

**A PETITION UNDER ARTICLE 32 OF THE CONSTITUTION  
OF INDIA**

To,  
The Hon'ble Chief Justice of India and  
His Companion Judges of the  
Supreme Court of India

The humble Petition of the  
Petitioner above named:

**Most Respectfully Showeth:**

1. The Petitioners have been constrained to invoke the extraordinary jurisdiction of this Hon'ble Court under Article 32 of the Constitution of India; the present petition is being filed by members of the Legislative Assembly who have resigned from the assembly and yet their resignations have not been accepted by the Speaker of the house in a mala fide manner.
2. The Petitioners in the instant application are members of the Karnataka Legislative Assembly.
3. Respondents No.1 is the State of Karnataka. Respondent No. 2 is the Speaker, Karnataka Legislative Assembly who is not accepting the resignations of the Petitioners. The Respondent No. 3 is the Chief Minister of the State of Karnataka whose Govt. no longer commands a majority in the Karnataka Legislative Assembly. Respondent No. 4 is the Union of India.

4. That having regard to the nature of the matter and the urgent reliefs sought, the Petitioners have not made any representation before filing the present petition.

5. That before detailing the grounds of the present Writ Petition, it is incumbent to narrate the brief facts leading to the filing of the present Writ Petition-

(a) The Strength of the Karnataka Legislative Assembly is 222 seats. On 12.5.2018/15.5.2018, Results of elections to the 15<sup>th</sup> Karnataka Legislative Assembly were declared and the position of seats were as follows-

<b>Party</b>	<b>Seats won</b>
Bahujan Samaj Party	1
Bharatiya Janata Party	104
Indian National Congress	78
Janata Dal(Secular)	37
Karnataka Pragnyavantha Janatha Party	1
Independent	1
Total	222

(b) As is clear from the above, the Bharatiya Janata Party(BJP) was the single Largest Party. It is pertinent to state that there was no pre-poll alliance between the Janata Dal Secular(JD-S) and the Indian National Congress. (INC)

- (c) On 16.5.2018, the Hon'ble Governor invited the BJP, as the single largest party, to form the Govt and seek a vote of confidence within 15 days.
- (d) On 16.5.2018/17.5.2018, Writ Petition (C) Diary No. 19482 of 2018 was filed being Dr. G. Parmeshwara & Anr. V. Union Of India & Ors, Challenging the said decision of the Hon'ble Governor, inviting the BJP to form the Govt.
- (e) On 17.5.2018, this Hon'ble Court passed an order in Writ Petition(C) Diary No. 19482 of 2018 directing that the oath ceremony was not being stayed but the same would be subject to further orders of the court and the outcome of the Writ Petition.
- (f) On 18.5.2018, this Hon'ble court passed a detailed order in Writ Petition(C) Diary No. 19482 of 2018 holding that-

*“...In a matter like this, detailed hearing is required in order to decide as to whether action of the Governor in inviting respondent no.3 to form the Government was valid in law or not. Since it may consume substantial time and the final decision cannot be given immediately, we deem it proper that Floor Test to ascertain the majority of one or the other group is conducted immediately and without any delay. Though the Governor in his letter dated 16.05.2018 inviting respondent no.3 to form the Government has given him*

*15 days' time for proving the majority on the floor of the House, having regard to all the circumstances of this case, we are of the view that such a Floor Test be conducted tomorrow itself i.e. on 19.05.2018..."*

The Hon'ble Court also laid down a specific procedure to be followed while conducting the floor test.

**Note-**This Hon'ble Court had itself directed that the group holding the confidence of the house had to be ascertained through a floor test.

A copy of the order dated 18.5.18 passed by this Hon'ble Court in Writ Petition(C) Diary No. 19482 of 2018 is annexed herewith and marked as **Annexure P-1. (Pgs-\_\_-\_\_)**

(g) The INC and JD-S claimed to have formed a post poll alliance. Accordingly, Sh. H. D. Kumaraswamy of the JD-S took oath as the Chief Minister of Karnataka on 25.5.2018.

(h) Since the time Sh. H. D. Kumaraswamy took oath as a Chief Minister, the administration has come to a standstill and maladministration is writ large. In recent days, the Govt. have been rocked by various scandals, chief among them were-

- I) IMA Ponzi scam, in which thousands of people have been cheated of their hard earned monies and yet the main accused has been allowed to leave the country. The allegations are that senior functionaries of the Govt. have been involved in the said scam.
  
- II) JSW land scam, wherein land has been given at through away rates to industrialists against public interest.
  - (i) Further, the coalition have been rocked by inner contradictions and the Govt. has never remained stable. Consequently, in the recent Lok Sabha Elections, despite the governing coalition contesting the election together on seat sharing formula, they lost miserably before the electorate.
  - (j) On 1.7.19, One Anand Singh resigned as an MLA from the assembly.
  - (k) Being fed up with the maladministration, the Petitioners who belong to Indian National Congress (INC) and Janata Dal Secular (JD-S) tendered their resignations to the Speaker of the Legislative Assembly on 6.7.19. It is pertinent to state that in all 14 MLA's of Congress and JDS have resigned as on date.

