

IN THE SUPREME COURT OF INDIA  
(CIVIL ORIGINAL JURISDICTION)

1

WRIT PETITION (CIVIL) NO. OF 2020  
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

**IN THE MATTER OF:**

MADHYA PRADESH CONGRESS  
LEGISLATURE PARTY

Through its Chief Whip,

Dr. Govind Singh  
B-28, 74 BUNGALOWS, BHOPAL,  
MADHYA PRADESH

... PETITIONER

**AND**

1. UNION OF INDIA  
Through its Secretary,  
Ministry of Home Affairs,  
Central Secretariat,  
North Block,  
New Delhi - 110 001
2. STATE OF KARNATAKA  
Through its Chief Secretary,  
Vidhan Soudha,  
Bangalore- 560001  
KARNATAKA
3. BHARATIYA JANATA PARTY, M.P  
Through its President  
Pt. Deen Dayal Parisar , Arera Colony, Bhopal  
Bhopal, Madhya Pradesh
4. STATE OF MADHYA PRADESH  
Through its Chief Secretary.  
M.P. Mantralaya, Vallabh Bhavan  
Bhopal - 462004  
Madhya Pradesh
5. Shri Hardeep Singh Dang  
R/o House No. 1251 Near Police Station,  
Suwarsa, Teh- Suwarsa,  
District- Mandsour

Madhya Pradesh

2

6. Shri Rajvardhan Singh  
R/o Village Bhesola Fata, Tehsil Badnawar,  
District Dhar 454660  
Madhya Pradesh
7. Shri Brajendra Singh Yadav  
R/o Gram Surel, Teh Chanderi,  
Dist Ashoknagar  
Madhya Pradesh
8. Shri Jaspal Jajji  
R/o 6 Sahu Colony Ward No.07  
AshokNagar Th.& Dist. Ashok Nagar  
Madhya Pradesh
9. Shri Suresh Dhakad  
R/o R/O Village & Post 28 Rathkhera,  
Vill Ghatai Teh Pohri  
Dist Shivpuri  
Madhya Pradesh
10. Shri Jaswant Jatav  
Karera, Shivpuri,  
Madhya Pradesh
11. Ms. Raksha Santram Sironia  
R/o H.No- 1/54 Behind to Workshop,  
Hanuman Garhi, Datia  
Madhya Pradesh
12. Shri Munnalal Goyal  
R/o Gwalior Arya Nagar,  
Baradari Chouraha, Murar,  
Madhya Pradesh
13. Shri Ranvir Jatav  
R/o 495, Sanjay Gandhi Ward No. 38,  
Uttari Side, Ater Road,  
Bhind, Tehasil and Dist. Bhind  
Madhya Pradesh
14. Shri O.P.S. Bhadoria  
R/o Resident Of Village Akloni,  
Post Office Akloni, District Bhind  
Madhya Pradesh
15. Shri Kamlesh Jatav

R/o 199 Nand Ke Pura ka Darga Morena,  
Teh. & Dist. Morena  
Madhya Pradesh

3

16. Shri Giriraj Dandotiya  
R/o H No-09, Vill Lalorkhurd,  
Lalor Teh and Distt Morena  
Madhya Pradesh
17. Shri Raghuraj Kansana  
R/o Kansana Bhawan,  
MS Road Muraina PO Morena  
Teh & Dist Morena  
Madhya Pradesh
18. Shri Aidalsingh Kansana  
R/o Village Harisingh ka Pura,  
Hussainpur, Nayakpura,  
Teh Dist Morena  
Madhya Pradesh
19. Shri Biasahulal Singh  
R/o Room No.191, Village Parasi,  
Post Office Latar, Tahasil Anuppur,  
District Anuppur  
Madhya Pradesh

... RESPONDENTS

**WRIT PETITION UNDER ARTICLE 32 OF THE  
CONSTITUTION**

TO,

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

THE HUMBLE PETITION OF  
THE PETITIONER ABOVENAMED

**MOST RESPECTFULLY SHEWETH:**

1. The Petitioner herein i.e. the Madhya Pradesh Congress  
Legislature Party ('MPCLP'), represented through its Chief

4

Whip, is constrained to invoke the jurisdiction of this Hon'ble Court under Article 32 of the Constitution in peculiar circumstances seeking urgent intervention of this Hon'ble Court to uphold the Rule of Law and pass appropriate directions against the blatant abuse of power and subversion of democracy by the BJP ruled Central Government – Respondent No. 1 herein as well as the BJP Ruled State Government of Karnataka – Respondent No.

2. The said Respondents have subverted the constitutional limitations for exercise of state power to aid the BJP in the State of Madhya Pradesh, to attempt to bring down the democratically elected government in the State of Madhya Pradesh.

