been communicated to both the groups.

54. This Commission cannot sit under a revisionary jurisdiction against an order passed by it and any appeal against such order should be filed before an appropriate judicial forum. In the present case, this was not done by either of the groups. Hence, the order dated 14.09.2023 passed by the Commission has attained finality in terms of recording of its satisfaction with respect to existence of dispute in NCP in terms of Paragraph 15 of the Symbols Order.

***A.7 Whether the Commission can determine tests to be applied in advance:***

55. The Commission does not lay out in advance the test to be applied in a given dispute case and that the Commission has applied the tests only after hearing the parties in the light of peculiar facts and circumstances of the case and analysing the documents brought on record of the Commission. That the Hon’ble Supreme Court has also held that the test to be applied in deciding a dispute case, after examining the peculiar facts of a case, is entirely the jurisdiction of the Commission.

56. In totality of the aforesaid facts, this Commission answers Issue (A) in the affirmative and holds that the petition dated 30.06.2023 is maintainable under Paragraph 15 of the Symbols Order.

**ISSUE B. WHETHER A SPLIT HAS OCCURRED IN NATIONALIST CONGRESS PARTY?**

57. The Petitioner in his petition dated 30.06.2023 stated that the Respondent, Sh. Sharad Pawar, was running the Party in total disregard of the Party Constitution. It was further stated that the patently illegal manner in

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which the affairs of the Party were being conducted have led to emergence of discord among members in both legislative and organizational wings of the Party and that due to internal differences, two factions have emerged in the Party. The Petitioner laid emphasis on the illegality of the National Convention held on 10th-11th September, 2022 as well as the appointment of certain office-bearers, such as the Maharashtra State President of NCP, as not complying of the Party Constitution.

58. The Respondent, in reply to the above petition, contended in the oral submissions as well as in written replies that the said petition did not indicate emergence of any rival faction or group and that at best, a challenge was being made to an organizational election of the Party held in 2022. It was further contended that the Commission was not the forum for raising any “intra-party” disputes and that for any aggrieved person, the appropriate remedy would have been filing of a civil suit challenging such organizational election.

59. With regard to the aforesaid submission of the Respondent, it is apposite to first deal with the issue of the alleged elections of both the Petitioner as well as the Respondent as Party Presidents and the organizational elections held in the year 2022. To deal with this issue, this Commission will peruse a number of judicial pronouncements which sufficiently covers the issue raised herein. The Hon’ble Delhi High Court in **Swami Chakrapani vs. Election Commission of India [LPA No. 363/2020]** vide judgment dated 06.09.2021 held that the issue of validity of election of the Party President has to be resolved through a civil suit and observed as follows:

#### **“6. Analysis and Findings**

*Having heard learned Senior Counsel appearing on behalf of the Appellant and learned counsels for ECI and interveners respectively, we see no reason to entertain the present appeal for the following facts and reasons:-*

[...]

*(iv) [...] The Division Bench clearly observed that it was beyond the powers and jurisdiction of ECI to recognize the Appellant as the President, more so, in view of the inter se disputes, where several rival*

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persons were claiming to be the party President. It was also observed that notwithstanding the dismissal of the civil suit for non-prosecution, filed by one of the rival groups, Appellant could not be recognized as the National President, in the absence of any material to show that he was the elected President and especially in face of the material on record, showing internal disputes in the Management since 2004. The Division Bench also held that in case any person wanted to exercise his or her rights as President / office bearer, it was for him to seek a declaration to that effect and he cannot be allowed to hold office merely for the reason that the others have not approached the Court of Law.”

[...]

“(viii) In view of the aforesaid aspects of the matter and the judgments aforementioned, this Court disagrees with the Appellant that his claim of being the National President is undisputed and that there are no rival claims to the said position. As held by the Division Bench, it is not for the ECI to resolve the said disputes and in case the Appellant desires, he is at liberty to take recourse to filing a declaratory suit or any other appropriate civil remedy to claim the National presidentship of ABHM. Thus, in our view, no direction can be issued to the ECI by this Court to recognize the Appellant as a National President of ABHM, in the wake of disputes pending in that regard and no infirmity can be found by the impugned judgment passed by the learned Single Judge.”

(Emphasis supplied)

60. The aforesaid judgment of the Hon’ble Delhi High Court was upheld by the Hon’ble Supreme Court in **Swami Chakrapani vs. Election Commission of India [SLP(C) No. 21194/2021]** vide judgment dated 07.02.2022 wherein the Hon’ble Court observed as follows:

“We find no grounds to interfere with the impugned judgment and order passed by the High Court in exercise of its jurisdiction under Article 136 of the Constitution of India.”

“The special leave petition is, accordingly, dismissed.”

61. Similarly, the Hon’ble Madras High Court in **B. Ramkumar Adityan vs. The Chief Election Commissioner of India & Ors.** [WP No. 19868/2021] vide judgment dated 20.09.2021 had held that the internal disputes have to be resolved within the domestic forum or by way of a civil suit. The relevant portion of the judgment is reproduced here below for ease of reference:

“[...] In other words, it is only a ministerial act which is performed by the Election Commission in taking on record the decision of a recognised political party as communicated to such Commission by a person who is

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*an authorized representative of the relevant party. In such a scenario, the Election Commission is not required to apply its mind or go into any degree of assessment to ascertain the veracity of the document or its adherence to the Rules governing such political party.”*

*“If at all, the grievances of the petitioner have to be carried by way of a civil suit. At any rate, grievances of such nature ought first to be attempted to be resolved within the domestic forum and, in the event there is any legal infraction which is complained of, the same may be carried to a civil court in accordance with law.”*

**62.** In the matter of **J. Jayachandran vs. The Election Commission of India & Ors. [W.P. No. 26171 of 2021]**, the Hon’ble Madras High Court vide judgment dated 14.12.2021 held that there is no statutory provision under which the Election Commission can approve the internal election of a political party and observed as follows:

*“9. The writ petition has been filed by impleading the Election Commission of India as a party respondent, apart from the political party (AIADMK) and other private parties as respondents to the litigation. The petitioner sought directions against the Election Commission of India not to accord its approval to the newly elected posts of Coordinator and Joint Coordinator of the second respondent political party. The prayer aforesaid is made without showing or referring to a provision under the Act of 1951, which obligates the Election Commission to approve the internal elections of the political party. Learned counsel for the petitioner could not specify the role of the Election Commission in the internal elections of the political party. It is apart from the fact that no provision could be referred to approve or given cognizance to the result of internal party elections. Thus, learned counsel for the petitioner could not clarify as to why Election Commission of India has been impleaded as a party respondent. The issue aforesaid is quite relevant for the reason that all other respondents are private parties in reference to which question of maintainability of the writ petition needs to be examined.”*

*“10. Learned counsel would harp on the issue of democratic values to be maintained by the political party, but could not refer to any provisions whereby the Election Commission can have a role so as to pass appropriate direction on the relief prayed for by the petitioner.”*

[...]

*“11. As per Article 324 of the Constitution of India the superintendence, direction and control of elections is vested in the Election Commission. It is not for internal election of a political party. Section 29A of the Act of 1951 pertains to registration with the Election Commission of associations and bodies as political parties. However, there is nothing*



*in Section 29A that requires an enquiry to be conducted into the fairness and validity of the internal elections held for the posts in a political party. The objection raised by the petitioner that the elections to the posts of Coordinator and Joint Coordinator of the second respondent political party were held without adopting democratic procedure cannot be countenanced, as the Election Commission is not empowered to go into the internal elections of a political party. All that Section 29A(9) of the Act of 1951 contemplates is that after an association or body has been registered as a political party, any change in its name, head office, office-bearers, address, etc., shall be communicated to the Election Commission of India without any delay. Such power does not confer any corresponding duty on the Election Commission of India to enter into the internal elections of a political party. In view of the above, we find the impleadment of the Election Commission of India is for the sake of it.”*

(Emphasis supplied)

63. Furthermore, the Hon'ble Kerala High Court in **Anil Thomas v. Indian National Congress & Ors. [WP(C) No. 31413 of 2017 (B)]** vide judgment dated 06.12.2017 held that the Election Commission cannot regulate the internal functioning of a political party and observed as follows:

*“10. It is argued by the respondents that un-disputedly its constitution incorporate democratic values and accountability insofar as the elections to the various hierarchical committees; a pre-requisite for registration under Article 29A of the RP Act. The respondent party has also been following the constitution in its letter and spirit. But by virtue of the registration under the RP Act the party does not become a public authority; enabling invocation of the powers under Article 226 to interfere with its internal affairs, like elections, in which intervention is sought in the present writ petition [...]*

[...]

*“27. [...] This Court has to respectfully bow to the dictum laid down in Indian National Congress (I); that the Commission could take no action to deregister a political party. The Commission cannot also regulate the inner party functioning. A writ, hence, would be futile and this Court would shun such exercise. The petitioner's right if at all arises from his membership and merely because, when in power the executive comprised of the elected representatives, constitute the Government, the status of the party in power does not change. It is a collective, an association, striving to serve the public and the nation, without any obligation enjoined, whether in power or otherwise; ideally! The writ petition is rejected as not maintainable.”*

(Emphasis supplied)

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**64.** The aforesaid judicial pronouncements explicitly hold that the Commission has no role to regulate the internal functioning of a political party and that if there is any dispute over the organizational matters, including internal elections, the appropriate forum is a civil court to seek remedy. In view of the above, this Commission agrees with the contention of the Respondent that it cannot examine the validity of any organizational election in proceedings under Paragraph 15 of the Symbols Order.

**65.** It is also pertinent to mention that allegations have been made with reference to the election of the Petitioner as the Party President on 30.06.2023 and its subsequent ratification in an open National Convention held on 05.07.2023. In this regard, it is stated that for the purpose of considering the organizational structure of the Party as well as members of the legislative wing, the Commission has one policy filter so as to seek the principle of “undisputed point of time” i.e., when the concerned Party was united. Therefore, this Commission for determination of the organizational wing, if required, will look at the status of Party as existing on or before 30.06.2023.

**66.** In view of the above position, this Commission will neither go into the validity of the organizational election of NCP held in 2022 nor into the validity of the election of the Petitioner as Party President in the year 2023. It is for the contending parties to approach an appropriate court for adjudication of such issues.

**67.** Another contention raised by the Ld. Counsels for the Respondent was there must be a pre-existing dispute for a petition under Paragraph 15 of the Symbols Order and that the same did not exist in the present case. However, the facts brought on record of the Commission by way of submissions and arguments indicate otherwise. It is a matter of fact that the Petitioner took oath as Dy. Chief Minister of Maharashtra on 23.11.2019 and became part of the then existing Government. Further, as submitted by the Ld. Senior Counsels representing the Respondent, such action was not backed either by the Party or

सहायित / The Party President i.e., the Respondent herein. In the final written submission

of the Respondent, it has been clearly stated that on 23.11.2019, the Petitioner had taken oath as the Dy. Chief Minister in the aforesaid Government and that Petitioner had acted without informing, let alone seeking permission, of the Party or the Respondent. It has been further stated therein that even at the time, only 6 MLAs supported the Petitioner and not 54 MLAs as being claimed by the Ld. Counsel for the Petitioner. Later, on 26.11.2019, the Petitioner resigned as the Dy. Chief Minister. Subsequently, on 30.11.2019, the NCP formed a "Maha Vikas Aghadi (MVA)" government with Shivsena and Indian National Congress. In that MVA Government, the Petitioner again served as the Dy. Chief Minister of Maharashtra. Further, there were media reports, brought on record before this Commission during the course of hearing, that Sh. Sharad Pawar wanted to step down from the position of Party President few months before the present dispute petition was filed, however, he was later requested to continue in the position by the Petitioner group. The above incidents which have not been disputed by either of the factions clearly demonstrate that there was internal discontent simmering within the Party. The argument that why the Petitioner has not raked up this issue in any intra party forum also does not have traction as can be seen in the context of the Party Constitution. While in certain facts and circumstances, exhaustion of an internal remedy can be considered as important determinant, however, it can't be taken as a prescriptive position. This is so because the nature of remedy is embedded in the constitution which may not provide for alternate remedy. This is further supported by the fact that the dissident MLAs who belong to the Petitioner's group were allegedly expelled from the Party on 02.07.2023 without giving any opportunity to show-cause. The Commission cannot ignore that the internal discontent or rumblings within the Party though appear to be seldom documented yet the seeds of dispute in the Party were germinating in the light of aforesaid developments. Thus, the internal dispute within a party ought to be inferred on the basis of attending facts and circumstances evaluated in the context of the case and in the present case, there is material to show that there were rumblings of internal dispute in NCP existing even before the filing of petition under Paragraph 15 of the Symbols Order.

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68. Both the parties herein are among the top leaders of the Party and the documents/ submissions brought on record of the Commission shows that the support in the Party had clearly split in two with rival groups rallying behind these two leaders. especially the fact that when two-top leaders of the Party are at loggerheads and are before the Commission in a dispute under Paragraph 15 of the Symbols Order to deny that there is no dispute and discarding such a fact will amount to turning blind-eye to the existing realities.

