

There is no gainsaying that the boundaries between the jurisdiction of Courts and Parliamentary independence have been contested for a long time.¹ However, there is a need and requirement for recognizing institutional comity and separation of powers so as to tailor judicial interference in the democratic processes only as a last resort. This case pertains to one such situation, wherein this Court is called upon to adjudicate and maintain democratic values and facilitate the fostering of the citizens' right of good governance.

Having heard the submissions of the learned counsel on the issues of maintainability, extent of judicial review and validity of the Governor's satisfaction, we are of the opinion that they can be adjudicated at an appropriate time. There is no doubt that the contentions have to be answered, as the petitioners have raised questions concerning important constitutional issues touching upon the democratic bulwark of our nation. However, at this

¹ Erskine May, Parliamentary Practice, 25th edition, 321 (2019).

interim stage, we may note that it is imperative for this Court to be cognizant of the need to take into consideration the competing claims of the parties, uphold the democratic values and foster constitutional morality.

In a situation wherein, if the floor test is delayed, there is a possibility of horse trading, it becomes incumbent upon the Court to act to protect democratic values. An immediate floor test, in such a case, might be the most effective mechanism to do so. A similar view was expounded by B.P. Jeevan Reddy, J., in the celebrated nine-Judge Bench decision of this Court in **S.R. Bommai v. Union of India, (1994) 3 SCC 1**, wherein he held as follows:

“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....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)

We may note that in the present case, oath has not been administered to the elected members even though a month has elapsed since the declaration of election results. In such emergent facts and circumstances, to curtail unlawful practices such as horse trading, to avoid uncertainty and to effectuate smooth running of democracy by ensuring a stable Government, we are of the considered opinion that it is necessary to pass certain interim directions in this case. In this context, it is necessary and expedient to conduct the floor test as soon as possible to determine whether the Chief Minister, who was administered the oath of office, has the support of the majority or not. Since the elected members of the Legislative Assembly are yet to take oath as

specified in the III Schedule of the Constitution, and the Speaker is also yet to be elected, we request the Governor of the State of Maharashtra to ensure that a floor test be held on 27.11.2019. The following procedure is to be followed for conducting the floor test:

- a. *Pro-tem* Speaker shall be solely appointed for the aforesaid agenda immediately.
- b. All the elected members shall take oath on 27.11.2019, which exercise should be completed before 5:00 p.m.
- c. Immediately thereafter, the *Pro-tem* Speaker shall conduct the floor test in order to ascertain whether the Respondent No. 3 has the majority, and these proceedings shall be conducted in accordance with law. The floor test will not be conducted by secret ballot.
- d. The proceedings have to be live telecast, and appropriate arrangements are to be made to ensure the same.