2. The said Respondents have in order to benefit the BJP in the State of Madhya Pradesh have used the might and power of the State to hold 16 MLAs belonging to the MPCLP in complete isolation in Bengaluru. The said MLAs belonging to the MPCLP have not been permitted to either contact the office bearers of the Petitioner or even their family members. The actions of the aforesaid Respondents raise larger issues of Constitutional Propriety and morality as to whether the Union Government and/or the State Government can use the official machinery of the Centre



as well as the States to foster the prospects of any political party.

3. It is submitted that even the office bearers of the MPCLP which is the parent party of the confined legislators have not been allowed to meet them despite numerous attempts being made. It is also relevant to note that although these aforesaid legislators have purportedly sent their resignation letters, none of them has resigned from the primary membership of the Congress party.
4. It is submitted that the Respondent Nos. 1-3 in keeping Respondent Nos. 5 to 19, who are the duly elected representatives of the people of the State of Madhya Pradesh, in captivity in the State of Karnataka so as to prevent them from participating in the ongoing budget sessions of the Legislative Assembly in the State of Madhya Pradesh as well as preventing the Petitioner and other members of the Petitioner's political party from communicating with the said Respondents is not only an outright subversion of the democratic ethos enshrined in the Constitution but is also a flagrant violation of Article 14, 19 and 21 of the Indian Constitution.
5. The instant Petition also challenges the unconstitutional messages sent by the Hon'ble Governor in purported exercise of his powers under Article 174 r/w Article 175

on 14.03.2020, 15.03.2020 as well as on 16.03.2020. The said messages direct holding of a floor test in the absence of 16 MLAs belonging to the Congress is a fraud upon the Constitution played by a Constitutional Authority itself and are completely beyond the realm of the powers of the Governor.

6. The present Writ Petition also raises issues of seminal importance which impinge the polity of the nation inter alia as to whether a trust vote/confidence motion ought to be held in the absence of any representation of the electorate who had voted in support of the incumbent government. In the instant case as the 22 MLAs who represent 22 constituencies almost constituting 10% of the total seats have purportedly resigned, the electorate of such constituencies are completely unrepresented. In these circumstances, a trust vote if held will be a complete sham and would be antithetical to the principle of representative democracy which is a basic feature of the constitution. It is submitted a floor test in such a situation ought to be held only after by-elections to the seats falling vacant as a result of the resignations have been held.

7. The Petitioner is the Madhya Pradesh Congress Legislature Party represented by Its Chief Whip. It is the

Petitioner's party which at present is the elected incumbent Government in the State of Madhya Pradesh.

8. The Respondent No. 1 is the Union of India, through the Secretary, Ministry of Home Affairs. The Respondent No.2 is the State of Karnataka through its Chief Secretary. The MLAs belonging the Congress Party have been confined in the State of Karnataka with the aid of the State apparatus. The Respondent No. 3 is the BJPMP, through its State Party President.
9. The Respondent No. 3- State BJP in connivance with the official machinery of the Respondent No. 1- Central Government as well as the Respondent No. 3- the State of Karnataka have politically orchestrated and kept the 16 MLAs in captivity, for political gains and to ensure that the incumbent government falls to minority.
10. The Respondent No. 4 is the State of MP through its Chief Secretary and Respondents No. 5-19 are the duly elected representatives of the State of Madhya Pradesh who are presently in captivity by the State BJP.
11. The facts which are relevant for the adjudication of the present Writ Petition are as follows:
  - a. Elections for the 230 seats for the 15<sup>th</sup> Legislative Assembly of Madhya Pradesh were conducted on



8

28.11.2018. The results of election were announced on 11.12.2018, which is as follows:

| Sl. No. | Party                          | No. of Seats |
|---------|--------------------------------|--------------|
| 1       | Indian National Congress (INC) | 114          |
| 2       | Bhartiya Janta Party (BJP)     | 109          |
| 3       | Bahujan Samaj Party (BSP)      | 2            |
| 4       | Samajwadi Party                | 1            |
| 5       | Independents                   | 4            |
|         | <b>Total</b>                   | <b>230</b>   |

- b. Following the election, the Indian National Congress which had emerged as the single largest party with 114 members staked claim to form the government in the State with the support of two MLAs of the BSP, 1 MLA of the Samajvadi Party and one independent MLA.
- c. The BJP since the formation of the Government in the State of MP has been making several unconstitutional attempts to destabilize the elected Government by offering large sums of money running into crores of Rupees to the MLAs to commit the Constitutional sin of defection.



