

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

WRIT PETITION (CIVIL) NO.

OF 2019

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

1. SHIV SENA

Through its Authorised
Representative,
Shiv Sena Bhavan
C Kelkar Road, Shivaji Park-
Dadar West,
Mumbai – 400028.

PETITIONER NO.1

2. NATIONALIST CONGRESS PARTY

Through its Authorised
Representative
10, Dr Bishambar Das Marg,
Baba Kharak Singh Marg Area,
New Delhi, Delhi 110001

PETITIONER NO.2

3. INDIAN NATIONAL CONGRESS

Through its Authorised
Representative
24, Akbar Road,
New Delhi 110 001

PETITIONER NO.3

VERSUS

1. UNION OF INDIA

Through its Secretary,
Ministry of Home Affairs,
Central Secretariat,
North Block,
New Delhi – 01

**CONTESTING
RESPONDENT No.1**

2. STATE OF MAHARASHTRA

Through its Chief Secretary,
Maharashtra Legislature,
Legislative Building,
Backbay Reclamation,
Legislative Building,
Mumbai - 19.

**CONTESTING
RESPONDENT No.2**

3. MR. DEVENDRA FADNAVIS

Office Address:

C. D. O. Barrack No. 1,
Vasantrao Bhagawat Chowk,
Opp. Yogakshem, Nariman
Point, Mumbai

Residence Address

276, Trikoni Park, Dharampeth,
Nagpur

**CONTESTING
RESPONDENT No. 3**

4. Mr. AJIT ANANTRAO PAWAR

Office Address:

Katewadi, Tq. Baramati, Dist.
Pune -413102

**CONTESTING
RESPONDENT No. 4**

WRIT PETITION UNDER ARTICLE 32 R/W ARTICLE 14 OF THE CONSTITUTION OF INDIA FOR QUASHING THE DECISION DATED 23.11.2019 OF THE HON'BLE GOVERNOR INVITING SHRI DEVENDRA FADNAVIS TO FORM THE GOVERNMENT AND FOR A FURTHER DIRECTION TO INVITE THE SHIV SENA, INDIAN NATIONAL CONGRESS AND THE NATIONALIST CONGRESS PARTY (TOGETHER SPECIFIED AS "MAHA VIKAS AGHADI"), AS THEY ARE THE MAJORITY TO FORM A COALITION GOVERNMENT IN THE 14TH LEGISLATIVE ASSEMBLY ELECTION IN THE STATE OF MAHARASHTRA

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

THE HUMBLE PETITION OF
THE PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHEWETH:

1. The Petitioner No. 1, the Shiv Sena has emerged as the second largest political party securing 56 seats in the 14th Maharashtra Legislative Assembly Elections, 2019.

Petitioner No 2 is the Nationalist Congress Party which

has secured 54 seats and Petitioner No 3 is the Indian National Congress, which has secured 44 seats in the 14th Maharashtra Legislative Assembly Elections, 2019. The Petitioners are constrained to move the instant Writ Petition under Article 32 of the Constitution in grave urgency seeking reliefs against the arbitrary and malafide actions of the Hon'ble Governor of Maharashtra who has on 23.11.2019 installed a minority BJP government led by Shri Devendra Fadnavis.

2. The Respondent No 1 is the Ministry of Home Affairs, which is responsible for the Centre State relations, including working of the constitutional provisions governing such relations, appointment of Governors, creation of new States, nominations to Rajya Sabha/Lok Sabha, Inter State boundary disputes, over seeing the crime situation in States, imposition of Presidents Rule and work relating to Crime & Criminal Tracking Network System (CCTNS) etc.
3. That Respondent No. 2 is the State of Maharashtra. The actions of the Hon'ble Governor as the head of the State in installing a BJP led Government with Shri Devendra Fadnavis as the Chief Minister of the State

and, Shri Ajit Pawar as his Deputy Chief Minister are being impugned in the instant Writ.

