

FORM III - A
IN THE HIGH COURT OF KARNATAKA AT BENGALURU

WRIT PETITION NO 21478 / 2018 (GM-RES)

[Notice under Rule 13(a) proviso]

Petitioner

- 1 BHARATIYA JANATA PARTY, KARNATAKA
REPRESENTED BY ITS OFFICE JOINT SECRETARY LOKESH AMBEHKALLU
48, TEMPLE STREET, 11TH CROSS, MALLESHWARAM
BENGALURU , KARNATAKA 560003

By Sri RAJASHEKAR S
Vs

Respondents

- 1 ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI 110001
REPRESENTED BY CHIEF ELECTION COMMISSIONER
- 2 B TV, KANNADA NEWS CHANNEL
HAVING ITS OFFICE AT 32/1-2, CRESECENT TOWER,
CRESCENT ROAD, HIGH-GROUNDS, NEXT TO GOLDFINCH HOTEL
BENGALURU, KARNATAKA 560001
REPRESENTED BY ITS CHIEF EDITOR
- 3 THE KARNATAKA STATE ELECTION COMMISSION
NO.8, 1ST FLOOR, KSCMF BUILDING ANNEX, CUNNINGHAM ROAD,
VASASANTH NAGAR, BENGALURU , KARNATAKA 560052
REPRESENTED BY ITS ELECTION COMMISSIONER
- 4 CHIEF ELECTION OFFICER
NIRVACHAN NILAYA, SHESADRI ROAD
BENGALURU 560022
- 5 M/S. THE TIMES OF INDIA
DAILY NEWS PAPER, M G ROAD, BANGALORE-560001
REPRESENTED BY ITS CHIEF EDITOR
- 6 M/S. THE BANGALORE MIRROR
DAILY NEWS PAPER, M G ROAD, BANGALORE-560001
REPRESENTED BY ITS CHIEF EDITOR
- 7 M/S. THE DECCAN HERALD
DAILY NEWS PAPER, M G ROAD, BANGALORE-560001
REPRESENTED BY ITS CHIEF EDITOR
- 8 M/S. THE PRAJAVANI KANNADA DAILY
DAILY NEWS PAPER, M G ROAD, BANGALORE-560001
REPRESENTED BY ITS CHIEF EDITOR
- 9 M/S. DECCAN CHRONICLE NEWS PAPER
KORAMANGALA, BANGALORE-560034
REPRESENTED BY ITS CHIEF EDITOR
- 10 M/S. THE INDIAN EXPRESS DAILY
DAILY NEWS PAPER, VIDHAN VEEDHI, QUEENS ROAD CIRCLE
INDIAN EXPRESS BUILDING, BANGALORE-560052
REPRESENTED BY ITS CHIEF EDITOR
- 11 M/S. KANNADA PRABHA
DAILY KANNADA NEWS PAPER, OPP. MALLIGE NURSING HOME
HIGH GROUNDS, BANGALORE-560001
REPRESENTED BY ITS EDITOR