69. As mentioned at the preceding paragraphs, the Commission will not go into the question of the validity of their election as Party Presidents. However, it is an evident fact that both the aforesaid parties are now claiming themselves as the leader of the Party. Moreover, their respective claim to the leadership of the Party is not solely based upon their individual claim but is backed by the support enjoyed by them in the organizational as well as legislative wing of the Party. This Commission considered the affidavits of support filed on behalf of the Petitioner by the legislators of NCP wherein it was stated that as follows:

*"I hereby solemnly state on oath that I repose my faith and unconditional support to Shri. Ajit Pawar and the group led by Shri Ajit Pawar, who has the backing of the majority of the senior leaders, elected members and the organisational members within the party. I further extend my unconditional support to Shri. Ajit Pawar to lead the NCP."*

The aforesaid statements made in the affidavits dated 30.06.2023 filed by NCP legislators in support of the Petitioner clearly indicates that rival factions had emerged on the said date.

70. Further, it is also relevant to reiterate the observations made by this Commission in the order dated 17.02.2023 passed in the matter of **Shivsena Dispute Case** whereby it was held that the organizational and the legislative side of the Party should not be seen in isolation since both shared an organic link with each other. Relevant extract of the said order is reproduced here below:

*"64. Thus, the aforesaid provisions indicate that the electoral performance of a political party is not only essential for getting recognition under the Symbols Order but also for its continued*

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recognition. In view of the said legal position, this Commission is of the view that for any dispute involving a recognized political party, where the dispute primarily revolves around the claim over the recognized symbol of the concerned political party, the legislative wing of the Party cannot be viewed in isolation.”

“65. There is no doubt that it is the organisational structure of the party including the grassroot workers who toil and labor and turn an association of individual members into an election machinery, which then contests an election and the resultant fruit is the popular vote received by it. The final product of the whole cycle is the election of legislators, such as members of Parliament and members of State Legislature, who win such elections on the name and symbol of the concerned political party. Thus, there exists an organic link between the legislators and the Party organisation which cannot be ignored or thought of as wholly separate.”

“66. It is also apposite to mention that most often, members of the legislative wing are also part of the organisational wing of the Party. In the present case, the Petitioner who is a Member of Legislative Assembly was also a “Shivsena Leader” i.e., part of the organisational structure of Shivsena, before the dispute arose. Similarly, the Respondent, who is a Member of the Legislative Council, served as the Shivsena Paksha Pramukh i.e., the position which is at the very apex of the organisational structure of Shivsena, if the 2018 Constitution of the Party is seen.”

71. In the present case, it is undisputed that there is a clear split in at least in the legislative wing of the Party. In the State of Maharashtra, the majority of MLAs are supporting the group led by the Petitioner whereas the majority of MLCs are supporting the Respondent. In the Parliament, the majority of Party MPs, both in Lok Sabha and Rajya Sabha, are supporting the Respondent. Furthermore, the Petitioner has the support of all seven NCP MLAs in Nagaland Legislative Assembly while on the other hand, both the NCP MLAs in Kerala Legislative Assembly are supporting the Respondent. Thus, a clear split in the legislative wing of the NCP is seen not just in the State of Maharashtra, but beyond.

72. It is also an undisputed fact that the Commission had been receiving communications from both the groups alleging violation of the Party Constitution by the other side in addition to various communications relating to appointment of separate set of office-bearers. In the petition itself, it has been contended that

the Respondent was running the Party in violation of the Party Constitution. Similarly, the communication dated 02.07.2023 received from Sh. Jayant Patil on behalf of the Respondent group, states that the conduct of 9 MLAs who were sworn in as cabinet ministers on 02.07.2023 (which includes the Petitioner) amounted to violation of Party Constitution. Moreover, the very fact that the affidavits filed by each of the faction ran into lakhs at the very least showed *prima facie* that the split was not just in the legislative wing but also in the organizational side of the Party.

**73.** It is also apt at the present juncture to examine some of the recent orders passed by the Commission in dispute cases of recognized political parties. In ***Kerala Congress (M) Dispute***, the Commission, while deciding the issue of whether a split had occurred in the Party, made the following observations in its order dated 31.08.2020:

*“35. The Commission has carefully considered the above rival submissions and contentions of Learned Senior Counsels representing the Parties. Both the parties have made submissions regarding the State Committee meeting held on 16.06.2019 and the disputed election of the Petitioner as the Chairman of KC(M). The legality of the above-mentioned meeting and election is not a determinative factor in deciding whether a split has occurred in the Party. It is on record that two lower courts, the Hon’ble Munsiff Court at Idukki and the Court of Sub-Judge, Kattapana, have already pronounced their judgments on this issue and that on behalf of the Petitioner, it has been submitted that an appeal against the decisions of the said courts will be made before the Hon’ble High Court of Kerala. In addition, the Petitioner has not prayed for his declaration as the Chairman of KC(M) in the Petition filed by him. Therefore the Commission will not go into the issue of the validity of the above-mentioned meeting of the State Committee and the subsequent election of the Petitioner as the Party Chairman.”*

*“36. The first indicator of the emergence of a split in KC(M) was holding of separate State Steering Committee by both the groups, in relation to the bye-election held for 93- Pala Assembly Constituency. On behalf of the Respondent, it has been submitted that in the State Steering Committee meeting held on 23.08.2019, it was decided that the Party would not contest the said bye-election. On the other hand, it has been submitted on behalf of the Petitioner that another meeting of the State Steering Committee was held on 30.08.2019, wherein it was decided that the Party would contest the said bye-election and a sub-committee led by Sh. Thomas Chazikkadan, Lok Sabha MP, would propose a*

suitable candidate. This meeting, held on 30.08.2019, was claimed to be attended by 50/96 members.”

“37. In addition, on the basis of the affidavits submitted by both the parties showing their support in the Legislative Wing and the Organisational Wing, it appears clear that two rival groups have emerged in KC(M). Four out of the seven elected legislators (1 Lok Sabha MP, 1 Rajya Sabha MP and 2 MLAs) had signed the Petition dated 18.10.2019, stating that rival factions had emerged in KC(M) and this in itself is an indicator of a split in the Legislative Wing of the Party. On the other hand, three out of seven legislators have filed affidavits in support of the Respondent, Sh. P.J. Joseph. Therefore, there is no doubt in the fact that the Legislative Wing of the Party has split into two factions, led by the Petitioner and the Respondent. Similarly, a split in the Organisational Wing of the Party is also seen. Both the Parties claimed a majority support in the State Committee and submitted affidavits of members supporting them. Since both the Parties failed to provide the original list of members of the State Committee, and the list submitted by both substantially differed, the Commission decided to proceed on the basis of a common list that comprised of the list of 305 undisputed members, i.e., the names which figured in the State Committee list submitted by both the parties. From among the above-mentioned undisputed members of the State Committee, 174 have filed affidavits in support of the Petitioner while 117 have filed affidavits in support of the Respondent [affidavits of 5 members were found in support of both the factions and is therefore excluded from consideration]. This clearly indicates a split in the apex representative body of KC(M).”

74. Further, in the **Samajwadi Party Dispute Case**, the Commission while deciding the issue of whether a split had emerged in the Samajwadi Party made the following observations in its order dated 16.01.2017:

“16. [...] In his letters dated 1st January, 2017 and 2nd January, 2017, Shri Mulayam Singh Yadav had himself informed the Commission that an emergency National Convention was convened by Shri Ram Gopal Yadav on 1st January, 2017 at Janeshwar Mishra Park, Lucknow, in which certain resolutions were allegedly passed and he prayed that no cognizance should be taken by the Commission of those resolutions as the said convention itself was unconstitutional and convened by a person who stood expelled from the party. Shri Sibal further pointed out that Shri Mulayam Singh Yadav in his letters dated 1st and 2nd January, 2017 had stated that the Central Parliamentary Board of the party had declared the above Convention as unconstitutional and also declared the resolution said to have been passed at that Convention illegal and null and void. Shri Sibal further submitted that the above referred convention, though claimed by Shri Mulayam Singh Yadav as unconstitutional, was attended by overwhelming majority of the

delegates of the State Legislature elected on the ticket of the Samajwadi Party. In view of the party and more than 90% of the elected Members of Parliament and Uttar Pradesh above facts and circumstances, Shri Sibal contended that there could not be any doubt in the mind of anyone that there are two rival groups in the Samajwadi Party and as each of those groups claims to be that party there has been a split in the party within the meaning of para 15 of the Symbols Order which needs determination by the Commission.”

“17. On the other hand, Shri Mohan Parasaran, senior learned counsel appearing for Shri Shri Mulayam Singh Yadav, submitted that there is no split in the party because, even as per their own case set up by the Shri Akhilesh Yadav group, Shri Mulayam Singh Yadav continues to be in the Samajwadi Party. He submitted that the sole claim made by Shri Akhilesh Yadav group is that Shri Akhilesh Yadav has been elected as the President of the party at the above mentioned convention held on 1st January, 2017, and thus the question before the Commission is whether Shri Akhilesh Yadav has been rightly elected as the President of the party in accordance with the party Constitution and the dispute relates to the internal administration or management of the party which does not mean that there is a split in the party resulting in the formation of two rival groups within the meaning of para 15 of the Symbols Order [...]”

“18. Shri Parasaran also submitted that the reference to the word 'split' in the Commission's letter dated 4th January, 2017 to Shri Mulayam Singh Yadav should mean only the prima facie presumption of the Commission and not an irrefutable presumption of satisfaction of the Commission in terms of para 15 of the Symbols Order. He stated that for arriving at a irrebuttable satisfaction about the existence of a split in the party, the Commission has to first hear both the groups and the Commission could change its prima facie view if any of the groups could rebut that presumption.”

“20. The Commission has carefully considered the above rival submissions and contentions of Shri Kapil Sibal and Shri Mohan Parasaran. As has been rightly pointed out by Shri Sibal, the very first communication dated 30th December, 2016 of Shri Mulayam Singh Yadav to the Commission gave a clear indication as to an impending split in the Samajwadi Party. Subsequent developments of holding a convention by Shri Ram Gopal Yadav on 1st January, 2017, passing of resolution in that convention electing Shri Akhilesh Yadav as the President of the Party, declaring convention as unConstitutional by Shri Mulayam Singh Yadav and reiterating his claim that he continues to be the National President of the party are clear manifestations of the split having been formalized on that day [...]”

(Emphasis supplied)

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75. The Commission has, thus, consistently been looking at a number of ingredients to determine whether a split has occurred in the Party. On behalf of the Petitioner, it was submitted that there are “three principle ingredients” that are considered by the Commission to arrive at a conclusion that a split has occurred in a political party for the purpose of adjudication under Paragraph 15 of the Symbols Order, i.e., “the factions holding separate meetings of the organizational wing of the party”; “affidavits of support submitted by members of the organizational and legislative wing of the party in favour of the rival groups/ factions”; “rival factions passing resolutions declaring different Presidents of the Party”. That in the present case, the aforesaid ingredients were already present before the Commission when the order dated 14.09.2023 was passed.

76. A peculiar fact which this Commission cannot ignore is that one political party which is a recognized State Party in Maharashtra is sitting on the treasury benches as well as the opposition benches in the Maharashtra Legislative Assembly. To say that a political party while being part of the Government and the Opposition at the same time is a united party is too far-fetched a proposition to accept.

77. Therefore, the consideration of the aforesaid facts shows that there were rumblings within the Party since 2019 and that now, there are two rival groups, led by two top leaders of the Party, who are each enjoying considerable support in the Party. Further, there are allegations from both the rival groups that the other group is violating the Party Constitution. The split is very evident in the legislative wing, not just in Maharashtra, but also in legislators belonging from other States. In totality of these facts, Issue (B) is answered in the affirmative and this Commission holds that there are rival factions in NCP, led by the Petitioner and the Respondent herein.

**ISSUE C. IF ISSUE (B) IS ANSWERED IN THE AFFIRMATIVE, THEN WHICH TEST IS TO BE APPLIED FOR ADJUDICATION OF THE PRESENT DISPUTE**

**CASE?**

78. Both the groups referred to tests laid down in **Sadiq Ali (supra)** and argued that tests prescribed therein are tilting the balance in their favour. However, the Petitioner placed reliance on the test of majority in the legislative wing of the Party as the organisational wing is not constituted as per the provisions of Party constitution. On the other hand, the Respondent emphasised upon the test of majority in the organisational wing of the Party stating that in **Subhash Desai (supra)**, the Hon'ble Supreme Court had held that the test of majority in the legislative wing of the party would not be appropriate in determining disputes in the peculiar circumstance of the case. It was further contended by the Petitioner that the Commission had been applying this 'test of majority' in legislative wing consistently to decide dispute cases of various political parties including the case of **Samajwadi Party Dispute Case**. On behalf of the Respondent, it was submitted and argued that if the Commission proceeds ahead to determine the test to be applied for the decide the present dispute case, it should not confine itself merely to the test of majority in the legislative wing but that the Commission should look at the support enjoyed by each group in the organizational wing of the Party.