- d. On and around 3<sup>rd</sup>/4<sup>th</sup> of March, 2020, 3 MLAs of the Congress Party, 1 MLA of the BSP and 1 independent MLA who support the incumbent Government enjoys, were taken to hotel ITC Manesar, Gurugram, by the BJP.
- e. Though the BSP MLA along with her family was somehow rescued by some members of the Congress, the other MLAs were taken to Bengaluru by a chartered flight, arranged by BJP. The said MLAs were accompanied by Shri Arvind Bhaduriya, a BJP MLA as well as Shri Ashutosh Tiwari, a BJP office bearer. A true and typed copy of the Passenger Manifest of Execujet Aviation Group dated 04.03.2020 is annexed hereto and marked as **ANNEXURE P-1** (Pg - 26 - 27)
- f. Thereafter, the BJP on 09.03.2020 once again arranged for three chartered aircrafts to take away 19 MLAs of the Congress Party including 6 MLAs who held the post of cabinet ministers in the State Government. It is stated that Shri Hemant Khandelwal, Shri Uma Shankar and Sudarshan Gupta who belonged to the BJP, accompanied the 19 MLAs, who are now held captive in the Sate of

Bengaluru. True and typed copies of the passenger manifest of Execujet Aviation Group, M/s Air Charter Services Pvt. Ltd., M/s Ashley Aviation Ltd. all dated 0903.2020 is annexed hereto and marked as **ANNEXURE P-2** (Pg-28 to 33)

- g. On 10.03.2020 at around 5:30 pm, senior leaders of BJP met the Speaker of the Assembly and handed over resignation letters purportedly sent by the said captive Congress MLAs. It is important to note that none of the said MLAs were personally/physically present when the so-called resignation letters were handed over to the Speaker.
- h. The Congress on 12.03.2020 dispatched 2 of its cabinet ministers namely Jitu Patwari and Shri Lakhan Singh Yadav to meet the captive MLAs along with Shri Narayan Singh Choudhary-father of one of the Congress MLAs, Shri Manoj Choudhary. The said three persons were manhandled by the BJP goons as well as the Karnataka police and illegally detained.
- i. Shri Kamal Nath, Chief Minister of Madhya Pradesh, on 13.03.2020 made a representation to

the Hon'ble Governor bringing to the latter's notice the aforesaid undemocratic actions of the BJP and offered to face the floor test post the release of the MLAs who were held captive in Bengaluru. A true copy of the letter dated 13.03.2020 sent by the Chief Minister to the Governor is annexed hereto and marked as **ANNEXURE P-3** (Pg 34 to 36)

- j. Since there was absolutely no communication from the Hon'ble Governor to the representation dated 13.03.2020, Shri Kamal Nath on 14.03.2020 sent a representation to Shri Amit Shah, Home Minister, Union of India, requesting him to use his good offices to ensure the return of the 22 Congress MLAs from their captivity so that they could participate in the legislative assembly session which was to commence on 16.03.2020. A true copy of the letter dated 14.03.2020 sent by the Chief Minister to the Union Home Minister is annexed hereto and marked as **ANNEXURE P-4** (Pg 37 to 39)

- k. The Petitioner herein on 14.03.2020 issued a three line whip to ensure presence of all its MLAs in the forthcoming budget session and to vote and support the government. A true and translated



12  
copy of the whip dated 14.03.2020 is annexed  
hereto and marked as **ANNEXURE P-5** (Pg 40 to 41)

1. The Hon'ble Governor around the midnight of 14.03.2020 addressed a letter to Shri Kamal Nath, the Chief Minister of Madhya Pradesh stating therein *"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 values, it is necessary for you to gain the trust vote in Vidhan Sabha immediately after my speech on 16.03.2020."*

- m. Thereafter, the Governor issued directions purportedly in exercise of Article 174 r/w Article 175(2) for conduct of 'Trust Vote'. A true and translated copy of the letter dated 14.03.2020 sent by the Governor to the Chief Minister is annexed hereto and marked as **ANNEXURE P-6** (Pg 42 to 47)

- n. The Hon'ble Governor sent a clarificatory letter on 15.03.2020 to the Chief Minister in respect of the procedure to be adopted in conducting the elections. A true and translated copy of the letter dated 15.03.2020 sent by the Governor to the Chief

Minister is annexed hereto and marked as  
**ANNEXURE P-7** (Pg 48 to 49)

