2020 INSC 335

**REPORTABLE**

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

**Writ Petition (C) No. 439 of 2020**

**Shivraj Singh Chouhan & Ors.** **…Petitioners**

**Versus**

**Speaker Madhya Pradesh Legislative Assembly & Ors.** **…Respondents**

**And with**

**Writ Petition (C) No. 449 of 2020**

**J U D G M E N T**

**Dr Dhananjaya Y Chandrachud, J**

1. An imbroglio in the Madhya Pradesh Legislative Assembly over the purported resignations of twenty-two Members and several communications by the Governor to Chief Minister to hold an immediate floor test have given rise to these writ petitions

under Article 32 of the Constitution.

2. The first writ petition has been instituted by ten Members of the Madhya Pradesh Legislative Assembly seeking a writ directing the Speaker, Chief Minister and Principal Secretary of the Legislative Assembly to hold a floor test in accordance with the directions issued by the Governor.[1] The second writ petition has been instituted by the Madhya Pradesh Congress Legislature Party[2] through its Chief Whip seeking diverse reliefs including:

(i) A direction to the Union of India and the State of Karnataka to grant access to the officer bearers of the MP Congress Party to communicate with respondents five to nineteen (the Members of the Madhya Pradesh Legislative Assembly who have tendered their resignation);

(ii) A declaration that respondents five to nineteen are in the illegal confinement of the Union of India, the State of Karnataka and the Bharatiya Janata Party[3];

(iii) A direction permitting and enabling respondents five to nineteen to participate in the ongoing Budget Session of the Madhya Pradesh Legislative Assembly;

(iv) A direction that a trust vote should be held only in the presence of all the elected Members of the Madhya Pradesh Legislative Assembly;

(v) A declaration that the communications of the Governor of Madhya Pradesh to the Chief Minister under Articles 174 and 175 of the Constitution of India are unconstitutional; and

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[1] **Prayer:** Issue a writ of mandamus or any other appropriate writ or direction, directing respondent nos 1 to 3 to hold the floor test in the Madhya Pradesh Legislative Assembly within 12 hours of the passing of the order by this Hon'ble Court and as per directions dated 14.3.2020 and 15.3.2020 issued by the Hon'ble Governor of Madhya Pradesh.
[2] "MP Congress Party"
[3] "BJP"

(vi) A direction that if the twenty-two Members belonging to the Indian National Congress[4] have resigned, the trust vote be postponed until by-elections are held for the vacant seats.

*The Facts leading up to the Writ Petitions*

3. Elections for the fifteenth Legislative Assembly of the State of Madhya Pradesh were held on 28 November 2018. The results were declared on 11 December 2018. There are 230 seats in the Legislative Assembly. The party position upon the declaration of the results is indicated in the following tabulation:

| **Party** | **No. of Seats** |
|---|---|
| Indian National Congress | 114 |
| Bhartiya Janata Party | 109 |
| Bahujan Samaj Party | 2 |
| Samajwadi Party | 1 |
| Independents | 4 |
| **Total** | **230** |

The INC staked the claim to form the government together with the support of four independents Members, two Members of the Bahujan Samaj Party[5] and one Member belonging to the Samajwadi Party[6]. The INC, having the support of 121 Members (114 + 4 + 2 + 1 = 121), formed the government. Mr. Kamal Nath who belongs to the INC was appointed Chief Minister. Two seats have fallen vacant from amongst the 109

[4] "INC"
[5] "BSP"
[6] "SP"

seats held by the BJP. The current strength of the Legislative Assembly is 228 Members of which the BJP has 107 Members in the House.

4. At about 5:30 PM on 10 March 2020, leaders of the BJP met the Speaker of the Madhya Pradesh Legislative Assembly and handed over what purported to be the resignation letters of twenty-two Members belonging to the INC. Three days later, on 13 March 2020, the Chief Minister addressed a communication to the Governor alleging that following a foiled attempt on 3 / 4 March 2020 to allure Members owing allegiance to the INC, the BJP had on 8 March 2020 arranged three chartered aircraft 'to whisk away' nineteen Members to Bengaluru. Since then, the nineteen Members, of whom six are Cabinet Ministers, were alleged to have been held incommunicado in a resort arranged for by the BJP. The letter adverted to the fact that the resignations of these nineteen Members had not been handed over by the Members themselves but rather by leaders of the BJP and that subsequently on 12 March 2020, an unsuccessful attempt was made by two Cabinet Ministers to meet one of the Members. The Chief Minister recorded:

> "We expect the enquiry and investigation on the resignation letters submitted by BJP allegedly of the captive Congress MLAs, is acted upon and completed early. As a responsible leader of Indian National Congress, I invite and would welcome a floor test of my Government in the forthcoming Session of Madhya Pradesh Legislative Assembly already notified from 16th March 2020, on a date fixed by the Speaker. This is the minimum a Constitutional Authority, can offer to address the ongoing turmoil."

The letter ended with a request to the Governor to ensure the release of the Members "held in captivity" in Bengaluru by taking the matter up with the Union Home Minister.

The above letter was followed by a communication dated 14 March 2020 by the Chief Minister to the Union Home Minister. In his letter, the Chief Minister stated:

> "You will agree that any demand of a floor test in the Assembly has little meaning with 22 of my MLAs being kept captive outside Madhya Pradesh. This is an unprecedented situation where the BJP is seeking a floor test in the Assembly while holding many Congress MLAs hostage away from Madhya Pradesh."

5. On 14 March 2020, the INC issued a three-line whip to ensure the presence of all its Members in the forthcoming Budget Session and to vote for and support the government. As noted above, amongst the Members who had purportedly tendered their resignations, six were Cabinet Members of the incumbent Madhya Pradesh government. Acting on the aid and advice of the Chief Minister, the Governor accepted the resignations of these six Members. On the same day, a communication was addressed by the Governor to the Chief Minister with the following contents:

> "I have received information that 22 MLAs of Madhya Pradesh Vidhan Sabha, have sent their resignation letters to the Speaker, Vidhan Sabha. These MLAs have also informed regarding their resignation through Electronic and Print Media. In this regard, I have watched the media coverage carefully.
>
> These 22 MLAs have sent their resignation letters also to me vide separate letters dated 10.03.2020 respectively and the same MLAs vide their separate letters dated 13.03.2020 have also requested to provide security during their presence before the Vidhan Sabha Speaker. Today, out of these 22 MLAs, the resignation total 6 MLAs who were Ministers in your Government, who were removed from the post of Minister on your recommendations, has also been accepted by Vidhan Sabha Speaker.
>
> You vide your letter dated 13.03.2020 has also granted consent for getting done the Floor Test and I have also received a Memorandum from the main Opposition Party of

Vidhan Sabha i.e. Bhartiya Janta Party, wherein, they have mentioned the aforementioned circumstances. They have also stated that the undue pressure is being created by the State Government on the Members who have resigned as well as other members.

From the above, I am confident that your Government has lost the trust of house and your Government is in minority. This situation is very serious, therefore, it has become mandatory as per Constitution and for the safeguarding the democratic value, it is necessary for you to gain the trust vote in Vidhan Sabha immediately after my speech on 16.03.2020.

In this regard, I by exercising the powers conferred by Article 174 r/w 175(2) of the Constitution and other Constitutional powers vested in me, I do hereby issue the following directions:-

1. Session of Madhya Pradesh Vidhan Sabha will on 16th March, 2020 w.e.f. 11 a.m. in the morning, and after my speech, only one work will be done i.e. trust vote.

2. The Trust Vote shall be done by pressing button on the basis of division and same will not be done by any other method.

3. The videography of entire proceedings of Trust Vote will be conducted by Vidhan Sabha through independent persons.

   Aforesaid proceedings shall be started on 16th March, 2020 in any case, and same shall not be adjourned delayed or suspended."

On 15 March 2020, the Governor addressed a further communication to the Chief Minister that since the facility for mechanically recording votes (through the 'press of a button') was not available, the trust vote should be taken by the raising of hands.

6. The Budget Session of the Madhya Pradesh Legislative Assembly commenced on 16 March 2020. The agenda which was circulated on 15 March 2020 covered (i) The

speech of the Governor; and (ii) the motion of thanks by the Governor. The agenda did not include a provision for a trust vote in terms of the communication of the Governor dated 14 March 2020. Eventually, the proceedings of the Legislative Assembly were adjourned to 26 March 2020 on account of public health concerns arising from the recent outbreak of Coronavirus (Covid-19).

7. On 16 March 2020, the Chief Minister addressed a communication to the Governor. While adverting to the decision of this Court in **Nebam Rebia and Bamang Felix** v **Deputy Speaker, Arunachal Pradesh Legislative Assembly**[7] ("**Nebam Rebia**"), **the Chief Minister stated** that the messages addressed by the Governor to the Legislative Assembly must abide by the mandate of Article 163(1) and that any such communication can only be on the aid and advice of the Council of Ministers. The Chief Minister stated that the directions which had been issued by the Governor touched upon issues which lay in the exclusive domain of the Speaker of the Legislative Assembly. In his response to the Chief Minister dated 16 March 2020, the Governor recorded that despite his earlier letter dated 14 March 2020, the Chief Minister did not initiate the process of proving his majority on the house floor and the proceedings of the Legislative Assembly were adjourned to 26 March 2020. The Governor requested the Chief Minister to have the floor test carried out on 17 March 2020 and to establish his majority, failing which the Governor would have to assume that the Chief Minister's government did not command the support of a majority in the Legislative Assembly. It was at this constitutional impasse that the present writ petitions were instituted before

[7] (2016) 8 SCC 1

this Court.

*Submissions*

8. The submissions in the writ petition which has been moved by the MP Congress Party are addressed first. Mr Dushyant Dave, learned Senior Counsel having led the challenge, urged that the writ petition under Article 32 is founded on the need to maintain (i) constitutional morality; (ii) constitutional ethos; and (iii) constitutional principles. The submission is that the Constitution contemplates, in the ordinary course, a fixed term of five years for the Legislative Assembly and as a necessary incident, a voter is entitled to expect to be represented by their duly elected representative for a period of five years. It was urged that the anti-defection provisions contained in the Tenth Schedule of the Constitution prescribe a 2/3$^{rd}$ requirement to sustain a valid break away or merger. Mr Dave has urged that twenty-two Members owing allegiance to the INC have been highjacked and have been held in captivity in Bengaluru. According to the submission, the process began on 3 / 4 March 2020 when three INC Members, one BSP Member and one Independent Member, all of whom have supported the INC government of Madhya Pradesh in the past, were taken away to a hotel at Manesar, Gurugram by the BJP. It has been urged that though the BSP Member was 'rescued' by the INC, other Members of the Legislative Assembly were taken to Bengaluru on a series of chartered flights arranged for by the BJP and under the escort of BJP Members and office bearers. Mr Dave submitted that on 9 March 2020 three chartered aircraft were arranged by the BJP to 'spirit away' nineteen Members belonging to the INC including six Members who were Cabinet Ministers in

the State Government of Madhya Pradesh to Bengaluru. They were stated to have been accompanied by Shri Hemant Khandelwal, Shri Uma Shankar and Shri Sudarshan Gupta belonging to the BJP. In this context, reliance has been placed on the manifest of the chartered aircraft. It has been urged that the resignations of the Members were handed over to the Speaker not by the INC Members themselves in person but rather by the leaders of the BJP in the Madhya Pradesh Legislative Assembly. In the above background, Mr Dave submitted that:

(i) Neither the Governor nor the Speaker required the Members who had been whisked away to Bengaluru to be brought back;

(ii) The Governor could not have addressed a communication to the Chief Minister without ascertaining the voluntary nature of the resignations, a matter which was within the domain of the Speaker of the Legislative Assembly;

(iii) In the alternative, even if the resignations of the Members are to be accepted, the holding of the trust vote must await by-elections being held for the purpose of filing up the vacancies; and

(iv) If at all, a motion of no confidence may be moved by any political party which seeks to do so, but there is no basis or justification for a government which was formed after the elections to be required by the Governor to convene a trust vote absent a motion of no confidence.

