

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITIONER (Civil) No. of 2020

IN THE MATTER OF:

Rajesh Kumar Jaiswal

Petitioner

VERSUS

1. Chief Election Commissioner  
Nirvachan Sadan, Ashoka Road,  
New Delhi-110001  
Respondent No.1
2. Chief Electoral Officer, Bihar  
7, Sardar Patel Marg, Mangles Road,  
Patna-800015 (Bihar)  
Respondent No.2
3. The State of Bihar  
Through Chief Secretary,  
Government of Bihar, Main Secretariat,  
Patna-800015 (Bihar)  
Respondent No.5
4. National Disaster Management Authority,  
Government of India, through its Secretary,  
NDMA Bhawan, A-1, Safdarjung Enclave,  
New Delhi-110029  
Respondent No.4
5. Ministry of Health and Family Welfare,  
Government of India, through its Secretary,  
Nirman Bhawan, New Delhi-110011  
Respondent No.5

6. Ministry of Home Affairs,  
Through its Secretary,  
North Block, Central Secretariat,  
New Delhi-110001

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Respondent No.6

(All are contesting respondents)

**A PETITION UNDER ARTICLE 32 OF THE  
CONSTITUTION OF INDIA READWITH ORDER  
XXXVIII OF SUPREME COURT RULES, 2013**

To

The Hon'ble Chief Justice of India and His Companion  
Judges of the Supreme Court of India

The Humble Petition on behalf of  
the Petitioner above named

**MOST RESPECTFULLY SHEWETH:**

1. That the Petitioner has preferred the present Writ Petition under the extraordinary circumstances, under Article 32 of the Constitution of India for issuance of an appropriate Writ, Order or Direction in the nature of Mandamus or any other appropriate Writ or Direction directing the respondent no.1 not to recommend to the Government of Bihar to publish notification of Election to the State Legislative Assembly in the official gazette under Section 15 of the Representation of Peoples Act 1951, till the competent authority declares the State of Bihar as Covid free and flood free state. The petitioner has further prayed for a direction upon the Respondent No.1 to decide his application and refrain from recommending the elections to the Legislative Assembly of the State of Bihar.

2. That the following questions/issues arise for the kind consideration by this Hon'ble Court:-
  - i. Whether the powers of the Election Commission under Article 324 include all powers necessary for the smooth conduct of elections, including framing of the schedule or calendar for election of the Legislative Assembly?
  - ii. Whether under sections 14 and 15 of the Representation of the People Act, 1951 the President or the Governor fixes the date or dates for holding elections on the recommendation of the Election Commission, which is in its exclusive domain?
  - iii. Whether the Election Commission has shown total unawareness of the extraordinary circumstances and prohibitions in the whole nation, and more particularly the constituencies which are likely to go for the polls, and has convinced itself that free and fair elections could be held even when public meetings are banned as well as extremely hazardous to the candidates to contest or to indulge in election propaganda, and even voters would be afraid/deprived to vote?
  - iv. Whether unless the electoral roll is prepared strictly in accordance with the provisions of the 1950/1951 Act and the 1960 Rules, it has no sanctity, and the election conducted on such defective electoral roll will tilt the balance of power and the consequent election will also not inspire confidence of the people?
  - v. Whether the approach of the respondent-Election Commission gives a total goby to the extraordinary situation prevailing in the entire world and more particularly in the State of Bihar and this Hon'ble Court cannot remain a

passive spectator in this extraordinary situation and leave the Nation to the mercy of the Election Commission, and this Hon'ble Court can certainly satisfy itself whether the Election Commission had kept its eyes, ears and mind open, and whether it is able to show that all relevant factors including the consideration as to what advantage was to be secured as against the risk to be faced, entered into his reckoning?