79. In **Sadiq Ali (supra)**, the Hon'ble Supreme Court had the occasion to examine the tests that were propounded by the Commission in deciding a symbol dispute case. Relevant extract of the judgment is reproduced here below for ease of reference:

*"14. [...] On Point 2, the Commission observed that it was satisfied on the information available in its possession that there were two rival sections of the Indian National Congress, each claiming to be that Congress. Regarding Point 3, the finding of the Commission was that the Election Symbol was not property. As regards Point 4, the Commission observed that the majority test was a valuable and relevant test in a democratic organisation. The test based upon the provisions of the Constitution of the Congress canvassed on behalf of the Congress 'O' was held to be hardly of any assistance in view of the removals from membership and expulsions from the Committees of the Congress of the members belonging to one group by those belonging to the opposite group. Reference was also made in this context to the rejection of the requisition sent by some members of Congress 'J' for convening a meeting of the All-India Congress Committee. The*

*Commission then considered another test, namely, that based upon the aims and objects as incorporated in the constitution of the Congress. It was observed that none of the two groups had challenged in any manner or openly repudiated those aims and objects. The test based upon the aims and objects was consequently held to be ineffective and neutral. Applying the test of majority, the Commission observed that Congress 'J' had the majority out of the total number of members returned on Congress tickets to the Houses of Parliament as well as the majority out of the sum total of the members of all the Legislatures returned on Congress tickets although in some States, like Gujarat and Mysore, Congress 'O' had majority in the Legislatures. As regards the organisational wing of the Congress, the Commission are to the conclusion that Congress 'J' enjoyed majority in the All-India Congress Committee as well as amongst the delegates of the undivided Congress. Decision was accordingly given that for the purpose of para 15 of the Symbols Order, Congress 'J' was the Congress for which the symbol "Two Bullocks with Yoke on" had been reserved."*

(Emphasis supplied)

### **C.1 Test of Aims and Objects of the Party Constitution**

The first test is the "Test of Aims and Objects of the Party Constitution". The objectives of the NCP are laid down in Article 2 of the Party Constitution which states as follows:

#### **"Article 2 : Objectives :**

*The Party shall bear true faith and allegiance to the Constitution of India as by law established and stand committed to the values as enshrined therein, especially in its preamble. More specifically, the Party aims at :*

- i. *Stimulating, promoting and strengthening the spirit and forces of nationalism and vigilantly preserving the Indian national identity, with special emphasis on the egalitarian and secular ethos of the Indian Republic and combating fundamentalism and sectarianism of all shades;*
- ii. *Maintaining the unity and integrity of India by building up on the concept of unity in diversity ad by strengthening federalism and decentralisation of power consistent with the Gandhian concept of taking it right down to the village level;*
- iii. *Promoting economic growth and prosperity through competition, self-reliance, individual initiative and enterprise with emphasis on equity and social justice;*
- iv. *Strengthening the Rule of Law and Constitutional Order based on Parliamentary and participatory democracy;*

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- v. *Empowerment of the weaker sections through affirmative actions in favour of the disadvantaged sections of the society. The Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Women and the Disabled;*
- vi. *Promoting science and technology, including by drawing upon traditional indigenous know-how and constantly adapting. the same to the changing reeds of modern Indian society; monitoring the application of science and technology so adapted, immediately for the overall betterment of the people and ultimately for generation, amongst them, of the spirit of inquiry and scientific temper;*
- vii. *Strengthening the forces of peace within the country and in the world; attempting to secure universal, non-discriminatory disarmament; maintaining an independent Indian position and identity in world affairs; and committing to resolving international conflicts through a strengthened and truly representative United Nations;*
- viii. *Ensuring institutionalised and democratic functioning of the Party at all levels by encouraging free exchange of views and permitting the members of the Party to make their best individual contribution to enrich the lives of the people in all spheres;”*

In the present dispute case, neither of the two factions has made any substantial claim that their faction has been following the aforesaid aims and objects and that the other faction was not. Therefore, the application of this test will not lead to any conclusion.

## **C.2 Test of Party Constitution:**

**80.** The Commission may have an occasion to apply this test when it is convinced that the internal structure of the Party flowing from the relevant provisions of the Party Constitution provides an appropriate forum to any dissident to raise their grievance and that an adequate opportunity by way of enquiry and hearing is provided before taking actions of suspension and expulsions from the Party. In the constitution of NCP, the relevant provision is Article 32, which states as follows:

### **“Article 32 : Discipline:**

*(1) For the purpose of maintaining discipline amongst party members and among Party Committees a Central Discipline Committee shall be appointed by the Working Committee at the National level and Discipline Committees at State level and Union Territory level by the Executive Committees of the Party in the States and Union Territories respectively.*

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(2) Supercession or dismissal of the party Committee over and above the disciplinary proceedings against the individual involved shall be the punishment imposed on party committees involved in antiparty activities.

Rules relating to Disciplinary Committees shall be formed by the Working Committee.

(3) Censor, reprimand, suspension of membership for a term of not more than three years and expulsion shall be the penalties imposed on member who engage themselves in the following conduct.

(i) Violation of the Constitution or Rules of the party;

(ii) Denigration of the status of party membership;

(iii) Infraction of the political ethics guidelines of the party;

(iv) Any other action detrimental to the interest of the party.

A member who is expelled from the party, on the decision of the Central Disciplinary Committee shall have the right of appeal to the NC; a member penalised by a State Level Disciplinary Committee shall have the right of appeal to the Central Disciplinary Committee.

Details of Disciplinary proceedings shall be laid down in the procedural rules to be made by the WC."

81. In the letter dated 02.07.2023 received from Sh. Jayant R. Patil, on behalf of the Respondent group, it was mentioned as follows:

"As per the provisions of the Party Constitution (and the rules made thereunder), the State Discipline Committee of the NCP has passed a unanimous and urgent resolution recording the factum of disqualification and violation of the Party Constitution (and the rules made thereunder) by the said 9 MLAs. You may be informed that the actions of the 9 MLAs, which are detrimental for NCP and its functioning, not only amounts to anti party activities but also desertion from the Party. Therefore, we reiterated that the 9 MLAs were former members of NCP and are no longer associated with the Party."

Further, the resolution dated 02.07.2023 itself passed by the State Discipline Committee, enclosed with the aforesaid communication received from Sh. Jayant R. Patil, mentions as follows:

"It has been brought to the notice of the Central Discipline Committee vide letter dated 2 July 2023 by Anil Deshmukh, MLA, Maharashtra Vidhan Sabha, that 9 MLAs of the NCP party have indulged in anti-party activities in clear and absolute violate of Article 32 of the Party Constitution."

"These actions of the 9 MLAs call for immediate disqualification as not only are such defections ipso facto seriously damaging to the party but

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also that it allowed to continue as members, there is a very real likelihood that they will continue to try and undermine the interests of the party.”

82. The Commission in its previous orders found this Test to be of little help since in almost all the dispute cases, the act of expulsion and counter-expulsion happens and that too without paying any heed to the provisions of the Party Constitution. The same facts exist here.

83. With respect to the Respondent, it is seen that his group had expelled the Petitioner and other MLAs supporting him without adhering to the provisions of the Party Constitution. On the other hand, the Respondent claimed that the Petitioner was elected as the Party President by the Party MLAs, which again, was not as per the provisions of the Party Constitution. In view of the above, the “Test of Party Constitution” cannot be applied by this Commission in determining the present dispute case as both the factions have been found to be violating the provisions of the Party Constitution.

### C.3 Test of Majority

84. The inapplicability of the aforesaid tests in previous symbol dispute cases had led the Commission to rely on the “Test of Majority” to arrive at a determinative outcome. It is relevant here to refer to the observations made by the Hon’ble Supreme Court in **Sadiq Ali (supra)** whereby the test of majority was held to be a very valuable and relevant test for deciding political party disputes:

*“26. The figures found by the Commission of the members of the two Houses of Parliament and of the State Legislatures as well as those of AICC members and delegates who supported Congress ‘J’ have not been shown to us to be incorrect. In view of those figures, it can hardly be disputed that substantial majority of the members of the Congress in both its Legislative Wing as well as the Organisational Wing supported Congress ‘J’. As Congress is democratic organization, the test of majority and numerical strength, in our opinion, was a very valuable and relevant test. Whatever might be the position in another system of Government or organization, numbers have a relevance and importance in a democratic system of Government or political set up and it is neither possible nor permissible to lose sight of them. Indeed it is the view of*

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the majority which in the final analysis proves decisive in a democratic set up.”

“27. It may be mentioned that according to Paragraph 6 of the Symbols Order, one of the factors which may be taken into account in treating a political party as a recognized political party is the number of seats secured by that party in the House of People or the State Legislative Assembly or the number of votes polled by the contesting candidates set up by such party. If the number of seats secured by a political party or the number of votes cast in favour of the candidates of a political party can be a relevant consideration for the recognition of a political party, one is at a loss to understand as to how the number of seats in the Parliament and State Legislature held by the supporters of a group of the political party can be considered to be irrelevant. We can consequently discover no error in the approach of the Commission in applying the rule of majority and numerical strength for determining as to which of the two groups, Congress ‘J’ and Congress ‘O’ was the Congress Party for the purpose of Paragraph 15 of Symbols Order.”

(Emphasis supplied)

85. Further, in the **Samajwadi Party Dispute Case**, the Commission had observed that since the dispute could not be decided on the touchstone of Party Constitution, the Commission had to necessarily apply the test of majority. Relevant extract of the order is reproduced here below:

*“27. Now, coming to the question as to what test has to be applied by the Commission or what parameters have to be kept in view by the Commission while deciding matters under para 15 of the Symbols Order, Shri Kapil Sibal, as mentioned above, has taken the stand that the Commission is required only to apply the test of majority or numerical strength of the rival groups or sections in the legislative and Organisational Wings of the party. Shri Mohan Parasaran has taken the contrary view that the Commission has first to judge the relative claims of the rival sections or groups on the touchstone of their functioning as per the provisions of the party constitution.”*

*“28. In the context of the above rival submissions and contentions of Shri Kapil Sibal and Shri Mohan Parasaran, it is relevant to take note of the Commission’s order dated 11th January, 1971 in the matter of first split in the Indian National Congress which arose in 1969 after the promulgation of the Symbols Order in 1968. In that order, the Commission observed that the test based on the provisions of the constitution of the party was hardly of any assistance in view of the removals from membership and expulsions from the committees of the party of the members belonging to one group by those belonging to the opposition group [...] In view of the above, the insistence by Shri Mohan Parasaran that the Commission should decide the matter on the test of*

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functionality of the rival groups on the touchstone of the party constitution is hardly of any assistance to him and the Commission cannot go into validity or otherwise of the removals and expulsions and counter removals and counter expulsions of members or leaders by one group or the other. For the same reasons, it is not necessary for the Commission to go into the question whether the convention held by Shri Akhilesh Yadav on 1st January, 2017 at Lucknow was convened in accordance with the provisions of the party constitution or not, as here also, there are contentious issues relating to the interpretation and application of various provisions of the party constitution. Pertinent here to take note of the submission made by Shri Kapil Sibal that if a substantial number of members of the party feel disappointed with the functioning of the party managers and those managers obstruct the redressal of their grievances under the party constitution, the political functioning of the political party cannot be frustrated by their inaction or their failure to act in accordance with the party constitution. In any democratic institution, which the political parties are, the will of majority should prevail in the internal functioning of the party and if the majority will is suppressed or not allowed to have a proper expression, it will amount to 'tyranny of the minority'."

"29. Having thus come to the conclusion that the present dispute cannot be decided on the touchstone of the functioning of the rival groups as per the party constitution, the Commission has to necessarily apply the test of majority, i.e., numerical strength of the rival groups, both in the legislative and Organisational Wings of the party. In taking this view, the Commission is fortified by the observations and ruling of the Supreme Court in above referred case of Sadiq Ali (supra)."

(Emphasis supplied)

**86.** The Commission in its Order dated 25.09.2000, in the dispute case of **Himachal Vikas Congress** had held that the test of majority was a settled and consistent principle adopted by the Commission in deciding dispute under Paragraph 15 of the Symbols Order. Relevant extract of the order is reproduced here below:

"17. In the case of splits, the experience of the Commission has been that neither of the rival groups acts wholly in accordance with the provisions of the party constitution and both of them interpret them in a manner convenient to them. In such circumstances, for deciding the claims of rival groups, the consistent and settled principle adopted by the Commission has been the test of numerical majority, both in the organizational and legislature wings of the party. The Supreme Court has upheld this test as a valuable test in the case of Sadiq Ali and

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*Another Vs. Election Commission of India and Others (AIR 1972 SC 187)."*

87. A pertinent point to consider herein is that with respect to a previous dispute in the political party in consideration, i.e., the **NCP**, the Commission passed an order dated 08.03.2004 wherein the following observation was made with respect to the applicability of the "Test of Majority":

*"17. In an ordinary case or suit of civil nature, the conclusions arrived at by the Commission as aforesaid would have been sufficient for rejecting the claims of Shri Sangma made in his letter of 24th January, 2004. But in a dispute of political nature where two or more rival sections or splinter groups of a recognised political party claim to be that party, the Commission has been deciding such disputes under para 15 of the Symbols Order by applying the test of majority in the organizational and legislature wings of the party. In the above-referred case of Sadiq Ali (supra), the Supreme Court upheld the principle of deciding disputes relating to splits in political parties on the basis of relative strength of the splinter groups in the organizational and legislature wings of the party. The Supreme Court held in that matter in 1971 that the test of majority applied by the Commission in the case of split in the INC which was the subject matter of that case, was a valid and relevant test. The Commission has since then been following and applying this test of numerical majority in the legislature wings and in the organisational wings of the party in all cases of splits. Obviously, it is not possible for the Commission to embark on a head count of general/ primary members supporting one or the other group in such cases, and the test of numerical strength has necessarily to be restricted to the representative bodies of the party-legislature wing comprising elected members of the party in Parliament and State Legislatures and the Organisational wing consisting of decision-making bodies."*

(Emphasis supplied)

88. In the present case also, this Commission is of the considered view that it is the "Test of Majority" which will yield a reliable outcome in the facts and circumstances of the case. This Commission will now proceed ahead with the application of the "Test of Majority" in the organizational and legislative wings of the Party to effectively determine as to which if the two faction is the Nationalist Congress Party and entitled to use the recognized symbol "clock". However, which of the wings of the Party is relevant for application of 'test of majority' will be examined in the next issue.