- o. Shri Kamal Nath thereafter on 16.03.2020 responded to the Governor's letter stating that such directions are in excess of the jurisdiction and requested the Hon'ble Governor to act within the contours of the law as well as the Constitution. A true and translated copy of the letter dated 16.03.2020 sent by the Chief Minister to the Governor is annexed hereto and marked as **ANNEXURE P-8** (Pg 50 to 59)
- p. While the session of the 15<sup>th</sup> Madhya Pradesh Legislative Assembly commenced on 16.03.2020, the MLAs belonging to the Madhya Pradesh Congress were absent, despite whips issued by the Petitioner.
- q. The Governor once again on 16.03.2020 wrote to the Chief Minister directing him to face the floor test on 17.03.2020. A true and translated copy of the letter dated 16.03.2020 sent by the Governor to the Chief Minister is annexed hereto and marked as **ANNEXURE P-9** (Pg 60 to 62)

2. In these circumstances the Petitioner is moving this Hon'ble Court under Article 32 of the Constitution beseeching this Hon'ble Court to intervene. It is respectfully submitted that the Petitioners are directly approaching this Hon'ble Court under Article 32 of Constitution in view of the gross abuse of Rule of law by Respondents. It is submitted that this Hon'ble Court as the sentinel on the qui vive of the Constitution is mandated to ensure that the State functionaries do not transgress the limitations of the constitutionally circumscribed powers. It is submitted that the Respondents herein by their impugned actions have sought to transgress the limitations of their own Constitutionally circumscribed power in their attempt to somehow topple the duly elected Congress Government in the State of MP. ***In Shrimanth Balasaheb Patil Vs. Hon'ble Speaker Karnataka Legislative Assembly and Others reported in 2019 (15) SCALE 533 (Writ Petition (Civil) No. 992 OF 2019 dated 13.11.2019)*** a bench of three judges of this Hon'ble Court while quoting the wide contours of Article 32 has observed in para 26 and 27 as follows:

"26. Reliance can be placed on the constitutional provisions and debates thereupon which show that this Court can inquire into the legitimacy of the exercise of the power. Dr. B.R. Ambedkar has described Article



32 as the very soul of the Constitution - very heart of it - most important Article. Moreover, the jurisdiction conferred on this Court by Article 32 is an important and integral part of the basic structure of the Constitution of India and no act of Parliament can abrogate it or take it away except by way of impermissible erosion of fundamental principles of the constitutional scheme are settled propositions of Indian jurisprudence.

27. This Court, as the highest Constitutional Court, has to, and has always, functioned in accordance with the applicable judicially determined parameters while performing its constitutional duty to judicially review the acts of constitutional functionaries. It has examined questions of both fact and law, so long as it has been vested with the power to do so. The scrupulous discharge of duties by all guardians of the Constitution include the duty not to transgress the limitations of their own constitutionally circumscribed powers by trespassing into what is properly the domain of other constitutional organs."

3. It is also relevant to note that Shri Shivraj Singh Chouhan former Chief Minister of Madhya Pradesh has moved Writ Petition (C) No. 439 of 2020 *inter alia* seeking directions for a floor test. This Hon'ble Court vide order dated 17.03.2020 was pleased to issue notice. The instant Writ Petition is connected to the aforesaid Writ Petition No. 439 of 2020 and the same may be tagged with it.
4. That the Petitioner has not filed any other Petition on the same subject matter or seeking similar reliefs either in this Hon'ble Court or any other High Courts except this present petition.

16

5. That the Writ Petition has been filed without any delay or laches and there is no legal bar in entertaining the same. That the Petitioner has no other efficacious alternative remedy except to file the present Writ Petition before this Hon'ble Court by invoking Article 32 of the Constitution.
6. That the Annexures are true and correct copies of their respective originals.
7. That in the circumstances mentioned hereinabove this Writ Petition is being preferred by the Petitioner *inter alia* on the following amongst other grounds without prejudice to each other:

#### GROUND

- a. FOR THAT the confining of MLAs belonging to the Congress party in the State of Karnataka with the aid of the State apparatus, while at the same time using the offices of the Hon'ble Governor of the State of Madhya Pradesh to hold a floor test is a farce being played upon the Constitution.
- b. FOR THAT holding of a floor test can only be meaningful when all the elected representatives are able to attend and exercise their freedom without any pressure or duress.

- c. FOR THAT even assuming but not conceding that the MLAs have tendered their resignations from the Legislative Assembly, they are still members of the Madhya Pradesh Congress Committee. As such, there is no reason as to how and why should the members of the Indian National Congress not be allowed to meet the said persons.
- d. FOR THAT any constitutional process involving the ascertainment of support enjoyed by an incumbent government can only be meaningful in the presence of all the members of the House.
- e. FOR THAT by keeping members of the Petitioner confined and captive in a separate state with the active connivance of the official machinery of the other State and then to demand and get directions from the Hon'ble Governor to conduct a floor test is absolutely illegal and arbitrary and violative of Articles 14, 19 and 21 of the Constitution.
- f. FOR THAT the insistence of the BJP to hold a floor test without the participation of the 16/22 confined/captive MLAs belonging to the Congress Party is a classic text book example of an attempt to pervert a Constitutional process and to frustrate the very purpose of holding a floor test.