- vi. Whether the powers of this Hon'ble Court under Article 32 are wide enough to include the power to intervene in the present fact situation?
3. That shorn of unnecessary details, the petitioner most respectfully submits that in a news report published by "The Times of India" on 12<sup>th</sup> August 2020, the Chief Election Commissioner has been reported to have said that Bihar Assembly Elections, 2020 will be held as per schedule ignoring the fact that Bihar is grappling with Covid-19 and floods. There is very high degree of risks of coronavirus exposure at in-person polling places.
4. That as per the Chief Election Commissioner, Bihar Legislative Assembly elections will be held in Bihar in October 2020 to elect 243 members of the Bihar Legislative Assembly. Announcing election at this time will impose an additional burden on an already embattled administration. The politicians and administration are now focusing on election preparation instead of battling with flood and Covid-19. The term of the Bihar Legislative Assembly ends on 29<sup>th</sup> November 2020 and it is a matter of utmost seriousness, since the Central Government and

World Health Organisation have declared Covid-19 globally as a public health epidemic.

5. That a population of around 50 lakh in 14 out of Bihar's 38 districts is affected by floods in 113 blocks and 1,059 panchayats. The flood hit persons have been taken to flood relief camps where there is high risk of spread of infection/virus and no step is being taken by the state government to identify the flood hit people and test Covid-19 suspects in the population. The Covid 19 cases in Bihar are rising with almost 500-600 cases being reported daily but no proper step is being ensured to suppress the transmission as well as to keep case fatality rate low. On 17.8.2020 itself there has been increase of 1364 active cases in Bihar.
6. The brief facts leading to the filing of the present Writ Petition are as follows:-
  - i.
  - ii. The Petitioner is not involved in any other civil or criminal or revenue litigation, which could have direct legal nexus with the issues involved in the present Writ Petition.
  - iii. The Respondent No.1 is the Chief Election Commissioner which heads the Election Commission of India, a body constitutionally empowered to conduct free and fair elections to the National and State Legislatures and of President and Vice-President of India.

- iv. The Respondent No. 2 is the Chief Electoral Officer, Bihar who is the Nodal officer, in-charge of ensuring implementation of all the provisions of electoral laws in the State. He functions under the direction and supervision of the Election Commission of India (ECI) as outlined in the Representation of the People Act, 1950 & 1951. Besides overseeing the conduct of state elections, he has other multi-faceted roles to play.
- v. The respondent No.3 is State of Bihar through its Chief Secretary. The Chief Secretary functions as the central point of interdepartmental coordination at the departmental level and is classified as being in the Apex grade of officers in the State of Bihar.
- vi. The Respondent No.4 is the National Disaster Management Authority, a statutory body constituted under section 3 of the Disaster Management Act, 2005 and is the organization responsible for management of resources and responsibilities for dealing with all humanitarian aspects of emergencies, in particular preparedness, response and recovery in order to lessen the impact of disasters.
- vii. The Respondent No.5 is Ministry of Health & Family Welfare and is an Indian Government Ministry charged with health policy in India. It is also responsible for all government programs relating to Family Planning In India.
- viii. The Respondent No.6 is Ministry of Home Affairs, Government of India and as the interior Ministry of India, it is mainly responsible for the maintenance of internal security and domestic policy.

- ix. Thus all the Respondents are "State" within the meaning of Article 12 of the Constitution and hence amenable to Writ Jurisdiction of this Hon'ble Court.
7. That it is submitted that in the month of March 2020, due to global outbreak of COVID-19 pandemic, commonly known as "Corona virus outbreak", India also became a victim of Covid-19 outbreak and the Central Government in order to curb the rapid rise of outbreak within the country, was constrained to announce a national lockdown for 21 days. In this regard, the Hon'ble Prime Minister of India addressed the nation and announced the initial lockdown. The said announcement was given effect by an Order dated 24.3.2020 issued by the National Disaster Management Authority in exercise of the powers under section 6(2)(1) of the Disaster Management Act 2005. A true copy of the order dated 24.3.2020 issued by the National Disaster Management Authority is annexed herewith and marked as ANNEXURE P/1 [Pages 33-35].
8. That the national lockdown was further extended till 3.5.2020 in wake of continuous rise of coronavirus infections. A true copy of the order dated 14.4.2020 issued by the National Disaster Management Authority is annexed herewith and marked as ANNEXURE P/2 [Pages 36-38].
9. That it is respectfully submitted that on 5<sup>th</sup> June, 2020 a news item was published in Hindustan Times with regard to preparation of Bihar Legislative Assembly elections. Again on 12<sup>th</sup> June 2020, the Bihar Election Commission directed to complete EVM, Physical Inspection of booths and other works in all the districts in a time bound manner through

video conferencing and directed to complete the work of physical verification till 21<sup>st</sup> June 2020.

