

BRIEF SYNOPSIS AND LIST OF DATES

The Petitioners are nationals and citizens of India and, therefore, they are entitled to the protection of their fundamental rights guaranteed under the constitution of India particularly under Article 14 and 19 of the constitution of India. The Petitioners are approaching this Hon'ble Court as the Respondents Nos.1 to 3 have flagrantly violated the constitutional principles and have deliberately and wilfully defied the directions issued by Hon'ble Governor dated 14.3.2020 requiring the Respondent No.2-Hon'ble Chief Minister to prove his majority on the floor of Madhya Pradesh legislative assembly on 16.3.2020 when the budget session of the legislative assembly was to commence.

It is submitted that the 15th legislative assembly of Madhya Pradesh was constituted in December, 2018 after the conduct of general elections. The assembly has a strength of 230 seats. After the constitution of assembly, the Indian National Congress ("**Congress party**"), which had won 114 seats had staked claim to form the government with the support of 4 independents, 2 members of Bahujan Samaj Party and 1 member of the Samajwadi party. Thus, the Congress party claimed support of 121 members in the assembly and sought to form the government. Subsequently, the Hon'ble Governor invited the Congress party to form the government and Shri Kamal Nath was sworn in as the Hon'ble Chief Minister. The main opposition party namely the Bhartiya Janata Party ("**BJP**") won 109 seats in the legislative assembly.

However, as of now, two seats of the assembly belonging to BJP have fallen vacant and the current strength of the assembly is 228 members. The BJP, as of now, has 107 members in the house.

It has recently emerged that on account of dissatisfaction with the Hon'ble Chief Minister for non-fulfilment of promises made prior to elections; 22 members of the assembly who were supporting the government, no longer support it, and have tendered their resignation to the Speaker on 10.3.2020. The factum of resignation of members supporting the government and presence of political turmoil is also

admitted by the Hon'ble Chief Minister in his letter dated 13.3.2020 addressed to the Hon'ble Governor. The Chief Minister, in the said letter, also expressed willingness to conduct floor test in the budget session commencing on 16.3.2020. It is further an admitted position that out of 22 MLA's who had tendered resignations, the Hon'ble Speaker, even without their personal presence, accepted the resignation of 6 MLAs. Thus, the strength of legislative assembly, as of now, is reduced to 222.

It is submitted that the leaders of the main opposition party namely the BJP also on 14.3.2020 addressed a letter to the Hon'ble Governor that the government was reduced into minority and attempts of horse trading were being made. In such a situation, the Hon'ble Governor should exercise his constitutional powers and direct the Hon'ble Chief Minister to prove his majority on the floor of the house.

Since the government appears to have lost the majority in the house and the Hon'ble Chief Minister had himself expressed willingness to conduct the floor test, the Hon'ble Governor, in exercise of his constitutional powers, by letter dated 14.3.2016, directed the Hon'ble Chief Minister to conduct floor test in the house and prove his majority on 16.3.2020, when the budget session of the assembly begins.

However, despite the clear-cut directions issued by the Hon'ble Governor to the Hon'ble Chief Minister to seek vote of confidence and prove his majority on the floor of the house on 16.3.2020 itself, after the address by the Hon'ble Governor is over, the item for seeking the confidence vote has not been included in the business to be transacted on the floor of the House on 16.3.2020. The direction of the Hon'ble Governor is, thus, intentionally and wilfully been defied. The Hon'ble Chief Minister and his party leaders have publicly declined to conduct the floor test.

It is submitted that on account of lack of confidence and resignation of 22 MLAs of Congress party, out of which the resignation of 6 MLAs having been already accepted by Hon'ble Speaker, the government led by Hon'ble Chief Minister has been

reduced to minority. It has no moral, legal, democratic or constitutional right to remain in power even for a single day. All possible attempts are being made by the Hon'ble Chief Minister to convert his minority government into majority by giving all possible threats, allurements to the members of the Madhya Pradesh Vidhan Sabha. The horse-trading is at its peak. Therefore, it is essential that floor test is conducted on 16.3.2020 itself as already directed by Hon'ble Governor, so that it becomes absolutely clear as to whether the Hon'ble Chief Minister continues to enjoy the confidence of the majority of the Madhya Pradesh Vidhan Sabha. Any deferment of the floor test will further encourage horse trading and would be in utter violation of the directions issued by the Hon'ble Governor; law laid down by this Hon'ble Court and the spirit and basic structure of the constitution of India.

