

SYNOPSIS AND LIST OF DATES

The Petitioner No.1 is the President of the Karnataka Pradesh Congress Committee and has also been elected as an MLA of the Indian National Congress (“**INC**”) in the 15th Karnataka Legislative Assembly. The Petitioner No. 2 is the leader of the Janata Dal (Secular) (“**JD(S)**”) legislature party and has also been elected as an MLA of the JD(S)in the 15th Karnataka Legislative Assembly. The Petitioner No.2 has staked claim to form the Government before the Hon’ble Governor on 15.05.2018 and is supported by 116 legislators belonging to the INC, JDS and BSP in the Legislative Assembly which consists of 224 seats

The Petitioners are constrained to move this Hon’ble Court under Article 32 of the Constitution against the blatant arbitrary action of the Hon’ble Governor dated 16.05.2018 in inviting Shri B.S. Yeddyurappa to form the Government despite having only 104 members, while the minimum required strength to form the Government in the State of Karnataka is 112. The failure of the Governor to invite the INC – JD(S) – BSPAlliance which together commands a clear majority of about 116 legislators in the Legislative Assembly consisting of 224 seats is ex facie unconstitutional, illegal and arbitrary .

In these circumstances, the Petitioners are approaching this Hon'ble Court as the *sentinel on the qui vive* to uphold the rule of law and the basic rule of parliamentary democracy i.e. the rule by majority.

In the instant case, the elections to the 15th Karnataka Legislative Assembly were held on 12.05.2018 and results were declared on 15.05.2018. The party wise distribution of seats in the Fifteenth Karnataka Legislative Assembly is as follows:

Party	Won
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

It is submitted that INC, JD(S) and BSP have a formed a post poll alliance on the day of declaration of results i.e.

15.05.2018. The INC has unconditionally offered support to the JD(S) to form the Government. The post poll INC – JD(S) – BSP has 116 seats.

At about 5.30 pm on 15.05.2018 the leaders of JD(s) and Congress met the Hon'ble Governor and offered to form the Government as they enjoyed the majority support in the House. It was therefore incumbent upon the Hon'ble Governor to invite the post poll alliance of JD(s) and INC with the support of other MLAs to form the Government and direct them to prove the majority on the floor of the house.

It is submitted that the impugned decision/refusal of the Hon'ble Governor in not inviting the INC – JD(S) – BSP alliance of 116 MLAs flies in the face of the well-established constitutional convention that the Governor is Constitutionally obliged to invite the party/alliance of parties which has ex-facie demonstrated to the Governor that the said party/alliance of parties enjoys support of the majority of the Legislators. If such party/alliance of parties clearly demonstrates the support of the majority of the legislators, then the Hon'ble Governor has a constitutional duty to first invite such party and/or alliance of parties which *prima facie* enjoy the support of the majority.

GOVERNOR IS UNDER A CONSTITUTIONAL DUTY TO INVITE THE POST POLL ALLIANCE WHICH HAS PRIMA FACIE DEMONSTRATED THAT IT HAS SUPPORT OF THE MAJORITY OF THE LEGISLATORS

The constitution bench (5 Hon'ble judges) of this Hon'ble Court in **Rameshwar Prasad (VI) v. Union of India**, (2006) 2 SCC 1, categorially held that:

“165. If a political party with the support of other political party or other MLAs stakes claim to form a Government and satisfies the Governor about its majority to form a stable Government, the Governor cannot refuse formation of the Government and override the majority claim because of his subjective assessment that the majority was cobbled by illegal and unethical means. No such power has been vested with the Governor. Such a power would be against the democratic principles of majority rule. The Governor is not an autocratic political ombudsman. If such a power is vested in the Governor and/or the President, the consequences can be horrendous...”

This issue is no longer *res-integra*. As a matter of fact a three-judge bench in **Chandrakant Kavlekar v. Union of India**, (2017) 3 SCC 758 has upheld the action of the Governor in the context of the elections of the Goa Legislative Assembly. In the said case the Assembly comprised of 40 elected members. The Governor invited a post poll alliance consisting of more than 21 members comprising of:

Sr. no	Name of the Party	No of seats
1.	Bharatiya Janata Party	13
2.	Maharashtrawadi Gomantak Party	3
3.	Goa Forward Party	3
4.	Independent	2
	Total	21

In the said elections the Congress Legislature party had secured 18 seats and was the single largest party. The action of the Governor in inviting the post poll alliance consisting of smaller parties including the BJP was questioned by the single largest party i.e. the Congress.

This Hon'ble Court upheld the decision of the Governor by directing an expedited floor test. Therefore, it is submitted that the action of the Hon'ble Governor in this particular case to take a detour from the well settled Constitutional convention is *ex facie* unconstitutional, arbitrary, void-ab-initio and is violative of Article 14 of the Constitution.

It is submitted that till the time of filing the instant Writ Petition the BJP has not been able to even prima facie demonstrate (in any event it cannot legally) that it can form a Government with the support of the majority of the legislators in the assembly. The pre-requisite to the formation of the executive is the prima facie satisfaction of the Governor on the basis of objective material that the Leader staking his claim as Chief Minister has to enjoy the support of the majority of the members of the Legislative Assembly which is the *sine qua non* of the parliamentary democracy i.e. the political executive being responsible to the legislature and can continue only so long as it enjoys the confidence of the majority in the legislature.

This Hon'ble Court in ***Rameshwar Prasad (para 149)*** has categorically held in that at the stage of formation of Government the test to be adopted by the Governor is the '*prima facie test*. If the political party or and alliance is prima facie able to show to Governor that it has the support of the majority then the Governor has no choice but to call the said party/alliance which has demonstrated with prima facie material that it has the majority to form the Government.