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**ISSUE D. WHICH GROUP/ FACTION IS ENTITLED TO USE THE SYMBOL**

**“CLOCK”, THE RECOGNIZED SYMBOL OF THE NATIONALIST CONGRESS PARTY?**

89. The application of the “Test of Majority” in symbol dispute cases involves assessing the support enjoyed by each of the faction in the organizational as well as the legislative wings of the Party.

90. On behalf of the Petitioners, it has been vehemently argued that the Commission should restrict the application of “Test of Majority” only to the legislative wing of the Party. It was further contended that the Party was being run contrary to the provisions of the Party Constitution by the Respondent and that the last organizational election held in the year 2022 was all but on paper and whereby the Respondent was making all the major appointments in the organizational hierarchy. On the other hand, the Respondents have strongly argued for the application of the test of majority in both the legislative as well as organizational wings of the Party. It was contended that since disqualification petition was pending against the members of the legislative wing, the Commission should give primacy to the support enjoyed by the rival factions in the organizational wing of the Party.

91. Usually, the Commission has in such symbol dispute cases first assessed the majority support enjoyed by the factions in the organizational wing of the Party before assessing the numbers in the legislative wing. At first, assessing the former requires examining the constitution of the concerned Party and to find out as to which body constitutes the “organizational wing” for the purpose of adjudication of the symbol dispute case under Paragraph 15 of the Symbols Order.

92. The Commission in **AIADMK Dispute Case** had held that “...the Commission will look into the relative strength of the two groups in the apex representative body, of the organisational structure of the Party as provided for in the Party Constitution.” Further, in the case of **Sadiq Ali (supra)**, the Hon’ble

Supreme Court considered the issue of ascertaining the support among the primary members of the Party and held that:

*“28. It is no doubt true that the mass of Congress members are its primary members. There were obvious difficulties in ascertaining who were the primary members because there would in that event have been allegations of fictitious and bogus members and it would have been difficult for the Commission to go into those allegations, and find the truth within a short span of time. The Commission' in deciding that matter under paragraph 15 has to act with a certain measure of promptitude and it has to see that the inquiry does not get bogged down in a quagmire. This apart, there was practical difficulty in ascertaining the wishes of those members. The Commission for this purpose could obviously be not expected to take referendum in all the towns and villages in the country in which there were the primary members of the Congress. It can, in our opinion, be legitimately considered that the members of, AICC and the delegates reflected by and large the views of the primary members.”*

**93.** In the **Kerala Congress (M) Dispute Case**, the factions therein had made divergent submissions as to which body of the Party constituted its organizational wing for the purpose of applying the test of majority. The Commission had then examined the Party Constitution and held that the body which was sovereign body of the Party and was in control of all the subordinate committees was the “apex representative body” of the Party. Relevant extract of the order is reproduced here below”

*“29. The second preliminary issue relates to determining the ‘Organization Wing’ of the KC(M). A perusal of the rival submissions made by both the factions indicate that there are divergent views as to which body of Kerala Congress (Mani) should be considered as representing the organizational wing of the Party for the purposes of deciding this dispute under Paragraph 15 of the Symbols Order. Learned Senior Counsel representing the Petitioner has submitted that it is the Steering Committee of the KC(M) which should be considered as the organizational wing of the Party. He has relied on Article X(14) of the Constitution of KC(M) which states that – “The State Steering Committee shall consist of 111 members including all the State Office Bearers of the Party, Party MPs, Party MLAs and District Party Presidents and the remaining members shall be elected from the State Committee. This Committee shall have the absolute authority in taking decisions on all administrative, disciplinary and organizational matters of the Party.” On the other hand, the Ld. Senior Counsel representing the Respondent has submitted that the Petitioner has to show that he enjoys a majority*

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support in the State Committee of KC(M) to establish that he represents the Party. He has relied on clauses (1) and (8) of Article XVI of the Party Constitution which states as follows-

(1) "A Committee of the party at any level shall be under the control of the State Committee and shall be subordinate to the said committee."

(8) "The State Committee shall be sovereign body of the Party..."

It is pertinent to note that this Commission in *Sh. E. Madhusudan & Ors Vs. Smt. V.K. Sasikala & anr (AIADMK case- Dispute 2 of 2017)* had held that "... the Commission will look into the relative strength of the two groups in the apex representative body of the organizational structure of the Party as provided for in the Party Constitution." In the present dispute case, on the basis of the above- mentioned provisions laid down in the Constitution of KC(M), it is clear that is the State Committee which is the apex representative body of the Party. Therefore, the Commission will consider the State Committee of KC(M) as the 'Organizational Wing' of the Party for the purposes of deciding this dispute."

**94.** In the order dated 25.11.2017 passed in the **Janata Dal (United) Dispute Case**, the Commission had taken the "National Council" of the Party as the organizational wing of the Party. In this case, both the rival factions had accepted that it was the National Council, as per the provisions of the Party Constitution, which was fairly representative of the primary members of the Party.

**95.** In the order dated 27.11.2011 passed in the **Uttarakhand Kranti Dal Dispute Case**, the Commission had examined the Party Constitution of UKD to arrive at the conclusion as to what constituted the apex representative body. Relevant extract of the order is reproduced here below:

*"25. As per the Constitution of the UKD, there are two apex representative bodies/ committees of the Party, viz., Kendriya Samiti and Karya Samiti. As per article 11 of the party constitution, the Kendriya Samiti consists of 101 members including the President of the Party, and as article 12 of the Constitution, the Karya Samiti consists of 32 members including the Party President [...]"*

*"29. As regards the organizational wing of the Party, the only apex representative body of the Party whose list of office- bearers/ members is on the record of the Commission prior to the dispute between the two groups is*

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the Karya Samiti. A list of 56 members of the Karya Samiti was submitted with the letter dated 6th December, 2010 of the Party. Sh. Trivendra Singh subsequently submitted another list of Kendriya Karyakarini (dated 06-12-2010), after the conclusion of the hearing on 23-09-11. This list contains 72 names. However, the list submitted after the hearing can not be taken into account as this was not submitted at any earlier point of time, particularly before the start of the dispute. Thus, the relevant list is the one submitted on 06-12-10 containing 56 names.”

96. In the order dated 16.10.1994 passed in **Janata Dal Dispute Case**, the Commission had observed that the test of organizational majority will be applied with respect to the National/ State level body of the Party. Relevant extract of the order is reproduced here below:

*“36. Insofar as the application of test of majority in the organisational wing of the party is concerned, it is true that it is the primary members who constitute the party but it is also equally true that it is well-nigh impossible to ascertain the relative strength of the primary members whose numbers may run into lakhs in the case of a National party, supporting one or the other rival sections or groups of the party in the case of the split. Therefore, the Commission has been applying this test of majority in respect of the bodies/committees forming the organisational wing of the party at the National or State levels. In several cases even an exercise of such limited nature has resulted in a quagmire. The same consideration will weigh while considering the relative claims of both the groups in the organisational wing of the Janata Dal before the emergence of these two groups in June, 1994. Any later developments leading to the constitution or reconstitution of any committees/bodies at the various levels by the two rival groups may not lead us anywhere.”*

97. Even in the landmark case of **Sadiq Ali (supra)** relating to the split in Indian National Congress, the Commission had restricted the test of organizational majority to the members of the All India Congress Committee (AICC). The Hon'ble Supreme Court had affirmed the same and held that the AICC members could be legitimately considered that AICC delegates reflected by and large the views of the primary members. The Hon'ble Court therein had further observed that while the Working Committee of the Party took the administrative and political decisions, it could not veto the decisions of the AICC

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and that all the major decisions taken by the Working Committee had to be placed before AICC for ratification.

**98.** Thus, the Commission has to look into the majority support enjoyed by the rival factions in the apex representative body of the Party as provided in the Party Constitution. During the course of oral arguments as well as in the final written submission dated 15.12.2023, the Respondent has claimed that it is the “National Working Committee” of NCP which is the apex body of the Party. As per the provisions of the Party Constitution, Article 21 provides for “Nationalist Congress Party Working Committee (NCP-WC)”. Sub-article (iii) of Article 21 of the Party Constitution states that *“The WC shall be the highest executive authority of the Party and shall have the power to carry out the policies and programmes laid down by the Party and by the NC and shall be responsible to the NC. It shall be the final authority in all matters regarding interpretation and application of the provisions of the Constitution.”* Sub- article (vi) of Article 21 of the Party Constitution further states that:

*“(vi) The WC shall have the power:*

- (a) To frame rules for the proper working of the organisation. Such rules shall, as early as possible, be placed for the consideration of the NC;*
- (b) To issue instructions not inconsistent with the Constitution and frame rules in all matters not otherwise provided for;*
- (c) To superintend, direct and control all SCs/ UTCs and Subordinate Committees as well as the Reception Committee;*
- (d) To take such disciplinary action as it may deem fit against a Committee other than the NC or an individual;*
- (e) In special case, to relax application of provisions under Article 6(i), (ix) and (x); and Article 9(ii) and (iii).”*

With regard to the composition of the NCP-WC, it is relevant to refer to sub-article (i) of Article 21 which states as follows:

*“(i) The WC shall consist of the President of the Party, Leader of the Party in Parliament and 23 other members, of whom 12 members will be elected by the NC, as per rules prescribed by the WC and the rest shall be appointed by the President [...]”.*

**99.** A perusal of the aforesaid provision shows that the Working Committee of NCP is the apex body and is responsible for all major executive decisions of the

Party. Further, certain members of the body have ex-officio membership to the body such as the Party President and the Leader of the Party in Parliament, 12/23 other members are to be elected by the National Committee of the Party while the rest 11 are appointed by the President. Further, as explained in the subsequent paragraphs, it will be seen that no details of election of working committee members by the National Committee was brought on record of the Commission and a communication dated 15.09.2022 from Sh. Praful Patel, the then National Vice- President of NCP explicitly shows that the names of all the members of the working committee were “announced” by Sh. Sharad Pawar after his election at the National Convention held on 10<sup>th</sup> -11<sup>th</sup> September, 2022.

**100.** Another body of the Party which was considered by the Commission in applying the test of majority in order dated 08.03.2004 passed in the previous dispute case of NCP was the “National Committee”. The relevant provision in the Party Constitution is Article 14 which is reproduced here below:

**“Article 14 : Nationalist Congress Party National Committee (NCP-NC)”**

1. *The National Committee of the Party shall consist of :-*
  - (i) *One tenth of the number of members of the SC elected by them from amongst themselves by proportional representation according to the system of single transferable vote, provided that the number is not less than five; however four members each shall be elected from Chandigarh, Andaman Nicobar, Dadra Nagar Haveli, Daman & Diu and Lakshadweep UTCs;*
  - (ii) *President of the Nationalist Congress Party*
  - (iii) *Ex-Presidents of the Party who have completed a term of 365 days and have continued to be Active members of the Party;*
  - (iv) *Presidents of the SCs, provided that they shall not be eligible to become office-bearers of the N.C.*
  - (v) *Leader of the Nationalist Congress Party in Parliament;*
  - (vi) *Leaders of the Nationalist Congress Party in the Legislatures and Leaders of the Councillors in Union Territories and Metropolitan Councils:*

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(vii) 15 members elected by the Nationalist Congress Party in parliament according to the system of single transferable vote;

(viii) Members co-opted by the WC from special elements not adequately represented and others in accordance with the rules prescribed by it;  
2.

