SYNOPSIS

1. The Petitioners (Members of Parliament – Rajya Sabha) are constrained to move this Hon'ble Court, under Article 32 of the Constitution of India, 1950 ("**CoI**") against the order dated 23.4.2018 passed by the Hon'ble Chairman of the Rajya Sabha (**"Impugned Order"**) rejecting the Notice of Motion dated 20.04.2018 (**"Notice"**) under Section 3(1)(b) of the Judges (Inquiry) Act, 1968 **('Inquiry Act')** r/w Article 124(4) and Article 124(5), CoI, seeking initiation of proceedings for impeachment of Hon'ble Justice Dipak Misra, the incumbent Chief Justice of India.

2. The Petitioners, who are signatories to the Notice of Motion and as such are aggrieved by the impugned order, which is *ex facie* illegal, arbitrary and violative of Article 14. The impugned order is in the teeth of the constitutional mandate of Article 124(4) and 124(5) and the provisions of the Inquiry Act. None of the reasons given by the Chairman in the Impugned Order carry any weight or are legally tenable. It deserves to be set aside for being wholly extraneous and ultra vires to the provisions of the Constitution of India and the Inquiry Act. A perusal of the Impugned Order will reveal that only one of the 5 grounds are discussed *in extenso* ie. The Honb'le CJI has abused his position as the Master of the Roaster. The Impugned Order holds that Charge No.5 is not

tenable, based on the decisions of this Hon'ble Court. It is submitted that it is not the Chairman's prerogative to adjudicate whether there has been any abuse by the Hon'ble CJI of his power as the Master of the Roster. This is the job of the Inquiry Committee. The Impugned Order cites judicial authorities and goes into an impermissible arena of quasi-judicial determination of Charge No.5 which is impermissible and illegal. The Impugned Order does not even attempt to discuss or deal with the rest of the Charges, and rightly so, as in the absence of a full fledged inquiry, it is not possible to return any findings on the same. Yet the Impugned Order, in a cavalier, cryptic and abrupt manner, shockingly holds that none of the other charges are made out without disclosing as to on what basis was this finding retuned. The Charges contained in the Notice of Motion are extremely serious and merit a full-fledged inquiry to test their veracity. It cannot be adjudicated in a summary whimsical manner as the Impugned Order has sought to do. On this short ground itself, the Impugned Order deserves to be set aside.

3. As per the provisions of Article 124(5), CoI supra, the Parliament may enact a Law to regulate the procedure for impeachment of a judge of the Hon'ble Supreme Court in terms of Article 124(4). It is in exercise of this power, as contained in Article 124(5), that the Parliament has enacted the Judges (Inquiry) Act, 1968.

Article 124 of the CoI reads as hereunder :-

124. Establishment and constitution of Supreme Court.-

(1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven[1] other Judges.

(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years:

[*4][Provided that]-

(a) a Judge may, by writing under his hand addressed to the President, resign his office;

(b) a Judge may be removed from his office in the manner provided in clause (4).

(2A) The age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide.]

(3) A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and—

(a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or

(b) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or

(c) is, in the opinion of the President, a distinguished jurist.

(4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehavior or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehavior or incapacity of a Judge under clause (4).

(6) Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(7) No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India."

Furthermore, Section 3, Judges (Inquiry) Act, 1968 reads as follows:

3. Investigation into misbehaviour or incapacity of Judge by Committee.—

(1) If notice is given of a motion for presenting an address to the President praying for the removal of a Judge signed,—

(a) in the case of a notice given in the House of the People, by not less than one hundred members of that House;

(b) in the case of a notice given in the Council of States, by not less, than fifty members of that Council, then, the Speaker or, as the case may be, the Chairman may, after consulting such persons, if any, as he thinks fit and after considering such materials, if any, as may be available to him either admit the motion or refuse to admit the same.

(2) If the motion referred to in sub-section (1) is admitted, the Speaker or, as the case maybe, the Chairman shall keep the motion pending and constitute as soon as may be for the purpose of making an investigation into the grounds on which the removal of a Judge is prayed for, a Committee consisting of three members of whom—

(a) one shall be chosen from among the Chief Justice and other Judges of the Supreme Court;

(b) one shall be chosen from among the Chief Justices of the High Courts; and

(c) one shall be a person who is in the opinion of the Speaker or, as the case may be, the Chairman, a distinguished jurist: Provided that where notices of a motion referred to in sub-section (1) are given on the same day in both Houses of Parliament, no Committee shall be constituted unless the motion has been admitted in both Houses and where such motion has been admitted in both Houses, the Committee shall be constituted jointly by the Speaker and the Chairman: Provided further that where notices of a motion as aforesaid are given in the Houses of Parliament on different dates, the notice which is given later shall stand rejected.

(3) The Committee shall frame definite charges against the Judge on the basis of which the investigation is proposed to be held.

(4) Such charges together with a Statement of the grounds on which each such Charge is based shall be communicated to the Judge and he shall be given a reasonable opportunity of

presenting a written Statement of defence within such time as may be specified in this behalf by the Committee.

(5) Where it is alleged that the Judge is unable to discharge the duties of his office efficiently due to any physical or mental incapacity and the allegation is denied, the Committee may arrange for the medical examination of the Judge by such Medical Board as may be appointed for the purpose by the Speaker or, as the case may be, the Chairman or, where the Committee is constituted jointly by the Speaker and the Chairman, by both of them, for the purpose and the Judge shall submit himself to such medical examination within the time specified in this behalf by the Committee.

(6) The Medical Board shall undertake such medical examination of the Judge as may be considered necessary and submit a report to the Committee stating therein whether the incapacity is such as to render the Judge unfit to continue in office.

(7) If the Judge refuses to undergo medical examination considered necessary by the Medical Board, the Board shall submit a report to the Committee stating therein the examination which the Judge has refused to undergo, and the Committee may, on receipt of such report, presume that the Judge suffers from such physical or mental incapacity as is alleged in the motion referred to in sub-section (1).

(8) The Committee may, after considering the written Statement of the Judge and the medical report, if any, amend the charges framed under sub-section (3) and in such a case, the Judge shall be given a reasonable opportunity of presenting a fresh written Statement of defence.

(9) The Central Government may, if required by the Speaker or the Chairman, or both, as the case may be, appoint an advocate to conduct the case against the Judge."

4. Section 3 of the Inquiry Act, inter-alia provides that a notice for motion, signed by at least 50 members of Rajya Sabha, for investigation of misbehavior of any Judge (in this case, the Hon'ble CJI), shall be given to the Chairman of the Rajya Sabha.

5. The said Notice of Motion containing five distinct and clear allegations was submitted to the Chairman on 20.04.2018. The said charges/allegations were as follows:-

"1. The facts and circumstances relating to the Prasad Educational Trust case show prima facie evidence suggesting that Chief Justice Dipak Misra may have been involved in the conspiracy of paying illegal gratification in the case, which at least warrants a thorough investigation.

2. That the Chief Justice Dipak Misra dealt on the administrative as well as judicial side, with a writ petition which sought investigation into a matter in which he too was likely to fall within the scope of investigation since he had presided over every bench which had dealt with the case and passed orders in the case of Prasad Educational Trust, and thus violated the first principle of the Code of Conduct for Judges.

3. That the Chief Justice Dipak Misra appears to have antedated an administrative order dated 6th November 2017 which amounts to a serious act of forgery/fabrication.