Therefore, it is submitted that at the stage of formation of Government the Governor is duty bound to only select a Chief Minister who can demonstrate on an objective basis that he enjoys the confidence of majority of legislators of house. No such demonstrations either by letters of support or by parading of MLA's has been done by the BJP. The BJP clearly falls short of the halfway mark of 112. In any event the BJP cannot get the support of majority through legal constitutional means in the face of the provisions of the Tenth Schedule. In these circumstances and in no event and in no circumstance could the Governor select Shri. Yeddyurappa (Respondent No. 3) to be the Chief Minister and invite him to form the Government.

PETITIONER NO.2 HAS PRIMA FACIE DEMONSTRATED THAT HE ENJOYS THE SUPPORT OF THE MAJORITY OF THE LEGISLATORS IN THE LEGISLATIVE ASSEMBLY

On the other hand, the Petitioner No.2 has clearly demonstrated before the Governor on 16.05.2018 with signed letters of support of 116 legislators belonging to INC – JD(S) – BSP. In these circumstances, the inaction of the Governor is entirely wanton, arbitrary, illegal, unconstitutional and in fact tainted with malafides.

It is submitted that the deliberate delay in inviting the leader of INC – JD(S) – BSP Alliance to form the Government in fact amounts to subverting democracy and has been abhorred by this Hon'ble Court in a catena of judgements (**See S.R. Bommai Vs UOI, (1994 3 SCC 1)**). It is respectfully submitted that this inaction on the part of the Hon'ble Governor is directed to somehow benefit the BJP which has a strength of 104 MLAs in the Legislative Assembly and is attempting to reach the half way mark by undemocratic means and attempts to poach the MLAs of the INC –JD(S) Alliance with a naked allurements of money and muscle power.

PREVIOUS PRECEDENTS OF GOVERNMENT FORMATION ALSO SUPPORT THE CASE OF THE PETITIONERS

Further study of past precedents would also show that the coalition commanding the majority was given the opportunity to form the Government. In this regard the following may be noted.

Year	State	Required Majority / Total Strength	Single Largest Party with Strength	Party which was invited to form the Government by the Governor
2018	Meghalaya	30/60	Indian National Congress (21 seats)	National Peoples Party with support from Bharatiya Janta Party etc.
2017	Manipur	30/60	Indian National Congress (28 seats)	Bharatiya Janta Party with support from Naga Peoples Front etc.
2017	Goa	20/40	Indian national Congress (17 seats)	Bharatiya Janta Party with support from Maharashtrawandi Gomantak Party, etc.
2013	Delhi	35/70	Bharatiya Janta Party (31 seats)	Aam Aadmi Party with support from the Indian National Congress
2005	Jharkhand	41/81	Bharatiya Janta Party (30 seats)	Jharkhand Mukti Morcha party with support from Indian National Congress, etc.
2002	Jammu & Kashmir	45/89	Jammu & Kashmir National Conference (28 seats)	Peoples Democratic Party and Indian National Congress

It is submitted that when the Congress Legislative Party as well as the JD(S) Legislative Party had staked claim to form the Government as a coalition of political parties having the requisite numbers in the Assembly, the BJP which is running the Government at the Centre, in order to somehow have its party rule the State despite not having majority, is trying to use the Governor's Office to somehow delay the invitation to the Petitioners so that in the ensuing time all kinds of unconstitutional and illegal means can be adopted to somehow form the Government. It is submitted that such manoeuvring by the BJP and the Governor to suit their political agenda actually amounts to a death knell to the democracy which is a basic feature of our Constitution.

It is submitted that the discretionary powers exercised by the Governor are not beyond the pale of judicial review and any illegal and arbitrary decision taken against the constitutional provisions and conventions is liable to be interfered with and struck down by this Hon'ble Court in exercise of its jurisdiction as a *sentinel on the qui vive* of the Constitution. It is submitted that discretionary powers under the Constitution conferred on the Governor are not the *ipsi dixit* of the Governor but have to be exercised within the constitutional norms and conventions guiding the exercise of such discretion.

It is submitted that the impugned decision being ex facie unconstitutional is liable to be interfered with and set aside.

In this background, the present Writ Petition is being filed.

LIST OF DATES

DATES

PARTICULARS

2013 Post the 2013 Karnataka Assembly elections, the seat share of the Karnataka Legislative Assembly was as follows:

Party Name	Seats
Indian National Congress (INC)	122
Bharatiya Janata Party (BJP)	40
Janata Dal (Secular)	40
Badavara Shramikara Raitara Congress Party	4
Karnataka Jantha Paksha	6
Karnataka Makkala Paksha	1
Samajwadi Party	1
Sarvodaya Karnataka Paksha	1
Independent (IND)	9
Total	224

12.05.2018 Elections to the Fifteenth Karnataka Legislative Assembly were carried out for 222 seats.

Morning of Counting of votes to the Fifteenth Karnataka

15.05.2018 Legislative Assembly began.

15.05.2018 A post poll alliance was formed consisting of the Indian National Congress, Janata Dal (Secular) and Bahujan Samaj Party et. al. The party wise distribution of seats that the INC-JD(S) and others alliance enjoyed is as follows

Party	No of Seats
Indian National Congress (INC)	78
Janata Dal (Secular)	37
Bahujan Samaj Party	1
Total	116

15.05.2018 At about 4 pm on 15.05.2018, Dr G at about 4 Parameshwara of the Karnataka Pradesh pm Congress Committee sent a letter to the Hon'ble Governor of Karnataka informing him that the INC was extending support to the JD(S) to form the next Government in Karnataka.

15.05.2018 Thereafter Petitioner No.2 i.e. HD Kumaraswamy submitted a letter in the Governor's office requesting for an appointment in the evening between 5:30pm and 6:00 pm.