These submissions were buttressed by relying upon Articles 168, 172, 175, 188 (read with the Third Schedule), 190,191 and the Tenth Schedule (specifically paragraphs 2(1)(a), 4 and 6) of the Constitution. Mr Dave has also placed reliance on the

fundamental duties embodied in Article 51A of the Constitution. The decision in **Nebam Rebia** was relied upon in support of the proposition that the Governor has no constitutionally assigned role in relation to a disqualification under the Tenth Schedule. Mr. Dave also relied on extracts from the Constituent Assembly Debates to urge that, although the framers chose a system of parliamentary democracy to ensure the continuous accountability of government, minority Members of a legislative house should not sabotage the working of a legitimately elected government. Lastly, the decision of the Constitution Bench in **Kihoto Hollohan** v **Zachillhu**[8] has been placed before the Court to emphasise the nature of the political party as the primary political unit under the Constitution.

9. Opposing the above submissions, Mr Mukul Rohatgi, learned Senior Counsel who has appeared in support of the petition filed by Shivraj Singh Chauhan and nine other BJP Members submitted that:

(i) Twenty-two Members no longer owing allegiance to the INC resigned on 10 March 2020;

(ii) The Governor had directed the Chief Minister to conduct a floor test; and

(iii) The communication by the Governor has been flouted both by the Speaker and by the Chief Minister.

Mr Rohatgi urged that the view formed by the Governor in his communication to the Chief Minister dated 14 March 2020 was based on the:

(i) Information received in regard to the tendering of resignations by the twenty-

[8] 1992 (Supp.) 2 SCC 651

two Members;

(ii) Coverage of the resignations in the print and electronic media;

(iii) Receipt of separate letters addressed by the twenty-two Members to the Governor in regard to their resignations; and

(iv) Acceptance by the Speaker of the resignations of six of the twenty-two Members with no indication of why the six Members were different from the larger group of twenty-two Members.

In this backdrop, Mr Rohatgi submitted that the satisfaction of the Governor on the basis of which the communication was addressed to the Chief Minister was based on relevant and germane material. It was urged that in issuing the communication, the Governor has acted within the scope of his constitutional authority as delineated in the decisions of this Court in **SR Bommai** v **Union of India**[9] ("**SR Bommai**") and **Nebam Rebia**. As regards the writ petition which has been instituted by the MP Congress Party, Mr Rohatgi urged that:

(i) A petition under Article 32 by a political party is not maintainable;

(ii) The reliefs which have been sought are not in the nature of a *habeas corpus* remedy;

(iii) The MP Congress Party is not entitled to seek access to the Members in the face of their disinclination to meet any leader of the MP Congress Party; and

(iv) Any direction to allow the office bearers of the MP Congress Party to access the twenty-two Members who have resigned would only lead to further

[9] (1994) 3 SCC 1

political bargaining.

10. Mr Maninder Singh, learned Senior Counsel appeared in an application for impleadment[10] moved on behalf of the sixteen Members who had tendered their resignations to the Speaker (but whose resignations have not been accepted). On their behalf, Mr Maninder Singh submitted that:

(i) An elected Member of a legislative assembly has an absolute right to resign by virtue of the provisions of Article 190 of the Constitution;

(ii) The Speaker of the Madhya Pradesh Legislative Assembly accepted the resignations tendered by six Members, who are part of the same group of twenty-two Members, within the span of one day and in doing so has chosen not to make any enquiry in regard to the remaining sixteen letters of resignation;

(iii) Resignation and disqualification are distinct concepts; and

(iv) The exercise of judicial review in regard to the advice tendered by the Governor to the Chief Minister to convene a trust vote is not warranted.

In urging these submissions, Mr Maninder Singh placed reliance on the decision of the three judge Bench in **Shrimanth Balasaheb Patil** v **Speaker, Karnataka Legislative Assembly**[11].

11. Dr Abhishek Manu Singhvi, learned Senior Counsel appearing on behalf of the

[10] IA No 45942 of 2020

[11] (2020) 2 SCC 595

Speaker of the Madhya Pradesh Legislative Assembly, submitted that:

(i) The issue, in substance, is whether by a writ of *mandamus issued upon* a petition under Article 32 this Court can issue a direction to the Speaker to accept the resignations of the sixteen Members of the Legislative Assembly;

(ii) There is a fallacy in the assumption that the Governor has any *locus* to direct the Chief Minister to conduct a floor test to establish a majority on the floor of the house;

(iii) This Court ought not to enforce the direction for convening a floor test as it will have the effect of 'short-circuiting' (as it was described) the large discretion which is entrusted to the Speaker on matters of resignation by Members under Article 190.;

(iv) Under Article 193(3)(b) of the Constitution, the determination of whether a resignation is voluntary and genuine lies within the discretion of the Speaker;

(v) The role of the Speaker to determine matters of resignation has been reinforced by the Constitution (Thirty-Third Amendment) Act 1974 and the authority of the Speaker as *persona designata* under the Tenth Schedule;

(vi) A wide and inevitable discretion is enjoyed by the Speaker in holding an enquiry in regard to a resignation which is tendered by the Member of the Legislative Assembly;

(vii) While disqualification and resignation are distinct concepts, the decision of the Speaker in accepting or rejecting a resignation of a Member falls within the ambit of Article 212 of the Constitution;

(viii) The precedents of this Court in regard to the convening of a trust vote have

arisen in the context of fresh elections held to the legislature and not in the context of a 'running' assembly; and

(ix) The government under the auspices of Mr Kamal Nath, Chief Minister has already faced three motions of no confidence and another no confidence motion has been moved.

Apart from the above submissions, Dr Singhvi submitted that there is a substantial question on the issue of whether the purported resignations of the sixteen Members are genuine and voluntary and this issue requires the urgent attention of the Governor. In particular, the following circumstances were relied upon:

(i) None of the sixteen Members, who are (according to Dr Singhvi) confined in Bengaluru, are ready to leave the State of Karnataka;

(ii) None of the Members have shown any inclination to meet even their own relatives;

(iii) The resignation letters were not presented to the Speaker by the Members themselves, but rather were first sent by email and subsequently presented by leaders of the BJP; and

(iv) Three batches of resignations (seven, six and six) by the Members had been scribed in the handwriting of three persons.

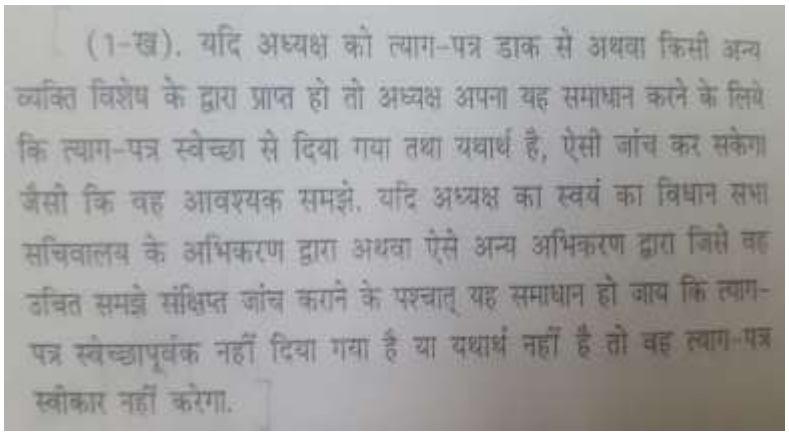
Dr Singhvi however clarified that while on 13 March 2020 disqualification notices were issued to the six Members who were ministers, the Speaker eventually did accept their resignations on 14 March 2020.

12. Elucidating on the above submissions, Dr Abhishek Manu Singhvi urged that the object of the exercise undertaken by the BJP is to find a way around the 2/3rd stipulation contained in the Tenth Schedule by engineering the resignations of the twenty-two Members in a 'running' House. The submission is that if a trust vote were to be held before a decision has been taken by the Speaker on whether to accept the resignations of the Members, this will pave the way for the sixteen Members whose resignations have not been accepted till date to abstain from voting. Their abstention, it has been urged, would alter the strength of members present and voting, thus modifying the required majorities in the house and impacting the outcome of the trust vote. If the present government were to lose the confidence of the house, it is apprehended that these sixteen Members may then be offered ministerial berths by the new government. Dr Singhvi submitted that disqualification petitions have been filed on which notices have been issued and if a Member of the House stands disqualified, this would result in consequences as envisaged in law.

13. The gravamen of the attack on the decision of the Governor is that there is a clear distinction between the powers of the Governor in relation to the constitution of the House in the aftermath of a new election and those in relation to a duly constituted Assembly. There is,in the submission, no precedent where the Governor has directed a floor test to be conducted in a 'running' assembly. Dr Singhvi submitted that on 19 September 1976 the Rules of Business of the Madhya Pradesh Legislative Assembly[12] were amended, following the amendment of Article 190 by the Constitution (Thirty-

[12] "Madhya Pradesh Assembly Rules"

Third) Amendment Act 1974. Rule 276 (1) – '*kha*' contains the following provisions:



(1-ख). यदि अध्यक्ष को त्याग-पत्र डाक से अथवा किसी अन्य व्यक्ति विशेष के द्वारा प्राप्त हो तो अध्यक्ष अपना यह समाधान करने के लिये कि त्याग-पत्र स्वेच्छा से दिया गया तथा यथार्थ है, ऐसी जांच कर सकेगा जैसी कि वह आवश्यक समझे. यदि अध्यक्ष का स्वयं का विधान सभा सचिवालय के अभिकरण द्वारा अथवा ऐसे अन्य अभिकरण द्वारा जिसे वह उचित समझे संक्षिप्त जांच कराने के पश्चात् यह समाधान हो जाय कि त्याग-पत्र स्वेच्छापूर्वक नहीं दिया गया है या यथार्थ नहीं है तो वह त्याग-पत्र स्वीकार नहीं करेगा.

A translated copy of the note of publication issued under the authority of Governor has been placed on the record.

Dr Singhvi urged that it is reasonable for the Speaker of the Legislative Assembly to seek about two weeks to decide the issue of resignation and disqualification. Dr Singhvi further submitted that when the recent constitutional dispute over the constitution of the government of Karnataka reached this Court, an order was passed initially on 11 July 2019 directing the Members to appear before the Speaker and for the Speaker to take a decision forthwith. Subsequently, however, by orders dated 12 July 2019 and 17 July 2019, the earlier direction was suspended, and this Court clarified that no fetter could be placed on the power of the Speaker to take a decision on matters of resignation.

14. The interim application for impleadment which has been filed on behalf of the sixteen Members has been the subject matter of serious criticism. The manner in which the affidavits in support of the IA have been filed and one of the signatures in the Vakalatnama have been questioned. Alternatively, it has been submitted by that a no-confidence motion has been received by the Secretariat of the Madhya Pradesh Legislative Assembly. Under Rule 143 of the Madhya Pradesh Assembly Rules, a decision on a no confidence motion has to be taken within ten days, which Dr Singhvi urged is an index of what is considered as a reasonable period. Dr Singhvi submitted that in an ongoing session of the legislature, the only way to test whether the government has a majority is through a no confidence motion moved under Rule 143.