4. That Chief Justice Dipak Misra acquired land when he was an advocate, by giving an affidavit that was found to be false and despite the orders of the ADM cancelling the allotment in 1985, surrendered the said land only in 2012 after he was elevated to the Supreme Court.

5. That Chief Justice Dipak Misra has abused his administrative authority as master of roster to arbitrarily assign individual cases of particular advocates in politically sensitive cases, to select judges in order to achieve a predetermined outcome."

6. Despite clear, tenable and cogent charges contained in the Notice of Motion, the Chairman vide the impugned order dated 23.04.2018, has "refused to admit" the said Notice of Motion and constitute the Inquiry Committee as contemplated under Section 3(2) of the Inquiry Act.

7. The ostensible reasons given by the Chairman for refusal to admit the Notice of Motion is as follows:-

7.1 Decision of this Hon'ble Court in Krishna Swami v. Union of India; (1992) 4 SCC 605 [**pl see Para 5 of the Impugned Order**]

7.2 Purported discussions and Consultations with un-named legal luminaries, constitutional experts, former Secretary Generals of both houses of Parliament, former Law Officers, Law Commission members and eminent jurists. Alleged Comments made by former Attorney General, un-named Constitutional Experts and Editors of un-named newspapers. [**Paras 7,8 & 9 of the IO**].

7.3 "Proved Misbehavior" not made out as per Petitioners own case in terms of decision of this Hon'ble Court in Re: Mehar Singh Saini; (2013) 10 SCC 586 [**Para 10 & 11 of the IO**].

7.4 Even otherwise, all the facts read with the annexures do not make out a case that the Hon'ble Chief Justice can ever be held of guilty of misbehavior [**Para 15**]. The Chairman takes a view that admission of the said Notice is neither "desirable not proper" [**Para 19**]

7.5 Purportedly it is an internal matter of the Supreme Court, to be resolved by this Hon'ble Court, referring upon Kamini Jaiswal v. Union of India decided on 14.11.2017. As also the ground of Independence of Judiciary and no interference by the executive [**Para 12&13&16]**

8. The broad grounds of challenge to the impugned order are briefly elaborated hereinafter.

A. <u>SECTION 3(1) OF THE INQUIRY ACT, INSOFAR ITS VESTS THE CHAIRMAN/SPEAKER WITH ANY DISCRETION TO REJECT THE NOTICE OF MOTION BASED ON HIS SUBJECTIVE OPINION, IS ULTA-VIRES TO ARTICLE 124(4) AND 124(5) OF THE COI</u>.

9. Article 124(4), CoI contains the substantive provision for removal of a judge of the Supreme Court from his office on the ground of 'proved misbehavior; or incapacity. Article 124(5), prescribes the procedural provision whereby the parliament may be law, prescribe a procedure for the removal of a judge of the Supreme Court in terms of Article 124(4).

9.1 A conjoint reading of Article 124(4) & (5), CoI, do not contain any provision of vesting the Chairman/Speaker, as the case may be, with any quasi-judicial powers, in the process of removal of a judge of the Supreme Court. The Inquiry Act, 1968 as enacted by the Union Parliament, in furtherance of the power contained under Article 124(5), CoI. Section 3 of the said act, provides for investigation into misbehavior or incapacity of a judge [defined under Section 2(c) to mean Judge of the Supreme Court or of a High Court and includes the respective Chief Justices], by a Committee.

9.2 Section 3(2), Inquiry Act, provides for composition of the Committee, which consists of three members (i) one chosen amongst the Chief Justice and other Judges of the Supreme Court, (ii) one of whom shall be chosen amongst the Chief

Justices of the High Courts and the (iii) third member would be a distinguished jurist.

9.3 Section 3 of the Inquiry Act, therefore, contains the substantive provision for creation of a statutory mechanism to enquire into the allegations against judges of the Supreme Court and the High Court. This statutory mechanism is the three member committee, as stated hereinabove. The Chairman/Speaker has no role whatsoever with regards to this Committee, excepting ensuring that said Committee is duly constituted.

9.4 The Impugned Order proceeds on an erroneous assumption in law that the Chairman/.Speaker, exercises quasi-judicial powers to determine whether to admit or not to admit a notice of motion and whether to constitute the aforesaid Committee. The Chairman/Speaker has to ensure that the signatures of 50 Members of the Rajya Sabha/100 members of the Lok Sabha as the case maybe, is in order and consequently refer the same to the Committee as contemplated under Section 3(2). The Chairman cannot sit and adjudicate over the adequacy, veracity and legal tenability of the allegations/charges contained in the said Notice, as this lies within the province of powers of the Committee, and the Impugned Order has not merely encroached but virtually assumed upon itself the role that was statutorily required to be played by the said Committee and that too after due

inquiry and following the procedure as prescribed under the Inquiry Act.

9.5 Presumably, the Chairman as relied upon the concluding part of Section 3(1) of the Inquiry Act, which provides that the Chairman *"may after consulting such persons, if any, as he thinks fit, and after considering such materials, if any, as maybe available to him, either admit the motion, or refuse to admit the same."* The aforementioned power is in the respectful submission of the Petitioners, relatable only to the satisfaction of the Chairman with regards to the genuineness and authenticity of the signatures to the Notice of Motion. It cannot, under any circumstance pertain to the merits of the allegations, and it is respectfully prayed that this Hon'ble Court, may either strike down, the afore excerpted provisions of Section 3(1) of the Inquiry Act or read it down, or harmoniously construe, Section 3(1), Inquiry Act to mean that once the Chairman/Speaker has satisfied himself that the appropriate number of the Parliamentarians has signed the Notice of Motion, then he has to necessarily refer it to the said Committee for adjudication on merits, and the Chairman/Speaker would have no further role to play and definitely cannot deal with the said Notice of Motion as has been dealt, in the Impugned Order.

9.6 If the Impugned Order is accepted as legally correct then it will tantamount to having a two stage adjudicatory process,

with regards to a Notice of Motion that is filed under Section 3(1) of the Inquiry Act. What the Impugned Order postulates is that once a Notice of Motion is submitted, the Chairman/Speaker shall exercise quasi-judicial powers and come to a decision with regards to its tenability and admissibility. Once this stage is passed and the Chairman/Speaker is duly satisfied only then, would the question of inquiry from the Committee arise. It is respectfully submitted that this interpretation as contained in the Impugned Order is wholly perverse, and violative not only Article 124(4) & (5), CoI but also the Judges Inquiry Act itself.

9.7 The legislative intent of the Judge's Inquiry Act was never to have a two stage adjudicatory process but to have a single composite adjudication by the Committee consisting of eminent members. If the Impugned Order is allowed to stand then, it would lead to, an anomalous situation which was never intended by the legislature while enacting the Inquiry Act.

9.8 The only discretion with the Chairman to reject the motion is if it does not have the requisite number of signatures required under the provisions of S. 3(1) (b) of the Judges (Inquiry) Act 1968 or if the charges do not relate to misbehavior or incapacity. The Chairman cannot refuse to admit the motion by stating that in his view the charges are not made out and

thereby going into the merits of the charges. That merits of the charges are for the Inquiry Committee to investigate and present a report on. It is finally for the House to deliberate and decide on the motion which cannot be preempted in the manner as performed by the Chairman, Rajya Sabha. In this constitutional and statutory background, it is impermissible for the Hon'ble Chairman to interdict this process by becoming a super arbiter and proceed to reject a Motion at the stage of Section 3(1)(b) on the ground that the proved misbehavior is not made out.