10. That based on the eligibility date 1.1.2020, the final publication of the electoral list was done on 7.2.2020 at all the 72,723 (seventy thousand seven hundred twenty-three) polling stations and other designated places under the special revision program 2020 of the electoral list. The Format of Electoral List was published on dated 16.12.2019 on the basis of eligibility date 1.1.2020 in the light of direction of the Election Commission of India. Claims / objections (NVSP) Vector Helpline Help received from online and online withdrawal from 16.12.2019 to 15.1.2020 during the period of draft publication. In this way, the names of a total of 15,35,767 voters were recorded in the last published voter list and the said list is as follows:-

Election Grade	Number of voters in the published electorate received on 16.12.19	Number of voters in the last published electorate list received on 07.02.2020	Total increment in revision period
Male	33705970	37912127	606157
Female	33273462	33907974	634517
Third Gender	2220	2344	124
Total	70581652	71822450	1240798

11. That from 1<sup>st</sup> June 2020 to 30<sup>th</sup> June 2020, the Government of India enforced Unlock 1.0, with certain relaxations. Thereafter Unlock 2.0 was implemented from 1<sup>st</sup> July 2020 to 31<sup>st</sup> July 2020 with more relaxations. And thereafter from 1<sup>st</sup> August, 2020 Unlock.3.0 was enforced.



12. That Bihar is one of the states in India that sees devastating floods almost every year and this year, as per the reports, so far 53.67 lakh people in 14 districts have been affected and 13 people have died in flood related incidents. As per press trust of India 16.89 lakh people had been affected in Muzaffarpur and 12.40 lakh people in Darbhanga. The third worst affected is East Champaran with 8.09 lakh affected.
13. That owing to the alarming increase in the Covid-19 positive cases across the nation, the election of Rajya Sabha, Legislative Council and other Legislative Councils had to be postponed by the Central Election Commission at the time of lockdown of Corona time. A true copy of Election Commission notification No.ECI/PN/40/2020 dated 15.6.2020 is annexed herewith and marked as ANNEXURE P/3 [Pages <sup>39-40</sup>].
14. That meanwhile, owing to the sudden upsurge of cases, the Patna District Administration on 8<sup>th</sup> July, 2020 imposed lockdown for a period of 1 week from 10.7.2020 till 16.7.2020. Thereafter, the lockdown has been extended from time to time. A true copy of the Patna District Administration Notification dated 8.7.2020 is annexed herewith and marked as ANNEXURE P/4 [Pages <sup>41-48</sup>].
15. That in this regard, the petitioner herein filed a detailed representation before the Respondent No.1-Chief Election Commissioner of India with copies to the Election Commissioners and the Chief Electoral Office, Bihar-Respondent No.2 requesting for postponement of the elections to ensure safety of all and purity of election process. A true translated as well as photocopy of the

representation dated 18.7.2020 is annexed herewith and marked as ANNEXURE P/5 [Pages 74-76].

16. That again on 24.7.2020, the petitioner wrote a reminder email to Respondent No.1-Chief Election Commissioner of India with copies to the Election Commissioners and the Chief Electoral Office, Bihar-Respondent No.2 requesting for postponement of the elections to ensure safety of all and purity of election process. The petitioner requested for expeditious disposal of his application within a week. A true copy of the reminder email dated 24.7.2020 is annexed herewith and marked as ANNEXURE P/6 [Pages 77].
17. That again on 1.8.2020, the petitioner wrote a second reminder email to Respondent No.1-Chief Election Commissioner of India with copies to the Election Commissioners and the Chief Electoral Office, Bihar-Respondent No.2 requesting for postponement of the elections to ensure safety of all and purity of election process. The petitioner requested for expeditious disposal of his application within a week. A true copy of the reminder email dated 1.8.2020 is annexed herewith and marked as ANNEXURE P/7 [Pages 78].
18. That in a news published by "Hindustan Times" on 11<sup>th</sup> August 2020, the Chief Election Commissioner has said that Bihar Assembly Elections, 2020 will be held as per schedule ignoring the fact that Bihar is grappling with Covid-19 and floods. There is very high degree of risks of coronavirus exposure at in-person polling places. A true copy of the news published by "Hindustan Times" on August 11, 2020 is annexed herewith and marked as ANNEXURE P/8 [Pages 79-82].