15. Assailing the communication of the Governor dated 14 March 2020, Dr Singhvi submitted that in requiring a trust vote to be undertaken on the floor of the house, the Governor purported to rely upon Articles 174 and 175(2), neither of which confer such a power on the Governor. It was urged that the Governor sought a trust vote following an earlier communication of the same day *inter alia* by the Chief Whip of the BJP in the Madhya Pradesh Legislative Assembly. Dwelling on the judgment in **Nebam Rebia**, it has been submitted that the Constitution Bench has held that any message by the Governor to the Legislative Assembly can only be on the aid and advice of the Council of Ministers. The submission is that absent a situation where the Council of Ministers has tendered its aid and advice, it was not open to the Governor to intercede in the legislative business of the Legislative Assembly, particularly having regard to the provisions contained in Article 212 of the Constitution. The BJP, as the main opposition,

would not (it was urged) be without a remedy since it is open to it to move a motion of no confidence. In sum and substance, it was of the submission of the Dr Singhvi on behalf of the Speaker that if the intervention of the Governor were to be permitted in the circumstances which have arisen in the present case, it would allow the Governor to become a supra legislative authority diluting the constitutional position of the Legislative Assembly. In the present case, it has been submitted that ongoing sessions of the Legislative Assemblies in Rajasthan, Madhya Pradesh, Maharashtra, Chhattisgarh, Odisha and Kerala have been recently adjourned as a result of the outbreak of Coronavirus (Covid-19) and hence there was nothing untoward in the Speaker's decision to adjourn the Madya Pradesh Legislative Assembly in the present case.

16. Lastly, it has been submitted that the decision of the nine judge Bench in **SR Bommai** dealt with a situation where the Governor had submitted a report under Article 356 of the Constitution and was not applicable to a situation where a trust vote was directed by the Governor. Dr Singhvi submitted that upon the declaration of President's rule in a state, the limitations on the exercise of powers of the Governor are substantially reduced. Hence, the decision in **SR Bommai** was sought to be distinguished on the ground that it does not deal with the case where the Governor has mandated a trust vote in a 'running' Assembly.

17. Mr Kapil Sibal, learned Senior Counsel appearing on behalf of the Chief Minister of Madhya Pradesh, supported the arguments made by Dr Singhvi and urged that the present situation is unique because:

(i) No one has appeared before the Governor to claim a majority in the Madhya

Pradesh Legislative Assembly; and

(ii) This is the first case of its kind where the Governor has sought a floor test when the House is in session.

Mr Sibal contends that the observations of the Constitution Bench in **Nebam Rebia** on the authority of the Governor to order a trust vote to be conducted on the floor of an ongoing legislative assembly are purely *obiter*. The case before the Constitution Bench in **Nebam Rebia** dealt with a situation where the Governor had preponed the date for the meeting of the Legislative Assembly to decide the question of the Speaker's removal. It was submitted that **Nebam Rebia** is not a precedent for the proposition that the Governor is entitled to require a trust vote to be conducted on the floor of a legislative assembly which has been duly constituted and is in session. Mr Sibal submitted that the consequences of upholding the power of the Governor would be to encourage both the demolition of an elected government and of the democratic structures of governance. In Mr. Sibal's submissions, the Governor would have the power to summon the House, where it is not in session. Since under Article 168, the Governor is a part of the legislature, if the House is not in session it is open to a Governor to seek a special session where facts indicate that the existing government has lost its majority. However, in a similar vein to Dr Singhvi's submission, Mr Sibal urged that this course of action is not open to the Governor when the House is in session and in such an eventuality, the only remedy is to seek a motion of no confidence to test whether the incumbent government is possessed of the confidence of the House.

18. With respect to the exercise of the power of the Governor by calling for a trust vote, it has been submitted that:

(i) There must exist an objective satisfaction of the Governor based on material in his possession;

(ii) Absent a physical verification, it cannot be said that the mere tendering of resignations by Members led to a valid exercise of power by the Governor to call for a trust vote;

(iii) The Governor had no material to conclude that sixteen Members had submitted their resignations voluntarily; and

(iv) Legislative history in the country indicates that minority governments have survived and unless it is shown that the mere tendering of resignations actually caused the loss of confidence in the incumbent government, it is not open to the Governor to conclude that the actions of the sixteen Members would result in a loss of confidence in the government.

In sum and substance, while both Dr Singhvi and Mr Sibal denied the existence of the power of the Governor to call for a trust vote in an ongoing legislative assembly, this limb of Mr Sibal's submissions is that even if the Governor possesses such a power, his exercise of the power was *ultra vires* the scope of that power. It is the submission of Mr Sibal that the Governor was not in possession of any facts that would demonstrate that the incumbent government had suffered a loss of majority. Lastly, Mr Kapil Sibal also submitted that sixteen Members have been 'whisked away' on a chartered flight from a high security zone of the Delhi Airport to Bengaluru, where they have been held at a

resort. Mr Sibal submitted that the statement made before this Court on behalf of the sixteen Members, that they are not prepared to appear before the Speaker or to participate in the proceedings in the House, is a strong indicator of their being held in captivity.

19. Mr Vivek Tankha, learned Senior Counsel appearing on behalf of the State of Madhya Pradesh, has supported the submissions which were urged by Dr Abhishek Manu Singhvi and by Mr Kapil Sibal, learned Senior Counsel. Apart from relying on certain observations contained in the report of the Sarkaria Commission, Mr Vivek Tankha submitted that the letter of the Governor was premature since the resignations of the sixteen Members were yet to be accepted by the Speaker. Absent a decision by the Speaker, it was urged that the Governor should not have formed an opinion that the government is in a minority.

20. Adopting the same line of submissions, Mr Harin P Raval, learned Senior Counsel appearing on behalf of the Secretariat of the Madhya Pradesh Legislative Assembly, submitted that the affidavit which has been filed before the Madhya Pradesh Legislative Assembly by fifty-four Members belonging to the BJP is likely to be treated as a motion of no confidence.

21. Mr Tushar Mehta, Solicitor General of India, appeared on behalf of the Governor of Madhya Pradesh and submitted that:

(i) The question of whether an incumbent government enjoys the support of the majority of the Members of a state legislative assembly is the sole prerogative of the Governor of that state;

(ii) The satisfaction of the Governor as to whether an incumbent government continues to enjoy the support of the majority in the legislative assembly is beyond judicially manageable standards of review and this Court should guard against entering the "political thicket";

(iii) The Governor has not taken a decision as to which political party enjoys a majority in the legislative assembly but has merely come to a *prima facie* determination that there exists a doubt over whether the incumbent government continues to enjoy the support of the majority in the House; and

(iv) It is a well-recognised principle that a floor test within the shortest possible time is the appropriate measure where any doubt arises over whether an incumbent government continues to enjoy the support of the majority in the legislative assembly.

*Constitutional Provisions concerning State Legislatures*

22. Part VI of the Constitution of India deals with the States. Chapter III of Part VI contains provisions relating to the state legislatures. Article 168(1) postulates that in every state "there shall be a legislature which shall consists of the Governor" and of two Houses in certain states (including Madhya Pradesh) and one House in others. Article 174(1) entrusts to the Governor, the authority to summon each House of the legislature of a state, "to meet at such time and place as it thinks fit". However, the duration between the end of a session and the commencement of the next session shall not exceed six months. Article 174(2) entrusts the Governor with the authority to (i) prorogue the House; and (ii) dissolve the legislative assembly. Article 175(1) permits

the Governor to address the legislative assembly. Article 175(2) contemplates that the Governor may send messages to the House or Houses of the legislatures of the states. Article 176 makes provisions for a special address by the Governor to the legislative assembly at the commencement of the session after the general election and at the commencement of the first session of each year. The powers which have been entrusted to the Governor are, generally speaking, exercised on the basis of the aid and advice of the Council of Ministers in terms of the provisions of Article 163(1). Article 163(1) stipulates that the Council of Ministers with the Chief Minister as its head would "aid and advise the Governor in the exercise of his functions" except where the Constitution requires the Governor to exercise "his functions or any of them in his discretion".

23. Article 190 contains provisions for the "vacation of seats". Clause (3) of the Article states:

> "(3) If a member of a House of the Legislature of a State—
>
> (a) becomes subject to any of the disqualifications mentioned in clause (1) or clause (2) of article 191; or
>
> (b) resigns his seat by writing under his hand addressed to the speaker or the Chairman, as the case may be, and his resignation is accepted by the Speaker or the Chairman, as the case may be, his seat shall thereupon become vacant:
>
> Provided that in the case of any resignation referred to in sub-clause (b), if from information received or otherwise and after making such inquiry as he thinks fit, the Speaker or the Chairman, as the case may be, is satisfied that such

> resignation is not voluntary or genuine, he shall not accept such resignation."

Sub-clause (b) of clause (3) of Article 190 indicates that a seat "shall thereupon become vacant" when a Member "resigns his seat" and the resignation is accepted by the Speaker and the Chairman, as the case may be. The provisions of sub-clause (b) of clause (3) of Article 190 were amended by the Constitution (Thirty-Third Amendment) Act 1974 to incorporate a specific provision for the acceptance of the resignation of a Member by the Speaker. The expression "shall thereupon become vacant" indicates that a vacancy arises only upon the acceptance of the resignation by the Speaker, or as the case may be, the Chairman of the House. The proviso to clause (3) of Article 190 indicates that a resignation shall not be accepted if the Speaker or Chairman is not satisfied that the resignation is "voluntary or genuine". Before this satisfaction is arrived at, the proviso requires the Speaker or the Chairman (as the case may be) to make an enquiry as is thought to be fit. These provisions were introduced through a constitutional amendment to safeguard the membership of elected members of the legislature being forfeited by coercion or misrepresentation. The Statement of Objects and Reasons accompanying the constitutional amendment explained its purpose in the following terms:

> "…In the recent past, there have been instances where coercive measures have been resorted to for compelling members of a Legislative Assembly to resign their membership. If this is not checked, it might become difficult for Legislatures to function in accordance with the provisions of the Constitution. It is, therefore proposed to amend the above two articles to impose a requirement as to acceptance of the resignation by the Speaker or the Chairman and to provide that the resignation shall not be accepted by the

> Speaker or the Chairman if he is satisfied after making such inquiry as he thinks fit that the resignation is not voluntary or genuine."

24. The role of the Speaker in accepting resignations and determining disqualifications was the subject of a three judge Bench decision of this Court in **Shrimanth Balasaheb Patil** v **Karnataka Legislative Assembly**[13]. While elaborating on the provisions of Article 190(3)(b) as amended, the judgment lays down the following principles:

(i) A Member of the legislature is vested with the sole prerogative to determine whether or not to continue in office;

(ii) A Member who seeks to resign cannot be compelled to continue in office;

(iii) A resignation is required to be accepted by the Speaker or the Chairman, as the case may be;

(iv) The seat occupied by the Member falls vacant only upon acceptance of the resignation;

(v) The role of the Speaker is to determine whether a resignation is "voluntary or genuine";

(vi) The satisfaction of the Speaker should be based on the information received or otherwise and upon making such enquiry as is considered to be fit;

(vii) Though, the term "genuine" has not been defined, what is meant is the authenticity of the letter of resignation; and

(viii) Though, the expression "voluntary" has not been defined, it would mean that

[13] (2020) 2 SCC 595

a resignation should not be a result of threat of force or coercion.

Justice N V Ramana speaking for the three-judge bench of this Court elaborated on the role which has been entrusted to the Speaker, stating:

> "79. Third, the Speaker can reject the resignation, if the Speaker is satisfied that the resignation was "not voluntary or genuine". Herein, our attention is drawn to the Chapter 22, Rule 202(2) of the Rules of Procedure and Conduct of Business in Karnataka Legislative Assembly […] Reading the rule in consonance with Article 190(3)(b) of the Constitution and its proviso, it is clear that the Speaker's satisfaction should be based on the information received and after making such inquiry as he thinks fit. The aforesaid aspects do not require a roving inquiry and with the experience of a Speaker, who is the head of the House, he is expected to conduct such inquiry as is necessary and pass an order. If a Member appears before him and gives a letter in writing, an inquiry may be a limited inquiry. But if he receives information that a Member tendered his resignation under coercion, he may choose to commence a formal inquiry to ascertain if the resignation was voluntary and genuine."