9.9 *Ex hypothesi,* if the Chairman were to hold by way of a detailed Impugned Order that, as done in the instant case, that there is merit in the allegations/charges contained in the Notice of Motion, then he is effectively presenting the said Committee with a *fait accompli*. This was never contemplated under the Inquiry Act or under our Constitution. Even for the Chairman to arrive at a reasoned decision, with regards to the tenability and admissibility of the charges, as done in the Impugned Order, he would necessarily have to undertake an exercise, as contemplated under Sections 3, 4 & 5, Inquiry Act. It is instructive to note that while the statute prescribes an elaborate Inquiry mechanism for the said Committee, no such statutory provisions are prescribed for the Chairman/Speaker. Therefore, the Impugned Order is wholly

illegal, and unsustainable in as much as it seeks to assume upon itself jurisdiction which is clearly not vested in it by law.

9.10 The Petitioners submissions are also fortified by the fact that the Rules framed under Section 7(4), Inquiry Act, namely the Judges (Inquiry) Rules, 1969 lays down the procedure and mechanism to be followed by the Inquiry Committee constituted under the Inquiry Act. The said Rules are also silent about any such mechanism which the Chairman/Speaker ought to follow, which asserts the fact that the Chairman could not have exercised his powers and assume jurisdiction when the same has not been vested upon him.

9.11 Therefore, the Petitioners herein would pray that the Impugned order be set aside for being violative of Article 124(4) & (5) of the Constitution of India and beyond the scope of Section 3(1), Inquiry Act. Alternatively, and in addition to the above prayer, it is respectfully prayed that, this Hon'ble Court may declare Section 3(1), Inquiry Act, in so far as it enables the Chairman/Speaker to adjudicate on the merits of the charges/allegations, is ultra vires to the Constitution of India. The Petitioners most respectfully relies upon the observations made by this Hon'ble Court in Justice P.D. Dinakaran v. Hon'ble Judges Inquiry Committee; **(2011) 8 SCC 380**.

B. <u>THE TEST APPLIED IN PARAGRAPH 5 OF THE IMPUGNED ORDER IS *EX FACIE* PERVERSE</u>

10. The Impugned Order extensively relies and quotes the observation of this Hon'ble Court in ***Krishna Swami*** (supra). The quotation in ***Krishna Swami's*** judgment occurring in Para 5 of the Impugned Order is Para 45 of the Dissenting Judgment of Justice K. Ramaswamy. In the said case, the majority judgment is reflected in the judgment of Justice Verma (on behalf of Justice Kasliwal, Justice Jayachandra Reddy, Justice Agarwal and himself), the minority judgment is by K. Ramaswamy J. The majority dismissed the writ petition filed by the petitioner Krishna Swami for quashing of the proceedings of the Inquiry Committee. However, Justice K. Ramaswamy in his dissenting opinion allowed the Writ Petition. In view of the observations made per majority, the Writ Petition was dismissed.

10.1 The Hon'ble Chairman has entirely lost sight of the fact that the dissenting opinion in ***Krishna Swami*** could not have been pressed into service as the sacred test for determining the scope of the power of the Hon'ble Chairman under Section 3(1)(b), Inquiry Act. The reliance placed by the Impugned Order on a dissenting minority judgment goes against the basic canons of jurisprudence.

10.2 The dissenting minority judgment is not Law under Article 141 of the CoI and the Impugned Order falls in grave by

relying upon the same and on this ground alone it deserves to be set aside.

C. THE IMPUGNED ORDER IS ALSO VITIATED ON ACCOUNT OF LACK OF PROPER CONSULTATION

11. It is submitted that although the impugned order in Para 6 and 7 states that the Hon'ble Chairman had consulted 'legal luminaries, constitutional experts, former Secretary Generals, former Law Officers, Law Commission Members and eminent Jurists', the details of these persons and the nature of consultation are entirely conspicuous by their absence.

11.1 Be that as it may, it is strange that when the Motion related to the impeachment of the Chief Justice, the Chairman deemed it fit to consult "legal luminaries", "constitutional experts", former Secretary Generals, former Law Officers, Law Commission Members and eminent Jurists but had not thought it appropriate and fit to consult the judges of the Supreme Court of India. This by itself is a serious infirmity.

11.2 The relevant stakeholders if at all who had to be consulted were the senior judges of the Hon'ble Supreme Court comprising the collegium, as the appointment of judges to the Supreme Court are based on the recommendation of the judges who form a part of the collegium. It is submitted that in the absence of the involvement of the senior judges of the collegium in the consultation process envisaged under

Section 3(1)(b), the so-called consultation with legal luminaries, constitutional experts, former Secretary Generals, former Law Officers, Law Commission Members and eminent Jurists is completely extraneous and an eyewash to say the least.

11.3 When a discretionary power is coupled with a duty to exercise that power when the occasion so arises, such power cannot be exercised in an arbitrary and illegal manner so as to defeat the purpose of justice and the rule of law. This Hon'ble Court has laid down the principle against arbitrariness in administrative action in a catena of cases as indicted below - In **Supreme Court Advocates on Record Association v. UOI, (1993) 4 SCC 441,** this Hon'ble Court discussing the concept of non-arbitrariness and the rule of law stated:

"13. Mathew, J. in Smt. Indira Nehru Gandhi v. Shri Raj Narain and Anr. (1975) Supp. SCC 1, after indicating that the rule of law is a part of the basic structure of the Constitution, apart of the basic structure of the Constitution, apart from democracy, as held in Kesavananda Bharati (1973) Supp. Supp. S.C.R. 1, proceeded to succinctly summarise the modern concept of the rule of law, as under :

...'Rule of law' is an expression to give reality to something which is not readily expressible. That is why Sir Ivor Jennings said that it is an unruly horse.... Dicey's formulation of the rule of law, namely the absolute supremacy or predominance of regular law, as opposed to the influence of arbitrary power, excluding the existence of arbitrariness, of prerogative, even of wide discretionary authority on the part of the government has been discarded in the later editions of his book. That is because it was realized that it is not necessary that where law ends, tyranny should begin. As Culp Davis said, where the law ends,

discretion begins and the exercise of discretion may mean either beneficence or tyranny, either justice or injustice, either reasonableness or arbitrariness.... It is impossible to find a government of laws alone and not of men in the sense of eliminating all discretionary powers. All governments are governments of law and of men...."

11.4 In **E. P. Royappa vs State Of Tamil Nadu & Anr, AIR 1974 SC 555**, this Hon'ble Court has held:

"85. ... Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Art. 14, and if it affects any matter relating to public employment, it is also violative of Art. 16. Arts. 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Arts. 14 and 16. Mala fide exercise of Power and arbitrariness are different lethal radiations emanating from the same vice in fact the matter comprehends the former. Both are inhibited by Arts. 14 and 16."

11.5 Per K. Ramaswamy, J. in **State of Bihar v. PP Sharma, (1992 Supp (1) SCC 222)-**

"…The administrative authority is free to act in its discretion if he deems necessary or if he or it is satisfied of the immediacy of official action on his or its part. His responsibility lies only to the superiors and the Government. The power to act in discretion is not power to act arbitrarium.

It is not a despotic power, nor hedged with arbitrariness, nor legal irresponsibility to exercise discretionary power in excess of the statutory ground disregarding the prescribed conditions for ulterior motive. If done it bring the authority concerned in conflict with law. When the power was exercised mala fide it undoubtedly gets vitiated by colourable exercise of power."