(i) The President of the Nationalist Congress Party, shall be the President of the N. C.;

(ii) The NC shall arrange for the implementation of the programme of the work laid down by the Party and shall have powers to deal with matters and situations that may arise during its term of office;

(iii) The NC shall have power to frame rules, not inconsistent with this Constitution for regulating all matters connected with the Party which shall be binding on all subordinate Party Committees;

(iv) The NC shall meet as often as required by the WC but not less than twice a year, or on a joint requisition addressed to the WC by not less than 20% of the total 4 number of NC members having full voting rights. Such requisition shall specify the purpose for which the requisitionists desire a meeting of the NC. A requisitioned meeting shall be held within two months of the receipt of the requisition provided that not more than, one requisition can be moved in one year. At any requisitioned meeting, additional items of business may be brought up by the WC for consideration;

(v) At all the meetings of the NC, other than requisitioned meetings, at least two hours shall be allotted for consideration of propositions of which due notice has been given by the members of the NC in accordance with the rules prescribed in that behalf;

(vi) One hundred or one-fifth of the total number of members, whichever is less, shall form the quorum for the NC meeting;

(vii) Every member of the NC shall pay an annual subscription of Rs.100/- and collect Rs. 200/- for the Party: Fund within three months of his/her election to the NC and deposit it with the NC and shall obtain a receipt thereof. He/she shall receive a certificate of membership, duly signed by one of the Secretaries of the NC. Any member who fails to pay subscription or collect the fund within the period - stipulated, shall forfeit the right to take part in any of the meetings of NC, Subjects Committee or any National Convention till such dues are cleared up;

Note: A member of NC need not collect fund for the SC also.”

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**101.** With respect to the National Committee, the Respondent claimed support of 337 out of 592 members in the final written submission. As seen from the details provided therein, 306/553 are claimed to be "elected members from the State Committees". In the final written submission filed by Sh. Mukul Rohatgi, Ld. Senior Counsel for the Petitioner, it has been stated that nothing has been brought on record to show that election to the National Committee of NCP was held.

**102.** This Commission examined the provisions pertaining to constitution of various bodies from the block level to the national level. The said provisions are reproduced here below:

**"Article 9: Constitution and Jurisdiction of Subordinate Committees**

*The constitution and jurisdiction of the committees subordinate to District Committees like Block/Constituency Committee, Panchayat/ Town area or City Division Committee/ Primary Committee will be decided by the State Committee as per the Rules of the Party."*

**"Article 10: District Committees**

*A district Committee shall cover an area prescribed by the SC in its Constitution and shall consist of:*

- (i) **Six members elected by secret ballot by each Block/Constituency Committee as per rules prescribed by WC;**
- (ii) *All ex-Presidents of the District Committee who have completed a term of 365 days and have continued to be active members;*
- (iii) *Members of the SC who reside in or have been elected from the district;*
- (iv) **Presidents of the Constituency/ Block Committees, provided that they shall not be eligible to become either President or Secretary of the District Committee;**
- (v) *Members of the Legislature Parties of the Nationalist Congress Party, both Central and State, from the district, provided that they are active members;*
- (vi) *Leaders of the Party in Municipal Corporations, Municipalities and District Boards/ Zilla Parishads or Janpads in the District, provided that they are active members;*
- (vii) *Members co-opted by the District Committee as per rules prescribed by the WC.*
- (viii) *The District Committee shall elect from among its members an executive committee consisting of 15 members including the President and other Office Bearers."*

**"Article 11: Regional Committees of NCP**

*Regional Committees of NCP will have jurisdiction over the area demarcated by the Working Committee and shall consist of:*

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1. Delegates elected to the State Committees from each of the Constituency Committees within the region.
2. All Ex-presidents of the Region who have completed a term of 365 days and continue to be active member of the Party.
3. Members of the Working Committee who reside within the region.
4. **Presidents of Constituency/Block Committees in the region.**
5. Members of the Legislature parties of NCP both in the Parliament and in the Assembly from the Region.
6. Leaders of the Municipal corporations, Municipalities, Zila Parishads and **District Councils of the Party.**
7. Members co-opted by the Executive Committee of the Region from special elements not adequately represented and others in accordance with the rules of the Party.

**All the members except the co-opted members will have the right to vote but only the delegates elected from constituency/ Block Committees will be eligible to be elected as President or as other office bearers of the party.**

The Regional Committee shall elect from among its members an Executive Committee consisting of 21 members including the President and other office bearers.”

**“Article 12: Nationalist Congress Party State Committee:**

The State Committee shall consist of: -

1. **Delegates elected from the constituency/Block Committees according to the number of voters in the Assembly Constituency as hereunder:**

Constituencies with a voters' strength of 50,000 and below electing one delegate and those with a voters' strength above 50,000 and upto 1,00,000 electing two delegates and those with a voters' strength of above 1,00,000 electing three members. The constituencies that come under the three categories will be decided by the State Committee on the basis of the number of voters in the voters list of each constituency.

An Active member ordinarily residing or having his/her place of business, occupation or profession within the area of the S.C. would be eligible to be a candidate for election as delegate from any Assembly/Block Committee within the area of the said SC provided that

- (a) Conditions and conduct of elections will be in accordance with the rules prescribed by the WC;
- (b) In the following States and Union Territories, the number of elected members of the SC/UTC shall be equal to the number of Members of the State/Territorial Legislative Assembly: (1) Arunachal Pradesh, (2) Goa, (3) Manipur, (4) Meghalaya, (5) Mizoram, (6) Nagaland, (7) Pondicherry, (8) Sikkim and (9) Tripura
- (c) From the UTCs of Andaman Nicobar Islands, Dadra- Nagar Haveli, Daman and Diu, Lakshadweep and Chandigarh Territories, there shall be twenty five members each;
- (ii) Ex -presidents of the SC who have completed a term of 365 days and who continue to be Active members;

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- (iii) **Presidents of the District Committees provided that they shall not be eligible to become either President or Secretary of the SC;**
  - (iv) WC members who reside in the State;
  - (v) Members elected by the Legislature Party of the Nationalist Congress Party at the rate of 5% of the number of SC/UTC members subject to a maximum of 15;
  - (vi) Members who are co-opted by the SC from special elements not adequately represented and others in accordance with the rules prescribed by the WC
  - (vii) The State Committee shall from amongst its members elect an Executive Committee consisting of 10% of the total number State Committee members in each state subject to a minimum of 21 members including the President and other Office Bearers
- [...]"

**"Article 13: Delegates: to the National Convention**

All members of the State Committee shall be delegates to the National Convention of the Party."

**"Article 14: Nationalist Congress Party National Committee (NCP-NC)**

1. The National Committee of the Party shall consist of: -

- (i) **One tenth of the number of members of the SC elected by them from amongst themselves by proportional representation according to the system of single transferable vote, provided that the number is not less than five; however, four members each shall be elected from Chandigarh, Andaman Nicobar, Dadra Nagar Haveli, Daman & Diu and Lakshadweep UTCs;**
- (ii) President of the Nationalist Congress Party
- (iii) Ex-Presidents of the Party who have completed a term of 365 days and have continued to be Active members of the Party;
- (iv) **Presidents of the SCs, provided that they shall not be eligible to become office-bearers of the N.C.**
- (v) Leader of the Nationalist Congress Party in Parliament;
- (vi) Leaders of the Nationalist Congress Party in the Legislatures and Leaders of the Councillors in Union Territories and Metropolitan Councils; (vi) 15 members elected by the Nationalist Congress Party in parliament according to the system of single transferable vote;
- (vii) Members co-opted by the WC from special elements not adequately represented and others in accordance with the rules prescribed by it;

2.(i) The President of the Nationalist Congress Party, shall be the President of the N.C.;

[...]"

**"Article 20: Election of the President:**

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- (i) The Chairman of the Central Election Authority will be ex- officio Returning Officer for the election of the President;
- (ii) **Any ten delegates may jointly propose the name of any delegate for election as President of the Nationalist Congress Party. Such proposals must reach the Returning Officer on or before the date fixed by the WC;**
- (iii) The Returning Officer shall publish the names of all persons so proposed and it shall be open to any person whose name has been so proposed to withdraw his/her candidature within seven days of publication of the proposed names by writing to the Returning Officer to that effect;
- (iv) After eliminating the names of those who have withdrawn, the Returning Officer shall immediately publish the names of the remaining candidates and circulate them to the SCs. If after elimination, there remains only one candidate, he/she shall be declared duly elected as President of the Party;
- (v) On a date fixed by the WC which shall not ordinarily be less than seven days after the final publication of the names of the contesting candidates, each delegate shall be entitled to record, for the election of a President, his vote in the following manner: On the voting paper which shall exhibit the names of the candidates, the delegate shall, if there are only two candidates, record his/her vote for one of them. If there are more than two candidates, the delegate shall record at least two preferences by writing the figures 1, 2 etc., against the names of the candidates voted for. In such a case, he/she may give more than two preferences but any voting paper showing less than two - preferences will be regarded as invalid. The voting paper shall be deposited in a ballot box provided for the purpose;
- (vi) The SCs shall immediately forward the ballot boxes to the NC.
- (vii) As soon as may be after the receipt of the ballot-boxes, to the Returning Officer shall count the votes of the first preferences recorded for each candidate. If a candidate secures more than 50% of the votes of the first preferences, he/ she shall be declared elected as President. If no candidate secures more than 50% of the first preferences, the candidate who secures the smallest number of first preferences shall be eliminated and the second preferences recorded by the voters who gave him/her the first preferences shall be taken into account in counting the votes of remaining candidates. In this counting, the candidate who secures the smallest number of votes shall be eliminated. By this process of eliminating the candidates who secure the smallest number of votes in subsequent counting after the transfer of votes according to recorded preferences, the candidate who secures more than 50% of the votes shall be declared elected as President;
- (viii) In the event of any emergency by reason of any cause such as the death or resignation of the President elected as above, the senior most General Secretary will discharge the routine functions of the President until the WC appoints a provisional President pending the election of a regular President by the NC;

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(ix) *The President shall preside over the National Convention of the Party held after his/her election and during his/her term of office, he/she shall exercise all the powers of the WC when it is not in session.*”

**“Article 21: Nationalist Congress Party Working Committee (NCP-WC)**

(i) *The WC shall consist of the President of the Party, Leader of the Party in Parliament and 23 other members, of whom 12 members will be elected by the NC, as per rules prescribed by the WC and the rest shall be appointed by the President. The President shall appoint a Treasurer and one or more General Secretaries from amongst the members of the WC. The President will have power to appoint one or more Secretaries/Joint Secretaries from elected members of the NC. The Secretaries/ Joint Secretaries will discharge the duties as may be assigned to them by the President. Ordinarily, Members of the WC will be appointed from amongst the members of the NC but in special cases, delegates who are not members of the NC may be appointed, provided however that a delegate so appointed shall cease to be a member of the WC if he/she is not elected as member of the NC within six months of appointment;*

*[...]*”

**103.** The crux of the aforesaid provision shows that the delegates from the Block Committees *inter alia* form the membership of the State Committee. Further, one tenth of the members of the State Committee form part of the National Committee. In addition, all Presidents of the State Committees also form part of the National Committee. Furthermore, all members of the State Committees also automatically become delegates to the National Convention. From among these delegates, ten proposers are required to propose the name of another delegate as a candidate for the election to the post of the NCP President. Therefore, the constitution of NCP envisages a pyramidal hierarchy where the existence of the higher-level body is dependent upon the existence of the lower-level body.

**104.** During the course of hearing, Sh. Maninder Singh, Ld. Senior Counsel for the Petitioner, had referred to the principle of “*sublato fundamento cadit opus*” i.e., once the foundation is destroyed, the entire structure collapses, to make his submission that no valid or legal election took place in NCP and consequently, the test of organizational majority could not be applied in the present case.

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105. It is also relevant herein to refer to certain timelines which relate to the last organizational election held in NCP in the year 2022.