15.05.2015 At about 5.30 pm on 15.05.2018 the leaders of at about JD(s) and INC met the Hon'ble Governor.

5.30 pm Petitioner No 2 submitted a letter to the Hon'ble Governor staking claim to form the next Government in Karnataka. The letter *inter alia* highlighted the support extended by INC to the JD(S) to form the next Government and also the party wise strength the JD(S)-INC alliance enjoyed as on the evening of 15.05.2018

15.05.2018 The Election Commission of India at about 10:30 pm on 15.05.2018 declared the final result of the elections to the Fifteenth Karnataka Legislative Assembly. The party wise distribution of seats in the Fifteenth Legislative Assembly is as follows:

Party	No of Seats
Indian National Congress(INC)	78
Janata Dal(Secular)	37
Bharatiya Janata Party	104
Karnataka Pragnyavantha Janatha Party	1
Bahujan Samaj Party	1
Independent	1

16.05.2018 In a meeting of the newly elected Legislators of the Congress Legislature Party of Karnataka, under the chairmanship of Petitioner No 1, at about 8:30 am on 16.05.2018, it was once again unanimously decided that support would be

extended to JD(S) to form the Government in Karnataka. Thus the alliance of INC-JD(S)/BSP now enjoyed the support of 116 MLAs in total, along with the support of 1 BSP MLA.

16.05.2018 Shri B.S. Yedyurappa, at about 11:15 am on at about 16.05.2018 met the Hon'ble Governor and 11:15 am staked claim to form the next Government despite having the support of only 104 MLAs and falling way short of the half way mark.

16.05.2018 *Vide* a telephonic conversation with the ADC of at about the Hon'ble Governor, a request was made that 2:45 the INC-JD(S) alliance be allowed to meet the Governor at the earliest. Subsequently, an email was also sent reiterating the urgency along with a copy of the resolution by the INC extending support to the JD(S) to form the next Government in Karnataka.

16.05.2018 *Vide* a letter from the Hon'ble Governor, the INC- at about JD(S) alliance was informed that their request 3:30pm for appointment had been confirmed and that the Hon'ble Governor would meet them at about 5:15 pm.

16.05.2018 The Petitioner No. 2 once again met the Hon'ble Governor at 5.15 pm and reiterated his request to the Governor to invite him to form the Government in view of the absolute majority support enjoyed by him.

16.05.2018 Despite the ex-facie demonstration of majority by the INC-JD(S) alliance the Governor has refused to invite the INC-JD(S) alliance to form the Government. The deliberate delay, inaction and protraction by the Hon'ble Governor in failing to invite the INC-JD(S) alliance, which commands a majority, is ex-facie illegal, arbitrary, unconditional and violative of Article 14 of the Constitution. As a matter of fact several news paper reports also suggest that massive efforts and naked display of money and muscle power by the BJP is underway to poach these MLAs.

16.05.2018 News reports at 8pm reveal that the Governor is likely to swear in Shri B.S. Yedyurappa as the Chief Minister at in the morning of 17.05.2018 at around 9:30pm.

16.05.2018 The impugned order passed by the Hon'ble
At about Governor inviting Shri Yeddyurappa to form the
9.30 pm Government and fixing the swearing in
ceremony at 9.30 am on 17.05.2018.

16.05.2018 Hence this Petition is being filed in extreme
At about urgency in the face of fast attempts being made
10:30 pm to subvert the basic structure of the
Constitution being the Rule by the majority in
our Parliamentary system of democracy. The
instant Petition is being moved at this late hour
on 16.05.2018 itself to obviate any argument of
fate accompli namely that the swearing in has
already happened.

Furthermore it is submitted that the instant
petition under Article 32 is being filed as the
impugned action of the Governor are ex facie
arbitrary, unconstitutional and violative of
Article 14. Further all the celebrated cases
relating to government formation have been
directly entertained by this Hon'ble Court (see
Chandrakant Kavlekar v. Union of India
(2017) 3 SCC 758; **Anil KUMAR Jha v. Union**
of India (2005) 3 SCC 150)

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) NO.

OF 2018

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

1. Dr. G. Parameshwara
President,
Karnataka Pradesh Congress Commiittee
Congress Bhawan,
Queens Road, Bangalore
2. H. D. Kumaraswamy
President
Janata Dal (Secular)
JP Bhavan, 19/1, Platform Road,
Sheshadripura, Bengaluru,
Karnataka-560020

... PETITIONERS

AND

1. UNION OF INDIA
Through its Secretary,
Ministry of Home Affairs,
Central Secretariat,
North Block,
New Delhi – 01
2. STATE OF KARNATAKA

Through its Chief Secretary,
Vidhan aSoudha,
Bangalore- 560001
3. BS YEDDYURAPPA
Leader of Karnataka BJP Legislature Party
Jagannatha Bhavana
#48, Temple Street,
11th Cross, Malleshwaram,
Bengaluru – 560 003

... RESPONDENTS

ALL ARE CONTESTING RESPONDENTS

WRIT PETITION UNDER ARTICLE 32 R/W ARTICLE 14 OF THE CONSTITUTION OF INDIA FOR QUASHING THE DECISION DATED 16.05.2018 OF THE HON'BLE GOVERNOR INVITING SHRI BS YEDDYURAPPA TO FORM THE GOVERNMENT AND FOR A FURTHER DIRECTION TO TO INVITE THE LEADER OF THE JANATA DAL (SECULAR) AND THE CONGRESS LEGISLATURE PARTY (TOGETHER SPECIFIED AS "ALLIANCE OF JD(S) AND INC"), AS THEY ARE THE MAJORITY TO FORM A COALITION GOVERNMENT IN THE 15TH LEGISLATIVE ASSEMBLY ELECTION IN THE STATE OF KARNATAKA

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 no. 1 is the leader of the Indian National Congress ("**INC**") legislature party and Petitioner No. 2 is the President of the Janata Dal (Secular) ("**JD (S)**") legislature party in the Legislative Assembly in Karnataka ("Hereinafter referred as "**alliance of JD (S) and INC**") who are constrained to move this Hon'ble Court under Article 32 of the Constitution for a direction to the Hon'ble Governor of Karnataka against the order of the Hon'ble Governor dated 16.05.2018 [**IMPUGNED ORDER**] passed approximately at 9:30 pm inviting Shri B.S. Yeddyurappa to form the Government despite having only 104 MLAs. The

instant Writ Petition is preferred at 10:30 pm on 16.05.2018. The order of the Hon'ble Governor dated 16.05.2018 is annexed hereto and marked as **ANNEXURE P-8 [Pg.** .The failure of the Governor to invite the INC – JD(S)-BSP Alliance which together commands a clear majority of about 116 legislators in the legislative assembly consisting of 224 seats is ex facie unconstitutional, illegal and arbitrary.