19. That it is submitted that the rivers such as Baghmati, Burhi Gandak, Kamlabalan, Adhwara, Khiroi, Mahananda and Ghaghra are flowing above the danger level at various places. The 14-flood affected districts are Sitamarhi, Sheohar, Supaul, Kishanganj, Darbhanga, Muzaffarpur, Gopalganj, West Champaran, East Champaran, Khagaria, Saran, Samastipur, Siwan and Madhubani. A translated as well as photocopy of daily flood information bulletin dated 14.8.2020 issued by Water Resource Department, Govt. of Bihar is annexed herewith and marked as ANNEXURE P/9 [Pages 83-86 ].
20. That Covid 19 cases in Bihar are rising with almost 500-600 cases being reported daily but no proper step is being ensured to suppress the transmission as well as to keep case fatality rate low. On 17.8.2020 itself there has been increase of 2525 active cases in Bihar. A true copy of the chart showing Covid-19 cases in Bihar uploaded by the Department of Health, Govt. of Bihar dated 17.8.2020 is annexed herewith and marked as ANNEXURE P/10 [Pages 87-90 ].
21. That as on date, the total number of Covid-19 positive cases, the 103844 with total number of active cases at 72324 and the State of Bihar vide its notification dated 17.8.2020 under the signatures of the Additional Chief Secretary, Department of Home, has extended the state-wide lockdown which was earlier imposed with effect from 30.7.2020 to a further period till 6<sup>th</sup> September, 2020. A true copy of the notification contained in memo no.G/disaster-06-02/2020-351 dated 17.8.2020 is annexed herewith and marked as ANNEXURE P/11 [Pages 91-93].

22. That the Constitution vests the authority of conduct of elections in India on the Election Commission as below:-

**“324. Superintendence, direction and control of elections**

**to be vested in an Election Commission.**—(1) *The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).*

- (2) *The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.*
- (3) *When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission.*
- (4) *Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint after consultation with the Election Commission such Regional*

*Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by clause (1).*

- (5) *Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine:*

*Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment:*

*Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.*

- (6) *The President, or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1)".*

23. That Article 326 provides for Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage to the effect that every person who is a citizen of India and who is not less than 18 years

of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.

24. That Article 327 provides for Power of the Parliament to make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses.
25. That under the Representation of Peoples Act 1951, provides for the powers of the Election Commission of India to conduct the elections and Section 15 of the Act provides as under:

***“15. Notification for general election to a State Legislative Assembly.***

- (1) *A general election shall be held for the purpose of constituting a new Legislative Assembly on the expiration of the duration of the existing Assembly or on its dissolution.*
- (2) *For the said purpose,<sup>60</sup>[the Governor or Administrator, as the case may be], shall by one or more notifications published in the Official Gazette of the State on such date or dates as may be recommended by the Election Commission, call upon all Assembly constituencies in the State to elect*

*members in accordance with the provisions of this Act and of the rules and orders made thereunder:*

*Provided that where a general election is held otherwise than on the dissolution of the existing Legislative Assembly, no such notification shall be issued at any time earlier than six months prior to the date on which the duration of that Assembly would expire under the provisions of clause (1) of Article 172 or under the provisions of Section 5 of the Government of Union Territories Act, 1963 (20 of 1963), as the case may be".]*

26. That as per Section 153 of the Act, it shall be competent for the Election Commission for reasons which it considers sufficient, to extend the time for the completion of any election by making necessary amendments in the notification issued by it under Section 30 or sub-section (1) of Section 39.
27. That this Hon'ble Court in the case of Public Interest Foundation and Ors. v. Union of India and Anr. (2019) 3 SCC 224, passed the following directions, inter-alia:-
- "116. Keeping the aforesaid in view, we think it appropriate to issue the following directions which are in accord with the decisions of this Court:*
- 116.1. Each contesting candidate shall fill up the form as provided by the Election Commission and the form must contain all the particulars as required therein.*
- 116.2. It shall state, in bold letters, with regard to the criminal cases pending against the candidate.*
- 116.3. If a candidate is contesting an election on the ticket of a particular party, he/she is required to inform the*

party about the criminal cases pending against him/her.

