

IN THE SUPREME COURT OF INDIA

(ORIGINAL WRIT JURISDICTION)

WRIT PETITION (CIVIL) NO. _____ 2018

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

...Petitioner

VERSUS

1. UNION OF INDIA
Through its Secretary,
Ministry of Home Affairs,
Central Secretariat,
North Block,
New Delhi – 01
2. STATE OF MAHARASHTRA
Through its Chief Secretary,
Maharashtra Legislature,
Legislative Building,
Backbay Reclamation,
Legislative Building,
Mumbai - 19.
3. SHIV SENA
Through its President
ShriUdhavBalasahebThakrey
Matoshri, Mumbai, Maharashtra
4. BHARATIYA JANATA PARTY,
Churchgate, Mumbai
Through its State President
5. NATIONALIST CONGRESS PARTY
Through its president,
10, Bishambhar Das Marg,
New Delhi - 110001

6. INDIAN NATIONAL CONGRESS
Through its President,
24 Akbar Road
New Delhi 110001

....Contesting Respondents

**WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA SEEKING APPROPRIATE WRIT
OF PROHIBITION/ DIRECTION AGAINST THE
RESPONDENTS.**

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

THE HUMBLE WRIT PETITION OF THE
PETITIONER ABOVENAMED

MOST RESPECTFULLY SHOWETH:

1. The Petitioner is constrained to move this Hon'ble Court under Article 32 of the Constitution seeking urgent directions against the Respondents to prohibit His Excellency the Governor of Maharashtra from inviting a combination of Respondent No. 3, 5 and 6 to form a Government against the mandate of the people.
- 1A. It is the right of petitioner and other public at large that their votes are not vitiated which is their fundamental right under Article 14 and 21 of Constitution of India.
2. The petitioner is a Citizen of India, Domiciled in the State of Maharashtra and is a Voter from the 159 Dindoshi Vidhansabha Constituency (Part No. 111 / Sr No. 536). The petitioner has no private interest except to safeguard the democratic system in the State

of Maharashtra. The Petitioner is constrained to move the instant Writ Petition under Article 32 of the Constitution seeking urgent reliefs against arbitrary acts of respondent no.3 to form the Government along with NCP and Indian National Congress which is against the mandate given by the people of Maharashtra, hence are necessary and proper parties.

3. 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 RajyaSabha/LokSabha, Inter-State boundary disputes, over-seeing the crime situation in States, imposition of President's Rule and work relating to Crime & Criminal Tracking Network System (CCTNS) etc.
4. The Respondent No. 2 is the State of Maharashtra. The actions of the Hon'ble Governor as the Head of the State are being impugned in the instant Writ Petition and hence the State is a necessary party.
5. Brief facts relating to the filing of the present Writ Petition are as follows:

5.1 Elections to the Fourteenth Maharashtra Legislative Assembly were carried out for 288 seats on 21.10.2019.

a. Results to the Fourteenth Maharashtra Legislative Assembly as declared on 24.10.2019 are as follows:

Party	Seats
All India Majlis-E-IttehadulMuslimeen	2
BahujanVikasAaghadi	3
BharatiyaJanata Party	105
Communist Party of India (Marxist)	1
Independent	13
Indian National Congress	44
Jan Surajya Shakti	1
KrantikariShetkari Party	1
Maharashtra NavnirmanSena	1
Nationalist Congress Party	54
Peasants And Workers Party of India	1
PraharJanshakti Party	2
RashtriyaSamajPaksha	1
Samajwadi Party	2
Shiv Sena	56
SwabhimaniPaksha	1
TOTAL	288

5.2 Due to such Pre-Poll Alliance pacts of MAHA - YUTI, the Voters of BJP & Shiv Sena casted their Vote either to BJP or Shiv Sena on the belief that the Mandate is being made in favour of the MAHA-YUTI (BJP AND SHIV SENA). Similarly people have voted for either

NCP or INC on the belief that the Vote is being made in favour of MAHA-AGHADI with the hope of forming new Government. As per the results, the BJP (105 MLA's) and Shiv Sena (56 MLA's) i.e. the MAHA-YUTI have got more than clear majority i.e. 161 elected MLA's.

5.3 Due to such circumstances, the incumbent Chief Minister Mr. Devendra Fadnavis resigned and was subsequently invited by the Hon'ble Governor of Maharashtra on 09/11/2019 for formation of Government, he being the leader of the single largest party with highest elected MLA's to show his willingness for formation of Government. However this offer was rejected by Devendra Fadnavis on 10/11/2019.

5.4 Thereafter the Hon'ble Governor of Maharashtra on 10/11/2019 invited the next largest party with the highest number of elected MLA's i.e. Shiv Sena Party/ respondent no.3 to show its willingness or possibility of forming the Government by 7.30 P.M. on 11/11/2019. That respondent no.3 on 11/11/2019 has requested the Hon'ble Governor of Maharashtra to extend the time granted for showing the willingness to form the Government, the same was rejected by the Hon'ble Governor of Maharashtra.