2. The Petitioner No. 1 is the leader of the Indian National Congress (“**INC**”) in the Legislative Assembly in Karnataka and is the President of the Karnataka Pradesh Congress Committee. He has also served as the Home Minister of Karnataka from 2015 to 2017.
3. The Petitioner no. 2 is the leader of the Janata Dal (Secular) legislature party. It is submitted that the Petitioner No. 2 has served as the 18th Chief Minister of the State of Karnataka.
4. That Respondent No. 1 is the Ministry of Home Affairs, which is responsible for the Centre-State relations, including working of the constitutional provisions governing such relations, appointment of Governors, creation of new States, nominations to Rajya Sabha/Lok Sabha, Inter-State boundary disputes, over-seeing the crime situation in States, imposition of

President's Rule and work relating to Crime & Criminal Tracking Network System (CCTNS) etc.

5. That Respondent No. 2 is the State of Karnataka. The instant matter is of grave public importance which specifically concerns the State of Karnataka in as much as the Governor of Karnataka has not yet invited the Petitioners to form a coalition Government despite the specific representation given by the Petitioners, which is a departure from the mandate given by the people of Karnataka State.
6. The Respondent no. 3, BS Yeddyurappa, has been elected as the leader of the Karnataka BJP Legislature Party in the 15th Karnataka Legislative Assembly. Despite not having the support of the majority members the said Respondent is pursuing all illegal conduits to form Government in the State and has been invited to form the Government by the impugned order.
7. That the 15th Karnataka Legislative Assembly Election of State of Karnataka was held on 12 May 2018 in 222 constituencies out of 224 seats of the Karnataka Legislative Assembly. The election was postponed in two constituencies, Jayanagar and Rajarajeshwari Nagar, following the death of a candidate and a voter

fraud scandal respectively. The tenure of the 14th Karnataka Assembly ends on May 28, 2018.

8. The results of the 15th Karnataka Legislative Assembly Election as declared on 15.05.2018 is as under:

Party	Won
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

9. That the Assembly comprises of 224 seats. The party having the support of at least 112 elected members would hold majority to form the Government. As can be seen BJP though emerged as the single largest party with total elected members of 104, are short of majority by 8 seats.
10. That the Petitioner no. 1, on behalf of the Congress Legislature Party in the Karnataka Legislative Assembly has unconditionally offered support to the JD(S) to form the Government by way of a letter dated 15.05.2018. A true and typed copy of the letter dated 15.05.2018 addressed by the President, Karnataka

PCC to the Hon'ble Governor is annexed hereto and marked as **ANNEXURE P-1 [Pg.**

11. Pursuant to the above, the Petitioner No.2, submitted a letter to the office of the Hon'ble Governor of Karnataka informing the Hon'ble Governor that he had accepted the support from the INC and therefore sought an appointment in this regard to stake claim to form the next Government. A true copy of the letter dated 15.05.2018 addressed by the President, JD(S) to the Hon'ble Governor is annexed hereto and marked as **ANNEXURE P-2 [Pg.**

12. Soon after the same, the Petitioner No. 2, with an intent to form a coalition government tendered a letter dated 15.05.2018 to the Hon'ble Governor informing him that together with the support of the INC and BSP, intend to form a coalition Government as the coalition strength is 116, which is sufficient to form a stable Government. Thus, the Hon'ble Governor was requested to invite Petitioner No. 2 to form the Government. A true and typed copy of the letter dated 15.05.2018 submitted by the Petitioner No. 2 to the Hon'ble Governor is marked as **ANNEXURE P-3 [Pg.**

13. That on the morning of 16.05.2018 at around 8:30 am, in a meeting of the newly elected legislators under the Chairmanship of their President, i.e. Petitioner No 1, it was once again unanimously decided that full support would be extended to JD(S) leader, Shri HD Kumaraswamy, ie. Petitioner No 2, to form the next Government in Karnataka. A true copy of the letter dated 16.05.2018 extending support to the Petitioner No 2 to form the next Government is annexed herewith and marked as **ANNEXURE P-4 [Pg.**
14. The Respondent No. 3, B.S. Yedyurappa on 16.05.2018 at about 11:15 am, met the Hon'ble Governor and purportedly staked claim to form the Government. There is all likelihood that the Hon'ble Governor may invite the said Respondent to form the Government without considering the representation made on 15.05.2018 by Petitioner No. 2 staking claim to form the Government on the strength and support of 116 MLAs.
15. At about 2:45 pm on 16.05.2018 *vide* a telephonic conversation with the ADC of the Hon'ble Governor, a request was made that the INC-JD(S) alliance be allowed to meet the Governor at the earliest.

Subsequently, an email was also sent reiterating the urgency along with a copy of the resolution by the INC extending support to the JD(S) to form the next Government in Karnataka.

16. *Vide* a letter from the Hon'ble Governor in the afternoon of 16.05.2018, the INC-JD(S) alliance was informed that their request for appointment had been confirmed and that the Hon'ble Governor would meet them at about 5:15 pm.