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- 12 M/S. VIJAYA KARNATAKA
DAILY KANNADA NEWS PAPER
NEAR MAKKALA KOOTA, BANGALORE-560019
REPRESENTED BY ITS EDITOR
- 13 M/S. VIJAYA VANI KANNADA
DAILY NEWS PAPER, OPP. KANNADA SAHITHYA PARISHATH
CHAMARAJAPET, BANGALORE-560018
REPRESENTED BY ITS CHIEF EDITOR
- 14 M/S. SANJE VANI KANNADA
DAILY EVENING PAPER, QUEENS ROAD, BANGALORE-560052
REPRESENTED BY ITS EDITOR
- 15 M/S. E-SANJE KANNADA DAILY
DAILY EVENING PAPER, DR. RAJKUMAR ROAD, BANGALORE-560010
REPRESENTED BY ITS EDITOR
- 16 M/S. UDAYA VANI KANNADA
DAILY NEWS PAPER, C/O M/S. MANIPAL TRUST
MANIPAL, MANGALORE-575001, KARNATAKA
REPRESENTED BY ITS EDITOR
- 17 M/S. JANATHA T V
MARUTHI ELITE, 8TH CROSS MALLESWARAM
NEAR CHANDUS HOTEL, MALLESHWARAM, BANGALORE 560003
REPRESENTED BY ITS EDITOR
- 18 M/S. T V 9 KARNATAKA AND NEWS-9
KANNADA AND ENGLISH NEWS, SATILLITE TELEVISION CHANNELS
OWNED BY M/S. ASSOCIATED BROADCASTING COMPANY LTD.
HAVING THEIR OFFICE AT NO.13, RHENIUS STREET
RICHMOND TOWN, CIVIL STATION BANGALORE 560025
REPRESENTED BY ITS EDITOR/DIRECTOR
- 19 M/S. SUVARNA KANNADA NEWS CHANNEL
OPP. MALLIGE NURSING HOME, HIGH GROUDS, BANGALORE-560001
REPRESENTED BY ITS EDITOR
- 20 M/S. KASTURI 24X4
KANNADA NEWS CHANNEL, KASTURBA ROAD, BANGALORE-560002
REPRESENTED BY ITS EDITOR
- 21 M/S. UDAYA NEWS CHANNEL
PRIMROSE ROAD, BANGALORE-560052
REPRESENTED BY ITS EDITOR
- 22 M/S. SAMAYA NEWS CHANNEL
KASTURBA ROAD, BANGALORE-560001
REPRESENTED BY ITS EDITOR
- 23 M/S. PUBLIC T.V NEWS CHANNEL
BMTc COMPLEX, YESHWANTHAPURA, BANGALORE-560022
REPRESENTED BY ITS EDITOR
- 24 M/S. JANASHREE T.V CHANNEL
SALAPURIA TOWERS, BIG BAZAAR BUILDING,
NEAR FORUM MALL, HOSUR ROAD, BANGALORE-560018
REPRESENTED BY ITS CHIEF EDITOR
- 25 M/S. RAJ NEWS T.V
KANNADA NEWS, MARATA BUILDING, MILLERS TANK BUND ROAD,
VASANTHANAGAR, BANGALORE-560052
REPRESENTED BY ITS CHIEF EDITOR

Contd..3/-..



- 26 M/S. ETV KANNADA NEWS CHANNEL
UNITY BUILDINGS, CSI PREMISES
CENTENARY BUILDING, BANGALORE-560001
REPRESENTED BY ITS CHIEF EDITOR
- 27 M/S. PRAJA T V
KANNADA NEWS CHANNEL, SAPARKA INFO MEDIA PVT. LTD.
SHEZAN LAVELLE, 4TH FLOOR, NO.15, WALTON ROAD, BANGALORE-560025
REPRESENTED BY ITS CHEF EDITOR
- 28 M/S. LANKESH PATRIKE
KANNADA JOURNAL, NO.5/2, UNIT NO.001, TRUMPH TOWER
EAGLE STREET, LANGFORD TOWN, BANGALORE 560025
REPRESENTED BY ITS EDITOR
- 29 M/S. HAI BANGALORE JOURNAL
KANNADA JOURNAL 2, PADMANABHA NAGAR, 2ND STAGE, KADIRENAHALLI
CROSS, BANASHANKARI, KADIRENAHALLI BANGALORE 560070
REPRESENTED BY ITS EDITOR
- 30 M/S. AGNI KANNADA JOURNAL
KANNADA JOURNAL 2, PADMANABHA NAGAR, 2ND STAGE, KADIRENAHALLI
CROSS, BANASHANKARI, KADIRENHALLI BANGALORE 560070
REPRESENTED BY ITS EDITOR
- 31 M/S. SUDDI TV
KANNADA NEWS JOURNAL, CASH TECHNO MEDIA PVT. LTD.,
BMTc BUILDING, SHANTINAGAR, BANGALORE 560027
REPRESENTED BY ITS EDITOR
- 32 M/S. BN TV
KANNADA NEWS CHANNEL, OPP. ESI, RAJAJINAGAR, BANGALORE-560010
REPRESENTED BY ITS EDITOR
- 33 T.V. 5 KANNADA
RAILWAY PARALLEL ROAD, KUMARA PARK WEST,
SAMPANGI RAMA NAGAR, BANGALORE - 020
REPRESENTED BY ITS CHIEF EDITOR.
- 34 T.V 1 KANNADA
TOWER NUMBER 7, 1ST MAIN ROAD, LIC COLONY,
YESHWANTHPUR, BENGALURU, KARNATAKA - 560022.
REPRESENTED BY ITS CHIEF EDITOR

Whereas, a Writ Petition filed by the above named petitioner under Article 226 & 227 of the Constitution of India, as in the copy annexed hereunto, has been registered by this court.