11.6 The Motion was presented on 20.04.2018 and the impugned order was passed on 23.04.2018 at around 9.30 a.m. From the reports which are in public domain, the Hon'ble Chairman was not in New Delhi for a good part of the weekend of 21st and 22nd April, 2018. In these circumstances, to say that he had consulted legal luminaries, constitutional experts, former Secretary Generals, former Law Officers, Law Commission Members and eminent Jurists and also had personal conversations with them does not appear to be probable. It is also not clear whether the Hon'ble Chairman had in fact supplied the copies of the Notice of Motion to such legal luminaries and/or constitutional experts for them to give their comments.

11.7 If the Hon'ble Chairman, as is reported in the public domain was out of town, how these personal conversations happened with such legal luminaries, constitutional experts, former Secretary Generals, former Law Officers, Law Commission Members and eminent Jurists is extremely suspicious to say the least. This Hon'ble Court may consider summoning the record of the case from the Office of the

Hon'ble Chairman to satisfy itself whether in fact such consultations ever took place.

11.8 This is without prejudice to the fact that such consultation in any event is extraneous in the absence of any consultation with the members of the collegium who are the relevant stakeholders in any impeachment proceedings against the Chief Justice of India.

D. <u>IMPUGNED ORDER RELIES ON UNVERIFIED NEWSPAPER REPORTS.</u>

12. In Para 8 of the order, the Hon'ble Chairman states that he has gone through the comments made by the former Attorney General and Constitutional Experts. It is not clear from the order as to whether those comments were sought for by the Hon'ble Chairman or whether he happened to see those comments in newspapers and other news media. The Hon'ble Chairman further states that he had gone through the comments of Editors of prominent newspapers which were unequivocally and nearly unanimous that the present Notice of Motion was not a fit case for removal of judges.

12.1 It is indeed shocking that to say the least the Hon'ble Chairman while purporting to exercise statutory function deems it fit to rely upon the newspaper reports in his order to buttress his conclusion. The reliance on in para 8 that news paper reports " *are unequivocal and nearly unanimous that*

the present notice of motion before me is nota fit case for removal of judges" is entirely irrelevant consideration in performance of the duties of the Chairman under Section 3(1)(b).

12.2 The constitutional process of impeachment cannot be scuttled by relying upon newspaper reports and comments which are extraneous and irrelevant for discharge of the duties of the chairman under Section 3(1)(b)

E. NOTICE OF MOTION COULD NOT HAVE BEEN REJECTED MERELY ON THE GROUND THAT THE NOTICE OF MOTION USES THE WORDS SUCH AS "MAY HAVE BEEN", "LIKELY" ETC.

13. It is submitted that the Hon'ble Chairman has sought to reject the Notice of Motion of impeachment on the extremely flimsy pretext that the Members of Parliament who have presented the petition were "unsure" of their case. This again is fallacious to say the least. At the stage of the notice of motion, it is not required that a case of proved misbehavior is made out. The notice of motion rightly states that the facts so indicated therein require a detailed investigation and the probable culpability of the judge concerned supported by prima facie material. That being so, to insist that the notice of motion should itself conclusively assert that the judge concerned has committed proved misbehavior is putting the cart before the horse. The misbehavior can only be proved or disproved after an investigation by the Inquiry Committee, akin to a judicial

process as prescribed statutorily, and not at the threshold of the initiation of Notice of Motion.

F. <u>THE IMPUGNED ORDER WRONGLY HOLDS THAT INTERNAL MATTERS OF THE COURT CANNOT BE MADE SUBJECT MATTER OF IMPEACHMENT PROCEEDINGS.</u>

14. The Hon'ble Chairman in Para 12, while relying on a judgment in ***Kamini Jaiswal vs Union of India***, holds that *"clearly this is an internal matter to be resolved by the Supreme Court itself. Going through the allegation mentioned in the Notice of Motion, I am of the view that they are neither tenable nor admissible."* This finding is again perverse. Which of the 5 charges relate to an internal matter of the Hon'ble Supreme Court is not clear from the impugned order.

14.1 The allegation of acquisition of land in Charge No. 4 has nothing to do with the internal matter of the Supreme Court. Even otherwise, if the charges relate to corruption in passing of judicial orders or if orders have been passed by a judge for extraneous considerations and/or by receiving bribe, the same cannot be brushed aside by saying that it is the internal matter of the Supreme Court. The charge is extremely serious and ought to have been investigated.

14.2 The rejection seems to be motivated by political consideration beyond the constitutional scheme which is buttressed by the fact that one of the charges against the Chief Justice is that he has been partial in assigning political

sensitive cases pertaining to the ruling party before particular benches of this Hon'ble Court in order to get a predetermined outcome. If such power is exercised arbitrarily, for mala fide considerations or in absolute disregard of the canons of the constitutionalism, it results in gross violation of Article 14 of the Constitution.

14.3 The refusal of the Hon'ble Chairman to place the matter for investigation by giving platitudes and hollow assertions of independence of judiciary cannot validate the passing of the impugned order. Independence of judiciary is secured not only by ensuring that an honest judge is protected in discharge of his duties but also by ensuring that wherever a judge has demeaned and/or sullied the office which he holds, appropriate proceedings for impeachment need to be brought about in accordance with law for removal of the said judge. This would augur well for the independence and purity of the judicial system.

14.4 Independence of the judiciary in its truest sense is not in scuttling of an investigation being necessitated as a result of an impeachment motion being moved, by giving it a political twist, but to let the statutory mechanism already set in motion, to reach its logical end. After all, Parliament thought it fit to provide for an inquiry by members occupying highest positions in the Judiciary, who form a part of the Inquiry Committee which investigates into allegations of misbehavior

or incapacity. When such power of investigation is expressly conferred upon the Inquiry Committee, the Chairman, Rajya Sabha cannot and ought not to be allowed to usurp the same purporting to maintain the independence of the Judiciary.

G. IMPUGNED ORDER DOES NOT GIVE ANY REASONS AS TO HOW THE CHARGES ARE NOT AT ALL MADE OUT.

15. The impugned order in Para 15 and 16 merely says that the charges against the Chief Justice of India have not been made out and that the Chief Justice on these facts can ever be held guilty of misbehavior. It is submitted that these are mere words. In the Notice of Motion, detailed allegations were made and supported by documents.

15.1 As far as Charge No. 1 in respect of the CJI's involvement in the conspiracy of illegal gratification relating to the Prasad Education Trust case is concerned, the explanatory note to the notice of motion explained in detail the preferential treatment received by the Petitioner therein. In support of the same various orders passed by Dipak MisraJ., in relation to Prasad Education Trust case were annexed. Along with the orders, transcripts of conversations tapped by the CBI were also annexed. The Preliminary Report of the CBI dated 08.09.2017 was also annexed after the CJI refused to give permission to register an FIR against Justice Shukla.

15.2 In respect of Charge No. 2 relating to the CJI dealing with a writ petition, both on the administrative side as well as the

judicial side, which sought an investigation, wherein he was likely to be investigated, the Members of Parliament had submitted a copy of the CBI FIR dated 19.09.2017.

15.3 In respect of Charge No.3 relating to the allegation that the CJI antedated an administrative order, the order dated 09.11.2017 passed in W.P. No. 176/2017 along with the administrative note was also annexed.

15.4 In respect of Charge No. 4 relating to the CJI acquiring a land by giving a false affidavit and surrendering the same only upon getting elevated to the Supreme Court, the explanatory note contained annexures including the affidavit in lease case no. 588 of 1979, a copy of the lease application, a copy of the ADM's order in Lease Revision Case No. 238 of 1984,copy of CBI status report.