It is submitted that a 9 judge constitution bench in **S.R. Bommai v. Union of India, (1994) 3 SCC 1**, held that if the support to a government is withdrawn by some legislators and the government appears to have lost the confidence of the house, it is the duty of the Governor to direct the government to prove the majority by floor test: -

"119. In this connection, it is necessary to stress that in all cases where the support to the Ministry is claimed to have been withdrawn by some legislators, the proper course for testing the strength of the Ministry is holding the test on the floor of the House. That alone is the constitutionally ordained forum for seeking openly and objectively the claims and counter-claims in that behalf. The assessment of the strength of the Ministry is not a matter of private opinion of any individual, be he the Governor or the President. It is capable of being demonstrated and ascertained publicly in the House. Hence when such demonstration is possible, it is not open to bypass it and instead depend upon the subjective satisfaction of the Governor or the President. Such private assessment is an anathema to the democratic principle, apart from being open to serious objections of personal mala fides. It is possible that on some rare occasions, the floor-test may be impossible, although it is difficult to envisage such situation. Even assuming that there arises one, it should be obligatory on the Governor in such circumstances, to state in writing, the reasons for not holding the floor-test. The High Court was, therefore, wrong in holding that the

floor-test was neither compulsory nor obligatory or that it was not a prerequisite to sending the report to the President recommending action under Article 356(1). Since we have already referred to the recommendations of the Sarkaria Commission in this connection, it is not necessary to repeat them here.

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 this 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.

396. We make it clear that what we have said above is confined to a situation where the incumbent Chief Minister is alleged to have lost the majority support or the confidence of the House. It is not relevant to a situation arising after a general election where the Governor has to invite the leader of the party commanding majority in the House or the single largest party/group to form the Government. We need express no opinion regarding such a situation."

Another 5 judge constitution bench in **Nabam Rebia & Bamang Felix v. Dy. Speaker, Arunachal Pradesh Legislative Assembly, (2016) 8 SCC 1**, held that if the Governor has reason

to believe that the Chief Minister has lost confidence of the house, it is open to the Governor to require the Chief Minister to prove the majority in the house by floor test: -

“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.”

In the case of **Rameshwar Prasad (VI) v. Union of India, (2006) 2 SCC 1**, a 5 judge constitution bench of this Hon'ble Court referred to the need of following the Sarkaria Commission report that where there is a claim and counter claim regarding the majority of the government in the house, the course for the Hon'ble Governor is to order a floor test: -

“25. Even assuming that the floor test was neither necessary nor feasible in the present case, the Governor has totally failed to follow the recommendations of the Sarkaria Commission Report namely 4.4.03, 4.11.03 to 4.11.07. The aforesaid provisions are as follows:

Use of discretion—

4.11.07. We are firmly of the view that when a number of Members of the Legislative Assembly approach the Governor and contest the claim of the incumbent Chief Minister to continued majority support in the Assembly, the Governor should not risk a determination of this issue, on his own, outside the Assembly. The prudent course for him will be to cause the rival claims to be tested on the floor of the House. Such a procedure will

not only be fair but also seen to be fair. It will also save the Governor from embarrassment consequent upon any error of judgment on his part."

It is submitted that whenever a situation has arisen where the issue of majority of a government in the house has reached this Hon'ble Court, this Hon'ble Court has issued directions for immediate conduct of floor test.

It is submitted that in **Jagdambika Pal v. Union of India, (1999) 9 SCC 95; Anil Kumar Jha v. Union of India, (2005) 3 SCC 150; Chandrakant Kavlekar v. Union of India, (2017) 3 SCC 758;** this Hon'ble Court has directed for immediate conduct of floor test.

Most recently, in the cases of **G. Parmeshwara v. Union of India, (2018) 16 SCC 46 and Shiv Sena v. Union of India, (2019) 10 SCC 809,** this Hon'bler Court, after referring to all previous decisions where floor test was ordered, directed that floor test shall be conducted within 24 hours.

The act of Hon'ble Chief Minister and Hon'ble Speaker deliberately defying the directions of the Hon'ble Governor is arbitrary and violative of fundamental rights guaranteed under Article 14, 19 of the constitution of India.

In **S.R. Bommai case** (supra) it was held that 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.

Thus, as per the settled legal position, the Petitioners respectfully pray for issuance of writ of mandamus directing the Respondent No.1 to 3 to conduct floor test in order to prove the majority of the government within 12 hours.

LIST OF DATES

The Petitioners state and submit that they are elected Members of Madhya Pradesh Legislative Assembly. The Petitioner No.1 is three-time former Chief Minister of Madhya Pradesh. The Petitioner No.2 is the leader of Opposition in Madhya Pradesh Legislative Assembly. The Petitioner No.3 is the Chief Whip of Bharatiya Janta Party ("**BJP**") in the Vidhan Sabha. The remaining Petitioners are all elected members of the M.P. Legislative Assembly. All the Petitioners were set up as candidates by recognized national party namely BJP. The Petitioners were elected in the general elections held for electing the members of the Legislative Assembly of State of Madhya Pradesh in the year 2018.

28.11.2018

The elections for electing the 15th Legislative Assembly of State of Madhya Pradesh was conducted by the Election Commission of India ("**Election Commission**"). The assembly has a total number of 230 seats.