17. The Petitioner No. 2 met the Hon'ble Governor at about 5:15 pm on the evening of 16.05.2018 and submitted a letter staking claim to form the Government on the premise that he enjoyed support of the majority of the 116 legislators in the Assembly. The letter further highlighted his willingness to undertake a floor test to prove his majority as well. The said letter also enclosed letters of support in his favour from individual MLAs. A true copy of the letter dated 16.05.2018 addressed by Shri HD Kumaraswamy, i.e. Petitioner No 1, to the Hon'ble Governor with its enclosures is annexed hereto and marked as **ANNEXURE P-5(colly) [Pg. .** Letters of support of the Congress MLAs which was also

handed over to the Governor is annexed hereto and marked as **ANNEXURE P-6 [Pg.**

18. Despite the ex-facie demonstration of majority by the INC-JD(S) alliance the Governor has refused to invite the INC-JD(S) alliance to form the Government. The deliberate delay, inaction and protraction by the Hon'ble Governor in failing to invite the INC-JD(S) alliance, which commands a majority, is ex-facie illegal, arbitrary, unconditional and violative of Article 14 of the Constitution. As a matter of fact several news paper reports also suggest that massive efforts and naked display of money and muscle power by the BJP is underway to poach these MLAs. A true copy of the article dated 16.05.2017 published in the Indian Express reporting the Petitioner No 2's claim that JD(S) MLAs were being offered bribes to the tune of Rs 100 crore is annexed hereto and marked as **ANNEXURE P-7 [Pg.**

19. At about 830 pm on 16.05.2018, news paper reports emerged that the Hon'ble Governor had invited the BJP to form the Government and the swearing in ceremony was likely to be held on 17.05.2018 at 9.30am. Copy of the newspaper reports dated

16.05.2018 is annexed hereto and marked as

ANNEXURE P-8 [Pg.

20. A political party/alliance *prima facie* having majority has to be permitted to form the Government. If a political party with the support of other political parties or other independent MLAs stakes claim to form a Government and satisfies the Governor about its majority to form a stable Government, then Governor has to permit them to form the Government. The subjective satisfaction of the Governor has to be based on the sheer strength and support based on which a party staking claim to form the Government.
21. The Governor is Constitutionally obliged to invite the party/alliance of parties which has *ex-facie* demonstrated to the Governor that the said party/alliance of parties enjoys support of the majority of the legislators.
22. If such party/alliance of parties presents to the Governor letters of support of the legislators which clearly show that the majority of the legislators are with the party/alliance of parties staking claim to form the Government, then the Hon'ble Governor has a Constitutional duty to first invite such party and or an

alliance of parties which *prima facie* enjoys the support of the majority of the legislators.

23. The oath prescribed under Article 159 requires the Governor to faithfully perform the duties of his office and to the best of his ability preserve, protect and defend the Constitution and the laws. The Governor cannot, in the exercise of his discretion or otherwise, do anything what is prohibited to be done. The Constitution enjoins upon the Governor that after the conclusion of elections, every possible attempt is made for formation of a popular and stable Government representing the will of the people expressed through the electoral process. If the Governor acts to the contrary by creating a situation whereby a party is prevented even to stake a claim and recommends dissolution to achieve that object, the only inescapable inference to be drawn is that the exercise of discretion is wholly illegal and unconstitutional.

24. It is submitted that the inaction of the Hon'ble Governor in not inviting the coalition formed by the parties led by the Petitioners to form the Government is highly arbitrary and against the constitutional mandate.

25. In these circumstances the Petitioner is moving this Hon'ble Court under Article 32 of the Constitution beseeching this Hon'ble Court to intervene and direct the Hon'ble Governor to invite the Petitioners to form the Government.
26. 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.
27. 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.
28. That the Annexures are true and correct copies of their respective originals.
29. 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 impugned action/order of the Governor dated 16.05.2018 in inviting Shri B.S. Yeddyurappa to form the Government despite having only 104 MLAs is *ex facie* unconstitutional arbitrary and illegal.
- b. FOR THAT the impugned action of the Hon'ble Governor of not inviting the Petitioners having the absolute majority to form the Government is *ex-facie* unconstitutional and liable to be interfered with and set aside. In this background, the present Writ Petition is being filed.
- c. FOR THAT the constitutional convention of inviting the single largest party in the case of a fractured mandate has been outlined by the Sarkaria Commission recommendations, which were affirmed by a Constitutional Bench of this Hon'ble Court in ***Rameshwar Prasad v Union of India reported in 2006 (2) SCC 1***. The relevant extract of the judgment reads as under:

“**163.** There cannot be any doubt that the oath prescribed under Article 159 requires the Governor to faithfully perform the duties of his office and to the best of his ability preserve, protect and defend the Constitution and the laws. The Governor cannot, in the exercise of his discretion

or otherwise, do anything what is prohibited to be done. The Constitution enjoins upon the Governor that after the conclusion of elections, every possible attempt is made for formation of a popular Government representing the will of the people expressed through the electoral process. If the Governor acts to the contrary by creating a situation whereby a party is prevented even to stake a claim and recommends dissolution to achieve that object, the only inescapable inference to be drawn is that the exercise of jurisdiction is wholly illegal and unconstitutional.

165. If a political party with the support of other political party or other MLAs stakes claim to form a Government and satisfies the Governor about its majority to form a stable Government, the Governor cannot refuse formation of the Government and override the majority claim because of his subjective assessment that the majority was cobbled by illegal and unethical means. No such power has been vested with the Governor. Such a power would be against the democratic principles of majority rule. The Governor is not an autocratic political ombudsman. If such a power is vested in the Governor and/or the President, the consequences can be horrendous.”

