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SC order paves way for a floor test, say experts

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Mumbai: The Supreme Court order extending till July 12, 5.30 pm, the time granted by the Deputy Speaker of the Maharashtra Assembly to Eknath Shinde and other 'rebel' MLAs to reply to disqualification notices, paves the way for a "very definite possibility" of a floor test to prove the confidence of the Assembly, said legal experts on Monday.

Given that there is no stay on such action, the entire sequence of events now points in the direction of a floor test, which could be the only way out of the impasse in the next two weeks, said experts. "There will be no disqualification till then and they are theoretically entitled to having a floor test," said senior counsel Vineet Naik.

The SC vacation bench of Justices Surya Kant and J B Pardiwala did orally allow Maharashtra state to knock on its doors in case a no-confidence motion is sought by the 'rebel' MLAs to verify the MVA's numbers in the legislature. Senior counsel Prasad Dhakephalkar said the Maharashtra governor can legally promulgate a Session of the House and direct a floor test be held. The process would then kick in and the State's legal team can immediately rush to the SC and seek an urgent hearing to try and stall it since the apex court is seized of the matter filed by the 'rebel' MLAs. Even if the motion does go ahead, the affected parties can challenge its outcome later.

However, in the House during a vote for no-confidence, "there can be no concept of disqualification at that time," said a senior advocate from Delhi. But Dhakephalkar said if a motion is called for and a whip issued for members to vote, disobedience in the show of hands may incur consequences and pave way for notice of disqualification.

With Shinde camp saying it constitutes a majority of the Shiv Sena Legislative Party, it may issue its own whip. Any disobedience of the whip may entail a disqualification petition, but then the ball may lie in the Speaker's court—and who the Speaker would be will depend on the outcome of the floor test. If the government remains, the Speaker will remain and if the Government falls the Speaker would change.

“If a floor test were to be held, Shiv Sena would in all probability issue a whip to vote in favor of the Deputy Speaker. If the rebel MLAs were to defy this whip and avoid being disqualified, they would have to be 37 in number on the day of the voting or merge with the BJP or float a new political party, for which permission would be required to be sought from the Election Commission,” said Naik.

Rahul Chitnis, a counsel appearing on behalf of the State Government, informed the court that adequate steps have been taken and will be taken to protect the 39 dissident Sena MLAs and their families. “With this assurance by the State Government, which includes all three parties from MVA, it would be safe to assume that the 39 MLAs who are camping out of State can or may return to Mumbai,” said Naik.