- 5.5 Thereafter the Hon'ble Governor of Maharashtra on 11/11/2019 has invited the 3rd largest party with the highest number of elected MLA's i.e. Nationalist Congress Party to show its willingness or possibility of forming the Government by 8.30 P.M. on 12/11/2019. That the Nationalist Congress Party on 12/11/2019 has also requested the Hon'ble Governor of Maharashtra to extend the time granted for showing the willingness to form the Government, which was also rejected the Hon'ble Governor of Maharashtra.
- 5.6 Subsequently the Hon'ble Governor of Maharashtra on 12/11/2019 wrote to the Hon'ble President of India recommending Presidential Rule for the State of Maharashtra. The Hon'ble President has accepted the report and accordingly imposed Presidential Rule in the state of Maharashtra on 12/11/2019.
- 5.7 Petitioner herein gave his representation to President of India as well as the Hon'ble Governor of Maharashtra praying not to allow respondent no.3 to form the Government with NCP and Indian National Congress which is against the mandate of the people of Maharashtra and it amounts to cheating the people/voters. True copy of Election ID card of the petitioner is annexed herewith and marked as **ANNEXURE - P1 Pgs.**

True copy of representation dated 14.11.2019 sent by petitioner to His Excellency Governor of Maharashtra is annexed hereto as **ANNEXURE P-2** Pgs.

True copy of representation dated 15.11.2019 sent by petitioner to His Excellency Governor of Maharashtra and Hon'ble President of India is annexed hereto as **ANNEXURE P-3** Pgs.

- 5.8 That the Petitioner has not filed any other Petition on the same subject matter or seeking similar reliefs either in this Hon'ble Court or any other High Courts except this present petition.
6. That the Writ Petition has been filed without any delay or laches and there is no legal bar in entertaining the same. That the Petitioner has no other efficacious alternative remedy except to file this Writ Petition before this Hon'ble Court by invoking Article 32 of the Constitution.
8. That the Petitioner has not filed any other Petition on the same subject matter or seeking similar reliefs either in this Hon'ble Court or any other High Courts except this present petition.
9. That the Annexures are true and correct copies of their respective originals.

10. That in the circumstances mentioned hereinabove this Writ Petition is being preferred by the Petitioner inter alia on the following amongst other grounds without prejudice to each other:

GROUND

- A. For that the present writ petition pertains to a substantial question of law of public importance. In the decision of a Constitution Bench of Seven Judges of this Hon'ble Court, in S.R. Bommai Vs. Union of India; (1994)3 SCC1, this Hon'ble Court held that, *"We make it clear that what we have said above is confined to a situation where the incumbent Chief Minister is alleged to have lost the majority support or the confidence of the House. It is not relevant to a situation arising after a general election where the Governor has to invite the leader of the party commanding majority in the House or the single largest party/group to form the Government. We need express no opinion regarding such a situation."*

The meaning and purport of the expression 'largest party/group' is the substantial question before this Hon'ble Court in the present writ petition. More specifically the questions before this Hon'ble court are:

1. Whether the expression includes a group of parties that contested against each other and fought election expressly against each other in

terms of ideology, policies, propaganda and manifesto?.

2. Whether an alliance between two political parties that contested against each other is acceptable under present constitutional Scheme?.
3. Whether the expression “political Party”/“Group of parties” include a group of parties that contested against each other?.
4. Whether a coalition of Shiv Sena, NCP and INC is against the judgment passed by this Hon’ble court in S.R.Bomma?.
5. Whether the constitution draftsmen intended such coalitions, to form Government is the question this Hon’ble Court is deciding in this writ petition.

In the peculiar facts and circumstances regarding the State of Maharashtra, the political parties namely Shiv Sena and BhatiyaJanata Party contested the polls against the political parties National Congress Party and the Indian National Congress. Broadly speaking, if a coalition of Shiv Sena with the political parties against which it contested the election is allowed to form a Government, the same will result in dilution of the mandate of the public and is against constitutional ethos.

B. That this Hon'ble Court in another case i.e. Rameshwar Prasad v. Union of India; (2006) 2 SCC 1, quoted the Sarkaria Commission report in placing reference as to the course to be adopted by the Governor in a situation like the present one,

"Para 4.11.04 of Sarkaria Commission Report specifically deals with the situation where no single party obtains absolute majority and provides the order of preference the Governor should follow in selecting a Chief Minister. The order of preference suggested is:

- 1. An alliance of parties that was formed prior to the Elections.*
- 2. The largest single party staking a claim to form the Government with the support of others, including "independents".*
- 3. A post-electoral coalition of parties, with all the partners in the coalition joining the Government.*
- 4. A post-electoral alliance of parties, with some of the parties in the alliance forming a Government and the remaining parties, including "independents" supporting the Government from outside."*

The fact that a post election alliance of parties in fact restricts its meaning to political parties that contested the election with a minimum common understanding with each other is not expressly mentioned in the above decision nor in the Sarkaria Commission

Report, however it is very clear from the wordings that it is this kind of a coalition that the decision as well as the report tries to proscribe is very clear.