15.5 In respect of Charge No. 5 in relation to abuse by the CJI of his administrative authority as a master of the roster, the letter dated 12.01.2018 sent by 4 judges which is already in the public domain.

15.6 That apart various other allegations were made against the CJI. It is for the Inquiry Committee to look into the allegations and frame charges or absolve a judge of all allegations.

15.7 The decision of the Chairman rejecting the motion without valid reasons is arbitrary and in violation of Article 14 of the Constitution of India. Rule of law is a basic feature of the

Constitution which permeates the whole of the Constitutional fabric and is an integral part of the constitutional structure. In a parliamentary democracy governed by rule of law, any action, decision or order of any statutory/public authority/functionary must be founded upon reasons stated in the order or staring from the record. Reasons demonstrate how the mind of the maker was activated and actuated and their rational nexus and synthesis with the facts considered and the conclusions reached. Else, the decision would be arbitrary, unfair and unjust, violating Article 14 or unfair procedure offending Article 21. The order of the Chairman in rejecting the motion is completely devoid of any valid reasons and is hence illegal and needs to be set aside.

15.8 The order of the Chairman has not dealt with or discussed the reasons as to how and why these documents did not carry any evidentiary weight. The duty to give reasons is a sina qua non for the passing of any order (See **Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwalai, (1962) 2 SCR 339**).

15.9 In the absence of any reasoning whatsoever, the bald assertion in paras 15 and 16 of the impugned order that no case is made out cannot stand that the impugned order deserves to be quashed for the singular reason of absence of any reasons in the entire order relating to the charges against the Hon'ble Chief Justice of India.

15.10 It is absolutely essential to ensure that the public trust in the Institution of Judiciary is not eroded. If the institutional independence of the judiciary has to be preserved and democracy flourish, the Hon'ble Chief Justice of India must be subjected to an inquiry committee set up by the Chairman once he admits the impeachment motion. There is no other recourse to remedy the situation that has imperilled the very fabric of the highest court of justice. The office of the Chief Justice of India must be judged on the basis of the highest standards of integrity.

15.11 The charges as stated in the impeachment motion suggest conduct unbecoming of a person holding the office of the Chief Justice of India. Thus, the decision of the Chairman while rejecting the motion has failed to appreciate that the alleged charge(s) of prevailing corruption in high places, and including in the judiciary is a matter of serious concern. The credibility of the judiciary ought to be maintained at all costs so that they remain above suspicion and the confidence of the public in these high offices is maintained. The judiciary is the final custodian of the rule of law and guardian of the Constitution.

15.12 In our Constitutional democracy, society is entitled to expect the highest and most exacting standards of propriety in judicial conduct. Any conduct which tends to impair public confidence in the efficiency, integrity and impartiality of the Court is forbidden. It is in this context that a mandamus

directing the Chairman to admit the notice of motion and set up an Inquiry Committee to enquire into the allegations of misconduct is a crucial function that must be exercised if democracy and the rule of law is to prevail.

15.13 The position of the Chairman of the Rajya Sabha under the Inquiry Act is a mirror of the Speaker of the Lok Sabha. Therefore, the Chairman of the Rajya Sabha is equally a statutory authority under the Inquiry Act and is similarly subject to the Court's jurisdiction upto the point of "*admission of the motion, constitution of the Committee and the recording of findings by the Committee"* (that *"are not, strictly, proceedings in the Houses of Parliament"*) (per **Sub-Committee on Judicial Accountability v. Union of India & Ors., (1991) 4 SCC 699 [99]**).

15.14 This is corroborated by the manner in which this Hon'ble Court, throughout its judgement in ***Sub-Committee on Judicial Accountability*****,** refers to the duties and responsibilities of the 'Speaker or Chairman (as the case may be).' Since the Chairman of the Rajya Sabha and Speaker of Lok Sabha are amenable to this Hon'ble Court's jurisdiction, it follows they are also subject to the necessary corollaries of this jurisdiction, including prerogative writs.

Hence this Writ Petition.

LIST OF DATES

DATE	PARTICULARS
28.08.2017	Hon'ble Justice Dipak Misra was sworn in by the Hon'ble President of India as the 45th Chief Justice of India.
20.04.2018	In terms of Section 3(1) of the Judges (Inquiry) Act, 1968, a notice was presented to the Hon'ble Chairman, Rajya Sabha, of a motion for presenting an address to the Hon'ble President praying for the removal of Hon'ble Justice Dipak Misra in terms of Article 124(4) of the Constitution of India. The notice of motion details in an explanatory note five very serious acts of misbehaviour for the removal of the Hon'ble Chief Justice of India. The said notice, initially signed by 71 Rajya Sabha MPs, at the time of being presented to the Hon'ble Chairman i.e. on 20.04.2018, had the support of 64 Rajya Sabha MPs, from across the political spectrum i.e. Congress, BSP, Samajwadi Party, NCP, CPI, Indian Union Muslim League (IUML) and Jharkhand Mukti Morcha (JMM). In any event, it was supported by much more than the minimum prescribed number, as required under Section 3(1)(b) of the Judges (Inquiry) Act, 1968 i.e.

	50 Rajya Sabha MPs.
23.04.2018	The Hon'ble Chairman in utmost haste and in the most illegal and arbitrary manner and against the settled law on the subject, rejected the notice of motion on 23.04.2018.
07.05.2018	Hence, the present Writ Petition.

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) NO. OF 2018

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

BETWEEN:

1. **PARTAP SINGH BAJWA**
   Member of Parliament from Punjab
   Rajya Sabha
   S/o Late Sardar Satnam Singh Bajwa
   R/o AB – 97, Shahjahan Road,
   New Delhi …Petitioner No. 1

2. **DR. (MRS.) AMEE HARSHADRAY YAJNIK**
   Member of Parliament from Gujarat
   Rajya Sabha
   W/o Shri Harshadray Yajnik
   R/o 6, A.D.C Bank Soc.
   Behind Sahajanand College
   Ambawadi
   Ahmedabad – 380 015 …Petitioner No. 2

VERSUS

1. **CHAIRMAN, RAJYA SABHA**
   32, Paliament House
   New Delhi – 110 001
   Also at –
   6, Maulana Azad Road
   New Delhi- 110 011 … Respondent No. 1

2. **UNON OF INDIA**
   Through its Secretary
   Ministry of Law &Justice
   Legislative Department
   Shastri Bhawan,
   New Delhi – 110001 … Respondent No. 2

WRIT PETITION UNDER ARTICLE 32 R/W ARTICLE 14 OF THE CONSTITUTION OF INDIA CHALLENGING THE ORDER DATED 23.04.2018 PASSED BY THE HON'BLE CHAIRMAN, RAJYA SABHA, REJECTING THE NOTICE OF MOTION FOR PRESENTING AN ADDRESS TO THE HON'BLE PRESIDENT OF INDIA FOR REMOVAL OF HON'BLE CHIEF JUSTICE OF INDIA - DIPAK MISRA UNDER ARTICLE 124(4) OF THE CONSTITUTION OF INDIA.

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

THE HUMBLE PETITION OF
THE PETITIONER ABOVENAMED

MOST RESPECTFULLY SHEWETH:

1. That the Petitioners are constrained to move this Hon'ble Court under Article 32 of the Constitution of India against the order dated 23.4.2018 passed by the Hon'ble Chairman of the Rajya Sabha rejecting the Notice of Motion dated 20.04.2018 under Section 3(1)(b) of the Judges' (Inquiry) Act, 1968 **('Inquiry Act')** r/w Article 124(4) and Article 124(5) of the Constitution of India, seeking initiation of proceedings for impeachment of Justice Dipak Misra, Hon'ble Chief Justice of India.