11.12.2018

12.12.2018

After counting of votes, the Election Commission notified the results which are as under: -

Party	Seats
Indian National Congress (INC)	114
Bhartiya Janata Party (BJP)	109
Bahujan Samaj Party (BSP)	02
Samajwadi Party (SP)	01
Independents	04

17.12.2018

The Indian National Congress ("**Congress party**"), which had won 114 seats had staked claim to form the government with the support of

4 independents, 2 members of Bahujan Samaj Party and one member of the Samajwadi party. Thus, the Congress Party claimed support of 121 members in the assembly. Subsequently, the Congress Party was invited and a government led by Shri Kamal Nath as Hon'ble Chief Minister was sworn in.

However, as of now, two seats of the assembly belonging to BJP have fallen vacant and the current strength of the assembly is 228 members. The BJP, as of now, has 107 members in the house.

It is further an admitted position that the Hon'ble Speaker on 14.3.2020 accepted the resignation of 6 MLAs belonging to Congress party. Thus, the strength of legislative assembly, as of now, is reduced to 222.

The Petitioners state and submit that since last many months, the internal dissatisfaction of members belonging to the Congress party in the house started gaining momentum. It came in public domain very frequently that many members of the house elected as candidate set up by Congress party were unhappy with the functioning of the Respondent No.2 as the Hon'ble Chief Minister and were feeling betrayed due to non-fulfilment of many promises which were made by their party prior to elections. The Petitioners have gathered from public domain that this kind of dissatisfaction against Respondent No.2 became a subject matter of public discussion, public debate and came to be known to everyone in the State.

10.3.2020

It has emerged that the dissatisfaction of members of Congress party reached such proportions that 22 members who were elected as candidates set up by Congress party tendered their respective resignations to the Speaker of the legislative assembly. This is also widely reported in the print and electronic media.

The Petitioners have also learnt from electronic and print media that the Respondent No.2- Hon'ble Chief Minister and his party tried to pressurise and threaten these 22 MLAs to withdraw their resignations, as a result of which they left the territory of State of Madhya Pradesh.

The Petitioners state and submit that it is a matter of public knowledge that all 22 MLAs whose confidence the Respondent No.2-Hon'ble Chief Minister has lost, are in Bangalore. The said 22 MLAs have also intimated constitutional functionary namely the Hon'ble Governor in writing that: -

- (i) The Respondent No.2 has lost their confidence;
- (ii) They are voluntarily staying outside the State of Madhya Pradesh as they apprehend danger to their lives in the State;
- (iii) They do not wish to come to the State of Madhya Pradesh as they do not trust the police authorities working under Respondent No.4.

The Petitioner state and submit that all these 22 MLAs have also addressed electronic and print

media clearly and categorically conveying that they do not support the leadership of Respondent No.2-Hon'ble Chief Minister and that they are staying at Bangalore out of their own volition.

That thereafter, the Hon'ble Speaker fixed different dates for the personal appearance of these 22 MLAs, in three different groups to appear before him to verify the genuineness of the resignations. However, it appears that these MLAs could not appear before the Hon'ble Speaker saying that they apprehend threat to their lives and, therefore, will not be able to come to Bhopal to appear before the Hon'ble Speaker in person unless they are provided adequate security by at least central police/paramilitary agencies. They did not trust the local police working under Respondent No.2-Hon'ble Chief Minister.

10.3.2020

These 22 MLAs also sent the intimation of their resignation to the Hon'ble Governor of the State of Madhya Pradesh.

13.3.2020

The Respondent No.2-Hon'ble Chief Minister addressed a letter to the Hon'ble Governor accepting that certain MLAs of the Congress party have tendered their resignations. The Respondent No.2-Hon'ble Chief Minister further admitted that there is a political turmoil in the state and that he would welcome a floor test of his government in the forthcoming budget session commencing from 16.3.2020.

14.3.2020

Subsequently, the leaders of BJP in their written representation to the Hon'ble Governor categorically informed the Hon'ble Governor that Respondent No.2-Hon'ble Chief Minister is trying

to threaten, pressurise and/or bribe the MLAs and horse trading is going on. It is becoming clear on every day that Respondent No.2-Hon'ble Chief Minister is fully conscious that he has lost confidence of 22 MLAs belonging to his own party and reduced to minority and he does not wish to face floor test unless and until he gets an opportunity to either pressurise them or purchase them to vote in his favour.

14.3.2020 That on 14.3.2020, the Hon'ble Speaker accepted the resignations of only six (6) MLAs out of twenty two (22) who had sent their resignations to the Hon'ble Speaker.

Interestingly, the Hon'ble Speaker, accepted the resignations of six (06) out of twenty two (22) MLAs who had tendered their resignation but did not accept the resignation of other sixteen (16) MLAs who also did not appear before the Hon'ble Speaker.

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14.3.2020 After receiving the representations from the twenty two MLAs as well as the MLAs/leaders belonging to the BJP, the Hon'ble Governor required the Respondent No.2-Hon'ble Chief Minister of Madhya Pradesh to seek vote of confidence on the floor of the house on 16.3.2020 when the budget session of the Legislative Assembly commenced.

14.3.2020 The Congress party issued whip to its MLAs directing them to be present in the house during the budget session commencing from 16.3.2020 and to vote in favour of the Congress party in case of voting.