- C. For that this Hon'ble Court in the case of NabamRebia v. Deputy Speaker; (2016) 8 SCC 1, the question relating to the order of preference is left open. Even though the order of preference is enlisted in the cases of Rameshwar Prasad and S.R. Bommai, the case of NabamRabia leaves it open. In this context it is submitted that since even the order of preference is left open, there is a lack of clarity in the law laid down by this Hon'ble Court in dealing with a post poll alliance of parties who contested against each other and defeated each others' candidates. It has been held in a catena of cases that whenever there is a legislative / constitutional vacuum, this Hon'ble Court shall for the ends of justice fill in the vacuum. In the instant case, as well as for cases like this which shall arise in future, it is most humbly prayed that this Hon'ble Court shall settle this question of law.
- D. The governor is under constitutional obligation to consider concept of popular government to be provided. The present post poll coalition is based on

power sharing concept of two political parties who have been voted out by the people.

- E. FOR THAT the act of respondent no.3 to form the Government with NCP and Indian National Congress against the wishes of people of Maharashtra as their MLAs have won only by defeating the candidates of NCP and Indian National Congress amounts to cheating of the people for their personal gain.
- F. FOR THAT the act of the Hon'ble Governor of Maharashtra against the recommendations of Justice M.M. Punchi who in his recommendations suggested that in case of hung assembly if there is a pre-poll alliance or coalition shall be called by Governor to form the Government and it should be considered as single party.
- G. FOR THAT it is the right of petitioner and other public at large that their votes are not vitiated which is their fundamental right under Article 14 and 21 of Constitution of India.
- H. FOR THAT the Petitioners crave leave of this Hon'ble Court to amend/alter its grounds at appropriate stage, as and when required.

PRAYER

In view of the aforementioned facts and circumstances of the present case, the petitioner most respectfully pray that this Hon'ble Court may kindly be pleased to:-

- a) Issue a writ of prohibition restraining His Excellency the Governor of Maharashtra from inviting Respondent No. 3, 5 and 6 to form a Government in the State of Maharashtra against the mandate of the people; and
- b) In the alternative; if a Government is formed against the mandate of the people, to declare the formation of Government as unconstitutional, void ab initio and therefore liable to be dismissed; and
- c) Any such further and other order/ orders be passed as may be necessary and deemed fit and proper in the facts and circumstances of the case to sub serve the interest of justice;

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

DRAWN BY:

IN THE SUPREME COURT OF INDIA
ORIGINAL APPELLATE JURISDICTION
I.A. NO. OF 2019
IN
WRIT PETITION (CIVIL) NO. OF 2019
IN THE MATTER OF:

UNION OF INDIA & ORS

RESPONDENTS

APPLICATION FOR DIRECTION

To

The Hon'ble Chief Justice of India
And His Companion Justices of the
Hon'ble Supreme Court of India.

Humble petition of the Petitioner
above named.

MOST RESPECTFULLY SHOWETH:

1. The Petitioner is constrained to move this Hon'ble Court under Article 32 of the Constitution seeking urgent directions against the Respondents to prohibit His Excellency the Governor of Maharashtra from inviting a combination of Respondent No. 3, 5 and 6 to form a Government.
2. That the facts of the case have been fully set out in the Writ Petition. It is submitted that the facts stated in the Writ Petition may be treated as part of this application. The same are not reproduced herein for the sake of brevity.
3. That the present petition seeks to stop the unholy alliance between three political parties which have all

fought against each other but is trying to form Government by joining hands thereby cheating the electoral mandate. If an ad-interim ex-parte injunction is not granted, the cause of democracy in the State of Maharashtra and irreparable harm and injury and the mandate of the people of Maharashtra will become meaningless.

4. This application is made bonafide and in the interest of justice.

P R A Y E R

It is therefore most respectfully prayed that this Hon'ble Court may be pleased to

- a) during the pendency restraining His Excellency the Governor of Maharashtra from inviting Respondent No. 3, 5 and 6 to form a Government in the State of Maharashtra against the mandate of the people; and
- b) pass any other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR WHICH ACT OF KINDNESS THE PETITIONER SHALL AS IN DUTY BOUND EVER PRAY.

FILED BY

(M/S. LAWFIC)
ADVOCATE FOR THE PETITIONERS

NEW DELHI
FILED ON: 22.11.2019