

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
I.A.NO _____/2019
IN
WRIT PETITION (CIVIL) NO. 872 OF 2019**

IN THEMATTER OF:

PRATAP GOUDA PATIL & ORS.	... PETITIONERS
VERSUS	
STATE OF KARNATAKA & ORS.	... RESPONDENTS

AND IN THEMATTER OF:

SHRI H.K KUMARASWAMY 19/1, J P BHAVANA, PLATFORM ROAD, SHESHADRIPURA, BANGALORE 560 020	APPLICANT
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**APPLICATION FOR CLARIFICATION/DIRECTIONS
TO,**

THE HON'BLE CHIEF JUSTICE OF INDIAAND HIS
LORDSHIP'S COMPANION JUSTICES OF THE HON'BLE
SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF
THE APPLICANTS ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. The Applicant is the Chief Minister of the State of Karnataka and also the President of the Janatha Dal (Secular) and is filing the present Application on behalf of the Jantha Dal (Secular) seeking directions/clarifications in respect of the order dated 17.07.2019
2. It is respectfully submitted that as a result of the order dated 17.07.2019 the constitutional rights of the Applicant under the Tenth Schedule are vitally affected and as such the instant

Application is being moved. The order dated 17.07.2019 *interalia* records the following.

“We also make it clear that until further orders the 15 Members of the Assembly, ought not to be compelled to participate in the proceedings of the ongoing session of the House and an option should be given to them that they can take part in the said proceedings or to opt to remain out of the same...”

3. It is respectfully submitted that the Jantha Dal (Secular) presently has 37 MLA's in the Karnataka Legislative Assembly and has not been arrayed as a party Respondent.
4. It is submitted that a political party under the Tenth Schedule has a constitutional right to issue a whip to its legislators. The exercise of this right under the Constitution is not circumscribed by any condition nor can it be subject to any restrictive *qua timet* orders even prior to the issuance of the whip. More importantly, any enquiry for the purposes of the Tenth Schedule is a proceeding of the Legislature of the State within the meaning of Article 212 of the Constitution.
5. It is submitted that a Constitution Bench of five Hon'ble Judges of this Hon'ble Court in ***Kihoto Holohan v Zachillhu & Ors 1992 Supp(2) SCC*** while interpreting para 2(1)(b) of the Tenth Schedule laid down that para 2(1)(b) has to be made mandatorily applicable in cases of a confidence motion. In this regard the relevant portion of paragraph 122 reads as follows
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“122....where a change of government is likely to be brought about or is prevented, as the case may be, as a result of such voting or abstinence or when such voting or

abstinence is on a matter which was a major policy and programme on which the political party to which the Member belongs went to the polls. For this purpose the direction given by the political party to a Member belonging to it, the violation of which may entail disqualification under Paragraph 2(1)(b), would have to be limited to a vote on motion of confidence or no confidence in the government or where the motion under consideration relates to a matter which was an integral policy and programme of the political party on the basis of which it approached the electorate. The voting or abstinence from voting by a Member against the direction by the political party on such a motion would amount to disapproval of the programme on the basis of which he went before the electorate and got himself elected and such voting or abstinence would amount to a breach of the trust reposed in him by the electorate.

6. Further in paragraph 123 this Hon'ble Court directed that the whip of the political party has to be "*....so worded as to clearly indicate that voting or abstaining from voting contrary to the said direction would result in incurring the disqualification under Paragraph 2(1)(b) of the Tenth Schedule so that the member concerned has fore-knowledge of the consequences flowing from his conduct in voting or abstaining from voting contrary to such a direction.*"

7. It is submitted that on 18.07.2019, the Hon'ble Governor sent a communication directing that the confidence motion and the trust vote should be held before 1:30 pm on 19.07.2019. It is respectfully submitted that no such direction could have been issued by the Hon'ble Governor when the confidence motion has already been initiated. The debates on the motion are currently ongoing and the House is in seisin of the confidence motion. The Hon'ble Speaker has also opined that the Division will take place only at the end of the debate. In

these circumstances the Hon'ble Governor cannot dictate to the House the manner in which the debate of the confidence motion has to be taken up.

8. It is submitted that any interpretation of the order dated 17.07.2019 which whittles down the power of a political party to issue a whip to its legislators would be in the teeth of the provisions of the Tenth Schedule of the Constitution and the judgment of the Constitution Bench of this Hon'ble Court in ***Kihoto Holohan v Zachillhu***.

9. That the present application is being filed with a bona fide purpose, and in the interests of justice.

PRAYER:

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to

- a) Clarify/direct that the order dated 17.07.2019 to the extent that “..ought not to be compelled to participate in the proceedings ongoing session of the House and an option should be given to them that they can take part in the said proceedings or to opt to remain out of the same...” does not refer to the rights of a political party to proceed under para 2(1)(b) of the Tenth Schedule; and
- b) Pass such other and further orders and/ or directions as this Hon'ble Court may deem fit, just and proper in the facts and circumstances of the case and in the interest of justice.

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