Notice is hereby given to you to appear in this court in person or through an Advocate duly instructed or through some one authorised by law to act for you in this case, at 10.30 AM in the forenoon on the 29/05/2018 to show cause why rule nisi should not be issued.

If you fail so to appear on the said date or any subsequent date to which the matter may be posted as directed by the court, without any further notice, the petition will be dealt with, heard and decided on merits in your absence.



INTERIM ORDER

Pending issue of Rule nisi in the aforesaid Writ Petition it is hereby ordered by this Court on

Friday THE 11TH DAY OF May 2018

By Hon'ble Mr. Justice ARAVIND KUMAR
as follows:-

XEROX COPY OF THE ENTIRE ORDER DATED 11/05/2018 IS ENCLOSED
HEREWITH SEPARATELY.

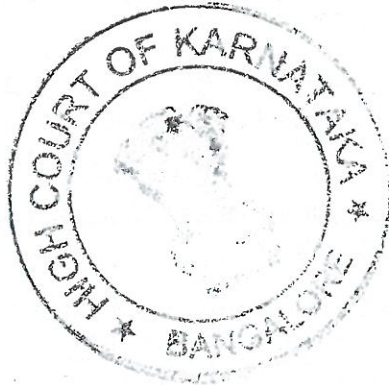
M.V. Susheela 11/5/18

[M.V.SUSHEELA]
Assistant Registrar

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AKJ:

W.P.No.21478/2018

11.05.2018

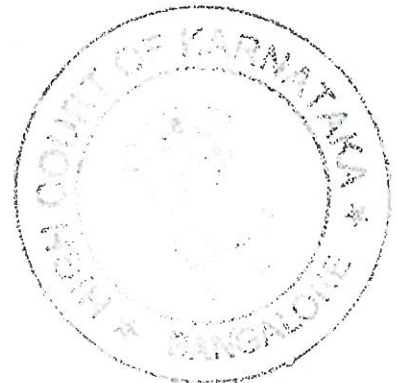
Issue notice to respondents.

2. Sri.Sharas Chandra Dodawad, learned counsel accepts notice for respondent Nos.1 and 4.

3. Petitioner herein, which is a National Political Party is seeking for the following reliefs:

- (i) Issue a Writ of mandamus or any other Writ or order directing the respondent No.1, 3 and 4 to take appropriate action against the 2nd respondent and Respondents No.5 to 34 for violation of model code of conduct and telecasting false, frivolous and baseless information, visuals, news item and thereby tarnishing image and reputation of the petitioner and its candidates and thereby protect the right to reputation of the petitioner which is fundamental right guaranteed by the Constitution of India under Article 21.

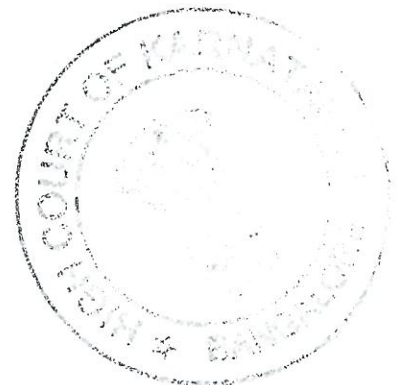
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(ii) Issue a writ of mandamus or any other writ or order of direction to the respondent Nos.1, 3 and 4 to restraining the respondent No.2, 5 to 34 their agents, men or anybody from telecasting printing, publishing and circulating any article or statement etc., in any manner in their TV channel, web portal, news papers and social media against the candidate of the petitioner i.e. B. Sriramulu and from making allegations against the Indian Judicial System without there being any basis.

4. An interim prayer is also sought for restraining respondent Nos.2, 5 to 34 from telecasting, printing and publishing and circulating any article or statement etc. in any manner in their television channels, web portal, newspapers and social media against the candidate of the petitioner i.e., Sri.B.Sriramulu and to restrain them from making allegations against the Indian Judicial System.