15.3.2020 The remaining 16 MLAs of the Congress party, who had also tendered resignation and was selectively not accepted by the Hon'ble Speaker; wrote letters dated 15.3.2020 to the Hon'ble Speaker stating that just like the resignation of other 6 MLAs was accepted without personal presence, their resignations be also similarly accepted without insisting on personal presence.

15.3.2020 That on 15.3.2020, the Vidhan Sabha Secretariat issued the list of agenda/business to be transacted in the Madhya Pradesh Vidhan Sabha on 16.3.2020. However, in spite of clear-cut directions issued by the Hon'ble Governor to the Hon'ble Chief Minister to seek vote of confidence and prove his majority on the floor of the house on 16.3.2020 itself, after the address by the Hon'ble Governor is over, the item of seeking the confidence vote has not been included in the business to be transacted on the floor of the house on 16.3.2020. The direction of the Hon'ble Governor is, thus, intentionally and wilfully been defied by Respondent No.2-Hon'ble Chief Minister.

It is submitted that the press statements of Respondent No.2--Hon'ble Chief Minister as well as the Hon'ble Speaker leave no room for any doubt that they are not willing to hold floor test. This indication is very clear from their press interviews and press statements.

That it has been held by this Hon'ble Court in number of cases that the only place to test the majority of the government is on the floor of the House and this Hon'ble Court has been directing the Chief Ministers to seek vote of confidence even within 24 hours or 48 hours.

That the government led by Respondent No.2- Hon'ble Chief Minister has been reduced to minority. It has no moral, legal, democratic and constitutional right to remain in power even for a single day. All possible attempts are being made by Respondent No.2-Hon'ble Chief Minister to convert his minority into majority by giving all possible threats, allurements to the members of the Madhya Pradesh Vidhan Sabha. The horse-trading is at its peak, therefore, it is essential that floor test is held as per the directions of the Hon'ble Governor on 16.3.2020 itself so that it becomes absolutely clear as to whether the Chief Minister continues to enjoy the confidence of the majority of the Madhya Pradesh Vidhan Sabha. Any deferment of the floor test will be an utter violation of the directions issued by the Hon'ble Governor; law laid down by this Hon'ble Court as well as the spirit of the basic structure of the constitution of India.

In **S.R. Bommai case** (supra) it was held by this Hon'ble Court that 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.

16.3.2020

Hence the present writ petition under Article 32 of the constitution seeking writ of mandamus and or any other writ directing the Respondent No.2 for conduct of floor test, as directed by the Hon'ble Governor, forthwith.

IN THE SUPREME COURT OF INDIA

(Civil Original Jurisdiction)

Writ Petition (Civil) No. of 2020

(Under Article 32 of the Constitution of India)

In the matter of:

1. Shivraj Singh Chouhan
son of late Shri Prem Singh Chouhan
Aged about 61 years
Member of Legislative Assembly, Madhya Pradesh
Resident of B-8, 74 Bungalows
Bhopal (M.P.)

... Petitioner No.1
2. Gopal Bhargava
Son of late Shri Shankar Lal Bhargava
Aged about 67 years
Member of Legislative Assembly, Madhya Pradesh
Resident of B-1, 74 Bungalows
Bhopal (M.P.)

... Petitioner No.2
3. Narottam Mishra
Son of late Shri Shiv Dutt Mishra
Aged about 60 years
Member of Legislative Assembly, Madhya Pradesh
Resident of B-6, Char Imli
Bhopal (M.P.)

... Petitioner No.3
4. Bhupendra Singh
Son of late Shri Amol Singh
Aged about 59 years
Member of Legislative Assembly, Madhya Pradesh
Resident of Hotel Dipali, Jabalpur Road
Sagar (M.P.)

... Petitioner No.4
5. Rameshwar Sharma
Son of late Shri Parmanand Sharma
Aged about 49 years
Member of Legislative Assembly, Madhya Pradesh
Resident of 65, Patrakar Colony
Bhopal (M.P.)

... Petitioner No.5
6. Vishnu Khatri
Son of Dhanna Lal
Aged about 49 years
Member of Legislative Assembly Madhya Pradesh
resident of 159/150, Om Shiv Nagar, Lalghati
Bhopal (M.P.)

... Petitioner No.6

7. Vishwas Sarang
Son of Kailash Narayan Sarang
Aged about 48 years
Member of Legislative Assembly, Madhya Pradesh
Resident of H-50, Nishat Colony, 74 Bunglow
Bhopal (M.P.)
... Petitioner No.7
8. Sanjay Satyendra Pathak
Son of late Shri Satyendra Pathak
Aged about 44 years
Member of Legislative Assembly, Madhya Pradesh
Resident of Pathak Ward
Katni (M.P.)
... Petitioner No.8
9. Krishna Gaur
Wife of late Shri Purshottam Gaur
Aged about 51 years
Member of Legislative Assembly, Madhya Pradesh
Resident of B-6, 74 Bunglow
Bhopal (M.P.)
... Petitioner No.9
10. Suresh Rai
Son of late Shri Gendalal Rai
Aged about 48 years
Member of Legislative Assembly, Madhya Pradesh
Resident of Raibila, behind Old Crecent Hotel
Sehore (M.P.)
... Petitioner No.10