- d. FOR THAT the Sarkaria Commission report specifically dealt with the situation where no single party obtained absolute majority. It provided the order of preference the Governor should follow in selecting a Chief Minister in such a fluid situation: (1) An alliance of parties that was formed prior to the elections. (2) The single largest party staking a claim to form the government with the support of others, including independents. (3) A post-electoral coalition of parties, with all the partners in the coalition joining the

government. (4) A post-electoral alliance of parties, with some of the parties in the alliance forming a government and the remaining parties, including independents, supporting the government from outside.

- e. FOR THAT it is clear that the leader of the party which has an absolute majority in the Assembly should be called upon by the Governor to form a government. However, if there is a fractured mandate, then the Commission recommends an elaborate step-by-step approach and has further emphasised that the Governor should select a leader who, in his/her judgement, is most likely to command a majority in the Assembly. The Governor need not call upon the party with the single largest votes, but can call the one which he believes holds the majority to demonstrate confidence in the floor of the House.

- f. FOR THAT the action of the Hon'ble Governor dated 15.05.2018 in not inviting the Petitioners to form the Government by proving their majority is unconstitutional, arbitrary, illegal and violative of Article 14.

- g. FOR THAT the impugned action of the Hon'ble Governor flies in the face of the well-established constitutional convention that the Governor is Constitutionally obliged to invite the party/alliance of parties which has ex-facie demonstrated to the Governor that the said party/alliance of parties enjoys support of the majority of the Legislators.
- h. FOR THAT If such party/alliance of parties presents to the Governor letters of support of the Legislators which clearly show that the majority of the Legislators are with the party/alliance of parties staking claim to form the Government, then the Hon'ble Government has a Constitutional duty to first invite such party and or alliance of party's which prima facie enjoys the support of the majority of the legislators.
- i. FOR THAT there cannot be any ambiguity in respect of the absolute majority support enjoyed by the Petitioner No. 2 in the face of the letters of support by majority of the legislators.
- j. FOR THAT in the instant case the petitioners i.e. INC and the JD(S) have formed a post poll alliance on 15.05.2018. Accordingly, the INC has unconditionally offered support to the JD(S) to form the Government.

- k. FOR THAT on 15.05.2018 the leaders of JD(s) and Congress met the Hon'ble Governor and offered to form the Government as they enjoyed the majority support in the house. The letters of support of the majority MLA's was also handed over to the Hon'ble Governor.
- l. FOR THAT the post poll alliance between the INC and the JD(S) has 115 seats, and 1 other MLA from the Bahujan Samaj Party has also offered support to the coalition of the JD(s) and INC and therefore legislators supporting the alliance is 116.
- m. FOR THAT therefore, commanding a clear majority in the house of 224 (election for 222 seats were carried out). It was therefore incumbent upon the Hon'ble Governor to invite the post poll alliance of JD(s) and INC to form the Government and direct them to prove the majority in the floor of the house.
- n. FOR THAT this issue is no longer *res-interga*. As a matter of fact a three-judge bench in ***Chandrakant Kavlekar v. Union of India, (2017) 3 SCC 758*** has upheld the action of the Governor in the context of the elections of the Goa Legislative Assembly. The said Assembly comprised of 40 elected members, and the Governor had invited the post poll alliance consisting of more than 21 members comprising of the following:

Sr. no	Name of the Party	No of seats
5.	Bharatiya Janata Party	13
6.	MaharashtrawadiGomantak Party	3
7.	Goa Forward Party	3
8.	Independent	2
	Total	21

- o. FOR THAT in the said elections the Congress Legislature party had secured 18 seats. The action of the Governor in inviting the post poll alliance consisting of smaller parties including the BJP was questioned by the single largest party i.e. the Congress.
- p. FOR THAT in ***Chandrakant Kavlekar v. Union of India, (2017) 3 SCC 758***, this Hon'ble Court upheld the decision of the Governor by directing an expedited floor test. Therefore, it is submitted that the action of the Hon'ble Governor in this particular case to take a detour from the well settled Constitutional convention as also the judgment of this Hon'ble Court in ***Chandrakant Kavlekar*** is *ex-facie* unconstitutional, arbitrary, void-ab-initio and is violative of Article 14 of the Constitution.

- q. FOR THAT the study of past precedents would also show that the post poll coalition commanding a majority has always been given an opportunity to form the Government. In this regard the following may be noted:

Year	State	Required Majority / Total Strength	Single Largest Party with Strength	Party which formed Government
2018	Meghalaya	30/60	Indian National Congress (21 seats)	National Peoples Party with support from Bharatiya Janata Party etc.
2017	Manipur	30/60	Indian National Congress (28 seats)	Bharatiya Janata Party with support from Naga Peoples Front etc.
2017	Goa	20/40	Indian national Congress (17 seats)	Bharatiya Janata Party with support from Maharashtra wandi Gomantak Party, etc.
2013	Delhi	35/70	Bharatiya Janata Party (31 seats)	Aam Aadmi Party with support from the Indian National Congress
2005	Jharkhand	41/81	Bharatiya Janata Party (30 seats)	Jharkhand Mukti Morcha party with support from Indian National Congress, etc.

200 2	Jammu & Kashmir	45/89	Jammu & Kashmir National Conference (28 seats)	Peoples Democratic Party and Indian National Congress
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- r. FOR THAT the impugned action of the Governor in attempting to appoint Respondent No. 3 i.e. B.S. Yeddyurappa as the Chief Minister and trying to invite BJP to form the government by proving its majority is completely unconstitutional, illegal, arbitrary and violative of the basic features of the Constitution.
- s. FOR THAT that in the evening of 15.05.2018 when the Congress Legislature Party as well as the JD(S) Legislative Party had staked claim to form the Government as a coalition of political parties having the requisite numbers in the Assembly, the BJP which is running the Government at the Centre, in order to somehow have its party rule the State despite not having majority, is using the Governor's office to get itself invited to form the Government.
- t. FOR THAT the Hon'ble Governor, without affording an opportunity to the said coalition of the Petitioners, has hastily proceeded to pre-empt the coalition parties

from forming the Government. It is submitted that the INC together with JD(S) etc. is in a position to form the Government and will demonstrate its comfortable majority on the floor of the House if given an opportunity.