2. The Petitioners are the signatories to the Notice of Motion and as such are aggrieved by the impugned order which is *ex facie* illegal, arbitrary and violative of Article 14, CoI. The impugned order is in the teeth of the constitutional mandate of Article 124(4) and 124(5), CoI and the provisions of the Inquiry Act.

3. Petitioner No. 1 – Partap Singh Bajwa, Member of Parliament of Rajya Sabha from Punjab is an eminent politician, who has after being elected to the Punjab Vidhaan Sabha from Kahnuwan Constitutency in 1992, 2002 & 2007, has also worked in various different departments under Govt. of Punjab. He was the Minister of State Information & Public Relations, Govt. of Punjab from 1994-95, the Cabinet Minister, PWD B & R, I&PR, Govt. of Punjab from 1995-96, the Cabinet Minister Judiciary, Jails etc., from 1996-97 and the Cabinet Minister PWD B & R and School Education, Govt. of Punjab from 2002-2007. That apart from his political career, the Petitioner No. 1 is also a social worker, who has through the NGO Adhaar Foundation, provided mobile medical vans in the remote areas of the State.

4. Petitioner No. 2 – Dr. Amee Harshadray Yajnik, Member of Parliament of Rajya Sabha from Gujarat, is a practicing advocate in the High Court of Gujarat. Having served as the Govt. Pleader for a long term, she has also been a member of the numerous legal and social organizations and Committees such as Global Action Committee for Elimination of Family Violence. A great part of her practice comprises of pro-bono legal aid for women and legal awareness at grass root level. Besides her conventional law practice, the Petitioner No. 2 is engaged in several training programs conducted for women, trainers and NGOs and State level

officers by State's Home Department, Gender resources, women workers in unorganized sectors and the States rural development and Educational Programs.

5. Respondent No.1 is the Chairman of the Rajya Sabha, who in the capacity of a Statutory Authority under the Judges (Inquiry) Act, 1968, has passed the impugned order dated 23.04.2018, with undue haste and in an illegal manner unknown to law.

6. Respondent No. 2 is the Union of India, represented through its secretary, Ministry of Law and Justice.

7. That the cause of action arose on 23.04.2018 when the Respondent No. 1 rejected the notice of motion submitted by 64 incumbent Rajya Sabha MPs for presenting an address to the Hon'ble President of India for removal of the incumbent Chief Justice of India, Mr. Dipak Misra J. for various acts of misbehaviour, under Article 124(4) of the Constitution of India.

8. The facts leading to the filing of the present Writ Petition are as follows:

   a) Justice Dipak Misra was sworn in by the Hon'ble President of India as the 45th Chief Justice of India on 28.08.2017.

   b) A notice was presented to the Hon'ble Chairman, Rajya Sabha, of a motion for presenting an address to the Hon'ble President praying for the removal of Hon'ble

Justice Dipak Misra in terms of Article 124(4) of the Constitution of India.

c) The notice of motion details in an explanatory note five very serious acts of misbehaviour for the removal of the Hon'ble Chief Justice of India apart from other incidents.

d) The said notice, initially signed by 71 Rajya Sabha MPs, at the time of being presented to the Hon'ble Chairman i.e. on 20.04.2018, had the support of 64 Rajya Sabha MPs, from across the political spectrum i.e. Congress, BSP, Samajwadi Party, NCP, CPI, Indian Union Muslim League (IUML) and Jharkhand Mukti Morcha (JMM).

e) In any event, it was supported by much more than the minimum prescribed number, as required under Section 3(1)(b) of the Judges (Inquiry) Act, 1968 i.e. 50 Rajya Sabha MPs. A true copy of the notice of motion presented to the Hon'ble Chairman, Rajya Sabha, on 20.04.2018 is annexed hereto and marked as **ANNEXURE P- 1 [Page Nos. 44 to 214]**.

f) The Hon'ble Chairman in utmost haste and in the most illegal and arbitrary manner and against the settled law on the subject, rejected the notice of motion on 23.04.2018, a copy of which is annexed hereto and marked as **ANNEXURE P – 2 [Page Nos. 215 to 233]**.

9. In these circumstances, the Petitioner is moving this Hon'ble Court under Article 32 of the Constitution seeking to quash the impugned order dated 23.04.2018 and further to direct the Chairman, Rajya Sabha, to conduct himself as a Statutory Authority and not as the Presiding Officer of the Rajya Sabha, in accordance with and within the limitations of the Judges (Inquiry) Act, 1968 **('Inquiry Act')** and lastly to set up a Committee to investigate into the allegations set out in the notice of motion after admitting the same.

10. 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.

11. That the Writ Petition has been filed without any delay or latches 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. The Petitioners have not approached any authority for the Redressal of the instant grievance, as approaching this Hon'ble Court under its writ jurisdiction was the only remedy available to the Petitioners herein.

12. That the Annexures are true and correct copies of their respective originals.

13. 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:

GROUNDS

a. Because the impugned order is *ex facie* illegal, contrary to the mandate of Article 124(4) and 124(5) of the Constitution and the provisions of the Judge's Inquiry Act as Article 124(4), CoI contains the substantive provision for removal of a judge of the Supreme Court from his office on the ground of 'proved misbehavior; or incapacity. Article 124(5), prescribes the procedural provision whereby the parliament may be law, prescribe a procedure for the removal of a judge of the Supreme Court in terms of Article 124(4).

b. Because a conjoint reading of Article 124(4) & (5), CoI, do not contain any provision of vesting the Chairman/Speaker, as the case may be, with any quasi-judicial powers, in the process of removal of a judge of the Supreme Court. The Inquiry Act, 1968 as enacted by the Union Parliament, in furtherance of the power contained under Article 124(5), CoI. Section 3 of the said act, provides for investigation into misbehavior or incapacity of a judge [defined under Section 2(c) to mean Judge of the Supreme Court or of a High Court and includes the respective Chief Justices], by a Committee.

c. Because Section 3(2), Inquiry Act, provides for composition of the Committee, which consists of three members (i) one chosen amongst the Chief Justice and other Judges of the Supreme Court, (ii) one of whom shall be chosen amongst the Chief Justices of the High Courts and the (iii) third member would be a distinguished jurist.

d. Because Section 3, Inquiry Act, therefore, contains the substantive provision for creation of a statutory mechanism to enquire into the allegations against judges of the Supreme Court and the High Court. This statutory mechanism is the three member committee, as stated hereinabove. The Chairman/Speaker has no role whatsoever with regards to this Committee, excepting ensuring that said Committee is duly constituted.

e. Because the Impugned Order proceeds on an erroneous assumption in law that the Chairman/.Speaker, exercises quasi-judicial powers to determine whether to admit or not to admit a notice of motion and whether to constitute the aforesaid Committee. The Chairman/Speaker has to ensure that the signatures of 50 Members of the Rajya Sabha/100 members of the Lok Sabha as the case maybe, is in order and consequently refer the same to the Committee as contemplated under Section 3(2). The Chairman cannot sit and adjudicate over the adequacy, veracity and legal tenability of the allegations/charges contained in the said