Versus

1. Speaker
Madhya Pradesh Legislative Assembly
Vidhan Sabha, Bhopal (M.P.)
Contesting
... Respondent No.1
2. Shri Kamal Nath
Chief Minister, Madhya Pradesh
Resident of CM House, Shyamla Hills
Bhopal, (M.P.)
Contesting
... Respondent No.2
3. The Principal Secretary
Madhya Pradesh Legislative Assembly
Vidhan Sabha, Bhopal (M.P.)
Contesting
... Respondent No.3

4. State of Madhya Pradesh
Through Chief Secretary
Vallabh Bhawan
Bhopal (M.P.)

Contesting
... Respondent No.4

5. Hon'ble Governor
Through Principal Secretary
to Hon'ble Governor
Raj Bhawan
Bhopal (M.P.)

Proforma
... Respondent No.5

WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA

To

**THE HON'BLE CHIEF JUSTICE AND
HIS HON'BLE COMPANION JUSTICES
OF THE HON'BLE SUPREME COURT OF INDIA**

 **THE HUMBLE PETITION OF
THE PETITIONER ABOVE-NAMED**
Most respectfully sheweth:
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1. The Petitioners are nationals and citizens of India and, therefore, they are entitled to the protection of their fundamental rights guaranteed under the constitution of India particularly under Article 14 and 19 of the constitution of India. The Petitioners are approaching this Hon'ble Court as the Respondents Nos.1 to 3 have flagrantly violated the constitutional principles and have deliberately and wilfully defied the directions issued by Hon'ble Governor dated 14.3.2020 requiring the Respondent No.2-Hon'ble Chief Minister to prove his majority on the floor of Madhya Pradesh legislative assembly on 16.3.2020 when the budget session of the legislative assembly was to commence.
- 1A. The Petitioners have not written any representation to the Respondents seeking the same relief that is sought in the present writ petition.

2. The Petitioners state and submit that they are elected Members of Madhya Pradesh Legislative Assembly. The Petitioner No.1 is three-time former Chief Minister of Madhya Pradesh. The Petitioner No.2 is the leader of Opposition in Madhya Pradesh Legislative Assembly. The Petitioner No.3 is the Chief Whip of Bharatiya Janta Party ("**BJP**") in the Vidhan Sabha. The remaining Petitioners are all elected members of the M.P. Legislative Assembly. All the Petitioners were set up as candidates by recognized national party namely BJP. The Petitioners were elected in the general elections held for electing the members of the Legislative Assembly of State of Madhya Pradesh in the year 2018.

3. The Respondents are state under Article 12 of the constitution of India and hence amenable to the writ jurisdiction of this Hon'ble Court.

4. The facts relevant for the present writ petition are set out as under: -
 - i. That on 28.11.2018, the elections for electing the 15th Legislative Assembly of State of Madhya Pradesh was conducted by the Election Commission of India ("**Election Commission**"). The assembly has a total number of 230 seats.

 - ii. That on 11.12.2018/ 12.12.2018, after counting of votes, the Election Commission notified the results which are as under: -

Party	Seats
Indian National Congress (INC)	114
Bhartiya Janata Party (BJP)	109
Bahujan Samaj Party (BSP)	02
Samajwadi Party (SP)	01
Independents	04

- iii. On 17.12.2018, the Indian National Congress ("**Congress party**"), which had won 114 seats had staked claim to form the government with the support of 4 independents, 2 members of Bahujan Samaj Party and one member of the Samajwadi party. Thus, the Congress Party claimed support of 121 members in the assembly. Subsequently, the Congress Party was invited and a government led by Shri Kamal Nath as Hon'ble Chief Minister was sworn in.
- iv. However, as of now, two seats of the assembly belonging to BJP have fallen vacant and the current strength of the assembly is 228 members. The BJP, as of now, has 107 members in the house. It is further an admitted position that the Hon'ble Speaker on 14.3.2020 accepted the resignation of 6 MLAs belonging to Congress party. Thus, the strength of legislative assembly, as of now, is reduced to 222.
- v. The Petitioners state and submit that since last many months, the internal dissatisfaction of members belonging to the Congress party in the house started gaining momentum. It came in public domain very frequently that many members of the house elected as candidate set up by Congress party were unhappy with the functioning of the Respondent No.2 as the Hon'ble Chief Minister and were feeling betrayed due to non-fulfilment of many promises which were made by their party prior to elections. The Petitioners have gathered from public domain that this kind of dissatisfaction against Respondent No.2 became a subject matter of public discussion, public debate and came to be known to everyone in the State.
- vi. It has emerged that the dissatisfaction of members of Congress party reached such proportions that 22 members who were elected as candidates set up by Congress party tendered their respective resignations to

the Speaker of the legislative assembly on 10.3.2020. This is also widely reported in the print and electronic media.