116.4. The political party concerned shall be obligated to put up on its website the aforesaid information pertaining to candidates having criminal antecedents.

116.5. The candidate as well as the political party concerned shall issue a declaration in the widely circulated newspapers in the locality about the antecedents of the candidate and also give wide publicity in the electronic media. When we say wide publicity, we mean that the same shall be done at least thrice after filing of the nomination papers”.

28. That thereafter a contempt petition was filed raising issues regarding the criminalisation of politics in India and the apparent disregard to the aforesaid directions of the Constitution Bench in the case of Public Interest Foundation and Ors. v. Union of India and Anr. (2019) 3 SCC 224, and the following direction were passed:-

“1) It shall be mandatory for political parties [at the Central and State election level] to upload on their website detailed information regarding individuals with pending criminal cases (including the nature of the offences, and relevant particulars such as whether charges have been framed, the concerned Court, the case number etc.) who have been selected as candidates, along with the reasons for such selection, as also as to why other individuals without criminal antecedents could not be selected as candidates



- 2) *The reasons as to selection shall be with reference to the qualifications, achievements and merit of the candidate concerned, and not mere "winnability" at the polls.*
- 3) *This information shall also be published in:*
  - (a) *One local vernacular newspaper and one national newspaper;*
  - (b) *On the official social media platforms of the political party, including Facebook & Twitter.*
- 4) *These details shall be published within 48 hours of the selection of the candidate or not less than two weeks 4 before the first date for filing of nominations, whichever is earlier.*
- 5) *The political party concerned shall then submit a report of compliance with these directions with the Election Commission within 72 hours of the selection of the said candidate.*
- 6) *If a political party fails to submit such compliance report with the Election Commission, the Election Commission shall bring such non-compliance by the political party concerned to the notice of the Supreme Court as being in contempt of this Court's orders/directions".*

A true copy of the order dated 13.2.2020 passed by this Hon'ble Court in Contempt Petition (Civil) No.2192/2018 is annexed herewith and marked as **ANNEXURE P/12** [Pages 94-97].

29. That it is respectfully submitted that purity of election is recognized as of paramount importance and the same is not possible unless the voter-list is tested from all perspective.

In this regard it is submitted that the problem of Bangladesi Intruders, has invited the attention of all the authorities and the National Citizen Register (NRC). It has not been implemented anywhere except the Assam state. Assam, as a border state, problem of illegal migrants also meets in Bengal, Bihar. Based on the figures of 1951 census, NRC was created for the state in 1951. Later in 1983, Illegal Migrant (Tribunal) Act was passed by the Parliament, but this Hon'ble Court declared it unconstitutional in 2005 after that Indian Government gave assent to up-to-date (update) Assam National Citizen Register. Later by seeing the unsatisfactory progress, this Hon'ble Court ordered for taking action under its supervision.

30. That in the NRC for Assam published on July 30, 2019, as many as 40 lakh applicants found their names excluded out of the 3.29 crore registered names in the final draft. A total of 36.2 lakh had claimed inclusion in the final draft of Assam NRC. Consequently, many illegal civilians came towards Bihar and settled in districts of Kishanganj, Katihar, Purniya, Saharsa, and the Bihar Government has kept their identity hidden till today. Never any kind of investigation was initiated by the Bihar Government for mere political benefits and polarization. Their border extends to districts of Siwan, Gopalganj and their physical verification has not been done till now while NRC is limited to Assam but Bangaladesi intruders are also in Bihar, Bengal too. By making fake Adhar card and Voter ID they become voters.
31. That so far no supervisor or other appointee has been appointed to review the preparation of election work. After

Lockdown and Unlock alarming increase in Covid-19 positive cases in the State. Big political parties which have resources are promoting themselves through virtual conferencing, but the Independent candidates are unable to represent themselves before public because of the restriction which still continue even in the unlock and maintenance of social distancing is mandatory as well as essential.