The three judge Bench of this Court finally held:

> "83. In view of our above discussion we hold that the Speaker can reject a resignation only if the inquiry demonstrates that it is not "voluntary" or "genuine". The inquiry should be limited to ascertaining if the Member intends to relinquish his membership out of his free will. Once it is demonstrated that a Member is willing to resign out of his free will, the Speaker has no option but to accept the resignation. It is constitutionally impermissible for the Speaker to take into account any other extraneous factors while considering the resignation. The satisfaction of the Speaker is subject to judicial review."

It is in the above context that the inquiry by the Speaker or Chairman (as the case may be) has to be understood. The Court cannot fetter the discretion of the Speaker to

conduct an inquiry into whether a resignation is “voluntary” or “genuine”. However, neither can the Speaker exceed the terms of the mandate and conduct an overbroad inquiry into the underlying motives of the Member. It is sufficient that the Speaker is satisfied that the Member’s resignation is “voluntary” and “genuine”.

25. The court further held that both a resignation as well as a disqualification arising on account of the defection under a Tenth Schedule results in a vacancy of the seat held by the Member in the legislature, but the consequences which emanate are distinct. As a result of Article 164(1B) a Member who is disqualified by the Speaker on account of defection is barred from being appointed as a Minister or from holding any remunerative political post from the date of disqualification till the date on which the term of their office would expire or until re-election to the legislature, whichever is earlier. The court held that under the Tenth Schedule, the Speaker does not have an explicit power either to specify the period of disqualification or to bar a Member from contesting elections after disqualification until the end of the term of the Legislative Assembly.

*The Actions of the Governor and the Legal Challenge*

26. The heart of the dispute in the present case is whether the Governor was acting within the bounds of his constitutional authority in ordering a trust vote to be conducted on the floor of the Madhya Pradesh Legislative Assembly on 16 March 2020. The factual background to this question has been adverted to in the prefatory part of the judgment. To recapitulate, twenty-two Members belonging to the INC tendered their

resignations on 10 March 2020. Alleging the complicity of the BJP in engineering these resignations, the Chief Minister of Madhya Pradesh in his letter to the Governor dated 13 March 2020 stated that 'as a responsible leader' he would 'invite and would welcome a floor test' of his government in the forthcoming Budget Session of the Legislative Assembly notified to commence on 16 March 2020. This, according to the Chief Minister, was 'the minimum a constitutional authority could offer to address the ongoing turmoil'. The Speaker of the Legislative Assembly furnished an opportunity on 13 March 2020 and 14 March 2020 to all the twenty-two Members (including six Cabinet Ministers among them) to appear before him but they did not do so. On 13 March 2020, notices of disqualification were issued to the six Members who were members of the Cabinet. The Governor acting on the aid and advice of the Chief Minister dismissed these six individuals from the State Cabinet. On 14 March 2020, the Speaker of the Legislative Assembly acting pursuant to Rule 276 of the Madhya Pradesh Assembly Rules, accepted their resignations. In a communication dated 14 March 2020 the Governor called upon the Chief Minister to undertake a floor test to determine whether the latter's to determine whether the government commanded the confidence of the legislature. The communication stated that the floor test was to take place at the inception of the forthcoming Budget Session immediately after the address of the Governor.

27. The letters sent by the Governor to the Chief Minister indicate that the Governor relied on the following circumstances in coming to the conclusion that a floor test was urgently required:

(i) Receipt of information by the Governor that twenty-two Members who had

previously supported the incumbent government had submitted their resignations to the Speaker of the Legislative Assembly;

(ii) The Members who had tendered their resignations had communicated their decision through the print and electronic media;

(iii) Copies of the letters of resignations had been submitted by the twenty-two Members to the Governor;

(iv) The twenty-two Members had asked the Governor to provide security to facilitate their appearing before the Speaker;

(v) Among the group of twenty-two Members who had tendered their resignations were six Cabinet Ministers whose resignations had been accepted by the Speaker;

(vi) The Chief Minister's letter dated 13 March 2020 indicating the desire to conduct a floor test in the Legislative Assembly; and

(vii) A letter received from the BJP (the principal opposition in the Legislative Assembly) adverting to the above circumstances. The BJP complained that undue pressure was being brought on the Members who have tendered their resignations.

It was on the basis of the above material and circumstances that the Governor informed the Chief Minister of his having formed the opinion *prima facie* that the government had been reduced to a minority in the House, making it necessary to conduct a floor test immediately after the address of the Governor at the Budget Session. The agenda which was circulated to the Members of the House did not include a floor test. Instead,

soon after the House convened, it was adjourned until 26 March 2020 on account of the outbreak of Coronavirus (Covid-19).

28. The action of the Governor requiring a trust vote be carried out has essentially been assailed on three broad grounds of challenge. It has been submitted that:

(i) The Governor had no power to order a trust vote in the course of an ongoing Legislative Assembly or at any rate while the Legislative Assembly was in session;

(ii) If the Governor did possess such a power then the exercise of the power by the Governor in ordering a trust vote impinged upon the authority entrusted to the Speaker under the proviso to Article 190(3)(b) and the Tenth Schedule of the Constitution to determine matters of resignation and disqualification respectively; and

(iii) The Governor had no objective basis or material to form the *prima facie* opinion that the incumbent government had lost its majority in the Madhya Pradesh Legislative Assembly.

29. Before we deal with the constitutional issues raised by the above submissions, it is necessary to consider the submission that a motion of no confidence has been received by the Speaker and that there was no justification for the Governor to impede that process. During the course of his submissions, Dr Singhvi placed on the record a copy of an affidavit submitted by 54 Members owing their allegiance to the BJP. It is evident from the contents and tenor of the affidavit that it has been prepared to support the position of the signatories that they will support the BJP and vote against the

incumbent government. On a bare reading of the affidavit, it is evident that it does not postulate a request for convening a discussion on a motion of no confidence. Having concluded that there exists no parallel proceeding for convening a trust vote, we now turn to whether the Governor has acted within the scope of his constitutional authority in calling for a trust vote.

*Questions before the Court*

30. The present controversy raises two separate but intertwined constitutional questions. First, whether the Governor is entrusted with the authority to call for a trust vote in the course of a "running assembly", and second whether the Governor exercised this authority correctly. If the Governor does not possess the authority, the action of calling for an immediate floor test is *ultra vires* and unconstitutional. Alternatively, if the Governor does possess the authority to call for a floor test, this Court must determine the contours of such power and answer the question of whether the Governor acted within those contours.

31. It was briefly contended before us that this Court should be wary of entering the 'realm of politics' where no 'judicially manageable standards' can be maintained, and the outcome prescribed by the court is likely to tilt the political balance. We reject these submissions. Merely because the present dispute concerns the conduct of elected representatives, or the remedy sought is a democratic process, does not mean that the court will refuse to consider it. In **State of Rajasthan** v **Union of India**[14] it was

[14] (1977) 3 SCC 592

contended that whether the government of a state could continue to operate in accordance with the Constitution was a political question not justiciable in courts of law. Rejecting this submission at the outset, Justice Bhagwati (as the learned Chief Justice then was) speaking for himself and Justice A C Gupta held:

> "[The Additional Solicitor General] urged that having regard to the political nature of the problem, it is not amenable to judicial determination and hence the Court must abstain from inquiring into it. We do not think we can accept this argument. Of course, it is true that if a question brought before the Court is purely a political question not involving determination of any legal or constitutional right or obligation, the Court would not entertain it, since the Court is concerned only with adjudication of legal rights and liabilities. **But merely because a question has a political complexion, that by itself is no ground why the Court should shrink from performing its duty under the Constitution if it raises an issue of constitutional determination. Every constitutional question concerns the allocation and exercise of governmental power and no constitutional question can, therefore, fail to be political.** A constitution is a matter of purest politics, a structure of power and as pointed out by Charles Black in '*Perspectives in Constitutional Law*' "constitutional law symbolizes an intersection of law and politics, wherein issues of political power are acted on by persons trained in the legal tradition, working in judicial institutions, following the procedures of law thinking as lawyers think".
>
> (Emphasis supplied)

Elucidating on the role of the court in such situations, the learned judge observed:

> "This Court is the ultimate interpreter of the Constitution and to this Court is assigned the delicate task of determining what is the power conferred on each branch of Government, whether it is limited, and if so, what are the limits and whether any action of that branch transgresses such limits. It is for this Court to uphold the constitutional values and to enforce the constitutional limitations. That is the essence of the rule of law. … **Where there is manifestly unauthorised exercise of power under the Constitution, it is the duty of the Court to intervene. Let it not be forgotten, that to this**

> **Court as much as to other branches of Government, is committed the conservation and furtherance of democratic values.** The Court's task is to identify those values in the constitutional plan and to work them into life in the cases that reach the Court."
>
> (Emphasis supplied)

Since the adoption of the Constitution, this Court has on several occasions adjudicated upon whether the actions of the legislative and executive branches adhere to the democratic processes created by the Constitution. As the ultimate arbiter of the constitutional text, this Court is tasked with ensuring that each branch of government operates within the limits placed upon it by the Constitution, including in the realm of democratic politics. The present controversy arises out of a dispute between the Governor, as the titular head of the executive within the State of Madhya Pradesh, the Chief Minister, the *de-facto* head of the executive within the state and the Speaker of the Madhya Pradesh Legislative Assembly, who has supervisory jurisdiction over the legislative branch of the state. In hearing the present dispute, the court is tasked to determine whether the Governor, a constitutional functionary, acted within his constitutional authority in relation to the legislature by demanding a floor test. Merely because the *prima facie* determination made by the Governor was of the political support enjoyed by the incumbent government or the action demanded was a political process (the floor test) is not a reason for this Court not to hear the matter. There is no doubt that the present case is suitable for judicial determination by this Court. In fact it is eminently so.

*Constitutional Role of the Governor*

32. We must consider the constitutional scheme in operation between the state legislature and the office of the Governor. As a matter of constitutional principle, the state legislature comprises of the Governor and the legislative assembly (and in the case of a bicameral legislature, this also includes the legislative council). The Governor is not an elected member of the state legislature. The Governor is appointed by the President and is the head of the executive branch in whom, under Article 154, the executive power of the state is vested. While holding office at the pleasure of the President, the Governor as a constitutional authority is not a Member of either House of Parliament or of the legislature of a state.[15]

33. Prior to the adoption of the Constitution, the discretion of the Governor to supervise the legislative processes of the (then) provinces was enshrined in Section 50 of the Government of India Act 1935. The provision stated that the Governor would act on the aid and advice of the Council of Ministers for a province "except in so far as he is by or under this Act required to exercise his functions or any of them in his discretion". Section 50 also gave the Governor of a province the power to preside at meetings of the Council of Ministers. During the framing of our Constitution, once a decision was taken that the post of the Governor would be filled by nomination and not election, it was widely accepted that the Governor should not be permitted to preside at meetings of the Council of Ministers. However, the drafting committee thought it wise to retain the

[15] **Article 158. Conditions of Governor's office.**—(1) The Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State specified in the First Schedule, and if a member of either House of Parliament or of a House of the Legislature of any such State be appointed Governor, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Governor.

discretionary powers of the Governor in draft article 143 (what ultimately became Article 163 of the Constitution). However, this decision was not taken lightly. When the motion to adopt the article was tabled, H V Kamath took objection to the Article and suggested an amendment in the following speech:

> "When you, Sir, raised a very important issue, the other day, Dr. Ambedkar clarified this clause by saying that the President is bound to accept the advice of his ministers in the exercise of all of his functions. But here Article 143 vests certain discretionary powers in the Governor, and to me it seems that even as it was, it was bad enough, but now after having amended Article 131 regarding election of the Governor and accepted nominated Governors, it would be wrong in principle and contrary to the tenets and principles of Constitutional Government, which you are going to build up in this country. **It would be wrong I say, to invest a Governor with these additional powers, namely, discretionary powers. I feel that no departure from the principles of Constitutional Government should be favoured except for reasons of emergency and these discretionary powers must be done away with**. I hope this Amendment of mine will commend itself to the House. I move, Sir."[16]
>
> (Emphasis supplied)

The amendment proposed by H V Kamath sought to strip the Governor of all discretionary powers except in the case of an emergency. Crucially, the reason given by H V Kamath for doing away with the discretionary powers of the Governor was that the decision had recently been taken that the Governor would be nominated and not elected. Thus, granting discretionary powers to an unelected constitutional authority was, to the mind of H V Kamath, "a departure from the principles of Constitutional Government".