- vii. The Petitioners have also learnt from electronic and print media that the Respondent No.2-Hon'ble Chief Minister and his party tried to pressurise and threaten these 22 MLAs to withdraw their resignations, as a result of which they left the territory of State of Madhya Pradesh.
- viii. The Petitioners state and submit that it is a matter of public knowledge that all 22 MLAs whose confidence the Respondent No.2-Hon'ble Chief Minister has lost, are in Bangalore. The said 22 MLAs have also intimated constitutional functionary namely the Hon'ble Governor in writing that: -

(a) The Respondent No.2 has lost their confidence;

(b) They are voluntarily staying outside the State of Madhya Pradesh as they apprehend danger to their lives in the State;

(c) They do not wish to come to the State of Madhya Pradesh as they do not trust the police authorities working under Respondent No.4.

- ix. The Petitioner state and submit that all these 22 MLAs have also addressed electronic and print media clearly and categorically conveying that they do not support the leadership of Respondent No.2-Hon'ble Chief Minister and that they are staying at Bangalore out of their own volition.
- x. That thereafter, the Hon'ble Speaker fixed different dates for the personal appearance of these 22 MLAs, in three different groups to appear before him to verify the

genuineness of the resignations. However, it appears that these MLAs could not appear before the Hon'ble Speaker saying that they apprehend threat to their lives and, therefore, will not be able to come to Bhopal to appear before the Hon'ble Speaker in person unless they are provided adequate security by at least central police/paramilitary agencies. They did not trust the local police working under Respondent No.2-Hon'ble Chief Minister.

- xi. These 22 MLAs also sent the intimation of their resignation to the Hon'ble Governor of the State of Madhya Pradesh on 10.3.2020.
- xii. The Respondent No.2-Hon'ble Chief Minister addressed a letter dated 13.3.2020 to the Hon'ble Governor accepting that certain MLAs of the Congress party have tendered their resignations. The Respondent No.2-Hon'ble Chief Minister further admitted that there is a political turmoil in the state and that he would welcome a floor test of his government in the forthcoming budget session commencing from 16.3.2020. A copy of letter dated 13.3.2020 is annexed as **Annexure P-1** (pg. ____ to ____).
- xiii. Subsequently, the leaders of BJP in their written representation dated 14.3.2020 to the Hon'ble Governor categorically informed the Hon'ble Governor that Respondent No.2-Hon'ble Chief Minister is trying to threaten, pressurise and/or bribe the MLAs and horse trading is going on. It is becoming clear on every day that Respondent No.2-Hon'ble Chief Minister is fully conscious that he has lost confidence of 22 MLAs belonging to his own party and reduced to minority and he does not wish to face floor test unless and until he gets an opportunity to either pressurise them or purchase them to vote in his favour. A copy of letter

dated 14.3.2020 is annexed as **Annexure P-2** (pg. ____ to ____).

- xiv. That on 14.3.2020, the Hon'ble Speaker accepted the resignations of only six (6) MLAs out of twenty two (22) who had sent their resignations to the Hon'ble Speaker. Interestingly, the Hon'ble Speaker, accepted the resignations of six (06) out of twenty two (22) MLAs who had tendered their resignation but did not accept the resignation of other sixteen (16) MLAs who also did not appear before the Hon'ble Speaker. A copy of order dated 14.3.2020 is annexed as **Annexure P-3** (pg. ____ to ____).
- xv. After receiving the representations from the twenty two MLAs as well as the MLAs/leaders belonging to the BJP, the Hon'ble Governor by letter dated 14.3.2020 required the Respondent No.2-Hon'ble Chief Minister of Madhya Pradesh to seek vote of confidence on the floor of the house on 16.3.2020 when the budget session of the Legislative Assembly commenced. A copy of letter dated 14.3.2020 is annexed as **Annexure P-4** (pg. ____ to ____).
- xvi. The Congress party on 14.3.2020 issued whip to its MLAs directing them to be present in the house during the budget session commencing from 16.3.2020 and to vote in favour of the Congress party in case of voting. A copy of letter dated 13.3.2020 is annexed as **Annexure P-5** (pg. ____ to ____).
- xvii. The remaining 16 MLAs of the Congress party, who had also tendered resignation and was selectively not accepted by the Hon'ble Speaker; wrote letters dated 15.3.2020 to the Hon'ble Speaker stating that just like the resignation of other 6 MLAs was accepted without personal presence, their resignations be also similarly accepted without insisting on personal presence. A copy

of letter dated 15.3.2020 is annexed as **Annexure P-6** (pg. ____ to ____).

xviii. The Hon'ble Governor by letter dated 15.3.2020 addressed to the Respondent No.2-Hon'ble Chief Minister that the floor test already ordered for 16.3.2020 may be conducted by raising of hands. A copy of letter dated 15.3.2020 is annexed herewith as **Annexure P-7** (pg. ____ to ____).