32. That the revision of voter list which should happen again has not been done because physical verification could not be done at the last minute due to covid-19 and will cannot happen at this stage, because monsoon has arrived it may last till September or till the first or second week of October. Catastrophe of flood is also hovering in Bihar and the problem of water logging continues to be frequent. The newly registered voters did not get their voter ID and physical verification is not possible in this corona period to those voters who have completed 18 years age and whose age complete in the time during 1<sup>st</sup> April 2020 to 1<sup>st</sup> August 2020 and hence the election in these circumstances becomes a mockery and a healthy democracy is becoming meaningless.
33. That the problem of unemployment in the state of Bihar including India has arisen due to Covid-19. A report from the Harvard Health Institute indicates that the infection will be at its peak in more populous state like Bihar and Uttar Pradesh, and this is being proved as true. The labour migrants who came to Bihar from other states in lockdown can have their names in both voter lists and the percentage of uneducated and illiterate voters is high.

34. That it was published in the Dainik Jagran Newspaper on July 8, 2020 that Physical verification has not been done of about 30,000 applicants to be a voter for Graduate and Teachers election. While for graduate and teachers election this was extended for indefinite period due to corona infection.
35. That the fundamental of healthy democracy is to have well informed citizens voters but in the given circumstances, to have a fair and unbiased election is a virtual impossibility. That apart, the Indian economy has been badly affected by the corona crisis, fiscal deficit has increased and financial crisis has increased pressure, which will further increase since election will be held with the money of tax payers and inflation will increase and voters will not be benefitted.
36. That by deciding to hold elections during a pandemic, the Election Commission of India has ignored the population of a State like Bihar whereby the population is above 9.9 crore and it cannot adopt targeted measures for older voters who are more vulnerable to COVID-19. Options like proxy voting under a well-established legal framework, postal voting, and mobile ballot boxes cannot be explored and implemented in such a short span of time. The EC has a difficult task of sticking to its goal of 'No Voter Left Behind' while also ensuring that the elections do not turn into a public health nightmare.
37. That the COVID-19 pandemic is a big threat to the established world order and is an exceptional circumstance whereby the Elections ought to be postponed. This is a pandemic that spreads when people mingle and even from contaminated surfaces. Holding an election will increase the

spread of the virus and, it must be said, cost lives. From Sri Lanka to the United States, several election across the world have been deferred or rescheduled due to the pandemic. There are three issues involved here: one, an election itself becoming a potential virus spreader; two, the difficulty of organising voting amid restrictions; and three, Covid restrictions coming in the way of free and fair election campaigning.

38. That the superintendence, direction and control of the conduct of elections referred to in Article 324(1) of the Constitution have been entrusted to the "Commission". The words "superintendence, direction and control" are wide enough to include all powers necessary for the smooth conduct of elections and are the broadest of the terms so far as the framing of the schedule or calendar for election of the Legislative Assembly is concerned, and the same is in the exclusive domain of the Election Commission and are part of the basic structure.
39. That sections 14 and 15 of the Representation of the People Act, 1951 provide that the President or the Governor shall fix the date or dates for holding elections on the recommendation of the Election Commission which is in its exclusive domain. Law is well settled that the power to issue a direction or order which has the effect of postponing an election if the situation so demands, is within the jurisdiction of this Hon'ble Court.
40. That in the present case the Election Commission has shown total unawareness of the circumstance that public meetings are prohibited under Section 144 of the Code of Criminal Procedure in the whole nation, and more particularly the

constituencies which are likely to go for the polls. The respondent-Election Commission is totally oblivious to the problems and has convinced itself that free and fair elections could be held even when public meetings are banned as well as dangerous in the present extraordinary circumstances, wherein it is extremely hazardous to the candidates to contest or to indulge in election propaganda, and even voters would be afraid/deprived to vote.