4. The Respondent No. 3, Shri Devendra Fadnavis, has been sworn in by the Governor of Maharashtra as the Chief Minister
5. The Respondent No. 4, Shri Ajit Pawar, has been sworn in as the Deputy Chief Minister of the Maharashtra Government headed by Shri Devendra Fadnavis as the Chief Minister.
6. On 21.10.2019, Elections to the Fourteenth Maharashtra Legislative Assembly were carried out for 288 seats.
7. On 24.10.2019, the Bhartiya Janata Party emerged as the Single Largest Party with 105 seats followed by the Shiv Sena emerging as the second largest party with 56 seats. The NCP emerged as the third largest party with 54 seats and the INC secured 44 seats.
8. On 09.11.2019, the Hon'ble Governor for almost 18 days did not take any action in inviting any political party to form the Government, but on 09.11.2019 the Hon'ble Governor invited the BJP to indicate willingness to form the Government while giving it 48 hours to prove that it has the requisite majority.

9. On 10.11.2019, the BJP expressed its inability and declined to form the Government. Thereafter, on the same day, the Hon'ble Governor on the very same day asked the Shiv Sena, to convey its willingness and ability to form the Government by granting it only 24 hours to demonstrate its majority.
10. On 11.11.2019, the Shiv Sena staked claim to form the Government while submitting that it has the majority support. Further, the Shiv Sena had also on the same day i.e. on 11.11.2019 itself requested for three days time to give the letters of support to demonstrate that it has the requisite majority to form the Government.
11. Shiv Sena MP Mr. Arvind Sawant resigned from the Union Cabinet that same day, i.e. 11.11.2019.
12. The party wise distribution of seats of the coalition government consisting of the Petitioner, NCP, INC and independent MLAs will be as follows:

Party	No of Seats
Shiv Sena	56
NCP	54
Indian National Congress (INC)	44
Independent	8
Total	162

13. However, the Hon'ble Governor on 11.11.2019, for reasons best known to him, declined to accommodate the request for three days and rejected the claim of the Shiv Sena to form the Government.
14. Thereafter the Governor invited NCP to indicate its willingness and ability to form the Government at around 9:30 PM on the same day. As per media reports, NCP was given 24 hours to stake claim at forming the government.
15. On 12.11.2019, Shiv Sena filed a Writ Petition before this Hon'ble Court challenging the Governor's decision rejecting Shiv Sena's claim to form the Government with requisite support. The same was diarised as Diary No. 40380 of 2019.
16. On 12.11.2019 itself, at about 3:16 PM, a press release reported that the Hon'ble Governor has submitted a report facilitating the invocation of Article 356 in the State of Maharashtra and the President of India thereafter issued Presidential Proclamation invoking Article 356 and imposing President's Rule in the State of Maharashtra on 12.11.2019 *vide* Ministry of Home Affairs Notification No. [F.No. V/11013/1/2019-CSR.I] A true copy of the

Presidential Proclamation dated 12.11.2019 is annexed herewith and marked as **ANNEXURE-P 1** [Pages to]

17. After comprehensive talks, the Shiv Sena, INC and NCP finalised a Common Minimum Programme for a post-poll alliance, namely the *Maha Vikas Aghadi*. On the evening of 22.11.2019 at about 7 pm, this alliance was announced at a press conference and it was further announced that it was unanimously agreed that Shri Uddhav Thackeray was to be named as Chief Minister candidate of the *Maha Vikas Aghadi* and the alliance was staking claim to form Government on this basis.
18. Facing the prospect of a non BJP Government staking claim to power, the BJP in the intervening night of 22.11.2019 and 23.11.2019 has resorted to political machinations in an attempt to install a completely unconstitutional BJP Government in the State. From the reports available in the public the Governor's original travel plan to the Governors conclave in the night of 22.11.2019 was cancelled. There is nothing in public domain as to how and in what manner Shri Devendra Fadnavis and/or the BJP had staked claim power between the intervening night of 22.11.2019

and 23.11.2019. Further there is no material in the public domain to show that Shri Devendra Fadnavis had carried letters of support of 144 MLA's (which in any event was not legally possible to do). The Petitioners categorically assert that all the MLA's of the Shiv Sena, NCP and Congress are completely and solidly with the alliance except for Shri Ajit Pawar.