xix. That on 15.3.2020, the Vidhan Sabha Secretariat issued the list of agenda/business to be transacted in the Madhya Pradesh Vidhan Sabha on 16.3.2020. However, in spite of clear-cut directions issued by the Hon'ble Governor to the Hon'ble Chief Minister to seek vote of confidence and prove his majority on the floor of the house on 16.3.2020 itself, after the address by the Hon'ble Governor is over, the item of seeking the confidence has not been included in the business to be transacted on the floor of the house on 16.3.2020. The direction of the Hon'ble Governor is, thus, intentionally and wilfully been defied by Respondent No.2-Hon'ble Chief Minister. A copy of list of business dated 15.3.2020 is annexed as **Annexure P-8** (pg. ____ to ____).

xx. It is submitted that the press statements of Respondent No.2--Hon'ble Chief Minister as well as the Hon'ble Speaker leave no room for any doubt that they are not willing to hold floor test. This indication is very clear from their press interviews and press statements.

xxi. That it has been held by this Hon'ble Court in number of cases that the only place to test the majority of the government is on the floor of the House and this Hon'ble Court has been directing the Chief Ministers to seek vote of confidence even within 24 hours or 48 hours.

xxii. That the government led by Respondent No.2-Hon'ble Chief Minister has been reduced to minority. It has no moral, legal, democratic and constitutional right to remain in power even for a single day. All possible attempts are being made by Respondent No.2-Hon'ble Chief Minister to convert his minority into majority by giving all possible threats, allurements to the members of the Madhya Pradesh Vidhan Sabha. The horse-trading is at its peak, therefore, it is essential that floor test is held as per the directions of the Hon'ble Governor on 16.3.2020 itself so that it becomes absolutely clear as to whether the Chief Minister continues to enjoy the confidence of the majority of the Madhya Pradesh Vidhan Sabha. Any deferment of the floor test will be an utter violation of the directions issued by the Hon'ble Governor; law laid down by this Hon'ble Court as well as the spirit of the basic structure of the constitution of India.

xxiii. Hence the present writ petition under Article 32 of the constitution seeking writ of mandamus and or any other writ directing the Respondent No.2 for conduct of floor test, as directed by the Hon'ble Governor, forthwith.

GROUNDS

That the Petitioner is filing the present Writ Petition on following amongst other grounds which are taken in addition and without prejudice to each other: -

- A. Because the Respondents Nos.1 to 3 have flagrantly violated the constitutional principles and have deliberately and wilfully defied the directions issued by Hon'ble Governor dated 14.3.2020 requiring the Respondent No.2-Hon'ble Chief Minister to prove his majority on the floor of Madhya Pradesh legislative assembly on 16.3.2020 when the budget session of the legislative assembly was to commence.

- B. Because it has recently emerged that on account of dissatisfaction with the Hon'ble Chief Minister for non-fulfilment of promises made prior to elections; 22 members of the assembly who were supporting the government, no longer support it, and have tendered their resignation to the Speaker on 10.3.2020 reducing the government into minority.
- C. Because the factum of resignation of members supporting the government and presence of political turmoil is also admitted by the Hon'ble Chief Minister in his letter dated 13.3.2020 addressed to the Hon'ble Governor.
- D. Because the Hon'ble Chief Minister also expressed willingness to conduct floor test in the budget session commencing on 16.3.2020.
- E. Because since the government appears to have lost the majority in the house and the Hon'ble Chief Minister had himself expressed willingness to conduct the floor test, the Hon'ble Governor, in exercise of his constitutional powers, by letter dated 14.3.2016, directed the Hon'ble Chief Minister to conduct floor test in the house and prove his majority on 16.3.2020, when the budget session of the assembly begins. However, the said direction is being defied by the Respondent No.2-Hon'ble Chief Minister.
- F. Because on account of lack of confidence and resignation of 22 MLAs of Congress party, out of which the resignation of 6 MLAs having been already accepted by Hon'ble Speaker, the government led by Hon'ble Chief Minister has been reduced to minority and a floor test is a constitutional imperative.
- G. Because the government has no moral, legal, democratic or constitutional right to remain in power even for a single day. All possible attempts are being made by the Hon'ble Chief Minister to convert his minority government into majority by giving all possible threats, allurements to the members of the Madhya Pradesh Vidhan Sabha. The horse-trading is at its peak.

- H. Because it is essential that floor test is conducted on 16.3.2020 itself as already directed by Hon'ble Governor, so that it becomes absolutely clear as to whether the Hon'ble Chief Minister continues to enjoy the confidence of the majority of the Madhya Pradesh Vidhan Sabha. Any deferment of the floor test will further encourage horse trading and would be in utter violation of the directions issued by the Hon'ble Governor; law laid down by this Hon'ble Court and the spirit and basic structure of the constitution of India.
- I. Because a 9 judge constitution bench in *S.R. Bommai v. Union of India*, (1994) 3 SCC 1, held that if the support to a government is withdrawn by some legislators and the government appears to have lost the confidence of the house, it is the duty of the Governor to direct the government to prove the majority by floor test.
- J. Because another 5 judge constitution bench in *Nabam Rebia & Bamang Felix v. Dy. Speaker, Arunachal Pradesh Legislative Assembly*, (2016) 8 SCC 1, held that if the Governor has reason to believe that the Chief Minister has lost confidence of the house, it is open to the Governor to require the Chief Minister to prove the majority in the house by floor test.
- K. Because in the case of *Rameshwar Prasad (VI) v. Union of India*, (2006) 2 SCC 1, a 5 judge constitution bench of this Hon'ble Court referred to the need of following the Sarkaria Commission report that where there is a claim and counter claim regarding the majority of the government in the house, the course for the Hon'ble Governor is to order a floor test.
- L. Because in *Jagdambika Pal v. Union of India*, (1999) 9 SCC 95; *Anil Kumar Jha v. Union of India*, (2005) 3 SCC 150; *Chandrakant Kavlekar v. Union of India*, (2017) 3 SCC 758; this Hon'ble Court has directed for immediate conduct of floor test.