[16] Constituent Assembly of India, Volume VIII (debate of 1 June 1949)

34. Opposing the above amendment to divest the Governor of discretionary powers, Brajeshwar Prasad took the floor and stated:

> "I feel that the Governor should be vested with the power of special responsibilities which the Governors under the British regime were vested in this country. **I feel that there is a dearth of leadership in the provinces. Competent men are not available and there are all kinds of things going on in the various provinces. Unless the Governor is vested with large powers it will be difficult to effect any improvement in the Provincial administration. Such a procedure may be undemocratic but such a procedure will be perfectly right in the interest of the country.** I feel there is no creative energy left in the middle-class intelligentsia of this country. They seem to have become bereft of initiative and enterprise. The masses who ought to be the rulers of this land are down-trodden and exploited in all ways. Under these circumstances there is no way left open but for the Government of India to take the Provincial administrations in its own hands. **I feel that we are on the threshold of a revolution in this country. There will be revolution, bloodshed and anarchy in this country. I feel that at this juncture it is necessary that all powers should remain centralised in the hands of the Government of India.** In certain provinces the machinery of law and order seems to have completely broken down. Dacoities, arson, loot, murder and inflationary conditions are rampant. I am opposed to this Article, because I am convinced that federalism cannot succeed in a country which is passing through a transitory period."[17]
>
> (Emphasis supplied)

In defending the discretionary powers of the Governor, the Member acknowledged that the grant of discretionary powers to the Governor ran counter to the principles of democracy. However, the Member saw two key historical circumstances that in his view necessitated the grant of such powers: first, the lack of competent administrators in the

[17] Constituent Assembly of India, Volume VIII (debate of 1 June 1949)

provinces to facilitate the democratic processes envisioned by the Constitution and second, the need for centralised and coordinated governance at a time when the unity and integrity of India was still in doubt.

35. It is pertinent to advert to the remarks made by Rohini Kumar Chaudhury in the Constituent Assembly Debates for they are particularly prescient in light of the present controversy. In supporting the amendment put forth by H V Kamath to restrict the discretionary powers of the Governor, the Member observed:

> "Sir, I know to my cost and to the cost of my Province what *'acting by the Governor in the exercise of his discretion'* means. It was in the year 1942 that a Governor acting in his discretion selected his Ministry from a minority party and that minority was ultimately converted into a majority. I know also, and the House will remember too, that the exercise of his discretion by the Governor of the Province of Sindh led to the dismissal of one of the popular Ministers-- Mr. Allah Bux. Sir, if in spite of this experience of ours we are asked to clothe the Governors with the powers to act in the exercise of their discretion, I am afraid we are still living in the past which we all wanted to forget."[18]

In granting the Governor a supervisory jurisdiction over the legislative assemblies of the states, there exists a risk that the unelected office of the Governor can alter democratically achieved electoral outcomes. The examples highlighted above show that the framers of the Constitution had themselves been subject to the abuse of the discretionary powers of the Governor under the Government of India Act 1935 and were acutely aware of the risks associated with the office of the Governor.

36. In interpreting the Constitution, it would be not be correct to rely on the speeches

[18] Constituent Assembly of India, Volume VIII (debate of 1 June 1949)

made by individual members of the Constituent Assembly. Each speech represents the view of one individual in the Assembly which taken as a whole formed a kaleidoscope of competing political ideologies. There may arise instances where the court is of the independent opinion that the views raised by individual Members of the Constituent Assembly in their speeches lay down considerations that warrant examination and approval by the Court. The general rule however, would be to examine the decisions taken by Constituent Assembly taken by majority vote. The votes of the Constituent Assembly represent equally the views of all the members of the Assembly and are the final and dispositive expressions of the constitutional choices taken in framing our Constitution. On the question of whether the Constitution should grant certain discretionary powers to the Governor, the question was put to the Assembly:

> "The question is: ***"That in clause (1) of Article 143, the words 'except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion be deleted."***
>
> The Amendment was negatived."

The Constituent Assembly thus decided to vest the office of the Governor with certain discretionary powers under the Constitution. In taking this decision, the Constituent Assembly was aware that there were certain associated risks in granting the Governor discretionary powers, including in questions of the formation, disruption and dissolution of democratically elected governments. However, the framers felt that this decision was necessitated by unique historical factors that existed at the time of adopting the Constitution and it was hoped that with the maturing of our polity, a level of constitutional statesmanship and trust would paper over the cracks of constitutional

choices necessitated by more violent times.

37. The discretionary powers ultimately vested in the Governor under Article 163 of the Constitution represent an exception to the general rule of aid and advice. The Constitution embodies the principle of aid and advice and in doing so, emphasizes that the Governor is a titular head of state, while the real authority and power vests in the Council of Ministers headed by the Chief Minister. The Council of Ministers is collectively responsible to the legislative assembly of the state. In discussing the principle of collective responsibility, a Constitution Bench of this Court in **State (NCT of Delhi)** v **Union of India**[19] observed:

> "321. Collective responsibility of Ministers to Parliament is comprehended in two aspects: (i) collective responsibility of Ministers for the policies of the Government; and (ii) individual responsibility of Ministers for the work of their governments. The idea behind this bifurcation, as explained by Birch, is to hold a Government 'continuously accountable for its actions, so that it always faces the possibility that a major mistake may result in a withdrawal of parliamentary support'…
>
> …
>
> 324. Granville Austin observes that the Framers of India's Constitution conceived that the democratic values of the Constitution would be achieved if 'the institutions of direct, responsible Government' The Members of the Constituent Assembly borrowed the Parliamentary-Cabinet form of Government from British constitutional theory and adopted it into our Constitution. Though the Constituent Assembly did not adopt the British constitutional conventions in the written form, collective responsibility of the Cabinet was specifically incorporated into India's constitutional framework."

The legislative assembly is a democratically elected body and the government

[19] (2018) 8 SCC 501

represented by the Council of Ministers with the Chief Minister at the head can continue in office only so long as it continues to have the confidence of the legislature. Integral to this concept is the ultimate authority of the state legislature to exercise supervisory control over the conduct, decisions and affairs of the government. The legislature does so through the debates which take place on the floor of the house as well as by exercising oversight over the departments of government. The relationship between the executive arm of the state and its legislative arm in the democratically elected legislative bodies of the states is not merely a matter of a constitutional affliction. In making the Council of Ministers answerable to the legislative assembly and in entrusting to the legislative assembly the authority to exercise oversight over the affairs of the state, the Constitution weaves an intricate process that has been described as representing the checks and balances of democratic governance.

38. The Constitution employs distinct expressions in relation to the term of its legislative bodies, their convening, sittings and ultimate dissolution. The duration of the state legislature is prescribed as five years from the date appointed for the first meeting, unless the legislature is dissolved sooner. After the elections have been held for the purpose of constituting a legislative assembly, the legislature is summoned by the Governor to meet at such time and place “as he thinks fit”. Upon the legislature being summoned, the Governor is entrusted with the authority to prorogue the House. The concept of the House being prorogued is distinct from the dissolution of the legislative assembly. A decision to prorogue the Houses does not bring to an end the duration of the assembly. The duration of the assembly which is prescribed as five years by Article

172 is brought to an end either on the expiry of this period counted from the first date appointed for the meeting or an earlier dissolution. In summoning the house, and in taking a decision to prorogue or dissolve it, the Governor ordinarily acts on the aid and advice of the Council of Ministers. The primary basis on which the accountability of the Council of Ministers is exacted towards the legislature is through the relationship which the Constitution envisions between the government and the elected body of the legislature. The Council of Ministers is drawn from the legislative body, membership of the Council of Ministers being dependent (beyond a term of six months) on membership of the House. But apart from the principle that a member of the Council of Ministers must be a Member of the legislature, accountability of the executive to the legislature is exacted by the ultimate authority which was conferred on the legislature to express a lack of confidence in the Council of Ministers. In envisioning the role of the Governor as a constitutional statesman, care must be taken in the course of interpretation to ensure that the balance of power which was envisaged by the Constitution between the executive and the legislature is maintained by the gubernatorial office.

*The Power of the Governor*

39. The issue of whether a Governor can call for a trust vote in an already constituted legislative assembly is not entirely *res integra.* Before a nine-judge Bench of this Court in **SR Bommai**, the individual cases which came up for consideration included the dispute emanating from the State of Karnataka. In the State of Karnataka, following elections to the Assembly in March 1985, the Janata Legislature Party

emerged with the majority. Shri Ramakrishna Hegde was elected as the leader of the party and was sworn-in as Chief Minister. Following his resignation, Shri Bommai was elected as leader of the party and was sworn-in as Chief Minister on 30 August 1988. In September 1988, there was a merger of the Janata Party with the Lok Dal (B) resulting in the formation of Janata Dal. On 17 April 1989, a legislator defected from the party and presented a letter to the Governor of Karnataka withdrawing his support from the Janata Dal government. The legislator met the Governor on the next day and presented nineteen letters purportedly of seventeen Janata Dal legislators, an independent and a BJP legislator withdrawing support from the Janata Dal government. On 19 April 1989, the Governor sent a report to the President opining that 'as a result of the withdrawal of support, the ruling party had been reduced to the minority in the Karnataka Legislative Assembly' and recommended that action be initiated under Article 356 of the Constitution. Subsequently on 20 April 1989, seven legislators submitted letters to the Governor complaining that their signatures had been obtained by misrepresentation and reaffirmed their support to Shri Bommai's government. The state Cabinet decided to convene an assembly session on 27 April 1989 and the Chief Minister met the Governor, offering to prove his majority on the floor of the house if necessary, by preponing the Assembly Session. Inspite of this, the Governor submitted another report to the President on 20 April 1989 and a proclamation was issued under Article 356 of the Constitution on the very next day. It was in this background that the nine-judge Bench in **SR Bommai** was called upon to determine the legality of the Governor's actions. In holding that the Governor's actions were unjustified, Justice BP Jeevan Reddy observed:

> "391. … The Constitution does not create an obligation that the political party forming the ministry should necessarily have a majority in the Legislature. Minority Governments are not unknown. **What is necessary is that that Government should enjoy the confidence of the House. This aspect does not appear to have been kept in mind by the Governor. Secondly and more importantly, whether the Council of Ministers has lost the confidence of the House is not a matter to be determined by the Governor or for that matter anywhere else except the floor of the House. The principle of democracy underlying our Constitution necessarily means that any such question should be decided on the floor of the House.** The House is the place where the democracy is in action. It is not for the Governor to determine the said question on his own or on his own verification. This is not a matter within his subjective satisfaction. It is an objective fact capable of being established on the floor of the House.
>
> 392. Exceptional and rare situations may arise where because of all pervading atmosphere of violence or other extraordinary reasons, it may not be possible for the members of the Assembly to express their opinion freely. But no such situation had arisen here…"
>
> (Emphasis supplied)

These observations indicate that the question of whether the Council of Ministers in an ongoing legislative assembly commands the confidence of the house is a matter which has to been determined only on the floor of the house and that it is not for the Governor to determine the issue within his subjective satisfaction. The only exception to this norm which the court drew was where a situation arises where members of the Legislative Assembly may not be able express their opinions freely as a result of prevailing violence or for other extraordinary reasons.