19. In the early hours of 23.11.2019 at around 5:47 am, the Presidential Proclamation issued on 12.11.2019 imposing President's Rule was revoked by the Hon'ble President *vide* Ministry of Home Affairs Notification No. [F. No. V/11013/1/2019-CSR-I]. A true copy of the Presidential Proclamation dated 23.11.2019 is annexed herewith and marked as **ANNEXURE-P 2** **[Pages to]**

20. At about 8:00 am on 23.11.2019 the Raj Bhavan in a make shift and a hurriedly convened swearing in ceremony administered oath to Shri Devendra Fadnavis of the BJP as Chief Minister of the State and further to Shri Ajit Pawar of the NCP as Deputy Chief Minister. It is not understood as to what was the hurry and/or the hot hast to revoke Presidents Rule at 5:47 am and administer oath at around 8:00 am barely two and a half hours later. The Hon'ble Governor was duty

bound to study the claim if any made by Shri Devendra Fadnavis, moreso when admittedly the previous night all the three political parties commanding a strength of 154 MLA's had categorically stated that they will be staking claim to form the Government.

21. It is submitted that the Hon'ble Governor has acted in a partisan manner and has made a mockery of the high office of the Governor. It is respectfully submitted that the Governor's actions between the intervening night of 22.11.2019 and 23.11.2019 culminating to the swearing in on the 23.11.2019 are a text book example of the Governor acting at the behest of a political party in power at the Centre. Unfortunately, the facts in this case demonstrate that the Hon'ble Governor has belittled the constitutional office of the Governor and has allowed himself to be a pawn in BJP's illegal usurpation of power.
22. A true copy of the press release announcing the swearing in of Shri Devendra Fadnavis as the Chief Minister, as also the swearing in of Shri Ajit Pawar as the Deputy Chief Minister is annexed hereto and marked as **ANNEXURE P-3 [Page to]**

23. At 9:27 AM on 23.11.2019, the President of the NCP Shri Sharad Pawar issued statement through his official Twitter handle that he does not endorse Respondent No. 5 Ajit Pawar's support of the BJP. A true copy of the statement dated 23.11.2019 issued by Shri Sharad Pawar is annexed herewith and marked as **ANNEXURE – P 4** [Page to]
24. That the Annexures are true and correct copies of their respective originals.
25. That in the circumstances mentioned hereinabove this Writ Petition is being preferred by the Petitioners *inter alia* on the following amongst other grounds without prejudice to each other:

GROUND

- A. FOR THAT, the impugned actions of the Governor in installing a minority BJP Government on 22.11.2019 is *ex facie* illegal, unconstitutional and in the teeth of the well settled law laid down by this Hon'ble Court;
- B. FOR THAT, the Petitioners political alliance constitutes a clear majority in the House. It is submitted that 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.

- C. FOR THAT, 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.
- D. FOR THAT, 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.
- E. FOR THAT, the pre-requisite to the formation of the executive is the *prima facie* satisfaction of the Hon'ble Governor on the basis of objective material that the Leader staking claim as Chief Minister enjoys the support of the majority of the members of the Legislative Assembly. This principle is the *sine qua non* of parliamentary democracy i.e. the political executive being responsible to the legislature and can continue only so long as it enjoys the confidence of the majority in the legislature.

