

20th April, 2020
(New Delhi)

To,
THE HON'BLE PRESIDENT OF INDIA
President's Secretariat,
Rashtrapati Bhavan
New Delhi – 110004

Subject: Unconstitutional functioning of the Government of Madhya Pradesh.

Your Excellency,

We are constrained to approach Your Excellency once again . Earlier one of us, i.e. Mr. Vivek K. Tankha on 11th April, 2020 wrote to you highlighting the undemocratic and unconstitutional functioning in Madhya Pradesh , not of a government , but of a one-man show.

We wish to draw your attention to the following two paragraphs of the earlier letter :
“Government of a sole CM i.e one-man government without a Cabinet is an unthinkable Constitutional anathema.”

"With utmost regret whilst India and the world is battling COVID-19 I feel compelled to write against the illegally designed & poorly conceived one-man show unconstitutionally thrust upon 7.5 crore people of Madhya Pradesh. This shenanigan gravely impacts and imperils the war against coronavirus."

In the midst of combating COVID 19 we cannot jettison our constitutional responsibilities. Otherwise posterity will not forgive us . Indore today is the epicentre of the spread of the virus hosting 80% of Coronavirus infections. Bhopal earlier witnessed the collapse of the health department with the hierarchy of its officers infected . In the absence of a Health Minister, the infected personnel continued to discharge their duties . Today the department in Bhopal is completely dysfunctional.

To halt the spread of the virus we need to test test and test . That is not happening because of the collapse of the administrative structure of the health department. We do not wish to indulge in a blame game . That benefits no one . But we need to attend to the prevailing administrative shortcomings to ensure the safety of our people . It is in that spirit that we are writing to you while saluting the frontline corona warriors who continue to risk their lives to protect us .

We wish to bring to your attention Article 163 of the Constitution which mandates a Council of Ministers to aid and advise the Governor in the exercise of his functions . The Governor cannot act without the advice of the Council of Ministers headed by the Chief Minister . Additionally , the proviso to Article 164(A) provides for the minimum strength of the Council of Ministers to be not less than twelve including the Chief Minister . Here the Council is missing , only the head exists . The Governor has therefore without jurisdiction acting on the advice of Sh. Shivraj Singh Chouhan alone promulgated two Ordinances referred hereinbelow :

- (1) The Madhya Pradesh Finance Ordinance, 2020 [No. 1 of 2020].
- (2) The Madhya Pradesh Appropriation (Vote On Account) Ordinance, 2020 [No. 2 of 2020].

These Ordinances authorise the State Government to burden the State with an additional loan of Rs. 4,443 Crore . It also allows for the withdrawal of Rs. 10,00,66,74,81,000 (One Lakh Sixty Six Crore Seventy Four Lakh Eight Thousand) from the Consolidated Fund of the State for the Financial Year 2020-21. This not only has grave fiscal implications on the fiscal health of the State but gives an unconstitutional act the colour of legality . In Madhya Pradesh constitutional democracy has been reduced to a farce.

The First Ordinance seeks to amend the Madhya Pradesh Rajkoshiya Uttardayitva Avam Budget Prabandhan Adhiniyam, 2005. Adopting the Ordinance route to do this , as indicated above is , not only a constitutional anathema but even otherwise highly inappropriate and undesirable . A decision to undertake transactions involving huge sums of money, without a cabinet in political harakiri .

The Chief Minister was administered the oath of office on March 23rd, 2020. No legal impediment stood in the way for him to constitute the cabinet . Since then 28 days have gone by . The magnitude of the momentous fiscal decisions taken mandate collective application of mind , the essence of collective responsibility in the cabinet form of government. In the absence of any discussion and deliberations in the Council of Ministers, as none exists there can be no Vote-on-Account. The whim and fancy of a one-man non government, unknown to law , cannot be the basis of taking recourse to Article 213 of the constitution, the Ordinance making power .

It is only in extraordinary circumstances that it is permissible to adopt the Ordinance making power route in fiscal matters and allow for a Vote-on-Account . Here the conditions precedent in the exercise of that power do not exist . The Madhya Assembly is in place . The Council of Ministers can be constituted any day . The cabinet when formed can deliberate and discuss the possibility of a Vote-on-Account . Thereafter the Assembly can be summoned to take up the business relating to the Vote-on-Account . Without following the above procedure and taking recourse to Article 213 is clearly unconstitutional .

As Senior Advocates of the Supreme Court, and members of Parliament, we are well conversant with parliamentary procedures and practices. There is little scope for departure of settled constitutional practices in fiscal matters. Articles 202 to 206 of the Constitution provide for the procedures to be followed in dealing with the finances of the State . The Constitution like the Magna Charta is the Gita of the Rules of Financial Business. The unprecedented departure of the Rules of Business, settled principles of accountability, collective responsibility of the cabinet as well as parliamentary procedures makes the unilateral acts of the Chief Minister imbued with illegality.

It is a matter of constitutional shame that Madhya Pradesh holds the dubious record of a Chief Minister functioning without a government. That too for the longest period in our constitutional history . In fact a Task Force has now been constituted in the State comprising of senior BJP leaders of which the Chief Minister is a mere member . This Task Force , led by the State BJP President is set up ostensibly to advise the State Government in tackling the COVID-19 pandemic . This Task Force has no

sanctity in law , cannot be held accountable , yet controls the functioning of the one-man non government show ; the death knell of democracy . The blatant exercise of such undemocratic decision-making cannot be countenanced .

We therefore humbly request your Excellency to intervene in the matter to ensure that the State of Madhya Pradesh is directed to :

- (1) Constitute a Council of Ministers;
- (2) To consider and pass the Vote-on-Account by following settled constitutional procedures
- (3) To withdraw the unconstitutional ordinances No. 1 & No. 2 of 2020.

In the absence of the above , Your Excellency should after summoning a report from the Governor of Madhya Pradesh , impose if necessary President's Rule in the state because of the complete breakdown of its constitutional machinery .

Yours truly,

(Vivek K. Tankha)

Senior Advocate & MP (Rajya Sabha)

(Kapil Sibal)

Senior Advocate & MP (Rajya Sabha)

Copy To:

- (1) The Hon'ble Prime Minister, South Block, Raisina Hill, New Delhi - 110011
- (2) The Hon'ble Home Minister, Ministry of Home Affairs, North Block, Raisina Hill, New Delhi – 110001.
- (3) The Hon'ble Governor, Madhya Pradesh, Raj Bhavan, Roshanpura Road, Roshan Pura Square, Malviya Nagar, Bhopal, Madhya Pradesh – 462003.