

**IN THE SUPREME COURT OF INDIA**  
**CIVIL ORIGINAL JURISDICTION**

**I.A No. OF 2019**

**IN**

**WRIT PETITION (CIVIL) NO. OF 2019**

**IN THE MATTER OF:**

SHIV SENA &ORS. ...PETITIONERS

VERSUS

UNION OF INDIA & ORS. ...RESPONDENTS

**APPLICATION FOR DIRECTIONS**

TO,

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

THE HUMBLE APPLICATION OF  
THE APPLICANTS ABOVENAMED

**MOST RESPECTFULLY SHOWETH:**

1. That the accompanying Writ Petition has been filed by the Petitioners assailing the *ex-facie* arbitrary and malafide actions/decisions dated 23.11.2019 of the Hon'ble Governor of the State of Maharashtra 'purportedly inviting' the State BJP led by Shri Devendra Fadnavisto form the Government in the State and subsequently administering him the oath of office as the Chief Minister of Maharashtra. The contents of the Writ

Petition may be referred to and relied upon for the purposes of the present Application and the same is not repeated herein *brevitatiscausa*.

2. The gross malafide, arbitrariness and illegality is writ large on the face of the impugned actions of the Hon'ble Governor in as much as the latter has proceed to swear in a Chief Minister who is well short of the majority mark of 145 in the State Assembly by 40 MLAs and had only recently i.e. on 10.11.2019 turned down the Governor's invitation to form a Government for lack of numbers, despite having ample time to garner support for itself.
3. It is respectfully submitted that the Petitioners political alliance constitutes a clear majority in the House. It is submitted that in these circumstances the action of the Hon'ble Governor in installing a minority Government is *ex facie* against the basic rule of law and the rule of parliamentary democracy i.e. rule by majority. More importantly the actions of the Hon'ble Governor are entirely malafide and for extraneous considerations without even a *prima facie* satisfaction based on objective material that Shri Devendra Fadnavis has majority support of the Members of the House. It is submitted that any action of the Hon'ble Governor in

inviting a political party to form the Government has to be based on *prima facie* satisfaction and objective material which in the present case is completely conspicuous by its absence.

4. It is submitted that the impugned action of the Hon'ble President dated 23.11.2019 must be examined in the context of the events leading upto it. The Elections to the Fourteenth Maharashtra Legislative Assembly were declared on 24.10.2019, and no party emerged with a clear majority. In fact, the erstwhile ruling BJP garnered only 105 seats and was thus short of majority by 40 seats.
5. In order to give leeway to the State BJP to muster an uncanny support for itself, the Hon'ble Governor took no action till 09.11.2019, on which date it then invited the BJP to form the Government. The BJP having failed to garner support even after 18 days of the declaration of the election results declined to form the government on 10.11.2019 since it could not muster the necessary strength.
6. Thereafter on 10.11.2019 itself, the Shiv Sena was asked to indicate its ability and willingness to form the Government. As the Shiv Sena was in advanced talks for

finalization of a common minimum programme with the INC and NCP, the Shiv Sena staked claim to form the Government on 11.11.2019 and sought for three days' time to submit the letters of support.

7. However, the Hon'ble Governor on 11.11.2019 refused Shiv Sena's request for three days' time, and on the same day invited the NCP to form the Government while granting it 24 hours to prove its claim to form the Government.
8. The Hon'ble Governor, who himself had invited the NCP to form the Government before 8:30 pm on 12.11.2019, in a deliberate attempt to aid and facilitate the BJP at about 3:16 pm on 12.11.2019 in a report to the Centre recommended invocation of Article 356. Thereafter Article 356 was invoked and the State of Maharashtra was put under President's Rule in the evening of 12.11.2019.
9. While the State was under President's Rule, the Shiv Sena, NCP and the INC engaged in extensive negotiations/ discussions to come up with a common minimum programme in order to provide a stable government in the State for the next five years. The negotiations stood concluded in the evening of

22.11.2019 and it was unanimously agreed that Shri Uddhav Thackeray was the Chief Ministerial candidate of the 'Maha Vikas Aghadi' – alliance of Shiv Sena, NCP and INC, and would stake claim to form government on the 23.11.2019.

10. However the powers at play i.e. the Hon'ble President of India as well as the Hon'ble Governor of the State, in utter disregard to the highest constitutional offices held by them have sought to revoke the President's Rule even before the break of dawn on 23.11.2019, at approximately 05.00 am, to facilitate the hasty swearing in of Shri Devendra Fadnavis of the State BJP to outmaneuver a non BJP government from being formed in the State of Maharashtra. Thereafter, the Hon'ble Governor at about 08.00am has proceeded to administer the oath of office to Shri Fadnavis along with Shri Ajit Pawar of the NCP as his Deputy.
11. It is most unfortunate that the offices of the Hon'ble President and the Hon'ble Governor have been exploited in a manner as has been sought to be done in the instant case, where not only is a Chief Minister sworn in who hitherto had refused to form the Government for lack of requisite numbers, but to give him that support, defections have been engineered from within other

political parties and the perpetrators of such 'constitutional sins' have been immediately rewarded, as in the case of Shri Ajit Pawar. Permitting such misuse of their offices, the Hon'ble President and the Hon'ble Governor have reduced the state of the Indian democracy to an abysmal nadir.