- F. FOR THAT, this Hon'ble Court in ***Rameshwar Prasad vs Union of India***,(2006) 2 SCC 1,at para 149 categorically held that at the stage of formation of Government the test to be adopted by the Governor is the '*prima facie*' test. If the political party and/or the alliance is *prima facie* able to show to the Hon'ble Governor that it has the support of the requisite majority, then the Hon'ble Governor has no choice but to invite the said party/alliance which has demonstrated with *prima facie* material that it has the majority to form the Government.
- G. FOR THAT, it is submitted that at the stage of formation of Government the Hon'ble Governor is duty bound to only select a Chief Minister who can demonstrate on an objective basis that he enjoys the confidence of the majority of legislators of the House.
- H. FOR THAT, no such demonstration either by letters of support or by parading of MLAs has been done by the BJP. The BJP clearly falls short of the halfway mark of 144. In any event the BJP cannot get the support of majority through legal constitutional means in the face of the provisions of the Tenth Schedule. In these circumstances and in no event and in no circumstance could the Hon'ble Governor 'annoint' Shri Devendra

Fadnavis to be the Chief Minister and invite him to form the Government.

- I. FOR THAT, it is submitted that the discretionary powers exercised by the Hon'ble Governor are not beyond the pale of judicial review and any illegal and arbitrary decision taken in brazen disregard of constitutional provisions and conventions is liable to be interfered with and struck down by this Hon'ble Court in exercise of its role as the *sentinel on the qui vive* of the Constitution.
- J. FOR THAT, it is submitted that the discretionary powers under the Constitution conferred on the Hon'ble Governor are not the *ipsi dixit* of the Hon'ble Governor but have to be exercised within the constitutional norms and conventions guiding the exercise of such discretion. It is submitted that such manoeuvring, at the behest of the BJP through the Governor, to suit their political agenda actually amounts to a death knell to democracy which is a basic feature of our Constitution.
- K. FOR THAT, it is submitted that although the instant Writ Petition seeks to challenge the brazen action of the Hon'ble Governor in inviting Shri Devendra Fadnavis to form the Government, the Petitioners are also praying for an immediate floor test within twenty-four hours so

as to avoid further horse trading and illegal maneuvers to somehow cobble up a majority from the MVA.

- L. FOR THAT, it is submitted that a coalition of the Janata Dal (Secular) and the INC had in identical circumstances challenged the order of the Hon'ble Governor dated 16.05.2018 in inviting Shri B.S. Yediyurappa to form the Government in the State of Karnataka. The said Writ Petition titled **Dr. G. Parameshwara and Anr vs UOI**, (supra), was moved late in the evening of 16.05.2018, and a midnight hearing was afforded to the Petitioners therein. Considering the constitutional importance of the matter, this Hon'ble Court was pleased to hear the said Writ Petition from 02.00 a.m. to 06:30 a.m. in the morning of 17.05.2018. Eventually an order was passed on 18.05.2018 directing floor test within a period of twenty-four hours and the action of the Hon'ble Governor in granting seven days time to Shri Devendra Fadnavis to prove his majority on the floor of the House, is completely illegal.
- M. For that the impugned actions are otherwise illegal, unconstitutional, malafide and deserve to be struck down

PRAYER

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

- a. pass an appropriate writ/order/direction declaring that action/order of the Hon'ble Governor dated 23.11.2019 inviting Shri Devendra Fadnavis to form the Government on 23.11.2019 as unconstitutional, arbitrary, illegal, void-ab-initio, and violative of Article 14 of Constitution of India; and accordingly quash the same;
- b. pass an appropriate writ/order/direction to the Hon'ble Governor to invite the alliance of Maha Vikas Aghadi comprising of the Shiv Sena, Indian National Congress and the Nationalist Congress Party which has the support of more than 144 MLAs to form the Government under the leadership of Shri. Uddhav Thackeray; and
- c. Pass such other order or direction as it deems fit in the facts of the present case and in the interest of justice.

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

DRAWN BY:

Adv Javedur Rahman
 Adv Aditya Bhat
 Adv Rajesh Inamdar
 Adv Shrinidhi Rao
 Adv. Ali Asghar Rahim

FILED BY**SETTLED BY:**

Devadatt Kamat
 SR Advocate

SUNIL FERNANDES
 ADVOCATE FOR THE PETITIONERS

PLACE: NEW DELHI
DRAWN ON: 24.11.2019