40. The judgment of Justice BP Jeevan Reddy also referred to a unanimous report submitted by a committee of Governors appointed by the President of India indicating that:

> "393. In this connection, it would be appropriate to notice the unanimous report of the committee of Governors appointed by the President of India. The five Governors unanimously recommended that the "test of confidence in the Ministry should normally be left to a vote in the Assembly. … **Where the Governor is satisfied by whatever process or means, that the Ministry no longer enjoys majority support, he should ask the Chief Minister to face the Assembly and prove his majority within the shortest possible time. If the Chief Minister shirks this primary responsibility and fails to comply, the Governor would be duty bound to initiate steps to form an alternative Ministry. A Chief Minister's refusal to test his strength on the floor of the Assembly can well be interpreted as prima facie proof of his no longer enjoying the confidence of the legislature.** If then, an alternative Ministry can be formed, which, in the Governor's view, is able to command a majority in the Assembly, he must dismiss the Ministry in power and install the alternative Ministry in office. On the other hand, if no such Ministry is possible, the Governor will be left with no alternative but to make a report to the President under Article 356…."
>
> (Emphasis supplied)

Subsequently dealing with the facts pertaining to the case of the State of Karnataka, Justice BP Jeevan Reddy held:

> "395. The High Court, in our opinion, erred in holding that the floor test is not obligatory. If only one keeps in mind the democratic principle underlying the Constitution and the fact that it is the Legislative Assembly that represents the will of the people – and not the Governor – the position would be clear beyond any doubt. In any case, it may be remembered that the Council of Ministers not only decided on April 20, 1989 to convene the Assembly on 27th of that very month, i.e., within 7 days, but also offered to prepone the Assembly if the Governor so desired. **It pains us to note that the**

> **Governor did not choose to act upon the said offer. Indeed, it was *his duty* to summon the Assembly and call upon the Chief Minister to establish that he enjoyed the confidence of the House. Not only did he not do it but when the Council of Ministers offered to do the same, he demurred and chose instead to submit the report to the President.** In the circumstances, it cannot be said that the Governor's report contained, or was based upon, relevant material. **There could be no question of the Governor making an assessment of his own. The loss of confidence of the House was an objective fact, which could have been demonstrated, one way or the other, on the floor of the House. In our opinion, wherever a doubt arises whether the Council of Ministers has lost the confidence of the House, the only way of testing it is on the floor of the House** except in an extraordinary situation where because of all-pervasive violence, the Governor comes to the Conclusion – and records the same in his report – that for the reasons mentioned by him, a free vote is not possible in the House."
>
> (Emphasis supplied)

In analysing the observations made by the nine-judge Bench in **SR Bommai** it is pertinent to remember that the Governor in that case did not call for a floor test. Rather, the Governor of Karnataka sent a report to the President, based on which a proclamation was issued under Article 356. The observations in **SR Bommai** can be relied on in determining whether the Governor possesses the power to call for a floor test. Discerning the subsequent question of when the exercise of such power is appropriate is a distinct issue. On a perusal of the above observations in **SR Bommai**, it is evident that:

(i) Whether or not the Council of Ministers has lost the confidence of the House must be determined only on the floor of the house and not by the Governor conducting an independent verification;

(ii) Where the Governor has reasons to believe that the incumbent government does not possess the support of the majority in the legislative assembly, the correct course of action would be for the Governor to call upon the Chief Minister to face the assembly and to establish the majority of the incumbent government within the shortest possible time; and

(iii) An exception to the invariable rule of testing whether the government has the assembly's confidence on the floor of the house is envisaged only in extraordinary situations where because of the existence of "all pervasive violence", a free vote is not possible in the House.

41. As a matter of constitutional law, it would not be correct to proceed on the basis that the constitutional authority entrusted to the Governor to require the Council of Ministers to prove their majority on the floor of the House can only be exercised at the very inception after general elections are held and not when the Governor has objective reasons to believe that the incumbent government does not command the confidence of the house. The Governor is not denuded of the power to order a floor test where on the basis of the material available to the Governor it becomes evident that the issue as to whether the government commands the confidence of the house requires to be assessed on the basis of a floor test. Undoubtedly, the purpose of entrusting such a function to the Governor is not to destabilise an existing government. When the satisfaction on the basis of which the Governor has ordered a floor test is called into question, the decision of the Governor is not immune from judicial review. The court would be justified in scrutinizing whether the Governor *prima facie* had relevant and

germane material to order a floor test to be conducted. It must be noted that the Governor does not decide whether the incumbent government commands the confidence of the house. The purpose of holding a floor test in the legislative assembly is precisely to enable the elected representatives to determine whether the Council of Ministers commands the confidence of the House; that verification is not conducted by the Governor. The decision in **SR Bommai** in fact held that recourse to the power under Article 356 was not warranted in a situation where the issue of confidence could yet be tested on the floor of the house by calling for a trust vote. Undoubtedly, in that case, it was the Chief Minister who had suggested, following a meeting of the Cabinet, that the House should be convened for the purposes of testing the majority of the Council of Ministers. The significance of the decision lies in the fact that the decision of the Governor to submit a report under Article 356 was faulted on the ground that the floor test would have been an appropriate course of action.

42. The principle which has been laid down in the nine judge Bench decision in **SR Bommai** has been reaffirmed by the Constitution Bench in **Nebam Rebia.** The judgment of the Constitution Bench arose when the Governor of Arunachal Pradesh, on the aid and advice of the Council of Ministers, summoned the Legislative Assembly of the state on 3 November 2015 to meet on 14 January 2016. Subsequently, the session of the Arunachal Assembly was preponed by the Governor to 16 December 2015 and by an order dated 19 December 2015, the Governor indicated the manner in which the proceedings of the House should be conducted. A notice for the removal of the Speaker dated 19 November 2015 was addressed by thirteen Members of the House to the

Secretary of the Legislative Assembly. One of the primary reasons for the message of the Governor dated 9 December 2015 was the understanding of the Governor that it would be an act of constitutional impropriety if the issue of the removal of the Speaker was not taken up for consideration forthwith. Dealing with this aspect, Justice J S Khehar (as the learned Chief Justice then was) observed that in contradiction to the provisions of Section 53 of the Government of India 1935 (which permitted the Governor to address messages to the House at his discretion) Article 175 does not contain a similar expression. Hence, the Court observed that the messages of the Governor to the House "must be deemed to be limited to the extent considered appropriate by the Council of Ministers headed by the Chief Minister". Dr Abhishek Manu Singhvi, learned Senior Counsel appearing for the Speaker, placed emphasis on this facet of the decision in **Nebam Rebia** and urged that that the relationship of the Governor with the legislative assembly must be bound by the principle of aid and advice. Mr Kapil Sibal, learned Senior Counsel appearing for the Chief Minister, urged that any observations beyond this in the judgment of the Constitution Bench are obiter. Justice J S Khehar, while dwelling upon the powers of the Governor adverted to the treatise of M N Kaul and S L Shakdher[20], noting that:

> "165. … The Governor would summon or prorogue the House or Houses of the State Legislature, on the Aid and advice of the Chief Minister. The narration by the authors reveals that it would be open to the Governor to suggest an alternative date for summoning or proroguing the House or Houses of the State Legislature, but the final determination on the above issue rests with the Chief Minister or the Cabinet, which may decide to accept or not to accept, the alternate date suggested by the Governor. The opinion of M.N Kaul and S.L.

[20] Practice and Procedure of Parliament, published by the Lok Sabha Secretariat

> Shakdher is in consonance with the Constituent Assembly Debates. **The position only gets altered, when the Government in power loses its majority in the House. With reference to prorogation, the opinion expressed by the authors is that the same is also to be determined by the Council of Ministers with the Chief Minister as the head, except in a situation wherein the Government's majority in the House, is under challenge**. From the above exposition it emerges that the Chief Minister and his Council of Ministers lose their right to aid and advise the Governor, to summon or prorogue or dissolve the House, when the issue of the Government's support by a majority of the Members of the House, has been rendered debatable. We have no hesitation in endorsing the above view. But, what is of significance and importance in the opinion expressed by M.N. Kaul and S.L. Shakdher, which needs to be highlighted is, that **the mere fact that some members of the ruling party have defected, does not necessarily prove that the party has lost confidence of the House. And in such a situation, if there is a no-confidence motion against the Chief Minister, who instead of facing the Assembly, advises the Governor to prorogue or dissolve the Assembly, the Governor need not accept such advice. In the above situation, the Governor would be well within his right, to ask the Chief Minister to get the verdict of the Assembly**, on the no-confidence motion."
>
> (Emphasis supplied)

Having adverted to the above treatise, Justice J S Kehar (as the learned Chief Justice then was) held:

> "166. In view of the consideration recorded hereinabove, we are of the view that in ordinary circumstances during the period when the Chief Minister and his Council of Ministers enjoy the confidence of the majority of the House, the power vested with the Governor under Article 174, to summon, prorogue and dissolve the House(s) must be exercised in consonance with the aid and advice of the Chief Minister and his Council of Ministers. In the above situation, he is precluded to take an individual call on the issue at his own will, or in his own discretion. In a situation where the Governor has reasons to believe that the Chief Minister and his Council of Ministers have lost the confidence of the House, it is open to the Governor, to require the Chief

> Minister and his Council of Ministers to prove their majority in the House, by a floor test. Only in a situation, where the Government in power on the holding of such floor test is seen to have lost the confidence of the majority, it would be open to the Governor to exercise the powers vested with him under Article 174 at his own, and without any aid and advice."

The court held that since it was not in dispute that the Governor "never called for a floor test", it was reasonable to infer that the Governor did not ever entertain any doubt about the Chief Minister and the Council of Ministers continuing to enjoy the confidence and the majority in the House. Nor was there any motion of no confidence moved against the government. We are unable to accept the submission of Mr Sibal that the observations of the Constitution Bench in **Nebam Rebia** are obiter. The observations in **Nebam Rebia** are consistent with the formulation of principle in the nine judge Bench decision in **SR Bommai**, as we have discussed earlier. The power under Article 174 of the Constitution to summon the House and to prorogue it is one which is exercised by the Governor on the aid and advice of the Council of Ministers. But in a situation where the Governor has reasons to believe that the Council of Ministers headed by the Chief Minister has lost the confidence of the House, constitutional propriety requires that the issue be resolved by calling for a floor test. The Governor in calling for a floor test cannot be construed to have acted beyond the bounds of constitutional authority.

*Exercise of Power by the Governor*

43. The powers which are entrusted to constitutional functionaries are not beyond the pale of judicial review. Where the exercise of the discretion by the Governor to call a floor test is challenged before the court, it is not immune from judicial review. The court

is entitled to determine whether in calling for the floor test, the Governor did so on the basis of objective material and reasons which were relevant and germane to the exercise of the power. The exercise of such a power is not intended to destabilise or displace a democratically elected government accountable to the legislative assembly and collectively responsible to it. The exercise of the power to call for a trust vote must be guided by the over-arching consideration that the formation of satisfaction by the Governor is not based on extraneous considerations.