- u. FOR THAT the impugned action of the Hon'ble Governor dated 15.05.2018 in not giving an opportunity to the coalition of political parties involving INC and JD(S) to show or prove its majority is highly arbitrary and illegal.
- v. FOR THAT the action of the Hon'ble Governor is completely tainted with arbitrariness, malafide, partisanship and has been taken in an extremely hasty manner to pre-empt the coalition from forming the Government. As such it is violative of Article 14 of the Constitution.
- w. FOR THAT such manoeuvring by the BJP and the Governor to suit their political agenda actually amounts to a death knell to the democracy which is a basic feature of our Constitution.
- x. FOR THAT despite the BJP being short of majority, in its hunger for power, by using the Office of Governor, is trying to get invited by the Governor.

- y. FOR THAT the discretionary powers exercised by the Governor are not beyond the pale of judicial review and any illegal and arbitrary decision taken against the constitutional provisions and conventions is liable to be interfered with and struck down by this Hon'ble Court in exercise of its jurisdiction as a *sentinel on the qui vive* of the Constitution.
- z. FOR THAT that discretionary powers under the Constitution conferred on the Governor are not the *ipsi dixit* of the Governor but have to be exercised within the constitutional norms and conventions guiding the exercise of such discretion.
- aa. FOR THAT the impugned action of the Hon'ble Governor being *ex facie* unconstitutional is liable to be interfered with to protect democracy and federalism.
- bb. FOR THAT the BJP, which is only having 104 electorates in the Legislative Assembly, using its political clout at the Centre, is staking claim to form the Government, though evidently it does not have the requisite majority nor does it enjoy enough support from outside its party to reach the majority mark of 112 required to form the Government.

cc. FOR THAT the Governor by delaying the invitation to the Petitioners to form the Government is only providing the BJP with an opportunity to poach MLAs from other parties, thereby indulging in horse trading in the Karnataka Legislative Assembly. It is submitted that the delay/protraction by the Hon'ble Governor in inviting the INC, JD(S) alliance to form the government in fact amounts to encouraging political defections, being engineered and orchestrated by the BJP. The only way in which the BJP can, if at all, form a Government is by unethical and unscrupulous political defection which is prohibited. This Hon'ble Court described unethical political defection as a "*canker eating into the vitals of those values that make democracy a living and worthwhile faith*" (see **Rameshwar Prasad v. Union of India**, (2006) 2 SCC 1). Therefore, the inaction of the Governor has severe consequences not only for the Petitioners but also for the very existence of democracy itself.

dd. FOR THAT law has been well settled by this Hon'ble Court that Constitutional Convention is as binding as Constitutional Law. [**see Supreme Court Advocates on Record Association v. Union of India**, (2016) 5 SCC 1 (para 767 and 768); **Supreme Court**

Advocates on Record Association v. Union of India, (1993) 4 SCC 441.

ee. FOR THAT this facet has further been elucidated by this Hon'ble Court in ***Manoj Narula v. Union of India, (2014) 9 SCC 1***, wherein the following observations were made in respect of Constitutional Conventions:

“97. It would be apt to say that when a country is governed by a Constitution, apart from constitutional provisions, and principles constitutional morality and trust, certain conventions are adopted and grown. In Supreme Court Advocates-on-Record Assn. [(1993) 4 SCC 441 : AIR 1994 SC 268] , the Court reproduced a passage from K.C. Wheare's book The Statute of Westminster and Dominion Status (4th Edn.) and we quote: (SCC p. 650, para 337)

“337. ... ‘The definition of “conventions” may thus be amplified by saying that their purpose is to define the use of constitutional discretion. To put this in slightly different words, it may be said that conventions are non-legal rules regulating the way in which legal rules shall be applied.’”

I. Jennings, in The Law and the Constitution [5th Edn., ELBS: London, 1976), in his Chapter “Conventions” 247.], stated that a convention exists not only due to its non-enforceability but also because there is a reason for the rule. I. Lovehead, in Constitutional Law — A Critical Introduction [2nd Edn., Butterworths: London, 2000), 247] , has said that the conventions provide a moral framework within which the government ministers or the monarch should exercise non-justiciable legal powers and regulate relations between the Government and other constitutional authorities. In the Constituent Assembly Debates, Dr Rajendra Prasad, in his speech as President of

the Constituent Assembly, while moving for the adoption of the Constitution of India, had observed: (CAD p. 993)

“... Many things which cannot be written in a Constitution are done by conventions. Let me hope that we shall show those capacities and develop those conventions.”(emphasis supplied)

- ff. FOR THAT the Hon’ble Governor could not have acted on the basis of any purported claim made by the BJP, when in fact a coalition led by the Indian National Congress and Janata Dal (Secular) has submitted a representation dated 15.05.2018 drawing the Governor’s attention to the majority support enjoyed by it to form the Government. It is again reiterated that the Petitioners have
- gg. FOR THAT recently ***in Chandrakant Kavlekar v. Union of India, (2017) 3 SCC 758***, in a similar situation this Hon’ble Court disposed of the matter with a simple direction requiring the holding of the floor test at the earliest.
- hh. FOR THAT it was imperative and incumbent upon the Hon’ble Governor to call upon the coalition of political parties led by the Indian National Congress to form the

Government and ask the Chief Ministerial candidate to prove its majority on the floor of the House.