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5. I have heard Sri.Aruna Shyam S, learned counsel appearing for petitioner along with Sri.S.Rajashekar and Sri.Sharas Chandra Dodawad appearing for respondent Nos.1 and 4 on grant of exparte interim prayer.

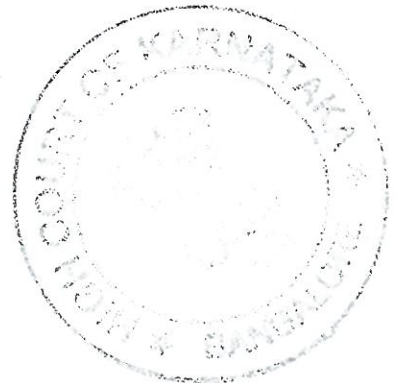
6. It is the contention of Sri.Aruna Shyam, learned counsel appearing for petitioner that respondent Nos.2, 5 to 34 are the media houses and respondent No.2 has been telecasting a news item in its television channel known and called as "B TV", Kannada news channel airing a sting video operation without any basis or credibility, investigation, enquiry, trial or orders from the Court of law or investigating agency. He would also contend that second respondent has been telecasting repeated news or information without verification and with a malafide intention actuated by political motives. He would also draw the attention of the Court to the annexures appended to the petition, contending that respondent No.10 has published a news item in its newspaper published today by making allegation against the candidate of petitioner's party, which views would

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influence the voters in the upcoming Assembly Election in Karnataka, which is scheduled to be held on 12.05.2018. He would further submit that inspite of respondent No.4 having already directed the television news channels, newspapers, digital media, radio channels, etc. from indulging in airing of such news or its publication and despite same, if it is being carried, it would amount to violation of Model Code of Conduct issued by respondent No.4. Hence, pending disposal of this writ petition he has prayed for an interim order to restrain respondent Nos.2, 5 to 34 from telecasting, printing, publishing, etc., as sought for in the writ petition.

7. He would also rely upon the judgment of Hon'ble Apex Court in the case of **SAHARA INDIA REAL ESTATE CORPORATION LIMITED AND OTHERS vs. SECURITIES AND EXCHANGE BOARD OF INDIA AND ANOTHER** reported in (2012) 10 SCC 603, to contend that this Court is empowered to issue such interim orders.



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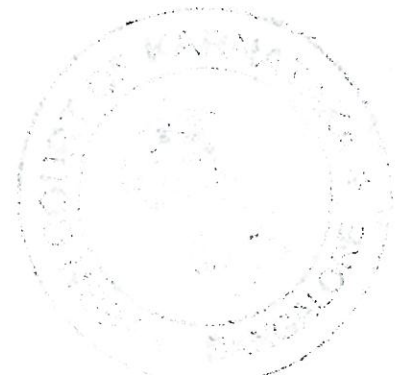
8. Sri. Sharas Chandra Dodawad, learned counsel appearing for respondent Nos.1 to 4 has placed on record the notification dated 02.05.2018 issued by the Election Commission of India, communication dated 04.05.2018 addressed to the Chief Electoral Officer, Karnataka, communication dated 05.05.2018 issued by the Office of Chief Electoral Office, Karnataka addressed to all the political parties, the District Election Officers and the Returning Officers including TV news channels, newspapers, digital media etc. He has also placed on record the photocopy of the email by the Commissioner DIPR – Government of Karnataka, dated 10.05.2018 (6.53 p.m.) addressed to mahendra@tv9.com and respondent No.18 and the reply received thereto. He would further submit that Election Commission has already viewed the act of respondent No.18 in publishing/airing the programme, which is complained of by petitioner seriously as being in contravention of Section 126 of Representation of People Act, 1951 and respondent No.18 has also agreed to withdraw the

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programme keeping in mind the instructions received by the Election Commission and accordingly, it has already replied to the respondent No.4. Hence, he prays for suitable orders being passed.