41. That Article 324 (6) provides that the President or the Governor of a State shall, when so requested by the Election Commission make available to the Election Commission as may be necessary for the discharge of the functions conferred on the Election Commission under Clause (1) of Article 324. This shows that for the purpose of preparing the electoral rolls for the purpose of conducting elections, the Election Commission, although a very high and independent constitutional functionary, does not have a staff of its own appointed and removable by it. The staff made available to the Election Commission for the above purposes are the employees of a State or the Central Government and in the present situation, when the State of Bihar is battling with the sudden upsurge in Covid-19 cases, coupled with massive flood, it axiomatic that the entire administration would be involved in election process leaving the people in the lurch.
42. That it is most respectfully submitted that unless the electoral roll is prepared strictly in accordance with the provisions of the 1950/1951 Act and the 1960 Rules, the electoral roll will have no sanctity, and the election conducted on such defective electoral roll will tilt the

balance of power and the consequent election will also not inspire confidence of the people. Section 15 provides that for every constituency there shall be an electoral roll which shall be prepared in accordance with the provisions of the Act. The preparation has to be made under the superintendence, direction and control of the Election Commission. Section 16 provides that a person who is not a citizen of India, a person of unsound mind, a person who is found to be guilty of corrupt practices and other offences in connection with the elections shall not be registered as electors. Sections 15 and 21 are mandatory and Section 21 (2) provides that the aforesaid electoral roll shall be revised in the prescribed manner with reference to the qualifying date (i) before the general election to the Legislative Assembly of a State or the House of the People and (ii) before each bye-election to fill a casual vacancy in a seat allotted to the constituency, unless otherwise directed by the Election Commission for reasons to be recorded in writing.

43. That the approach of the respondent-Election Commission has given a total go-by to the extraordinary situation prevailing in the entire world and more particularly in the State of Bihar and this Hon'ble Court cannot remain a passive spectator in this extraordinary situation and leave the Nation to the mercy of the Election Commission, and this Hon'ble Court can certainly satisfy itself whether the Election Commission had kept its eyes, ears and mind open, and whether it is able to show that all relevant factors including the consideration as to what advantage was to be secured as against the risk to be faced, entered into his reckoning.

44. That the petitioner has not approached this Hon'ble Court or any other Hon'ble High Court for grant of the same said reliefs as prayed for in this writ petition.
45. That in these extraordinary circumstances, as stated above, the Petitioner is constrained to approach this Hon'ble Court for enforcement of Fundamental Rights by way of present Writ Petition under Article 32 of the Constitution of India.
46. That the Petitioner has no effective or efficacious or alternative remedy under law except by way of the present Writ Petition. The Petitioner has not filed any other Petition or Writ Petition before this Hon'ble Court or before any other Court of law seeking the relief as prayed in the present Writ Petition.
47. That the Petitioner prays for leave to add, amend, alter, and vary any of the above grounds at the time of hearing or during the proceedings in the appeal, as they may be legally advised.

### GROUND

The present writ petition rests, inter-alia on the following grounds, namely,

- A. BECAUSE declaring election during pandemic/flood is completely devastating, wrong and in a way will take away the right to vote of the citizens in flood hit areas who are struggling for their life. This has caused hindrance and obstetrical in "right to life" guaranteed by Article 21 of the Constitution of India, in furtherance of right to life including right to vote which is a pre-requisite to the fundamental right guaranteed under Article 21 to people of India.
- B. BECAUSE as per the Chief Election Commissioner, Bihar Legislative Assembly elections will be held in Bihar in



October 2020 to elect 243 members of the Bihar Legislative Assembly. Announcing election at this time will impose an additional burden on an already embattled administration. The politicians and administration are now focusing on election preparation instead of battling with flood and Covid-19.

- C. BECAUSE recommending dates under section 15 for the purpose of notification for general election in Bihar at present will result into great difficulty to voters from flood affected area, exposure to the virus, along with a shortage of volunteer poll-workers and election supplies.
- D. BECAUSE this Hon'ble Court has held that though the State Government is in the best position to assess the law and order situation in the State, the ultimate decision as to whether it was possible and expedient to hold the election at any given point of time must rest with the Election Commission.
- E. BECAUSE in a news published by The Times of India wherein an exclusive conversation, the Chief Election Commissioner has said that Bihar Assembly Elections, 2020 will be held as per schedule ignoring the fact that Bihar is grappling with Covid-19 and floods. There is very high degree of risks of coronavirus exposure at in-person polling places.
- F. BECAUSE population of around 50 lakh in 14 out of Bihar's 38 districts is affected by floods in 113 blocks and 1,059 panchayats. The flood hit persons have been taken to flood relief camps where there is high risk of spread of infection/virus and no step is being taken by the state

government to identify those flood hit people and test Covid 19 suspects in the population.

