

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

**IN THE MATTER OF:**

PRATAP GOUDA PATIL & ORS. ... PETITIONERS

VERSUS

STATE OF KARNATAKA & ORS. ... RESPONDENTS

**AND IN THE MATTER OF:**

Shri Dinesh Gundu Rao .....APPLICANT

**APPLICATION FOR IMPLEADMENT**

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA AND 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 President of the Karnataka Pradesh Congress Committee and is constrained to move the present Application on behalf of the Congress Legislature Party of the Karnataka Legislative Assembly
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 aforesaid order has been passed without even arraying the Congress Legislature Party which presently has 79 MLA's in the Karnataka Legislative Assembly.
4. It is submitted that under the Tenth Schedule a political party 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 orders from the Court 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 respectfully submitted that a Constitution Bench of five Hon'ble Judges this Court in ***Kihoto Holohan v Zachillhu & Ors*** **1992 Supp(2) SCC 651**, categorically stated that

*“13. These provisions in the Tenth Schedule give recognition to the role of political parties in the political process. A political party goes before the electorate with a particular programme and it sets up candidates at the election on the basis of such programme. A person who gets elected as a candidate set up by a political party is so elected on the basis of the programme of that political party. The provisions of Paragraph 2(1)(a) proceed on the premise that political propriety and morality*

*demand that if such a person, after the election, changes his affiliation and leaves the political party which had set him up as a candidate at the election, then he should give up his membership of the legislature and go back before the electorate. The same yardstick is applied to a person who is elected as an Independent candidate and wishes to join a political party after the election.”*

6. It is submitted that this Hon’ble Court in ***Kihoto Holohan v Zachillhu*** 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 :-

*“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.*

7. 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.”*

8. It is therefore respectfully submitted 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) Allow the present Application implead the proposed Applicant as Respondent No 5 in the captioned Writ Petition; 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.**

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VERSUS

STATE OF KARNATAKA & ORS. ... RESPONDENTS

**AND IN THE MATTER OF:**

Shri Dinesh Gundu Rao .....APPLICANT

**APPLICATION FOR CLARIFICATION**

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA AND 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 President of the Karnataka Pradesh Congress Committee and is constrained to move the present Application on behalf of the Congress Legislature Party of the Karnataka Legislative Assembly
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 aforesaid order has been passed without even arraying the Congress Legislature Party which presently has 79 MLA's in the Karnataka Legislative Assembly.
4. It is submitted that under the Tenth Schedule a political party 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 orders from the Court 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 respectfully submitted that a Constitution Bench of five Hon'ble Judges this Court in ***Kihoto Holohan v Zachillhu & Ors*** **1992 Supp(2) SCC 651**, categorically stated that

*“13. These provisions in the Tenth Schedule give recognition to the role of political parties in the political process. A political party goes before the electorate with a particular programme and it sets up candidates at the election on the basis of such programme. A person who gets elected as a candidate set up by a political party is so elected on the basis of the programme of that political party. The provisions of Paragraph 2(1)(a) proceed on the premise that political propriety and morality*

*demand that if such a person, after the election, changes his affiliation and leaves the political party which had set him up as a candidate at the election, then he should give up his membership of the legislature and go back before the electorate. The same yardstick is applied to a person who is elected as an Independent candidate and wishes to join a political party after the election.”*

6. It is submitted that this Hon’ble Court in **Kihoto Holohan v Zachillhu** 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 :-

*“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.*

7. 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.”*

8. It is therefore respectfully submitted 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

- c) Clarify that the direction in 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
- d) 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.**