Notice, as this lies within the province of powers of the Committee, and the Impugned Order has not merely encroached but virtually assumed upon itself the role that was statutorily required to be played by the said Committee and that too after due inquiry and following the procedure as prescribed under the Inquiry Act.

f. Because, presumably the Chairman as relied upon the concluding part of Section 3(1) of the Inquiry Act, which provides that the Chairman *"may after consulting such persons, if any, as he thinks fit, and after considering such materials, if any, as maybe available to him, either admit the motion, or refuse to admit the same."* The aforementioned power is in the respectful submission of the Petitioners, relatable only to the satisfaction of the Chairman with regards to the genuineness and authenticity of the signatures to the Notice of Motion. It cannot, under any circumstance pertain to the merits of the allegations, and it is respectfully prayed that this Hon'ble Court, may either strike down, the afore excerpted provisions of Section 3(1) of the Inquiry Act or read it down, or harmoniously construe, Section 3(1), Inquiry Act to mean that once the Chairman/Speaker has satisfied himself that the appropriate number of the Parliamentarians has signed the Notice of Motion, then he has to necessarily refer it to the said Committee for adjudication on merits, and the Chairman/Speaker would have no further role to play and

definitely cannot deal with the said Notice of Motion as has been dealt, in the Impugned Order.

g. Because the Impugned Order is accepted as legally correct then it will tantamount to having a two stage adjudicatory process, with regards to a Notice of Motion that is filed under Section 3(1) of the Inquiry Act. What the Impugned Order postulates is that once a Notice of Motion is submitted, the Chairman/Speaker shall exercise quasi-judicial powers and come to a decision with regards to its tenability and admissibility. Once this stage is passed and the Chairman/Speaker is duly satisfied only then, would the question of inquiry from the Committee arise. It is respectfully submitted that this interpretation as contained in the Impugned Order is wholly perverse, and violative not only Article 124(4) & (5), CoI but also the Judges Inquiry Act itself.

h. Because the legislative intent of the Judge's Inquiry Act was never to have a two stage adjudicatory process but to have a single composite adjudication by the Committee consisting of eminent members. If the Impugned Order is allowed to stand then, it would lead to, an anomalous situation which was never intended by the legislature while enacting the Inquiry Act.

i. Because the only discretion with the Chairman to reject the motion is if it does not have the requisite number of signatures required under the provisions of S. 3(1) (b) of the

Judges (Inquiry) Act 1968 or if the charges are not charges do not relate to misbehavior or incapacity. The Chairman cannot refuse to admit the motion by stating that in his view the charges are not made out and thereby going into the merits of the charges. That merits of the charges are for the Inquiry Committee to investigate and present a report on. It is finally for the House to deliberate and decide on the motion which cannot be preempted in the manner as performed by the Chairman, Rajya Sabha. In this constitutional and statutory background, it is impermissible for the Hon'ble Chairman to interdict this process by becoming a super arbiter and proceed to reject a Motion at the stage of Section 3(1)(b) on the ground that the proved misbehavior is not made out.

j. Because, *Ex hypothesi,* if the Chairman were to hold by way of a detailed Impugned Order that, as done in the instant case, that there is merit in the allegations/charges contained in the Notice of Motion, then he is effectively presenting the said Committee with a *fait accompli*. This was never contemplated under the Inquiry Act or under our Constitution. Even for the Chairman to arrive at a reasoned decision, with regards to the tenability and admissibility of the charges, as done in the Impugned Order, he would necessarily have to undertake an exercise, as contemplated under Sections 3, 4 & 5, Inquiry Act. It is instructive to note that while the statute

prescribes an elaborate Inquiry mechanism for the said Committee, no such statutory provisions are prescribed for the Chairman/Speaker. Therefore, the Impugned Order is wholly illegal, and unsustainable in as much as it seeks to assume upon itself jurisdiction which is clearly not vested in it by law.

k. Because the Petitioners submissions are also fortified by the fact that the Rules framed under Section 7(4), Inquiry Act, namely the Judges (Inquiry) Rules, 1969 lays down the procedure and mechanism to be followed by the Inquiry Committee constituted under the Inquiry Act. The said Rules are also silent about any such mechanism which the Chairman/Speaker ought to follow, which asserts the fact that the Chairman could not have exercised his powers and assume jurisdiction when the same has not been vested upon him.

l. Because the Petitioners herein would pray that the Impugned order be set aside for being violative of Article 124(4) & (5) of the Constitution of India and beyond the scope of Section 3(1), Inquiry Act. Alternatively, and in addition to the above prayer, it is respectfully prayed that, this Hon'ble Court may declare Section 3(1), Inquiry Act, in so far as it enables the Chairman/Speaker to adjudicate on the merits of the charges/allegations, is ultra vires to the Constitution of India. The Petitioners most respectfully relies upon the

observations made by this Hon'ble Court in Justice P.D. Dinakaran v. Hon'ble Judges Inquiry Committee; (2011) 8 SCC 380.

m. Because the Impugned Order extensively relies and quotes the observation of this Hon'ble Court in ***Krishna Swami*** (supra). The quotation in ***Krishna Swami's*** judgment occurring in Para 5 of the Impugned Order is Para 45 of the Dissenting Judgment of Justice K. Ramaswamy. In the said case, the majority judgment is reflected in the judgment of Justice Verma (on behalf of Justice Kasliwal, Justice Jayachandra Reddy, Justice Agarwal and himself), the minority judgment is by K. Ramaswamy J. The majority dismissed the writ petition filed by the petitioner Krishna Swami for quashing of the proceedings of the Inquiry Committee. However, Justice K. Ramaswamy in his dissenting opinion allowed the Writ Petition. In view of the observations made per majority, the Writ Petition was dismissed. The dissenting minority judgment is not Law under Article 141 of the CoI and the Impugned Order falls in grave by relying upon the same and on this ground alone it deserves to be set aside.

n. Because although the impugned order in Para 6 and 7 states that the Hon'ble Chairman had consulted 'legal luminaries, constitutional experts, former Secretary Generals, former Law Officers, Law Commission Members and eminent

Jurists', the details of these persons and the nature of consultation are entirely conspicuous by their absence.

o. Because that as it may, it is strange that when the Motion related to the impeachment of the Chief Justice, the Chairman deemed it fit to consult "legal luminaries", "constitutional experts", former Secretary Generals, former Law Officers, Law Commission Members and eminent Jurists but had not thought it appropriate and fit to consult the judges of the Supreme Court of India. This by itself is a serious infirmity.

p. Because the Motion was presented on 20.04.2018 and the impugned order was passed on 23.04.2018 at around 9.30 a.m. From the reports which are in public domain, the Hon'ble Chairman was not in New Delhi for a good part of the weekend of 21st and 22nd April, 2018. In these circumstances, to say that he had consulted legal luminaries, constitutional experts, former Secretary Generals, former Law Officers, Law Commission Members and eminent Jurists and also had personal conversations with them does not appear to be probable. It is also not clear whether the Hon'ble Chairman had in fact supplied the copies of the Notice of Motion to such legal luminaries and/or constitutional experts for them to give their comments.

q. Because it is without prejudice to the fact that such consultation in any event is extraneous in the absence of any

consultation with the members of the collegium who are the relevant stakeholders in any impeachment proceedings against the Chief Justice of India.

r. Because in Para 8 of the Impugned order, the Hon'ble Chairman states that he has gone through the comments made by the former Attorney General and Constitutional Experts. It is not clear from the order as to whether those comments were sought for by the Hon'ble Chairman or whether he happened to see those comments in newspapers and other news media. The Hon'ble Chairman further states that he had gone through the comments of Editors of prominent newspapers which were unequivocally and nearly unanimous that the present Notice of Motion was not a fit case for removal of judges.