- g. FOR THAT the confinement of the MLAs since the beginning of March, 2020 and holding them in resorts in Bengaluru is ex facie unconstitutional and a fraud being perpetrated on the Constitution itself.
- h. FOR THAT none of these MLAs have till date resigned from the membership of the Congress Party. In these circumstances it is entirely unconstitutional and illegal for the Respondents to even deny access of the office bearers of the MPCLP to even meet their own members.
- i. FOR THAT the impugned action is brazenly opposed to the spirit of the Constitution as is reflected in Constitutional convention and practice having the force of law.
- j. FOR THAT when the electorate vote for a political party and give it a majority and the said political party then forms the government, the question which arises is whether by individual acts of resignation of the MLAs which is completely unsupported by the will of the people/the electorate, the mandate given to the political party to form the government can be subverted and that mandate cannot be subverted by individual acts of MLAs of either resignation or defection.
- k. FOR THAT a trust vote/confidence motion cannot be held in the absence of representation of the electorate who had

voted in support of the INC to form the government. It is submitted that the floor test cannot be held as ultimately the trust of the House can only be meaningful if the trust of all members, who are representatives of the electorate can be ascertained.

1. FOR THAT a trust vote is ultimately reflective of the trust of the electorate and whether the electorate and its representatives want a particular party to form the government or not. If the electorate or a substantial part of the electorate is unrepresented there cannot be a trust vote at all.
- m. FOR THAT in a situation like the present one where resignations are orchestrated solely to bring down governments, a floor test ought to be held only after by-elections to the seats falling vacant as a result of the resignations have been held.
- n. FOR THAT the messages being sent by the Hon'ble Governor on 14.03.2020, 15.03.2020 as well as 16.03.2020 under Articles 174 r/w 175 *inter alia* directing holding of a floor test in the absence of the 16 MLAs of the Congress Party is also entirely unconstitutional and in the teeth of the Constitution Bench judgment of this Hon'ble

20

Court in *Nabam Rebia v. Dy. Speaker, Arunachal Pradesh*, (2016) 8 SCC 1.

8. The Petitioner craves leave of this Hon'ble Court to amend/alter its grounds at appropriate stage, as and when required.

**PRAYER**

In these facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:-

- a. pass appropriate direction to Respondents no. 1 and 2 to grant access to the office bearers of the Madhya Congress Party to communicate with Respondent 5 to 19 who are the members of the Congress party; and
- b. pass appropriate writ/order/direction declaring that actions of the Respondent No. 1 to 3 in illegally confining and holding Respondent No. 5 to 19 Congress MLA's in Bengaluru as illegal, unconstitutional and violative of Article 14, 19 and 21 and Rule of law; and
- c. pass appropriate writ/order/direction permitting and enabling Respondents No. 5 to 19 to participate in the ongoing budget Session of the 15<sup>th</sup> Madhya Pradesh Legislative Assembly; and



- d. pass appropriate writ/order/direction that any trust vote/vote of confidence should be held only in the presence of all the duly elected MLA's elected to the 15<sup>th</sup> Madhya Pradesh Legislative Assembly; and
- e. pass an appropriate writ/order/direction declaring that the direction/messages of the Hon'ble Governor purportedly sent under Articles 174 r/w 175 are illegal, unconstitutional, and in the teeth of the Constitution Bench judgment of this Hon'ble Court in **Nabam Rebia**; alternatively
- f. pass appropriate writ/order/direction that if the 22 MLA's belonging to the INC have allegedly resigned and consequently their seats have fallen vacant, a trust vote cannot be held without the representation of the electorate of the said 22 constituencies, which could only be secured by holding by-elections for the vacant seats in accordance with law;
- g. Pass such other order or direction as it deems fit in the facts of the present case and in the interest of justice.

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

**DRAWN BY:**

MR. JAVEDUR RAHMAN,  
MR. RAJESH INAMDAR,  
MR. ADITYA BHAT &  
MR. ALI ASGHAR RAHIM  
(ADVOCATES)

**SETTLED BY:**

MR. DEVADATT KAMAT,  
(SENIOR ADVOCATE)

**FILED BY**

**PAI AMIT**  
**ADVOCATE FOR THE PETITIONER**

**PLACE: NEW DELHI**  
**FILED ON: 17.03.2020**