44. While the Constitution recognises that the Governor does possess a power inhering in the office to monitor that the elected government continues to possess the confidence of the Legislative Assembly, this entrustment ought not to override or displace the basic responsibility of the executive to the legislature or the ability of the legislature to demand accountability of the executive arm of the state. Dr Singhvi's submission that the Governor cannot demand a trust vote except at the initial constitution of the Legislative Assembly following an election would be to unduly constrain the constitutional entrustment authority to the Governor. Undoubtedly, the largest number of precedents emanating from this Court have dealt with situations where a trust vote was called at the time of the initial formation of government following an election. One of the reasons for this may well be the prevalence of disputes at the time of the initial formation of governments in the states. But, this line of precedent would not exhaust the power of the Governor nor does it suggest that the authority which is entrusted to the Governor cannot be exercised once a government has been formed. Mr Sibal, on the other hand, accepted that there may be situations where the

House is not in session, having been prorogued, and there arise circumstances leading the Governor to a reasonable belief that the government has ceased to command a majority in the legislative assembly. This, in our view, would certainly be one of the situations where the Governor would be justified in calling for a special session in the course of which the incumbent government may be required to establish that it continues to hold the confidence of the House.

45. In a situation where the House has been summoned following the aid and advice of the Council of Ministers, the position would be more nuanced in the sense that the remedy of a no confidence motion would be available to any segment of the legislature seeking to espouse the view that the government has ceased to command the confidence of the house. In exercising the constitutional authority to demand a trust vote, the Governor must do so with circumspection in a manner that ensures that the authority of the House to determine the existence or loss of confidence in the government is not undermined. Absent exigent and compelling circumstances, there is no reason for the Governor to prevent the ordinary legislative process of a no confidence motion from running its due course. The Governor is an appointee of the President but does not represent either a political ideology or a political view. The Governor is expected to discharge the role of a constitutional statesman. The authority of the Governor is not one to be exercised in aid of a political dispensation which considers an elected government of the day to be a political opponent. The precise reason underlying the entrustment of the authority to the Governor is the ability to stand above political conflicts and with the experience of statesmanship, to wheel the

authority in a manner which sub-serves and does not detract from the strength and resilience of democratically elected legislatures and the governments in the states who are accountable to them. To act contrary to this mandate would result in the realisation of the worst fears of the constitutional framers who were cognisant that the office of the Governor could potentially derail democratically elected governments but nonetheless placed trust in future generations to ensure that government of the people, by the people and for the people would not be denuded by those who were designed to act as its sentinels.

46. In discharging this crucial role, it is necessary that the Governor bear in mind that the purpose underlying the entrustment of the authority to require a trust vote is not to displace duly elected governments but to intervene with caution when the circumstances which are drawn to the attention of the Governor indicate a loss of majority. This power is granted to the Governor to ensure that the principle of collective responsibility is maintained at all times and must be exercised with caution. The circumstances on the basis of which the Governor forms a *prima facie* opinion leading up to a communication requiring a trust vote in the legislative assembly must be of an objective nature. The decision of the Governor to do so is not immune from judicial review and must therefore withstand the ability of being scrutinised on the touchstone of the circumstances being relevant, germane and not extraneous to the exercise of an exceptional power which is vested in the Governor.

47. In the present case, the facts which have come on the record indicate the Budget Session of the Legislative Assembly had been convened on the aid and advice of the

Council of Ministers to commence from 16 March 2020. The Governor was intimated that twenty-two Members owing allegiance to the INC had tendered their resignations to the Speaker of the Assembly. Copies of the resignation letters were forwarded to the Governor. At this stage, the validity of these resignations had not been discerned and no decision had been made by the Speaker as to whether the resignations were "voluntary" or "genuine". The Chief Minister subsequently tendered advice to the Governor for the removal of six Members who were ministers in the State government. On 13 March 2020, the Speaker of the Legislative Assembly issued notices of disqualification. However, on 14 March 2020 the resignations of six Members who were ministers of the incumbent government were accepted by the Speaker acting in exercise of the constitutional authority under the proviso to Article 190(3)(b). The Chief Minister, adverting to the turmoil in the state, addressed a communication to the Governor on 13 March 2020 stating that the convening of the floor test would be a sure basis for resolving the conundrum. This is a strong indication that the Chief Minister himself was of the opinion that the situation in the state had cast his government's majority in doubt. However, upon the convening of the Legislative Assembly, no floor test was conducted, and the House was adjourned till 26 March 2020. These facts form the basis on which the Governor advised that a floor test be conducted. Based on the resignation of six ministers of the incumbent government (accepted by the Speaker), the purported resignation of sixteen more Members belonging to the INC, and the refusal of the Chief Minister to conduct a floor test despite the House having been convened on 16 March 2020, the exercise of power by the Governor to convene a floor test cannot be regarded as constitutionally improper.

48. Following the acceptance of the resignations of six Members owing their allegiance to the INC, the strength of the INC in the Legislative Assembly was reduced from 114 to 108. The strength of the House stood reduced to 222. The Governor has in fact not intervened in the authority which is entrusted to the Speaker to either decide upon the voluntary and genuine character of the resignations or any issue of disqualification within the meaning of the Tenth Schedule. Faced with the communication of the Governor for convening a trust vote immediately after the Governor's address, the session of the Legislative Assembly was adjourned till 26 March 2020 despite the House having already convened. This would have allowed the state of political uncertainty in Madhya Pradesh to continue and furnish avenues for political bargaining on terms which cannot be regarded as legitimate. It is with a view to obviate illegitimate and unsemly political bargaining in the quest for political power that this Court has consistently insisted upon the convening of a trust vote at the earliest date. Some of those decisions are summarized in a tabulated statement, for the sake of brevity, which is extracted below:

| Name | Facts | Order of this |
|---|---|---|
| **Jagdambika Pal** v **Union of India**<br>(1999) 9 SCC 95 | • Dispute over Chief Ministership and majority in the house in the state of Uttar Pradesh.<br>• Conduct of the Speaker, Uttar Pradesh Legislative Assembly was challenged as he withheld the verdict on disqualification of 12 Members despite conducting a hearing. | • Court heard the matter on 24 February 1998. of Uttar Pradesh Legislative Assembly be composite floor test was ordered.<br>• The results of the floor test were to be submit<br>• The government was barred from taking an until floor test. |
| **Anil Kumar Jha** v **Union of India**<br>(2005) 3 SCC 150 | • Dispute over formation of government in the state of Jharkhand.<br>• The Governor had appointed a pro tem Speaker who was a comparatively junior member of the Jharkhand Legislative Assembly.<br>• There existed apprehensions that the Governor would tilt the electoral balance between the parties by appointing an Anglo-Indian member under Article 333 of the Constitution. | • A session of the Jharkhand Legislative Asse March 2005. This Court heard the matter c confidence on 11 March 2005.<br>• The only agenda for the day was to be the fl be announced by the pro tem Speaker.<br>• Till the floor test, the Governor was barred was to be confined to the 81 elected member<br>• The Directorate General of Police, Jharkhand "freely, safely and securely attend the Asser caused by anyone therein."<br>• Proceedings were to be video recorded and a |
| **Chandrakant Kavlekar** v **Union of India**<br>(2017) 3 SCC 758 | • Dispute over the formation of government in the state of Goa.<br>• Shri Manohar Parrikar belonging to the BJP was appointed as the Chief Minister of Goa on the claim of 21 supporting legislators in a house of 40.<br>• This number was challenged by the Congress Party in a letter addressed to the Governor. | • The election results were declared on 11 Ma 14 March 2017 and directed a vote of confide<br>• The only agenda for the day was to be the flo<br>• The Election Commission was directed to en March 2017. |

| | | |
|---|---|---|
| **G Parmeshwara** v **Union of India**<br>(2018) 16 SCC 46 | • Dispute over the formation of government in the state of Karnataka.<br>• The letter of the Governor inviting BS Yeddyurappa belonging to the BJP to form the government in the state and granting him 15 days to prove a majority was challenged. | • This Court heard the matter on 18 March 20 Governor claiming to be single largest par would be required, a floor test was direct (despite the Governor giving BS Yeddyurapp<br>• Elected members were to take oath by 4:00 floor test shall be conducted. No secret ball was to be conducted in accordance with the l<br>• The court held that, "Adequate and sufficient Director General of Police, State of Kar arrangements…". |
| **Shiv Sena** v **Union of India**<br>(2019) 10 SCC 809 | • Dispute over the formation of government in the state of Maharashtra.<br>• Following a hung assembly, the President's rule was imposed and subsequently revoked in the early hours of the morning leading to the swearing in of Devendra Fadnavis belonging to the BJP being invited to form the government.<br>• The decision of the Governor was challenged. | • This Court heard the matter on 26 Novembe on 27 November 2019.<br>• A pro tem speaker was to be appointed; Ele 5:00 pm on 27 November at which time the ballot was permitted for the floor test and the |

49. The idea underlying the trust vote in the ultimate analysis, is to uphold the political accountability of the elected government to the state legislature. Assertion of accountability is a mirror image of the collective responsibility of the government to the legislature. The requirement of the trust vote fulfils that purpose in the present case. The present controversy has shone a light on the often-fluid allegiances of democratically elected representatives. This is a matter for their conscience and the court expresses no opinion on the matter. However, it is important to note that in directing a trust vote, the Governor does not favour a particular political party. It is inevitable that the specific timing of a trust vote may tilt the balance towards the party possessing a majority at the time the trust vote is directed. All political parties are equally at risk of losing the support of their elected legislators, just as the legislators are at risk of losing the vote of the electorate. This is how the system of parliamentary governance operates and learned Senior Counsel on both sides of the dispute congenially admitted that the outcome of the trust vote is the ultimate litmus test for the legitimacy to govern. However, we note that where the evidence indicates that circumstances of violence and coercion exist that would undermine a free and fair vote in the assembly, the Governor and the court must take measures to ensure that the sanctity of the trust vote is maintained. In the circumstances as they have emerged in this case, the exercise of authority by the Governor was based on circumstances which were legitimate to the purpose of ensuring that the norm of collective responsibility is duly preserved. There existed no extraordinary circumstances for the Governor to determine that a trust vote was not the appropriate course of action on 16 March 2020.

*Short-circuiting the Speaker's discretion*

50. A significant ground of attack by Dr Singhvi, learned Senior Counsel appearing on behalf of the Speaker, on the decision by the Governor to call for the trust vote is that convening a trust vote at this stage will impinge on the discretion of the Speaker to determine whether the resignations should be accepted (under the proviso to Section 190(3)(b)) and at the second level to decide upon the consequence of the resignation in terms of the anti- defection provisions of the Tenth Schedule. 'Short-circuiting' is the phrase which was used by Dr Singhvi. Implicit in the submission is the charge that holding a trust vote impinges upon the discretion of the Speaker on whether to accept the resignations and to decide whether these Members have incurred the wrath of disqualification. While analysing the submission articulated by Dr Singhvi, the cobwebs need to be cleared. The Governor does not decide whether the resignations that were submitted by the Members were genuine and voluntary. That is squarely a matter which lies within the domain of the Speaker. Similarly, whether a Member of the House has incurred a disqualification under the Tenth Schedule is a matter where the Speaker is the designated authority. Conscious as the Court has been of the fact that these are matters which lie within the domain of the Speaker, in the recent past a direction to Members to appear before the Speaker and for the Speaker to take a decision immediately was recalled by a three judge Bench.[21] Dr Singhvi alluded to these orders.