s. Because it is indeed shocking that to say the least the Hon'ble Chairman while purporting to exercise statutory function deems it fit to rely upon the newspaper reports in his order to buttress his conclusion. The reliance on in para 8 that news paper reports " *are unequivocal and nearly unanimous that the present notice of motion before me is nota fit case for removal of judges*" is entirely irrelevant consideration in performance of the duties of the Chairman under Section 3(1)(b). Furthermore, the constitutional process of impeachment cannot be scuttled by relying upon newspaper reports and comments which are extraneous and

irrelevant for discharge of the duties of the chairman under Section 3(1)(b)

t. Because it is submitted that the Hon'ble Chairman has sought to reject the Notice of Motion of impeachment on the extremely flimsy pretext that the Members of Parliament who have presented the petition were "unsure" of their case. This again is fallacious to say the least. At the stage of the notice of motion, it is not required that a case of proved misbehavior is made out. The notice of motion rightly states that the facts so indicated therein require a detailed investigation and the probable culpability of the judge concerned supported by prima facie material. That being so, to insist that the notice of motion should itself conclusively assert that the judge concerned has committed proved misbehavior is putting the cart before the horse. The misbehavior can only be proved or disproved after an investigation by the Inquiry Committee, akin to a judicial process as prescribed statutorily, and not at the threshold of the initiation of Notice of Motion.

u. Because the Hon'ble Chairman in Para 12, while relying on a judgment in ***Kamini Jaiswal vs Union of India***, holds that *"clearly this is an internal matter to be resolved by the Supreme Court itself. Going through the allegation mentioned in the Notice of Motion, I am of the view that they are neither tenable nor admissible."* This finding is again perverse. Which of the 5 charges relate to an internal matter

of the Hon'ble Supreme Court is not clear from the impugned order.

v. Because the allegation of acquisition of land in Charge No. 4 has nothing to do with the internal matter of the Supreme Court. Even otherwise, if the charges relate to corruption in passing of judicial orders or if orders have been passed by a judge for extraneous considerations and/or by receiving bribe, the same cannot be brushed aside by saying that it is the internal matter of the Supreme Court. The charge is extremely serious and ought to have been investigated.

w. Because the rejection seems to be motivated by political consideration beyond the constitutional scheme which is buttressed by the fact that one of the charges against the Chief Justice is that he has been partial in assigning political sensitive cases pertaining to the ruling party before particular benches of this Hon'ble Court in order to get a predetermined outcome. If such power is exercised arbitrarily, for mala fide considerations or in absolute disregard of the canons of the constitutionalism, it results in gross violation of Article 14 of the Constitution.

x. Because the refusal of the Hon'ble Chairman to place the matter for investigation by giving platitudes and hollow assertions of independence of judiciary cannot validate the passing of the impugned order. Independence of judiciary is secured not only by ensuring that an honest judge is

protected in discharge of his duties but also by ensuring that wherever a judge has demeaned and/or sullied the office which he holds, appropriate proceedings for impeachment need to be brought about in accordance with law for removal of the said judge. This would augur well for the independence and purity of the judicial system.

y. Because the Independence of the judiciary in its truest sense is not in scuttling of an investigation being necessitated as a result of an impeachment motion being moved, by giving it a political twist, but to let the statutory mechanism already set in motion, to reach its logical end. After all, Parliament thought it fit to provide for an inquiry by members occupying highest positions in the Judiciary, who form a part of the Inquiry Committee which investigates into allegations of misbehavior or incapacity. When such power of investigation is expressly conferred upon the Inquiry Committee, the Chairman, Rajya Sabha cannot and ought not to be allowed to usurp the same purporting to maintain the independence of the Judiciary.

z. Because the impugned order in Para 15 and 16 merely says that the charges against the Chief Justice of India have not been made out and that the Chief Justice on these facts can ever be held guilty of misbehavior. It is submitted that these are mere words. In the Notice of Motion, detailed allegations were made and supported by documents.

aa. None of the reasons given by the Chairman in the Impugned Order carry any weight, or are legally tenable. They deserve to be set aside for being wholly extraneous and ultra vires the provisions of the Constitution of India and the Inquiry Act.

bb. A perusal of the Impugned Order will reveal that only one of the 5 grounds are discussed *in extenso* in the impugned Order ie. The CJI being the Master of the Roaster, the Charge No.5 viz abuse of that position is not tenable. It is submitted that it is not the Chairman's prerogative to adjudicate whether there has been any abuse by the Hon'ble CJI of his power as the Master of the Roaster. This is the job of the Inquiry Committee.

cc. The Impugned Order cites judicial authorities and goes into an impermissible arena of quasi-judicial determination of Charge No.5 which is impermissible and illegal.

dd. The Impugned Order does not even attempt to discuss or deal with the rest of the Charges, and rightly so, as in the absence of a full fledged inquiry, it is not possible to return any findings on the same. Yet the Impugned Order, in a cavalier and most cryptic and abrupt manner, shockingly holds that none of the other charges are made without even disclosing as to on what basis was this finding retuned.

PRAYER

IN THESE FACTS AND CIRCUMSTANCES HEREINABOVE, IT IS MOST RESPECTFULLY PRAYED, THAT THIS HON'BLE COURT MAY BE PLEASED TO:-

a. Issue an appropriate writ, order or direction of like nature, quashing the order dated 23.04.2018, passed by the Hon'ble Chairman, Rajya Sabha whereby the Notice of Motion for presenting an address to the Hon'ble President for removal of Hon'ble Chief Justice of India Shri Dipak Misra was rejected, as arbitrary, impermissible under Section 3(1) of the Judges Inquiry Act 1968 and violative of Article 14 of the Constitution of India;

b. Issue an appropriate writ, order or direction of like nature declaring Section 3(1) of the Judges Inquiry Act 1968, insofar it enables the Chairman/Speaker to exercise his discretion with regards to adjudication of the merits of the charges/allegations contained in the Notice of Motion for removal, as done in the instant impugned order dated 23.04.2018, as ultra vires to the Constitution of India, especially to Article 124(4)&(5);

c. Issue an appropriate writ, order or direction or like nature declaring that the Chairman Rajya Sabha is duty bound in law, to expeditiously refer the Charges/Allegations contained in the Notice of Motion of Removal, to the Inquiry Committee as envisaged under Judges Inquiry Act 1968 ,without any delay or demur, solely upon satisfaction that the said Motion is indeed signed by 50 members of the Rajya Sabha;

d. Issue an appropriate writ, order or direction or like nature, directing the Chairman, Rajya Sabha to admit the Notice of

Motion for presenting an Address to the Hon'ble President for removal of Hon'ble Chief Justice of India Shri Dipak Misra; and

e. Issue an appropriate writ, order or direction or like nature directing the Chairman, Rajya Sabha, to constitute a Committee in terms of Section 3(2), for the purpose of making an investigation into the grounds on which the removal of Hon'ble Chief Justice of India Shri Dipak Misra is prayed for; and

f. Pass such other order(s) or direction(s) as it deems fit in the facts of the present case and in the interests of justice.

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

SETTLED BY:-
SHRI KAPIL SIBAL
SENIOR ADVOCATE.

DRAWN & FILED BY

[**SUNIL FERNANDES**]
Advocate for the Petitioners

NEW DELHI
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