9. Having heard the learned counsel appearing for the petitioner and learned counsel appearing for Election Commission it is noticed that Hon'ble Apex Court in the case of **SAHARA INDIA REAL ESTATE CORPORATION LIMITED AND OTHERS vs. SECURITIES AND EXCHANGE BOARD OF INDIA AND ANOTHER** reported in **(2012) 10 SCC 603** has held that excessive prejudicial publicity or misinformation, leading to usurpations of functions of the Court not only interfering with the administration of justice, which is sought to be protected under Article 19(2), it also prejudices or interferes with a particular legal proceedings. It is further held that anyone, be he an accused, or an "**aggrieved person**", who genuinely apprehends on the basis of the content of the publication and its effect, an infringement of his /her rights under



Article 21 to a fair trial and all that it comprehends, would be entitled to approach an appropriate writ court and seek an order of postponement of the offending publication/broadcast or postponement of reporting of certain phases of the trial (including identity of the victim or the witness or the complainant), and that the Court may grant such preventive relief, on a balancing of the right to a fair trial and Article 19(1)(a) rights, bearing in mind the principles of necessity and proportionality and keeping in mind that such orders of postponement should be for short duration and should be applied only in cases of real and substantial risk of prejudice to the proper administration of justice or to the fairness of trial **Vide** paragraph-50.

10. The Election Commission of India in exercise of the power vested under Section 126A(1) of Representation of People Act, 1951 and having regard to the provisions of sub-section (2)(b) of Section 126A has notified the period 48 hours preceding between **7.00 a.m.** to **6.30 p.m.** on **12.05.2018** (Saturday) as the

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period during which conducting any such exit poll or publishing or publicizing by means of print or electronic media and disseminating in any other manner whatsoever, the result of any Exit Poll in connection with the current General Election to the Legislative Assembly of Karnataka announced on 27.03.2018 by prohibiting it.

It is further notified as under:

“It is further clarified that under Section 126(1) of the R.P. Act, 1951, **“displaying any election matter”** including results of any opinion poll or any other poll survey, in any electronic media, would be prohibited during the period of 48 hours ending with the hour fixed for conclusion of poll in each of the phases in connection with the aforesaid General election.”

(emphasis supplied)

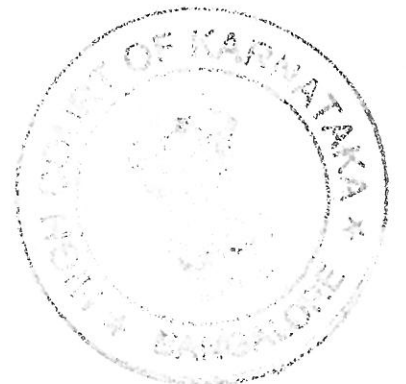
11. Further on 04.05.2018 the Election Commission of India has issued a communication to the Chief Electoral Officer – Karnataka notifying thereunder that it has been brought to its notice (ECI) about offending and misleading nature of advertisements published in print media, in the last stages of election, which would vitiate the entire election process, since the



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affected candidate and parties will not have the opportunity of providing clarification/rebuttal in such cases. Hence, it has directed that "no political party or candidate or any other organization or person shall publish any advertisement in print media on 11th and 12th May 2018, unless the contents of the advertisement proposed to be published by the political parties, Candidates etc. or got pre-certified by the Media Certification and Monitoring Committee (MCMC) at the State/District level, as the case may be.

12. Further the Chief Electoral Officer, Karnataka, respondent No.4 herein by communication dated 05.05.2018 addressed to all the political parties in Karnataka, the District Election Officers, the Returning Officers and TV news channel, newspapers, digital media, radio channels, general entertainment channels/all channels governed by Cable TV Act and Editors of All India Media has intimated them that strict directions issued by the Election Commission regarding "**Do's**" and "**Don'ts**" are to be observed by them during



period of 48 hours ending with hour fixed for conclusion of Poll. It is clearly indicated thereunder that TV/radio channels/cable networks, etc. shall ensure that content of programme/broadcast or displayed by them during 48 hours referred to above do not contain any material including views/appeal by panelists/participants that may be construed as promoting/prejudicing the prospects of any political party or candidate or influencing the result of the election. In fact, the print media at local, district or state and national level is not empowered to print any political advertisement relating to election in Karnataka without pre-certification from the respective Media Certification and Monitoring Committee as per the tenor of said communication issued by 4th respondent.