[21] Pratap Gouda Patil v State of Karnataka (W.P. 872 of 2019): orders dated 12 July 2019 and 17 July 2019

51. It is trite law that neither the Governor, nor for that matter this Court, has the power to impinge upon the authority of the Speaker to take a decision on the above issues. The issue however is whether the convening of a trust vote has to be deferred until such time as the Speaker has taken a decision on whether or not to accept the resignations and if so, the consequence of the Members departing from the fold of the party on whose ticket they were elected under the Tenth Schedule. The holding of a trust vote operates in a distinct field from the issue as to whether one or more individual members of the Legislative Assembly have embarked upon a voluntary act of resignation or have incurred the wrath of the Tenth Schedule. Holding a trust vote is necessary to ascertain whether the Council of Ministers headed by the Chief Minister has the confidence of the House. The continuous existence of that confidence is crucial to the legitimacy and hence survival of the government. It is a matter which can brook no delay since the authority of the government presided over by the Chief Minister depends on the Council of Ministers continuing to have the faith of the legislative body as a collective entity. Particularly where the Members resigned in an expression of a lack of faith in the existing government, the convening of a floor test is the surest method of assessing the impact of the resignations on the collective will of the house. The consequence of the acceptance of a resignation is to reduce the numerical strength of the House. Until the resignations are accepted, the Members who have resigned continue to be reflected in the strength of the house having regard to the language which has been employed in Article 190(3)(b) (“shall thereupon fall vacant”). Whether in a situation such as the present an elected government is entitled to continue despite the resignations of

twenty-two of its Members has a significant bearing on the issue of confidence. Neither the Governor nor for that matter the Court can entrench upon the power of the Speaker, but the pendency of the proceedings before the Speaker cannot be a valid basis to not have the confidence of the House in the government determined by the convening of a floor test. Added to it is a factual circumstance in the present case that the Speaker accepted the resignations tendered by six of the twenty-two Members on 14 March 2020. All of the Members sailed together. No explanation was forthcoming in the submission of Dr Singhvi on what, if any, was the distinction between the six Members whose resignations were accepted with alacrity and the remaining sixteen on whose resignations, no decision has been taken. None of the Members who resigned (neither the six nor the sixteen) appeared before the Speaker. Therefore, non-appearance before the Speaker is evidently not a ground of distinction. We have highlighted above the factual scenario only to emphasise that the convening of a trust vote is of crucial importance to affirm the fundamental values of the Constitution namely, abiding by the rules which govern a parliamentary democracy. The fundamental precept of parliamentary democracy is that the government owes collective responsibility to the legislative assembly and as a collective body, the legislative assembly is entitled to hold the government to account. The ultimate expression of accountability is the existence of or the lack of confidence in the Council of Ministers. We are therefore unable to accept the submission of Dr Singhvi that the holding of a trust vote would short-circuit the jurisdiction of the Speaker on a matter of resignation and disqualification.

52. During the course of his submission, Dr Singhvi fairly accepted that the holding of a trust vote at this stage would ultimately only affect the ability of the resigning Members to accept ministerial office in a new government that may be formed if the issue of disqualification has not been addressed in the meantime. Dr Singhvi submitted that the effort in such cases is for the resigning Members to bring down a government on the allure of ministerial positions in a succeeding government as their disqualification may not be accepted in the future if the government were to change. This, as Dr Singhvi submitted before the court, is how democratic politics operates in reality. The point of the mater however is that nothing prevents the Speaker from taking a decision either on matters of resignation or disqualification despite convening of a trust vote. That the Speaker has not yet done so, is not a ground to defer the convening of a trust vote.

*Seeking Access to the 'Captive' Members*

53. An area on which rival submissions have been urged before this Court is the issue of captivity. The petition by the INC on which submissions have been canvassed by Mr Dushyant Dave, learned Senior Counsel seeks, as one of the reliefs, a direction of this Court to grant access to the twenty-two Members who were lodged at a hotel in Bengaluru. Mr Dave was at pains to emphasise the affront to constitutional morality. Mr Dave submitted that the twenty-two Members who have been elected on the ticket of the INC were 'spirited away' to Bengaluru. Mr Kapil Sibal, learned Senior Counsel and in some measure Dr Singhvi, learned Senior Counsel have also dwelt on this aspect. Mr Sibal submitted that the Members were escorted to Bengaluru from the high security areas of a domestic

airport under the watchful gaze of BJP leaders. It was urged that the Members are in incommunicado and efforts to contact them have been met with resistance to the extent that the Members have not met even members of their own families. This submission has met with a significant amount of resistance. The Members have entered appearance in these proceeding by filing an application for impleadment, which was canvassed on their behalf by Mr Maninder Singh, learned Senior Counsel. Mr Maninder Singh submitted that the Members who have tendered their resignation have no desire to interact with any representatives of the INC and that they are entitled to decide for themselves as to whether they should continue to be Members of the House when they lack faith in the incumbent government in the state.

54. The spectacle of rival political parties whisking away their political flock to safe destinations does little credit to the state of our democratic politics. It is an unfortunate reflection on the confidence which political parties hold in their own constituents and a reflection of what happens in the real world of politics. Political bargaining, or horse-trading, as we noticed, is now an oft repeated usage in legal precedents. 'Poaching' is an expression which was bandied about on both sides of the debate in the present case. It is best that courts maintain an arm's length from the sordid tales of political life. In defining constitutional principle, however, this Court must be conscious of the position on the ground as admitted by Counsel of both sides and an effort has to be made to the extent possible to ensure that democratic values prevail. An underlying assumption of the anti-defection scheme outlined in the Tenth Schedule of the Constitution is

that the political party is the defined political unit which the Constitution recognises. Where we increasingly see a breakdown in the composition and allegiances of the political party due to private allurements offered to Members as opposed to public policy considerations, the law may have to evolve to address these burgeoning evils. We were of the view during the course of the hearing that directions can be issued by the Court to ensure that the twenty-two Members who were in Bengaluru during the course of the hearing are not subjected to any restraint or hindrance whatsoever in the free exercise of their rights and liberties as citizens. We put the question to Dr Singhvi, learned Senior Counsel appearing on behalf of the Speaker, as to whether the Speaker would be willing to accept speaking to the resigning Members through video conferencing at an independent neutral venue, under the supervision of an observer appointed by the Court. Mr Maninder Singh, learned Senior Counsel, appearing on behalf of the Members submitted that he was willing to abide by any modalities that may be fixed by this Court to ensure that the Members were not under any coercion. However, Dr Singhvi submitted that he did not have instructions to accept any such modality. Conscious as we are of the domain of the Speaker in such matters, we have desisted from issuing any such directions. However, we are of the view that in order to facilitate a trust vote for which the twenty-two Members should be free to participate in the house should they opt to do so, directions in that regard should be issued both to the Director General of Police of Karnataka as well as to the Director General of Police of Madhya Pradesh. Our directions are intended to sub-serve the purpose of ensuring that none of the Members are restrained in the exercise of their rights and liberties as citizens and that if any of

them opt to attend the proceedings of the Legislative Assembly, they should not be prevented from doing so.

55. The reliefs which have been sought in the writ petition instituted by the MP Congress Party are manifestly misconceived. A direction to the Union of India (through the Secretary, Ministry of Home Affairs) and to the State of Karnataka (through its Chief Secretary) has been sought to grant access to the office bearers of the MP Congress Party to communicate with respondents five to nineteen (the Members who have tendered their resignations). The petition has not been framed as one seeking a writ of *habeas corpus.* The Members who have appeared in these proceedings through learned Senior Counsel, Mr Maninder Singh have submitted that they do not wish to interact with any of the member of the MP Congress Party. We cannot compel them to do so. Ultimately, it is for the Members to decide who they wish to associate with and to face the consequences of such a decision in accordance with the law and the Constitution. We have already indicated that we are inclined to issue directions to ensure the protection of their rights and liberties as free citizens. Among the reliefs which have been sought is a direction that the vote of confidence should be held only in the presence of all the duly elected Members and that a trust vote cannot be held in the absence of representatives of twenty-two constituencies, whose presence could be secured by holding by-elections for the vacant seats in accordance with law. These reliefs are patently misconceived.

56. The court cannot issue a direction mandating that a trust vote cannot be convened if any one or more Members do not remain present in the House.

Whether or not to remain present is for the individual Members to decide and they would, necessarily be accountable for the decisions which they take, both to their political party and to their constituents. Similarly, the relief to the effect that no trust vote should be conducted until by-elections are held for the twenty-two seats is again misconceived. One of the prayers in the second writ petition seeks an anticipatory direction of this Court based on the assumption that a disqualification would stand attracted upon which the seat would fall vacant and an election would have been held. In any event, the convening of a trust vote cannot be postponed to a future date until by-elections take place.

57. The challenge to the communication of the Governor must fail for the reasons that we have already indicated. After the conclusion of the argument, this Court had pronounced its operative directions. The order passed by this Court on 19 March 2020 is extracted below:

> "Submissions extending over two days were addressed before the Court by learned counsel appearing on behalf of the contesting parties in the two writ petitions instituted under Article 32 of the Constitution.
>
> We have heard Mr Dushyant Dave, Dr A M Singhvi, Mr Kapil Sibal, Mr Vivek Tankha and Mr Harin Raval, learned senior counsel, on one side and Mr Tushar Mehta, learned Solicitor General, Mr Mukul Rohatgi and Mr Maninder Singh, learned senior counsel, on the other.
>
> The former set of counsel have assailed the communication of the Governor to convene a floor test. The latter set of counsel have supported the communication of the Governor.
>
> The submissions which have been urged before the Court would necessitate a judgment which would take some time to be delivered. The state of uncertainty in

the State of Madhya Pradesh must be effectively resolved by issuing a direction for convening a floor test, bearing in mind the principles which have been enunciated in the decision of the nine-Judge Bench of this Court in S R Bommai v Union of India [(1994) 3 SCC 1)] and in the decision of the Constitution Bench in Nabam Rebia v Deputy Speaker, Arunachal Pradesh Legislative Assembly [(2016) 8 SCC 1]. These principles have been consistently reiterated in several subsequent decisions of this Court which would be adverted to in the course of the reasons which will follow.

We accordingly issue the following directions:

(i) The session of the Madhya Pradesh Legislative Assembly which has been deferred to 26 March 2020 shall be reconvened on 20 March 2020;

(ii) The meeting to be convened in pursuance of (i) above shall be confined to a single agenda, namely, whether the government of the incumbent Chief Minister continues to enjoy the confidence of the House;

(iii) Voting on agenda (ii) above shall take place by show of hands (the Governor having clarified by his letter dated 15 March 2020 that there is no provision for recording the division by 'press of button');

(iv) The proceedings before the Legislative Assembly shall be video graphed and, if a provision exists for live telecast of the proceedings, this shall in addition be ensured;

(v) All authorities, including the Legislative Secretary, shall ensure that there is no breach of law and order in the course of the proceedings and that the floor test is conducted in a peaceful manner;

(vi) The floor test in pursuance of the above directions shall be concluded by 5.00 pm on 20 March 2020; and

(vii) The Director General of Police, Karnataka as well as the Director General of Police, Madhya Pradesh shall ensure that there shall be no restraint or hindrance whatsoever on any of the sixteen MLAs taking recourse to their rights and liberties as citizens. In the event that they or any of them opt to attend the session of the Legislative Assembly,

arrangements for their security shall be provided by all the concerned authorities.

Reasons shall follow."

Our reasons for the above directions are contained in the text of this judgment. We affirm the above directions as final operative directions of this Court. Writ Petition No. 439 of 2020 shall stand disposed of in terms of the above directions. Writ Petition No. 449 of 2020 shall stand dismissed. Impleadment applications shall accordingly stand disposed of.

Pending application(s), if any, shall stand disposed of.

**……..…..…....…….....J.**
**[Dr Dhananjaya Y Chandrachud]**

**…….…..…....…….....J.**
**[Hemant Gupta]**

**New Delhi;**
**April 13, 2020.**