A translated copy of the Resignation letter of B. A. Basavaraja dated 6.7.19 is annexed herewith and marked as **Annexure P-2. (Pg-\_\_-\_\_)**

A translated copy of the Resignation letter of Arabil Sivaram Hebbar dated 6.7.19 is annexed herewith and marked as **Annexure P-3. (Pg-\_\_-\_\_)**

A translated copy of the Resignation letter of B. C. Patil dated 6.7.19 is annexed herewith and marked as **Annexure P-4. (Pg-\_\_-\_\_)**

A translated copy of the Resignation letter of Ramesh L. Jarkhiholi dated 6.7.19 is annexed herewith and marked as **Annexure P-5. (Pg-\_\_-\_\_)**

A translated copy of the Resignation letter of Mahesh Kumathalli dated 6.7.19 is annexed herewith and marked as **Annexure P-6. (Pg-\_\_-\_\_)**

A translated copy of the Resignation letter of Narayan Gowda dated 6.7.19 is annexed herewith and marked as **Annexure P-7. (Pg-\_\_-\_\_)**

A translated copy of the Resignation letter of Pratap Gouda Patil dated 6.7.19 is annexed herewith and marked as **Annexure P-8. (Pg-\_\_-\_\_)**

A translated copy of the Resignation letter of K. Gopalaiah dated 6.7.19 is annexed herewith and marked as **Annexure P-9. (Pg-\_\_-\_\_)**

A translated copy of the Resignation letter of H. Viswanath dated 6.7.19 is annexed herewith and marked as **Annexure P-10. (Pg-\_\_-\_\_)**

It is stated that the acknowledgement of Sh. Somashekar was torn by one of the ministers of the Govt.

(l) On 6.7.19 i.e the day when several of the MLAs, including the Petitioner tendered their resignation, the Speaker was present in his Office. After coming to know that the MLA's had come to tender their resignation, the Speaker left his office by a private car and was not traceable.

(m) The members, who had gone to the Speaker's chamber, contacted the Secretary of the Karnataka Legislative Assembly and tendered their resignation. With no other option left, all the MLA's who resigned also went to meet his Excellency the Governor and handed over their resignation to his Ex. the Governor. The Hon'ble Governor further forwarded the letters with resignation to the speaker as well.

- (n) In the meanwhile, 2 other MLAs, 1 independent and 1 member of Karnataka Pragnyavantha Janatha Party tendered their resignation from the Cabinet and also withdrew their support to the coalition Govt. The said MLAs also addressed a letter to the Governor extending their support to the BJP on 8.7.19.
- (o) The Hon'ble Speaker chose not to attend office till Tuesday, 9<sup>th</sup> July, 2019. On the said date, he appeared before the media and stated that the resignation of 8 MLAs were not in a proper format and asked 5 of them to be present before him on Friday 12<sup>th</sup> July. A copy of the Newspaper report dated 9.7.19 showing the statement of the Speaker is annexed herewith and marked as **Annexure P-11.(Pg-\_\_-\_\_)**
- (p) Acting in a concerted manner, the Congress party has filed a Petition before the Speaker seeking disqualification of the MLAs who have resigned. Needless to state, the disqualification proceedings are completely illegal and without any cause of action in as much as the MLAs had tendered their resignations itself to their membership. A copy of the Newspaper report dated 9.7.19 showing the congress party has filed a disqualification application is annexed herewith and marked as **Annexure P-12.(Pg-\_\_-\_\_)**
- (q) It is stated that the Assembly Session is to begin from 12.7.19, i.e the same day that the MLA's have been asked to remain in person before the Speaker. The

same in itself shows the intent of the Speaker to disqualify the Petitioners in a prejudged manner.

- (r) The whole Idea is to disqualify the Petitioners and under threat of disqualification allow the minority Govt. to function without the support of majority in the house. It is stated that the Petitioners have resigned voluntarily and without any fear.