- ii. FOR THAT the events between the evening of 15.05.2018 and 16.05.2018 demonstrate a shocking and a brazen attempt to grab power violating the sacrosanct constitutional norms, conventions and principles guiding the discretionary powers of the Governor in a hung house. The Respondents by the impugned actions have virtually sought to strangle the will of the people and have used the office of the Governor to suit their political needs.
- jj. FOR THAT in the evening of 15.05.2018 when the coalition of political parties led by the Congress Legislative Party had chosen its leader and had staked claim to form the Government enjoying support of the majority, the BJP, which is running the Government at the Centre, in order to somehow have its party rule the State despite not getting majority, has used the Governor's Office to get itself invited to form the Government.
- kk. FOR THAT the action of the Hon'ble Governor is completely tainted with arbitrariness, malafide,

partisanship and has been taken in an extremely hasty manner to pre-empt the coalition of political parties from forming the Government. As such it is violative of Article 14 of the Constitution.

ll. FOR THAT such manoeuvring by the BJP and the Governor to suit their political agenda actually amounts to a death knell to the democracy and federalism which is a basic feature of our Constitution.

mm. FOR THAT the discretionary powers exercised by the Governor are not beyond the pale of judicial review and any illegal and arbitrary decision taken against the constitutional provisions and conventions is liable to be interfered with and struck down by this Hon'ble Court in exercise of its jurisdiction as a sentinel on the qui vive of the Constitution.

nn. FOR THAT while moving the Draft Constitution in the Constituent Assembly on 4.11.1948, Dr. Ambedkar after quoting Grote, historian of Greece observed that:

*“While everybody recognised the necessity of diffusion of Constitutional morality for the peaceful working of the democratic Constitution, there are two things interconnected with it which are not, unfortunately, generally recognised. One is that the form of administration must be appropriate to and in the same sense as the form of the Constitution. **The other, that it is perfectly possible to pervert the Constitution, without***

changing its form by merely changing its form of administration and to make it inconsistent and opposed to the spirit of Constitution.”

- oo. 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
- pp. FOR THAT 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 an appropriate writ/order/direction declaring that action/order of the Hon'ble Governor dated 16.05.2018 inviting Shri B.S.Yeddyurappa to form the Government on 17.05.2018 as unconstitutional, arbitrary, illegal, void-ab-initio, and violative of Article 14 of Constitution of India; and accordingly quash the same;

- b. pass an appropriate writ/order/direction to the Hon'ble Governor to invite the alliance of JD (S) and INC which has the support of more than 112 MLAs to form the Government under the leadership of Shri. H. D Kumarswamy; and
- c. 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. Devadatt Kamat
Mr. Prashant Kumar
Mr. Javedur Rehman,
Mr. Aditya Bhat
Mr. Rajesh Inamdar
(ADVOCATES)

SETTLED BY:

Dr Abhishek Manu Singhvi
(SENIOR ADVOCATE)

FILED BY

GAUTAM TALUKDAR
ADVOCATE FOR THE PETITIONERS

PLACE: NEW DELHI
DRAWN ON:

**IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)**

**I.A. NO. OF 2018
IN**

WRIT PETITION (C) No. OF 2018

[UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA]

BETWEEN:

DR. G. PARAMESHWAR & ANR. ...PETITIONER(s)

VERSUS

UNION OF INDIA &ORS. ...RESPONDENT(s)

APPLICATION FOR STAY/DIRECTIONS

TO,

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

THE HUMBLE APPLICATION OF
THE APPLICANT ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. That the Petitioner No.1 is the President of the Karnataka Pradesh Congress Committee and has also been elected as an MLA of the Indian National Congress ("INC") in the 15th Karnataka Legislative Assembly. The Petitioner No. 2 is the leader of the Janata Dal (Secular) ("JD(S)") legislature party and has also been elected as an MLA of the JD(S) in the 15th Karnataka Legislative Assembly. The Petitioner No.2 has staked claim to form the Government before the Hon'ble Governor on 15.05.2018 and is supported by 116 legislators belonging to the INC, JDS and BSP in the Legislative Assembly which consists of 224 seats.

2. The Petitioners are constrained to move this Hon'ble Court under Article 32 of the Constitution against the blatant inaction/refusal of the Hon'ble Governor in discharging his constitutional functions and his failure to invite the INC – JD(S)-BSP Alliance which together commands a clear majority of about 116 legislators in the legislative assembly consisting of 224 seats. This inaction/refusal/protraction by the Hon'ble Governor is *ex facie* unconstitutional and is in fact a recipe for encouraging horse trading and for perpetrating the constitutional sin of defection under the Tenth Schedule. The contents of the accompanying Writ Petition may be referred to and relied upon for the purposes of the present Application and the same are not being repeated herein *brevitatis causa*.
3. That it is being widely reported in the media that the Governor is going to invite Shri B.S. Yeddyurappa to form the Government and administer him the oath of office of the Chief Minister in the early hours of 17th of May 2008.
4. The Petitioners have already demonstrated that they enjoy the support of 116 MLAs and hence have made out a prima facie case. The balance of convenience is also in favour of the Petitioners. In these circumstances the Petitioners are constrained to move this Hon'ble Court in extreme urgency so as to prevent the Writ Petition and the reliefs sought therein from

becoming nugatory and infructuous thereby causing an irreparable injury to the Petitioners.

5. The Application has been filed bona fide and in the interests of justice.

PRAYER

In these circumstances the Petitioners most respectfully pray that this Hon'ble Court may be pleased to:

- (a) Restrain the Hon'ble Governor from selecting/inviting/appointing Shri B.S. Yeddyurappa as the Chief Minister of Karnataka and administering him the oath of office till the Writ Petition is finally disposed; and
- (b) Direct that the impugned order dated 16.05.2018 not to be given effect to or acted upon; and
- (c) Pass ad interim *ex-parte* orders in relation to items (a) and (b) above and after notice confirm the same till the final disposal of the writ petition.

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

FILED BY

GAUTAM TALUKDAR
Advocate for the Petitioner

Place: New Delhi
Filed on: .05.2018