- M. Because most recently, in the cases of G. Parmeshwara v. Union of India, (2018) 16 SCC 46 and Shiv Sena v. Union of India, (2019) 10 SCC 809, this Hon'bler Court, after referring to all previous decisions where floor test was ordered, directed that floor test shall be conducted within 24 hours.
- N. Because the act of Hon'ble Chief Minister and Hon'ble Speaker deliberately defying the directions of the Hon'ble Governor is arbitrary and violative of fundamental rights guaranteed under Article 14, 19 of the constitution of India.
- O. Because the Petitioners are seeking the enforcement of their fundamental rights guaranteed under the constitution of India.
- P. Because the refusal of the Hon'ble Chief Minister to conduct floor test is clear manifestation of the loss of majority in the house.
5. That the Petitioners have no other alternative efficacious remedy but to approach this Hon'ble Court by way of instant petition under Article 32 of the Constitution of India.
6. That the Petitioners have not filed any other petition seeking similar relief before the Hon'ble High Court or this Hon'ble Court.

PRAYER

In view of the facts stated and submissions made herein above, the Petitioner respectfully pray that this Hon'ble Court may graciously be pleased to: -

- a. issue a writ of mandamus or any other appropriate writ or direction, directing the Respondent No.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;

- b. pass any other order(s) which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS YOUR HUMBLE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

Drawn and filed by:

(MISHRA SAURABH)
Advocate for the Petitioners

Drawn on: 16.3.2020
Date: 16.3.2020
New Delhi



this Hon'ble Court to treat the same as an integral part of the present application as well.

3. It is submitted that on account of lack of confidence and resignation of 22 MLAs of Congress party, out of which the resignation of 6 MLAs having been already accepted by Hon'ble Speaker, the government led by Hon'ble Chief Minister has been reduced to minority. It has no moral, legal, democratic or constitutional right to remain in power even for a single day. All possible attempts are being made by the Hon'ble Chief Minister to convert his minority government into majority by giving all possible threats, allurements to the members of the Madhya Pradesh Vidhan Sabha. The horse-trading is at its peak. Therefore, it is essential that floor test is conducted on 16.3.2020 itself as already directed by Hon'ble Governor, so that it becomes absolutely clear as to whether the Hon'ble Chief Minister continues to enjoy the confidence of the majority of the Madhya Pradesh Vidhan Sabha. Any deferment of the floor test will further encourage horse trading and would be in utter violation of the directions issued by the Hon'ble Governor; law laid down by this Hon'ble Court and the spirit and basic structure of the constitution of India.
4. The Petitioners have prima facie case in their favour and the balance of convenience is in favour of the Petitioners and against the Respondents. The Petitioners would be prejudiced if the present application is not allowed.

P R A Y E R

In the facts and circumstances the above Petitioner respectfully prays that this Hon'ble Court may be graciously pleased to: -

- (a) pass an order directing the Respondent No.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;

(b) pass such other and further order(s) as may deem fit in the circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE APPLICANT AS IN DUTY BOUND SHALL EVER PRAY.

(MISHRA SAURABH)
ADVOCATE FOR PETITIONERS

New Delhi
Date: 16.3.2020



here for the sake of brevity. The Petitioners craves leave of this Hon'ble Court to treat the same as an integral part of the present application as well.

3. It is submitted that the Petitioners are filing the accompanying writ petition with the true translation of Annexure P-2 to P-8 and may be exempted from filing official translation of the same. The Petitioners undertake to file the official translation if need arises or as and when directed by this Hon'ble Court.
4. The Petitioners have prima facie case in their favour and the balance of convenience is in favour of the Petitioners and against the Respondents. The Petitioners would be prejudiced if the present application is not allowed.

P R A Y E R

In the facts and circumstances the above Petitioner respectfully prays that this Hon'ble Court may be graciously pleased to: -

- (a) pass an order exempting the Petitioners from filing official translation of Annexure P-2 to P-8
- (b) pass such other and further order(s) as may deem fit in the circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE APPLICANT AS IN DUTY BOUND SHALL EVER PRAY.

(MISHRA SAURABH)
ADVOCATE FOR PETITIONERS

New Delhi
Date: 16.3.2020