A copy of the Affidavits of Pratap Gouda Patil dated 9.7.19 is annexed herewith and marked as **Annexure P-13. (Pg-\_\_-\_\_)**

A copy of the Affidavits of Ramesh Jarkhiholi dated 9.7.19 is annexed herewith and marked as **Annexure P-14. (Pg-\_\_-\_\_)**

A copy of the Affidavits of Byrati Basavaraj dated 9.7.19 is annexed herewith and marked as **Annexure P-15. (Pg-\_\_-\_\_)**

A copy of the Affidavits of B. C. Patil dated 9.7.19 is annexed herewith and marked as **Annexure P-16.(Pg-\_\_-\_\_)**

A copy of the Affidavits of S. T. Somashekar dated 9.7.19 is annexed herewith and marked as **Annexure P-17.(Pg-\_\_-\_\_)**

A copy of the Affidavits of Arbail Sivaram Hebbar dated 9.7.19 is annexed herewith and marked as **Annexure P-18.(Pg-\_\_-\_\_)**

A copy of the Affidavits of Mahesh Kumathalli dated 9.7.19 is annexed herewith and marked as **Annexure P-19. (Pg-\_\_-\_\_)**

A copy of the Affidavits of K. Gopalaiah dated 9.7.19 is annexed herewith and marked as **Annexure P-20. (Pg-\_\_-\_\_)**

A copy of the Affidavits of H. D. Vishwanath dated 9.7.19 is annexed herewith and marked as **Annexure P-21. (Pg-\_\_-\_\_)**

A copy of the Affidavits of Narayan Gowda dated 9.7.19 is annexed herewith and marked as **Annexure P-22. (Pg-\_\_-\_\_)**

(s) Hence, the present Writ Petition.

6. That the Petitioner is filing the present Writ Petition on the following amongst other grounds which are in alternative and without prejudice to one and another: -

### **GROUNDS**

A. That the present petition is being filed by members of the Legislative Assembly who have resigned from the assembly and yet their resignations have not been accepted by the speaker of the house in a mala fide manner.

B. That the Hon'ble Speaker has acted as a partisan and mala fide manner in the present case in order to protect the Govt. in power which is in a minority. The same is clear from the following facts-

(a) On 6.7.19 i.e the day when several of the MLAs, including the Petitioner tendered their resignation, the Speaker was present in his Office;

(b) After coming to know that the MLA's had come to tender their resignation, the Speaker left his office by a private car and was not traceable;

(c) The members who had gone to the Speaker's chamber, contacted the Secretary of the Karnataka Legislative Assembly and tendered their resignation;

(d) With no other option left, all the MLA's who resigned also went to meet his Excellency the Governor and handed over their resignation to his Excellency the Governor. The Hon'ble Governor further forwarded the letters with resignation to the speaker as well.

- (e) In the meanwhile, 2 other MLAs, 1 independent MLA and 1 member of Karnataka Pragnyavantha Janatha Party tendered their resignation from the Council of Ministers and also withdrew their support to the coalition Govt. The said MLAs also addressed a letter to the Governor extending their support to the BJP.
- (f) The Hon'ble Speaker chose not to attend office till Tuesday, 9<sup>th</sup> July, 2019. On the said date, he appeared before the media and stated that the resignation of 8 MLAs were not in a proper format and asked 5 of them to be present before him on Friday 12<sup>th</sup> July;
- (g) Acting in a concerted manner, the Congress party has filed a Petition before the Speaker seeking disqualification of the MLAs who have resigned. Needless to state, the disqualification proceedings are completely illegal and without any cause of action;
- (h) It is stated that the Assembly Session is to be begin from 12.7.19, i.e the same day that the MLA's have been asked to remain in person before the Speaker. The same in itself shows the intent of the Speaker to disqualify the Petitioners in a prejudged manner.

The whole Idea is to disqualify the Petitioners and under threat of disqualification allow the minority Govt. to function without the support of majority in the house. It is

submitted that the actions of the Hon'ble Speaker are arbitrary and unreasonable are violative of Article 14 of the Constitution of India.

C. That the observation that the letters of resignation are not in format are contrary to the provisions of the Rules of Procedure and Conduct of Business of Karnataka Legislative Assembly. Rule 202 of the said rules prescribes a single line format of resignation in the following manner-

**Rule 202 of the Karnataka Legislative Assembly-  
CHAPTER-XXII  
RESIGNATION AND VACATION OF SEATS IN THE HOUSE  
Resignation of seats in the house:**

*202. (1) A member who desires to resign his seat in the House shall intimate in writing under his hand addressed to the Speaker, his intention to resign his seat in the House in the following form and shall not give reason for his resignation.*

To

*The Speaker  
Legislative Assembly  
Bangalore.*

*Sir,*

*I hereby tender my resignation of my seat in the House with effect From.....*

*Yours faithfully,*

*Place.....*

*Date.....*

*Member of the House*

*Provided that where any member gives any reason or introduces any extraneous matter the Speaker may, in his discretion, omit such words, phrases or matter and the same shall not be read out in the House.*

*(2) If a member hands over the letter of resignation to the Speaker personally and informs him that the resignation is voluntary and genuine and the Speaker has no information or knowledge to the contrary, and if he is satisfied, the Speaker may accept resignation immediately.*