- In the circular no. PS/CB/057 dated 17.06.2022 issued by Sh. T.P. Peethambaram Master, the then General Secretary of NCP, the election to various levels of organizational bodies of NCP was *inter alia* as follows:

*-Primary unit committees and the delegates*

*to the Mandal Town Area Committees 30.8.22*

*-Mandal Town Area Committee*

*and the delegates to the Block Constituency Committees 4.9.22*

*-Block Constituency Committee*

*and the delegates to the District and*

*State Committees and the delegates*

*to the National Committee 4.9.22*

*-District Committees- 14.09.2022*

*-Regional Committees- 17.09.2022*

*-State Committees and the members of*

*the State Executive and the members*

*of the National Committee- 22.09.2022*

- A communication dated 27.07.2022 received from Sh. Praful Patel, the then National General Secretary of NCP mentions that the eighth national convention of the NCP has been scheduled to be held on 11.09.2022 in Talkatora Stadium, New Delhi. Thus, while the earlier communication of 17.06.2022 provided for the election to State Committee and the National Committee to be held on 22.09.2022, the National Convention, where the delegates are the members of the State Committee, was scheduled to be held on 11.09.2022 i.e., before the election of the State Committee members.
- Another circular bearing no. PS/CB/063 dated 05.08.2022 was issued by Sh. T.P. Peethambaram Master, the then General Secretary of NCP, whereby

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it was mentioned that *“All the State Committee Members to be elected at the meetings of the Block/ Assembly Constituency Committees of the party to be held on 29.08.2022 (Three from each constituency) are the delegates of the National Convention. All the delegates are requested to reach Delhi sufficiently early so as to attend the session on time on 11th September, 2022.”*

- Another communication dated 24.08.2022 issued by Sh. Praful Patel, the then National General Secretary of NCP, stated that *“this is to inform you that the Eighth National Convention of the Nationalist Congress Party has been scheduled to be held on 11th September 2022 at Talkatora Stadium in New Delhi which will start at 10.10 am.”*
- A communication dated 27.08.2022 was received from Sh. T. P. Peethambaran Master, the then Central Returning Officer of NCP, wherein it was mentioned that the voting will take place for the position of National President on 10.09.2022. Thus, while the communication dated 05.08.2022 mentioned that the delegates to the National Convention are to reach Delhi on 11.09.2022, the date of voting by delegates for election of National President is informed to be 10.09.2022 as per the later communication dated 27.08.2022.
- Moreover, as per the rules of Nationalist Congress Party, it is provided that *“filing of nomination shall commence only after ten days of the notification calling for nomination”*. However, the above communication dated 27.08.2022 mentions that the last date for submitting the nomination is 01.09.2022 at 3 pm.
- Further, as per the proceedings of the Central Returning Officer, Nationalist Congress Party dated 01.09.2022, the Respondent had been unanimously elected as Party President on 01.09.2022. It was further stated therein that:  
*“Nomination papers proposing the name of the National President of the Nationalist Congress Party from the following States have been received.*

1. From Punjab State NCP
2. From Kerala State NCP

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3. From Uttar Pradesh NCP
4. From Maharashtra State NCP
5. From Gujarat State NCP
6. From Delhi State NCP
7. From Tamil Nadu State NCP
8. From Bihar State NCP
9. From Uttarakhand State NCP

*On perusal all the nominations are found to be in order. So all the nominations are accepted. All the Nomination papers have proposed the name of Shri Sharad Pawar as the National President of the Nationalist Congress Party. There is no other name proposed for the post so far.*

*So Shri Sharad Pawar is unanimously elected as the National President of the Nationalist Congress Party.*

*5.00 P.M., 1st September 2022”*

- In the letter dated 15.09.2022, with the subject “*Report on the completion of Organizational Elections of the Nationalist Congress Party*” issued by Sh. T.P. Peethambaram Master, the then General Secretary-cum-Chairman, Central Election Authority of the Party, to the Secretary, Election Commission of India, it was stated that a National Convention had been held “yesterday” wherein the organizational elections of the Nationalist Congress Party had been completed. In the chart enclosed with this communication, it has been mentioned that the Respondent was elected as the Party President. Relevant extract of the above-mentioned letter is reproduced here below:

*“The election process of the organizational elections of the Nationalist Congress Party has been completed by yesterday.”*

*“The national delegate conference of the National Convention of the Nationalist Congress Party held yesterday at Talkatora Stadium under the presidentship of Shri Sharad Pawar has completed the organizational election process of the Party.”*

*“The details of the elected president and other office-bearers are given in the format attached for your information.”*

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- Further, in the aforesaid communication dated 15.09.2022, a tabular chart with the heading “Information regarding Organizational Elections of various Parties” was enclosed wherein it was stated that the number of delegates who attended the meeting/ session/ conference converted in connection with the election as “558”. However, no details of these 558 delegates who played a vital part in the organizational election process was provided. It was rightly pointed out by the Ld. Counsels representing the Petitioner that the aforesaid details were brought on record for the first time *vide* reply dated 01.11.2023 filed by the Respondent.
- Lastly, a press release dated 16.09.2022 issued by Sh. S.R. Kohli, the then Permanent Secretary & Member Working Committee of NCP, stated that “*in the National Convention of Nationalist Congress Party held on 10-11 September 2022, Shri Sharad Pawar was elected unanimously as the National President of NCP*”.

**106.** Another communication dated 15.09.2022 issued by Sh. Praful Patel, the then National Vice- President of NCP, which was brought on record of the Commission during the present dispute case states as follows:

*“Attached herewith please find the list of National Office Bearers, National Secretaries, Spokespersons, Working Committee Members including Permanent Invitees to Working Committee, State/ UT Presidents/ Convenors. Frontal Organisations, Departments, Observers and Coordinators and Allocation of Work to General Secretaries of NCP, decision of which has been taken during the National Convention held on 10-11 September 2022 in New Delhi, which has been duly approved by the National President, Nationalist Congress Party, Shri Sharad Pawar.”*

The above communication was enclosed with a notification which mentioned as follows:

*“In the National Convention of Nationalist Congress Party held on 10-11 September 2022, Shri Sharad Pawar was elected unanimously as the National President of NCP. He was then authorised to announce the names of National Office Bearers of the Party along with Working Committee Members, Permanent Invitees, State Presidents, Frontal Organisations, Departments, etc., which under his instructions and approval are as follows [...]*”

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Based on the said communication, as in the preceding para, most of the positions, including the members of the working committee, which is the apex body, were filled by way of appointments rather than elections. Here it is pertinent to mention that no record was produced regarding elections of 12 members of the working committee as provided in Article 21 of the constitution of the party.

**107.** Further, during the course of hearing, Sh. Devadatt Kamat, Ld. Senior Counsel for the Respondent had sought to counter the discrepancies pointed by the Petitioner regarding the organizational elections by submitting that the election of the National President and the holding of National Convention were separate and that the National Convention had nothing to do with the election of the National President. The said argument has also been made in the written submission submitted by the Ld. Senior Counsel.

**108.** This Commission carefully considered the aforesaid submission and examined the relevant provisions of the Party Constitution.

- At first, Article 13 of the Party Constitution states that the delegates of the National Convention are members of the State Committee. The said provision is reproduced here below:

*“Article 13: Delegates: to the National Convention*

*All members of the State Committee shall be delegates to the National Convention of the Party.”*

- Article 20(ii) of the Party Constitution states that the candidate for the position of President of NCP shall be a delegate and his/ her candidature is to be proposed by ten delegates. The said provision is reproduced here below:

*“Article 20: Election of the President:*

*[...]*

*(ii) Any ten delegates may jointly propose the name of any delegate for election as President of the Nationalist Congress Party. Such proposals must reach the Returning Officer on or before the date fixed by the WC;”*

Thus, it appears that the persons who are delegates of the National Convention are the party members who not only propose the name of the candidate for the

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position of NCP President but also only a delegate himself is eligible for such a position.

**109.** Even in the communication dated 27.08.2022 received from Sh. T.P. Peethambaran Master, the then Central Returning Officer of NCP, with the headline "*Notification for the Election of the National President of Nationalist Congress Party*" it is mentioned that "*Nominations are invited from the National Delegates elected from the different states and union territories of the Party in the Organizational Election of 2022.*"

**110.** In addition to the above, it is also relevant to once again refer to the communicated dated 15.09.2022 received from Sh. T.P. Peethambaran Master, the then Chairman of the Central Election Authority of NCP, which mentions "report on the completion of organizational elections of the Nationalist Congress Party" as the subject line. Herein, it is explicitly mentioned that the National Convention completed the organizational elections of the Party including the election of the Party President. Relevant extract of the same is reproduced here below:

*"The national delegate conference of the National Convention of the Nationalist Congress Party held yesterday at Talkatora Stadium under the presidentship of Shri Sharad Pawar has completed the organizational election process of the Party.*

*The details of the elected president and other office bearers are given in the format attached for your information."*

**111.** Moreover, in the notification enclosed with the communication dated 15.09.2022 received from Sh. Praful Patel, the then National Vice- President of NCP, the following is stated:

*"In the National Convention of Nationalist Congress Party held on 10-11 September 2022, Shri Sharad Pawar was elected unanimously as the National President of NCP."*

**112.** Lastly, a press release dated 16.09.2022 issued by Sh. S.R. Kohli, the then Permanent Secretary & Member Working Committee of NCP, stated that "*in the National Convention of Nationalist Congress Party held on 10-11 September 2022, Shri Sharad Pawar was elected unanimously as the National President of NCP*".

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**113.** In light of the provisions reiterated in the preceding paragraph as well as the aforesaid communications issued by the Party itself, there is no doubt that the election of the National President is linked to the National Convention.

**114.** The conclusion arrived at by this Commission after carefully considering the above communications issued by the Party was that no details emerged with respect to whether the elections at the lower level such as the Block Committee, the District Committee, the State Committees were even held which was a requirement for constituting the National Committee and convening of the National Convention as per the provisions of the Party Constitution. Further, the last communication mentioned above, dated 15.09.2022, shows that most of the office-bearers including State Presidents (Presidents of the State Committees) were appointed at the alleged National Convention with the approval of the Respondent, the then Party President. The doubts over the holding of the organizational elections were raised during the course of hearing by the Ld. Counsels appearing for the Petitioner, however, no substantive documents were placed on record to alleviate such doubts.

**115.** Though the Respondent claimed that he enjoyed a majority in various organizational bodies of NCP, nothing was brought on record to show as to when the elections of the Block Committees, State Committees, National Committees were actually held. Mere communication of the election of the National President, which itself is fraught with multiple dates of election as discussed in preceding paragraphs, and submitting affidavits of support of persons of organizational wing without removing the doubts over their very credentials would not yield a reliable determination.

**116.** On behalf of the Respondent too, it was contended that the Petitioner and his supporters have violated the Party Constitution on multiple occasions and that organizational appointments were made in unconstitutional manner. It was argued that neither the alleged election of the Petitioner as Party President by MLAs was as per the Party Constitution nor the alleged open National

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Convention was called as per the Party Constitution. The relevant provisions relating to election of the Party President and holding of National Convention has already been mentioned in the preceding paragraphs and are thus not reiterated for the sake of brevity. Although, the validity of the said election or the convention is not an issue to be determined by this Commission in the present dispute case, this Commission is of the considered view that the aforesaid action of the Petitioner firmly indicate that the Petitioner's faction was also not acting as per the provisions of the Party Constitution and assessing the organizational support based on their claim will be futile.

**117.** In the Shivsena order, this Commission had examined in detail the relationship between the Party Constitution and the running of the Party Organization. It was held therein that:

*"135. The requirement for a written Constitution of political parties and an undertaking to the effect that such Constitution adheres to the norms of democracy prescribed in the Constitution of India is meant to promote inner party democracy. The need for such democratic organisational structure of a political party is often realised not in the heydays but when an internal dispute arises. An organisation ought to have its own mechanism to deal with internal disputes. A political organisation that is performing the difficult role of aggregating the often-differing aspirations of the people that it seeks to represent by democratic contest ought to give much more importance to internal democratic structures which have the ability to resolve disputes democratically. The Constitutions of political parties ought to provide for free, fair and transparent elections to the posts of office bearers and a further free and fair procedure for the resolution of internal disputes. These procedures ought to be difficult to amend and should be amendable only after ensuring a larger support of the organisational members for the same. The very survival and sustenance of the party depends on this. Yet, the party Constitutions are often amended to allow for its self-destruction by obliterating the internal democratic mechanisms."*

*"136. In the absence of such democratic internal structures, internal disputes are bound to create rifts and factions leading to determination of the question by the Election Commission under the Symbols Order. However, by the time a dispute comes to the Commission, the Party Constitutions are often seen to have been mutilated to undemocratically appoint people from a coterie as office bearers without any election at all. Such party structures fail to inspire confidence of the Commission*

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*and the Commission is forced to ignore the numerical strength of opposing factions in the Organisational Wing altogether despite being conscious of its importance and role as the building block of the party. This seemingly unjust situation is often a creation of the party itself which failed to create a robust Constitution that provides for democratic structures within the party and also to protect the Constitution when it was amended to allow undemocratic methods of appointments.”*

**118.** The Commission has time and again emphasized on the need on having a democratic running of political parties as per the provisions of the Party Constitution. This Commission holds that the Party Constitution is not merely a piece of paper which is to be submitted for registration of the Party under Section 29A of the Representation of the People Act, 1951. Rather, it is a vehicle which drives the organization. It breathes democracy into the organization and ensures that the democratic governance which runs the country is also reflected in the political parties. However, if the provisions of the Party Constitution are taken for a toss in order to run the Party in undemocratic manner, the organization begins to suffer from an internal rot.

**119.** It is reiterated that this Commission is not the platform for questioning the legality of the organizational elections and further, the Commission does not approve or disapprove of any appointments when adjudicating a dispute under Paragraph 15 of the Symbols Order. Such jurisdiction falls in the domain of the concerned civil court.

**120.** In this regard when reliance is being placed on organisational majority by a faction to allot the recognised symbol of the party, the order dated 16.10.1994 passed in **Dispute Case No. 1 of 1994** titled **George Fernandez vs. S.R. Bommai**, is recalled:

*“48. The Commission had observed in its order dated 25.01.1978 in the case of dispute in the Indian National Congress that a group or section which wants to form a rival group or section within a party must exhaust all the remedies available to it under the Constitution of the party to assert its majority and should come to the Commission if the other group has frustrated its efforts whimsically or capriciously and not in accordance with the party Constitution or democratic norms. In*

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almost all the cases of disputes in political parties with which I had the occasion to deal, allegations have been made that the disputes had arisen or splits occasioned due to the arbitrary or capricious acts of certain office bearers who were not allowing the will of majority to prevail. But in all such cases what the Commission was confronted with was some office bearers occupying or sticking to their offices by the manipulative tactics of postponing or not holding altogether the organisational elections in the party and with some adhoc committees or bodies constituted of some handful of nominated members chosen at the whim and fancy of the leaders at the top. The "Test of Majority" in such adhoc nominated bodies also becomes redundant. Firstly, such adhoc nominated bodies having been formed by the party bosses themselves will naturally consist of the favoured persons who will rarely go against the wishes of those to whom they owe their very existence in those bodies. In the next place, such nominated persons cannot be truly termed the representatives of the primary members who had no say or hand in their appointments and consequently the decisions taken by such adhoc nominated bodies, even if by majority, cannot be regarded as the decisions reflecting the wishes and aspirations of the majority of primary members. Confronted with such situation, the Commission finds itself in a helpless situation to grant relief to those who approach it seeking protection against the tyranny of the privileged few who have been treating the political parties headed by them as their fiefdom."