- G. Because, Covid 19 cases in Bihar are rising with almost 500-600 cases being reported daily and the overall situation is deplorable but no proper step is being ensured to suppress the transmission as well as to keep case fatality rate low.
- H. BECAUSE the word 'life' as employed by Article 21 takes in its sweep not only the concept of mere physical existence but also all finer values of life including the right to work and right to livelihood. This right is a fundamental right guaranteed to all persons residing in India, citizens and non-citizens alike, right to life including right to livelihood and work as guaranteed by Article 21 is not reduced to a mere paper platitude but is kept alive, vibrant and pulsating so that the country can effectively march towards the avowed goal of establishment of an egalitarian society as envisaged by the founding fathers while enacting the Constitution of India along with its Preamble.
- I. BECAUSE for the first time since independence, the country is in stagnation in the present scenario. Thus, initially except the essential services like electricity, gas, water supply and part of 3 B, C and D relating to broadcasting, financial services (Banking) and, public administration, defence, etc, all other sectors have been completely shut. Though there are some relaxations, but since Katihar is flood hit zone, no relaxation has been given there and till date all the sectors are remained closes, except essential services.
- J. BECAUSE Bihar is one of the states in India that sees devastating floods almost every year and this year, as per

the reports, so far 53.67 lakh people in 14 districts have been affected and 13 people have died in flood related incidents. As per press trust of India 16.89 lakh people had been affected in Muzaffarpur and 12.40 lakh people in Darbhanga. The third worst affected is East Champaran with 8.09 lakh affected.

- K. Because the rivers such as Baghmati, Burhi Gandak, Kamlabalan, Adhwara, Khiroi, Mahananda and Ghaghra are flowing above the danger level at various places. The 14-flood affected districts are Sitamarhi, Sheohar, Supaul, Kishanganj, Darbhanga, Muzaffarpur, Gopalganj, West Champaran, East Champaran, Khagaria, Saran, Samastipur, Siwan and Madhubani.
- L. BECAUSE this Hon'ble Court in the case Chameli Singh & Ors. vs. State of U.P. and Anr. Reported in (1996)2 SCC 549 held that this Court had to examine the question whether the term 'life' as found in Article 21 would include all the components of right to life. Answering the question in the affirmative the following pertinent observations were made in para 8 of the judgment: "In any organized society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to life guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter...."
- M. BECAUSE Article 21 alongwith Article 14 and 19, therefore, must be treated as a trinity of rights

projecting a golden triangle ensuring a healthy and effective life to all the residents in India including its citizens. These three Articles project an assurance that the promise held forth by the Preamble will be performed by ensuring an egalitarian era within the discipline of fundamental rights.

- N. BECAUSE in Bihar patients with cough and cold are not even allowed to enter private health centres due to fears that they might be Covid-positive. Many doctors have even asked patients to get themselves tested for Covid-19 before seeking treatment.
- O. BECAUSE the impugned action of the Election Commission of India in not deciding/considering the application of the petitioner, he has been highly discriminated and he has been deprived of his right to be heard and this violates the principles of natural justice.

#### PRAYER

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

- a) Issue an appropriate Writ, Order or Direction in the nature of mandamus or any other appropriate Writ or Direction directing the respondent no.1 not to recommend to the Government of Bihar to publish notification of election in official gazette under section 15 of the Representation of People Act, 1951 till the competent authority declares Bihar as Covid free and flood free state .
- b) Issue a Writ, Order or Direction in the nature of Mandamus thereby directing the Respondent no.1 /Chief Election Commissioner to decide the application of the

petitioner without further delay and refrain from recommending the elections to the Legislative Assembly of the State of Bihar; and/or

- c) Issue a Writ, Order or Direction in the nature of Mandamus thereby directing the Respondent no.3 /State of Bihar to ensure proper facilities to its residents without focusing on the upcoming assembly election; and/or
- c) Pass such other or further order/(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

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

DRAWN & FILED BY

**[SHANTANU SAGAR]**

Advocate on Record for the Petitioner

Drawn On: 18.8.2020

Filed On: 21.8.2020