*(3) If the Speaker receives the letter of resignation either by post or through someone else, the Speaker may make such inquiry as he thinks fit to satisfy himself that the resignation*

*is voluntary and genuine. If the Speaker, after making a summary enquiry either himself or through the agency of Legislative Assembly Secretariat or through such other agency, as he may deem fit; is satisfied that the resignation is not voluntary or genuine, he shall not accept the resignation."*

It is submitted that the resignations are in consonance with the Rules and the provisions of the Constitution of India. The said objection is clearly not warranted and appears to be an exercise to delay the proceedings thereby giving room for the ruling dispensation to exert pressure on the MLAs who have tendered resignations. Assuming (without admitting) that the resignation of the Member was not communicated in the prescribed format, such irregularity would not vitiate the resignation;

D. That neither Article 190 of the Constitution nor the Rules of the Assembly provide any contingency and/ or penalty for failure/ omission/ refusal to comply with the prescribed mode of communication of resignation by a Member and hence, requirement of following a prescribed format for communication of resignation is not mandatory;

E. That under Article 190 of the Constitution, a member can deliver resignation signed in his own hand and the Speaker is only to satisfy himself about genuineness and voluntariness of the Resignation. Article 190(3) states as follows-

**Article 190 of Constitution of India "Oath or affirmation by members"**

*(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.]*

It is stated that there is no doubt that the resignations are voluntary and genuine, more so when the MLA's themselves have given innumerable Television Interviews and statements requested the Speaker time and again to accept their resignation. It is pertinent to state that the Petitioners have filed affidavits alongwith the present proceedings stating that they have resigned voluntarily and their resignations may be accepted. And yet the Speaker refuses to act upon the same. The same is completely arbitrary and unreasonable and violative of the Constitution of India read with Article 190.

F. That the actions of the Hon'ble Speaker are not in furtherance of Constitutional Democracy. Any elected Member of the Legislature is entitled, in consultation with his conscience or other attendant circumstances to resign his membership of the Legislature. It is stated that the MLAs disenchanted with the mal-administration under the present dispensation wish to resign. The same is their fundamental right to so as a citizen and as a public

representative. The resignation was on the issue of principle and in public interest. However, the Hon'ble Speaker acting in an arbitrary and illegal manner is seeking to frustrate the said right in favour of the Petitioner. Denial of such a right is destructive of the principles of democracy and hence violative of the basic structure of the Constitution.

G. That the Hon'ble Speaker ought to have appreciated that the Petitioners themselves had never raised any grievance whatsoever regarding the validity and/ or genuineness of their resignation thereby obviating the requirement of an enquiry in terms of Article 190 of the Constitution of India. Article 190(3) does not envisage a roving enquiry by the Hon'ble Speaker into the circumstances pertaining to a voluntary and genuine resignation by a Member of the House;

H. That the actions of the Hon'ble Speaker are vitiated by mala fide as evident in his actions. As per simple arithmetic, the Strength of the House being 224, the Govt. headed by Sri H.D. Kumaraswamy lost its majority (112) seats and its strength has reduced to 103 seats. Notwithstanding the same and fearing that the Chief Minister may have to tender resignation for want of confidence of the house, the Speaker is acting in a partisan manner to frustrate the will of the house.

- I. That the Hon'ble Chief Minister despite being reduced to minority is refusing to seek a vote of confidence. As a result of the concerted acts between the speaker and the govt., a minority Govt. which does not enjoy the confidence of the House, continues in power illegally. A purposive interpretation of article 164 r/w principles of Parliamentary Sovereignty mandate that the Chief Minister should always command the confidence of the house.
- J. In this extra ordinary situation, Petitioners are before this Hon'ble Court invoking its extra-ordinary jurisdiction for upholding the democratic principles as enshrined in the Constitution of India. This Hon'ble Court being the sentinel and the final arbiter of all the Constitutional issues is requested to intervene to keep all Constitution Authorities within their limits and to ensure that there is no fraud on the constitution.
5. That the Petitioner has no equally efficacious alternate remedy in view of the urgent nature of the relief sought which will can be granted only by this Hon'ble Court.
6. That the Petitioner has not filed any other Writ Petition before this Hon'ble Court or any other proceedings in any other Court seeking similar reliefs.

**PRAYER**

In view of the aforesaid facts and circumstances and on the grounds as mentioned hereinabove, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to issue an other appropriate writ, order or direction under Article 32 of the Constitution of India:

- a) Directing the Respondent No. 2/Hon'ble Speaker to accept the resignations of the Petitioners as tendered;
- b) Restraining the Respondent No. 2/Hon'ble Speaker from proceeding with the applications for disqualification;
- c) Any other and further Order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

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

Filed by:

Drawn On: \_\_ .07.2019                      SHUBHRANSHU PADHI  
Filed On:    .07.2019                      ADVOCATE – ON – RECORD