12. It is submitted that this Hon'ble Court has in the past rightly intervened to prevent such unconstitutional and illegal maneuverings so as to prevent the mockery of democracy and to restore the rule of the majority and has directed the immediate conduct of a floor test to ascertain the true state of affairs.
13. It is pertinent to note that in ***Jagadambika Pal vs UOI***, (1999) 9 SCC 95, this Hon'ble Court *vide* interim order 24.02.1998 had directed a special session of the UP Assembly to be convened with the sole agenda of conducting a composite floor test between the contesting parties.
14. A three Judge Bench of this Hon'ble Court in ***Chandrakant Kavlekar vs UOI***, (2017) 3 SCC 758, *vide* order dated 14.03.2017 had also directed “..*the holding of the floor test at the earliest ..*” while further requesting the Governor to ensure the conduct of the floor test.

15. This Hon'ble Court in ***Union of India v. Harish Chandra Singh Rawat***, SLP (C) No. 11567 of 2016 had also *vide* order dated 06.05.2016 directed conduct of a floor test in similar circumstances.
16. Very recently, in ***Dr G Parameshwar vs UOI***, (2018) 16 SCC 48, a three Judge Bench of this Hon'ble Court in very similar circumstances *vide* interim order dated 18.05.2018 directed the conduct of the floor test within 24 hours with further directions for the appointment of a *pro tem* Speaker for the purposes of a floor test.
17. It is therefore imperative that in order to uphold the majesty of law laid down by this Hon'ble Court in the aforementioned cases as well as to uphold the principles of democracy the Petitioners humbly beseech this Hon'ble Court to pass necessary directions.
18. The present Application is being filed *bona fide* and in the interests of justice.

### **PRAYER**

In these circumstances the Petitioners most respectfully pray that this Hon'ble Court may be pleased to:

- a. Issue appropriate directions in terms of summoning a special session of the Fourteenth Maharashtra Legislative Assembly with the only agenda of administering oath to the MLAs, immediately followed by the holding of a floor test on 24.11.2019;
- b. Issue appropriate directions in terms of the order dated 24.02.1998 passed by this Hon'ble Court in **Jagadambika Pal (supra)** treating the order issued by this Hon'ble Court regarding conduct of the floor test as a notice on all the MLAs of the State;
- c. Issue necessary directions/orders in terms of the direction dated 17.05.2018 passed by this Hon'ble Court in **Dr. G. Parameshwara(supra)**, directing the Respondents to furnish the relevant records from the office of the Hon'ble Governor pertaining to:
  - i. the invitation extended to Shri Devendra Fadnavis to form the Government on 23.11.2019;
  - ii. the satisfaction of the Hon'ble Governor as to the support enjoyed by Shri Devendra Fadnavis of the majority of MLAs in the State Assembly and his subsequent swearing in as the Chief Minister; and



- d. Issue appropriate directions in terms of the order dated 24.02.1998 passed by this Hon'ble Court in **Jagadambika Pal (supra)** as well as **Harish Chandra Singh Rawat (supra)** directing that the proceedings of the House be video recorded and a copy of the video recording be placed on record of this Hon'ble Court;
- e. Issue appropriate directions appointing a pro-tem Speaker to preside over the conduct of the floor test;
- f. Issue necessary directions requesting the Hon'ble Governor of the State of Maharashtra to ensure that the floor test is conducted at the earliest;
- g. Issue necessary directions permitting the Petitioner herein to prove its strength on the floor of the House by holding of a composite floor test as had been directed in **Jagadambika Pal (supra)**;
- h. Issue necessary directions directing that the voting in the floor test be carried out in terms of the direction dated 06.05.2016 passed by t/his Hon'ble Court in **Harish Chandra Singh Rawat (supra)** by division by segregating the MLAs supporting and opposing the motion in different lobbies of the House.

- i. Issue necessary directions restraining the Respondent Nos. 4 and 5 from taking any policy decision in terms of ***Jagadambika Pal (supra)*** till the adjudication of the present Writ Petition;
- j. Pass any other order(s) as it deems fit and appropriate in the facts and circumstances of the case.

**AND FOR THIS ACT OF KINDNESS THE PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY.**

**FILED BY**

**MR. SUNIL FERNANDES**

ADVOCATE FOR THE PETITIONERS

**Place:** New Delhi

**Filed on: 23.11.2019**