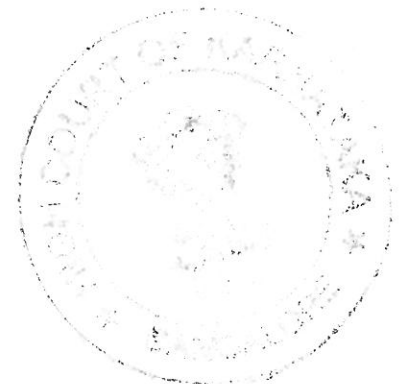
13. In this background, when the contention of petitioner is examined and the records are perused it would clearly indicate that Election Commission of India has taken serious note of the programme that came to be telecasted by the second respondent on 10.05.2018 at



1.00 p.m. and also airing of the programme by respondent No.18. In this background, an email has been sent to the respondent No.18 bringing to its notice about contravention of Section 126 of Representation of People Act, 1951 and respondent No.18 has been called upon to show cause as to why further legal action should not be initiated against them and has also been directed to forthwith stop all the content of the programme being broadcast, on the ground that it could have an effect on the outcome of the poll starting from 48 hours before conclusion of the poll i.e., 6.30 p.m. on 12.05.2018. In fact, respondent No.18 has also replied to 4th respondent stating that airing of such programme has been withdrawn by it by keeping in mind the instructions issued by the Election Commission of India. Any disseminating of information, which would be in violation of Model Code of Conduct and if such programmes are same being allowed to be telecast/published, it would thereby influence the voters in the Assembly Polls scheduled to be held on 12.05.2018 in the State of Karnataka. Hence, such acts

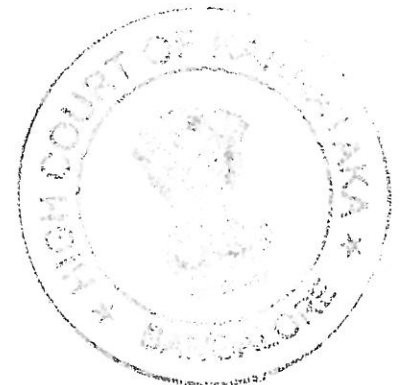
are to be restrained. In the light of aforesaid facts, the apprehension expressed by the petitioner merits acceptance at this stage.

14. The Hon'ble Apex Court in the case of **SAHARA INDIA REAL ESTATE CORPORATION LIMITED AND OTHERS vs. SECURITIES AND EXCHANGE BOARD OF INDIA AND ANOTHER** reported in **(2012) 10 SCC 603** referred to supra as already noticed hereinabove has held the aggrieved person would be entitled approach the High Court and in such circumstances, balancing test would not be a unreasonable restriction and it would be within the proper constitutional scheme. Hence, this Court is of the considered view, that by restraining R-2, R-5 to R-34 from publishing or telecasting any programme which would have an impact on the voters, would not curtail the right of the press or the freedom of speech. Hence, this Court is of the considered view that respondent Nos.2, 5 to 34 are to be restrained and accordingly they are restrained from telecasting, printing, publishing and



circulating any article or statement in any manner in their television channels, web portals, newspapers and social media of any candidate, which programme is likely to influence the voter in any manner whatsoever or from making any allegation against Indian Judicial System, as indicated or specified in the notification dated 02.05.2018 issued by Assistant Electoral Officer, *ex-officio* under Secretary to DPAR (Elections) and the communication dated 05.05.2018 issued by the Office of the Chief Electoral Officer, Karnataka, pending disposal of this writ petition.

15. The Chief Electoral Officer-Karnataka, Bengaluru, shall communicate this order to respondent Nos.2, 5 to 34 and all TV news channels, all newspapers, all digital media, all radio channels, all general entertainment channels, all channels governed by cable TV act and editors of all online media by email/speed post/fax, as the case may be and it shall be web hosted on the web portal of Chief Electoral Officer – respondent No.4 forthwith.



Registry to issue copy of this order to the learned
Advocates forthwith by Hand Delivery.

Re-list this matter on **29.05.2018**.

**Sd/-
JUDGE**

DR

COPY
1.1.V. Sushelle 11/5/18
Assistant Registrar
High Court of Karnataka
Bangalore - 560 001

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