(Emphasis supplied)

**121.** The issue of whether an organizational election is valid or not is not to be determined by the Commission. At the same time, a faction claiming majority support in the organizational wing of the Party needs to at the very least demonstrate that members of the organizational wing are genuine representatives of the Party and not puppet appointments made by a single person or select coterie of people. The facts brought on record regarding the organizational elections in NCP in 2022 has convinced this Commission that applying the test of majority in the organizational wing of NCP would fail the very purpose of the test i.e., the support enjoyed by the factions in the rank and file of the Party.

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**122.** Thus, the Commission in the present dispute case is constrained to reject the application of test of majority in the organizational wing of the Party as the details of the organizational structure of the Party, its members and their elections appear to be without any foundational basis. As discussed above, after perusal of the Party Constitution of NCP, it was seen that the “working committee” and the “national committee” were the apex representative bodies of the Party. However, the documents brought on record of the Commission show that in the case of the working committee, the names of the members were “announced” by Sh. Sharad Pawar at the alleged National Convention held on 10th- 11th September, 2022 rather than as provided under the Party Constitution. In the case of the National Committee, nothing was brought on record to show whether the elections of the State Committee were even held as it was the State Committee members which formed the crux of the National Committee. The Commission cannot merely rely on names and numbers when the very constitution of the body in question has been disputed by the rival faction in the dispute case.

**123.** At this point, it is relevant to refer to the observations made by the Hon’ble Supreme Court in the matter of **Subhash Desai (supra)** regarding the tests which had been consistently applied by the Commission in adjudicating disputes under Paragraph 15 of the Symbols Order and the possibility of fashioning a new test. Relevant extract of the aforesaid judgment is reproduced here below:

*d. The test(s) applicable to disputes under Paragraph 15 of the Symbols Order*

**139.** Paragraph 15 stipulates that the ECI must take into account all the available facts and circumstances of the case and hear representatives of the rival groups and other persons who wish to be heard. However, neither Paragraph 15 nor the other provisions of the Symbols Order specify the test which is to be applied by the ECI in arriving at its decision as to who the political party is. Similarly, no test is excluded from application by the ECI. This means that the ECI is free to fashion a test which is suited to the facts and complexities of the specific case before it.

**140.** In *Sadiq Ali (supra)*, this Court had occasion to consider a few of the different tests that were capable of being applied in proceedings under Paragraph 15. In that case, two rival groups, Congress O and

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Congress J, emerged from the INC. While adjudicating their competing claims under Paragraph 15, the ECI considered the following tests:

- a. A test analysing the provisions of the constitution of the party;
- b. A test assessing which of the two rival groups adhered to the aims and objects of the party as incorporated in its constitution; and
- c. A test evaluating which of the two rival groups enjoyed a majority in the legislature (i.e., the Houses of Parliament as well as the Legislative Assemblies of States) and in the organisational wing of the party.

**141.** The ECI declined to apply the first test detailed above because each group had expelled members from the other group. It was of the opinion that the second test was not suited to the facts of that case because neither Congress O nor Congress J had “openly repudiated” the aims and objects of the constitution of the party. The ECI held that the third test was most appropriate to the facts of that case. Accordingly, it assessed which of the two groups constituted a majority in Parliament and in the State Legislatures, and in the organisational wing of the party. It found that Congress J enjoyed a majority in both the organizational wing and the legislative wing, and that it was entitled to utilise the symbol which had been reserved for the INC.

**142.** On appeal, this Court upheld the decision of the ECI and ruled that the ‘test of majority’ was a very valuable test in the facts and circumstances of the case:

“26. ... As Congress is a democratic organisation, the test of majority and numerical strength, in our opinion, was a very valuable and relevant test. Whatever might be the position in another system of government or organisation, numbers have a relevance and importance in a democratic system of government or political set-up and it is neither possible nor permissible to lose sight of them. Indeed it is the view of the majority which in the final analysis proves decisive in a democratic set-up.

27. It may be mentioned that according to Paragraph 6 of the Symbols Order, one of the factors which may be taken into account in treating a political party as a recognised political party is the number of seats secured by that party in the House of People or State Legislative Assembly or the number of votes polled by the contesting candidates set up by such party. If the number of seats secured by a political party or the number of votes cast in favour of the candidates of a political party can be a relevant consideration for the recognition of a political party, one is at a loss to understand how the number of seats[...] to be irrelevant.

31. ... All that this Court is concerned with is whether the test of majority or numerical strength which has been taken into account

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*by the Commission is in the circumstances of the case a relevant and germane test. On that point, we have no hesitation in holding that in the context of the facts and circumstances of the case, the test of majority and numerical strength was not only germane and relevant but a very valuable test.”*

143. Subsequent to the decision in Sadiq Ali (supra), the Election Commission consistently applied the test of majority in the legislative and organisational wings of the party to disputes under Paragraph 15. However, neither the Symbols Order nor Sadiq Ali (supra) indicates that this is the only or even the primary test to be applied while determining disputes under Paragraph 15. The ECI may apply a test which is suitable to the facts of the particular dispute before it. It need not apply the same test to all disputes, regardless of the suitability of the test to those facts and circumstances.”

(Emphasis supplied)

124. As observed by the Apex Court in Subash Desai(supra) regarding the possibility of applying a new test, the same issue was posed to the Petitioner and the Respondent. However, both have proceeded to argue their case within the confines of the existing tests. In view of this and the factual matrix of this case, the Commission decided to continue the test applied consistently over the past decades i. e. the test of majority which has stood the test of time.

125. The Commission will now proceed to determine the present dispute case on the basis of the majority support enjoyed by either of the factions in the legislative wing of the Party. However, before this, we have to deal with the contention of the Respondent regarding non-applicability of ‘test of majority’ in the legislative wing of the Party in cases where proceedings under the Tenth Schedule of the Constitution are pending against the legislators.

126. On behalf of the Respondent, emphasis was placed on the constitution bench judgment of **Subhash Desai (supra)** and it was contended that the Hon’ble Court had expressed reservation on the application of test of majority in the legislative wing of the Party when proceedings under Tenth Schedule of the Constitution was pending against the legislators before the Hon’ble Speaker of the House. Past experiences of symbol dispute cases show that filing of

disqualification proceedings under the Tenth Schedule is a common occurrence when a Party splits into two since each faction tries to take action against the members of the rival faction. Similarly, even in the organizational wing, suspensions and expulsions by either of the faction against supporters of the opposite faction is a usual affair.

**127.** The constitution bench of the Hon'ble Supreme Court in the matter of **Subhash Desai (supra)** had made the following observations:

***"d. The potential for complications in the present case***

**144.** *In the present case, in late June 2022 and in the first week of July 2022, members of each faction filed petitions for the disqualification of members of the opposing faction under the Tenth Schedule. On 19 July 2022, Mr. Shinde filed a petition before the ECI under Paragraph 15 of the Symbols Order, claiming that the faction led by him constituted the "real" Shiv Sena and that it should therefore be allotted the symbol of the Shiv Sena (the 'bow and arrow').*

**145.** *When the Tenth Schedule and the Symbols Order are invoked concurrently, complications may arise, including in cases such as the present one. If the ECI applies the 'test of majority,' it will be required to consider (among other things) which of the two factions enjoys a majority in the Maharashtra State Legislature. Therefore, which faction has a majority in the House will have some bearing on the outcome of the proceedings before the ECI. Whether or not a particular faction has a majority in the legislature will depend on whether members from that faction have incurred disqualification. For example, we may illustratively consider a case where Party X has a hundred seats in the Legislative Assembly of a state. Two factions, Group A and Group B, emerge. The former consists of sixty MLAs and the latter consists of the remaining forty. Members of each group file disqualification petitions against members of the other group. The ECI is called upon to decide which group is Party X under Paragraph 15 of the Symbols Order. In terms of the law as it currently stands, there are two possible outcomes:*

*a. The ECI renders its decision prior to the Speaker. It observes that Group A enjoys a majority in the legislature. This has a significant bearing on its decision although it is not the only factor which is considered. Group A is adjudicated to be Party X and is awarded the symbol; or*

*b. The Speaker renders their decision prior to the ECI. They disqualify some or all the members of Group A for violating the anti-defection law. While adjudicating the petition under Paragraph 15 of the Symbols Order, the ECI (after taking into account the disqualification incurred by some or all of Group A)*

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notes that Group A does not enjoy a majority in the legislature. Once again, this has a significant bearing on its decision although it is not the only factor which is considered. Group B is adjudicated to be Party X and is awarded the symbol.

**146.** The outcome of the dispute before the ECI may change depending on the outcome of the disqualification petitions. It is precisely this complication which the petitioners seek to guard against. The petitioners urge that when proceedings under Paragraph 15 of the Symbols Order and the Tenth Schedule have arisen concurrently, this Court ought to lay down a 'constitutional sequence' for the proceedings. They submit that proceedings under the Tenth Schedule must be adjudicated before the dispute under Paragraph 15 of the Symbols Order is determined, and that a symbol can be allotted only after "the final adjudication of the Tenth Schedule proceedings."

**147.** The contentions of the petitioners cannot be brushed aside. If the faction which enjoys a majority in the House is disqualified soon after being adjudicated to be the political party, the very foundation of their claim of being the political party no longer subsists. Even if they are not disqualified, the foundation of their claim (i.e., a legislative majority) is still on uncertain ground at the time of adjudication. This is not a constitutionally desirable outcome."

[...]

**150.** In arriving at this decision, it is not necessary for the ECI to rely on the test of majority in the legislature alone. In cases such as the present one, it would be futile to assess which group enjoys a majority in the legislature. Rather, the ECI must look to other tests in order to reach a conclusion under Paragraph 15 of the Symbols Order. The other tests may include an evaluation of the majority in the organisational wings of the political party, an analysis of the provisions of the party constitution, or any other appropriate test."

**151.** When this Court decided the petition in Sadiq Ali (supra), the Tenth Schedule did not form a part of the Constitution. There was no way for this Court to have anticipated the complexities that could arise on its inclusion while deciding which test was most appropriate. Regardless, this Court did not hold that the test of majority in the legislature was exclusively appropriate or even that it was the primary test. It instead found that the test was suited to the facts and circumstances of that case. As noticed in the preceding paragraphs, nothing in the Symbols Order mandates the use of a particular test to the exclusion of other tests. The ECI must apply a test which is best suited to the unique facts and circumstances of the case before it. The parties in the dispute before the ECI are free to propose a suitable test and the ECI may either apply one of the tests proposed or fashion a new test, as appropriate. This Court observed in Sadiq Ali (supra) that the test of legislative majority was a relevant test under Paragraph 15

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*proceedings in that case for two reasons: first, INC was according to the court a democratic organisation, and numbers matter in such organisations; and second, the total number of seats secured by the political party in the legislative assembly is a relevant factor for the recognition of a political party as a State or a National Party. When legislators are disqualified under the Tenth Schedule, the basis of recognition of the political party under the Symbols Order and correspondingly, one of the reasons for using the test of legislative majority itself becomes diluted. Thus, it is not appropriate to confine the ECI to the singular test of legislative majority in such situations.”*

**128.** This Commission is conscious of the aforesaid complications when disqualification proceedings under the Tenth Schedule are initiated before filing of a petition under Paragraph 15 of the Symbols Order involving the same political party. In the present case, it is pertinent to mention that disqualification petitions were filed by the rival groups against members of the opposite group under the provisions of Tenth Schedule of the Constitution after the petition dated 30.06.2023 was filed by the Petitioner under Paragraph 15 of the Symbols Order. Thus, on the date when the dispute was brought to the knowledge of the Commission, no disqualification proceeding was pending against the members belonging to either of the rival groups. In the present case, as mentioned above, the initiation of disqualification proceedings under Tenth Schedule was subsequent to filing of petition under Paragraph 15 of the Symbols Order. This Commission ought not to await the outcome of the disqualification proceedings pending before the Hon'ble Speaker of the Maharashtra Legislative Assembly for adjudicating the present symbol dispute case.

