

ITEM NO.4

COURT NO.3

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s) (Civil) No(s). 797/2021

ASHISH SHELAR & ORS.

Petitioner(s)

VERSUS

THE MAHARASHTRA LEGISLATIVE ASSEMBLY & ANR.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.86146/2021-STAY APPLICATION and IA No.86181/2021-EXEMPTION FROM FILING O.T. and IA No.86182/2021-EXEMPTION FROM FILING AFFIDAVIT)

WITH

W.P. (C) No. 807/2021 (X)

(FOR ADMISSION and I.R. and IA No.87296/2021-STAY APPLICATION and IA No.87298/2021-EXEMPTION FROM FILING O.T. and IA No.87297/2021-APPLICATION FOR EXEMPTION FROM FILING ORIGINAL VAKALATNAMA/OTHER DOCUMENT)

W.P. (C) No. 808/2021 (X)

(FOR ADMISSION and I.R. and IA No.87312/2021-STAY APPLICATION and IA No.87314/2021-EXEMPTION FROM FILING O.T. and IA No.87315/2021-APPLICATION FOR EXEMPTION FROM FILING ORIGINAL VAKALATNAMA/OTHER DOCUMENT)

W.P. (C) No. 800/2021 (X)

(FOR ADMISSION and IA No.86411/2021-EX-PARTE STAY and IA No.86413/2021-EXEMPTION FROM FILING O.T. and IA No.86415/2021-EXEMPTION FROM FILING AFFIDAVIT)

Date : 14-12-2021 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR

HON'BLE MR. JUSTICE C.T. RAVIKUMAR

For Petitioner(s)

Mr. Siddharth Bhatnagar, Sr. Advocate
Mr. Utsav Trivedi, Advocate
Mr. Abhinay, Advocate
Mr. Karan Dev Chopra, AOR
Ms. Astha Prasad, Advocate-on-Record
Mr. Himanshu Sachdeva, Advocate
Ms. Manini Roy, Advocate
Ms. Shivani Bhushan, Advocate
Ms. Unnati Vijay, Advocate
Ms. Aishwarya Samal, Advocate
Ms. Pracheta Kar, Advocate
Mr. Aditya Sidhra, Advocate
Mr. Nadeem Afroz, Advocate,

Mr. Harish Salve, Sr. Adv.
Mr. Siddharth Dharmadhikari, Adv.
Mr. Abhikalp Pratap Singh, Advocate on Record
Mr. Abhay Anturkar, Adv.
Ms. Bhavya Tyagi, Adv.
Mr. Dhruv Tank, Adv.
Mr. Bhavya Pande, Adv.
Ms. Aadya Yadav, Adv.

For Respondent(s)

Mr. Rahul Chitnis, Adv
Mr. Sachin Patil, AOR.
Mr. Aaditya A. Pande, Adv.
Mr. Geo Joseph, Adv.
Ms. Shwetal Shepal

UPON hearing the counsel the Court made the following
O R D E R

We have heard learned counsel for the petitioners and for the State of Maharashtra.

These matters involve issues of moment for a Westminster form of Democracy.

It is urged by the petitioners that the impugned resolution by the Maharashtra Legislative Assembly dated 05.07.2021 suffers from the vice of denial of opportunity of being heard and adherence to the rules of natural justice.

It is also urged that the resolution neither follows the procedure prescribed under Rule 53 of the Maharashtra Legislative Assembly Rules (for short "The Rules"), namely, for suspension of member of the House by the Speaker nor predicated in Part XVIII including Rule 273

to take action against the member for breach of privilege of the House.

It is also urged that the power of Legislative Assembly though absolute in certain respects, the decision reached by the House can always be questioned on the settled principles amongst others being manifestly grossly arbitrary or irrational, violating the fundamental rights and such other grounds, as may be permissible and delineated in the decision of the Constitution Bench of this Court in *Raja Rampal Vs. Hon'ble Speaker, Lok Sabha & Ors.* reported in (2007) 3 SCC 184, including the two Judge decision of this Case in *Alagaapuram R. Mohan Raj & Ors. Vs. Tamil Nadu Legislative Assembly & Anr.* reported in (2016) 6 SCC 82. Further, for the nature of impugned resolution, it not only abridges the rights of as many as twelve members, as guaranteed to them under Article 194 of the Constitution of India, but also of the constituencies represented by each of them by merely invoking the route of majority opinion of the House, an unprecedented and unconventional move not backed by any similar precedent. In any case, the period of suspension of one year is unconscionable and manifestly arbitrary and irrational.

On the other hand, it is urged by the learned counsel for the State that Article 212(1) of the Constitution of India makes it amply clear that it is not open to the Court to explore the argument of proper procedure not followed by the House. Further, it is not open to the Court to do judicial review of the final decision on the basis of abstract arguments and grounds urged before this Court; and even if a *sui generis* procedure has been adopted by the House, it is the absolute prerogative of the House to regulate its business.

It is also urged by the learned counsel for the State that the petitioners have not refuted the case made out against them about misbehaviour in the House and outside the House as well. Indeed, this plea has been countered by learned counsel appearing for the petitioners.

All these are debatable issues and would require deeper consideration.

As a result, we deem it appropriate to issue a formal notice to the respondents, returnable on 11.01.2022.

Mr. Sachin Patil, Advocate waives notice for respondent No. 2-State.

Additionally, the petitioner is permitted to serve dasti notice on the respondent No.1.

Needless to observe that pendency of these petitions will not come in the way of the petitioners to explore the possibility of urging upon the House to show leniency and reconsider the decision impugned in these writ petitions, at least, to the extent of reducing the term specified therein. That is a matter to be considered by the House appropriately.

(DEEPAK SINGH)
COURT MASTER (SH)

(VIDYA NEGI)
COURT MASTER (NSH)