**129.** Herein, this Commission will first deal with a contention raised by the Respondent that even if the affidavits filed by the Petitioner indicates support for the Petitioner, it does not mean that the deponents no longer support the Respondent. A perusal of the affidavits of support filed by the Petitioner's faction clearly indicate that the Party has split into two factions and that the deponents have signed the affidavits in support of the faction led by the Petitioner. For instance, an affidavit dated 30.06.2023 filed in support of the Petitioner. states as follows:

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*"I say that I am a member of the Nationalist Congress Party (hereinafter referred to as "NCP") and an elected Member of (MLA)- 119- Yevla having been elected on the ticket of NCP.*

*I hereby solemnly state on oath that I repose my faith and unconditional support to Shri. Ajit Pawar and the group led by Shri Ajit Pawar, who has the backing of the majority of the senior leaders, elected members and the organisational members within the party. I further extend my unconditional support to Shri. Ajit Pawar to lead the NCP."*

(Emphasis supplied)

The aforesaid statement in the affidavit not only explicitly indicates that the Party has split into rival factions but that the deponent is supporting the faction led by the Petitioner. Similar affidavits have been filed by other legislators including those from Maharashtra Legislative Assembly and Nagaland Legislative Assembly. Thus, the argument raised by the Respondent that these affidavits do not indicate any split in the Party or unequivocal support for the Petitioner ought to be rejected.

**130.** Another contention raised by the Respondent during the course of oral hearings as well as in the written submission dated 15.12.2023 was that this Commission should not go into the legislative majority test due to the reason that a large number of Party legislators, especially those belonging from the State of Maharashtra, were elected when the Party contested the elections in alliance with other Parties. It was contended that the election of such NCP legislators was not solely on the basis of the support enjoyed by the Party among the electorate but also included support given by workers and supporters of the alliance partners. However, this Commission does not find any merit in such contention. Most political parties, particularly those which stand "recognized" under the Symbols Order have contested election in alliance with other political parties. However, in giving them the recognition as "National" or "State" Parties, the Commission looks into the determinative factors mentioned in the Symbols Order itself i.e., "the number of seats secured" and "the percentage of votes polled" in an election by the concerned Party. There is no divergence from these factors when the Party contests election in an alliance with other political

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parties. Any returned candidate gets elected on one symbol even though his Party may have had an alliance with others. In view of the above, there is no occasion for this Commission to ignore the legislative majority test on the ground that NCP legislators were elected whereby the Party had contested the election as part of an alliance.

**131.** This Commission will now examine the support enjoyed by each of the faction in the legislative wing of the Party. As per the affidavits of support filed by each of the factions in the legislative wing of the Party, their respective support is as follows:

<b>Sl. No.</b>	<b>Category of Members</b>	<b>Affidavits in support of the Petitioner</b>	<b>Affidavits in support of the Respondent</b>
<b>MEMBERS OF THE LOWER HOUSE</b>			
1.	Members of Legislative Assembly of Maharashtra	41*	15*
		*Five MLAs have given affidavits for both the sides	
2.	Members of Legislative Assembly of Nagaland	7	0
3.	Members of Legislative Assembly of Jharkhand	1	0
4.	Members of Legislative Assembly in Kerala	0	2
5.	Members of Parliament (Lok Sabha)	2*	4*
		*One MP has given affidavit for both the sides	
<b>MEMBERS OF THE UPPER HOUSE</b>			

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6.	Members of Legislative Council of Maharashtra	5	4
7.	Members of Parliament (Rajya Sabha)	1	3

**132.** Before assessing the aforesaid numbers, it is apposite to deal with the contention raised by the Respondent pertaining to calculating the value of each unit of a Member of Parliament in multiples so as to synchronize them with the value of each unit of Members of Legislative Assembly. In this regard, it is stated that the Commission has time and again taken the value of each of the MPs/ MLAs as one unit. Further, there is no authoritative method of weighing the value of a Rajya Sabha MP vis a vis the MLAs. Similarly, the MLCs are also elected using various methodologies including voting by MLAs, election by teachers/ graduates, appointments by Hon'ble Governors. Thus, making such kind of numerical co-relation between the Lok Sabha MPs, the Rajya Sabha MPs, the MLAs and the MLCs, is not feasible.

**133.** The total number of legislators, including MPs, MLAs, MLCs, belonging to the NCP stands at 81. On behalf of the Petitioner, a total of 57 affidavits of support were filed, whereas on behalf of the Respondent, a total of 28 affidavits were filed. However, as seen from the table, five MLAs and one Lok Sabha MP have submitted affidavits in support for both the factions. Even if the support of the 6 legislators (5 MLAs and 1 Lok Sabha MP), who submitted affidavits for both the factions, is taken into account for Respondent's faction, the Petitioner would still have a numerical majority with 51/81 legislators in the legislative wing of the Party, while the Respondent will have support of only 28/81 legislators.

**134.** In conclusion, it is stated that the Commission had examined the applicability of all the three tests i.e., "Test of Aims and Objectives of the Party Constitution", "Test of Party Constitution" and "Test of Majority" to adjudicate the present dispute case. *Firstly*, with respect to the Test of Aims and Objectives of the Party Constitution, it was seen that neither of the rival factions had

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Constitution and that the other side was violating it. Hence, this test was found to be failing in giving any outcome. *Secondly*, with respect to the Test of Party Constitution, it was seen that while both the rival factions had no dispute on the Party Constitution, they were not adhering to the same and thus, this test also failed to give any determinative result. *Thirdly*, the Commission once again relied on the Test of Majority to decide the present dispute case, following the precedents of past many cases. With regard to the organizational wing, it was seen that the constitution of the “apex representative bodies” of NCP, i.e., the Working Committee and the National Committee were shrouded with doubt in view of the disputed organizational elections held in the year 2022. In the absence of any coherent and substantial document brought on record which would have otherwise shown that these bodies were constituted as per the Party Constitution and thus undisputed, the Commission proceeded to determine the present dispute case on the basis of test of majority in the legislative wing. The Commission examined the affidavits of support filed by both the factions and concluded that the group led by the Petitioner enjoyed majority support among the legislators. In view of the aforesaid findings, this Commission holds that the faction led by the Petitioner, Sh. Ajit Anantrao Pawar, is the Nationalist Congress Party (NCP) and is entitled to use its name and reserved symbol “clock” for the purposes of the Election Symbols (Reservation and Allotment) Order, 1968.

**135.** Before parting with the present order, this Commission will be failing in its constitutional duties if the issue of non-transparent functioning which plagues a large number of political parties in our country is not addressed. A majority of symbol dispute cases which come before the Commission under Paragraph 15 of the Symbols Order show that political parties are either not holding regular organizational elections, or not holding them as per Party Constitution, or have amended their Constitution in such a manner that “elections” have turned into “appointments”. Such actions on the part of the political parties not only affect the Commission’s scope in applying the test of Party Constitution in adjudicating the dispute cases but also renders ineffective the application of test of majority in the organizational wing of the Party. It goes without saying that members of

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the Party's organizational structure will flow from provisions of the constitutional of the party, which provides for their election and thereafter, holding of regular democratic elections for the organizational positions.

**136.** When democratic elections get replaced by appointments or when the elections are held contrary to the provisions of the Party Constitution or when the elections are held in an opaque or obscure manner without disclosing the notifications, the electoral college, the place of election, etc, the result is that the Party becomes a private fiefdom of a single person or group of select individuals and the Party is run like a private enterprise. Such situations also lead to the party workers, who are at the bottom of the pyramidal hierarchy, to lose touch with the apex level representatives. The political parties form an important pillar on which our democratic governance stands and when this pillar is afflicted by undemocratic way of functioning, there will be reverberations in the national polity.

**137.** In absence of democratic internal structures, internal disputes are bound to create rifts and factions leading to determination of the question by the Election Commission under the Symbols Order. However, when a dispute comes to the Commission under Symbols Order 1968, invariably office bearers of the organisational structure of political parties claim numerical majority, sans the internal democratic rigour as per their respective constitutions. Thus, such party structures fail to inspire confidence of the Commission and the Commission is forced to ignore the numerical strength of opposing factions in the Organisational Wing despite being conscious of its importance and role as the building block of the party. This outcome is often a creation of the party itself, which failed to follow its own constitution. Moreover, the efficacy of the Commission is hindered in rendering decisions on party splits particularly when political parties fail to uphold transparency in documenting process of organisational elections and consequential organizational structures. Despite the Commission's repeated issuance of the advisories urging political parties to meticulously record and publicize information, compliance remains lacking. The

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repercussions of neglecting such record-keeping responsibilities often culminates in non-application of test of majority in the apex body of the party. It is imperative that political entities recognize the gravity of maintaining accurate records to ensure the integrity of the democratic process and not only document the process of election meticulously but also disclose to the various wings and workers of the party.

**138.** We hope that all political parties shall take note of the above and adopt good disclosure practices of said organisational elections within its internal structure. The Commission advises political parties to consider voluntary wider public disclosures of party constitution, amendments thereof, if any, internal electoral steps such as publication of electoral college, dates of elections, time and venue of elections of different tiers, candidates, compliant redressal mechanisms within their organisations, and list of elected office bearers etc. Such disclosures on their websites shall keep, the most valuable stakeholder of our electoral democracy, that is the electorate at large duly informed.

**139.** Before concluding, the Commission needs to give its special consideration to the peculiar time lines that the dispute occupied. By the time the pleadings ended, the 'imminence' of the General Election to Lok Sabha 2024 came into being by virtue of the Sec14A of the R P Act, 1951. Further, under Section 12 of the R P Act, the imminence of the 2024 cycle of Biennial Election to Rajya Sabha was triggered in 1<sup>st</sup> week January of 2024. The imperative of dealing with Para 15 [Symbols' Order] disputes with 'promptitude', has previously being balanced with the eventuality of imminence of polls, by providing interim option of permitting both groups/factions of a Para 15 dispute, to provide alternate name and a symbol. In this matter, no such interim occasion arose and neither of the groups/factions sought such an interim direction.

**140.** The privileges of Symbols Order are organically linked to the performance of a party in the General Elections to the House of People and / or to the Legislative Assembly of the State variously in terms of seats won or percentage of

votes received. In the matter of Amalgamation of Indian Congress (Socialist) and Nationalist Congress Party dated 4<sup>th</sup> August 1999, it was held by the Commission with respect to the general election i.e.

*“The Commission would now like to make it unambiguously clear to all parties and would like to put them on prior notice that no concession of allotment of a common symbol to any splinter group would be extended to any part in future unless that party becomes entitled to be recognised as the State party on the basis of its on poll performance under the Symbols Order, after it has been registered with the Commission under Section 29A of the R. P. Act, 1951. The recognition follows from the mandate gained at the general elections and get extinguished on the performance in the general elections.”*

**141.** In the present matter, the imminence of the Rajya Sabha Elections, which is not specifically accounted for in the above order of the Commission, becomes a special circumstance and thus requires de novo consideration in view of elections to six seats in the Rajya Sabha from Maharashtra to be notified on 8/02/24. With regard to the voting by MLAs in elections to Rajya Sabha, in particular regard, Rule 39AA of the Conduct of Election Rules, 1961, provides:

*[39AA. Information regarding casting of votes. — (1) Notwithstanding anything contained in rule 39A, the presiding officer shall, between the period when an elector being a member of a political party records his vote on a ballot paper and before such elector inserts that ballot paper into the ballot box, allow the authorised agent of that political party to verify as to whom such elector has cast his vote:*

**142.** The special circumstances, which has come into being, triggers a peculiarity as to whom the MLAs of the faction led by Respondent would show their vote in terms of provision of 39 AA of the Conduct of Election Rules, 1961 in the forthcoming Rajya Sabha Election in Maharashtra. Such circumstances create a fair and equitable case to invoke Para 18 of the Symbols Order 1961, which reads as follows:

*“Power of Commission to issue instructions and directions.  
The Commission, may issue instructions and directions-  
(a) for the clarification of any of the provisions of this Order;*

सत्यापित / Attested



जसमीत कौर/JUSMEET KAUR  
अवर सचिव / Under Secretary  
भारत निर्वाचन आयोग  
Election Commission of India  
निर्वाचन सदन/Nirvachan Sadan  
अशोक रोड /Ashoka Road  
नई दिल्ली-110001 /New Delhi-110001

- (b) for the removal of any difficulty which may arise in relation to the implementation of any such provisions; and
- (c) in relation to any matter with respect to the reservation and allotment of symbols and recognition of political parties, for which this Order makes no provision or makes insufficient provision, and provision is in the opinion of the Commission necessary for the smooth and orderly conduct of elections.”

**143.** Accordingly, by virtue of powers in Para 18 of the Symbols Order, the Commission provides a onetime option to the Respondent, for the purposes of forthcoming Election to Rajya Sabha in Maharashtra, to claim a new name to its new political formation and provide three preferences for the purpose of the Biennial Election to 6 seats in the Rajya Sabha from Maharashtra. The applications for the same must be received in the Commission latest by 16.00 Hours noon on 7<sup>th</sup> February, 2024, failing which, the MLAs claiming allegiance to Shri Sharad Pawar faction will be treated as independent for the purpose of Rule 39AA of the Conduct of Election Rules, 1961. The Form AA and BB which are required for this purpose would accordingly be processed.



**ANUP CHANDRA PANDEY**  
(ELECTION COMMISSIONER)



**RAJIV KUMAR**  
(CHIEF ELECTION COMMISSIONER)



**ARUN GOEL**  
(ELECTION COMMISSIONER)

PLACE: **New Delhi**

DATE: **6-02-2024**