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IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

[UNDER ORDER XXXVIII, RULE 7 OF SCR, 2013]

[A Writ Petition under Article 32 of the Constitution of India]

WRIT PETITION (C) No. _____ OF 2020

IN THE MATTER OF:-

Avinash Thakur,

...Petitioner

Versus

1. Chief Election Commissioner,
Election Commission of India,
Nirvachan Sadan, Ashoka Road,
New Delhi 110001.
2. Chief Electoral Officer, Bihar
7, Sardar Patel Marg, Mangles Road,
Patna-800015
Bihar
3. State of Bihar
Through its Chief Secretary,
Government of Bihar,
Main Secretariat,
Patna-800015
Bihar
4. National Disaster Management Authority,
Govt. of India,
Through its Secretary,
NDMA Bhawan,

A-1, Safdarjung Enclave,
New Delhi-110029

5. Ministry of Health and Family Welfare,
Through its secretary
Government of India,
Nirman Bhawan,
New Delhi-110011.

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

..... Respondents

(ALL ARE CONTESTING RESPONDENTS)

**A WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA**

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

THE HUMBLE PETITION OF
THE PETITIONER HEREIN

MOST RESPECTFULLY SHOWETH:

1. 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

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directing the respondent no.1 not to recommend to the Govt. of Bihar to publish notification of election in official gazette under section 15 of the RP, Act till the competent authority declares Bihar as Covid free and flood free state .

- 1a. That the petitioner has not approached the respondent authorities for Redressal of his grievance.
2. That in a news published by "The Times of India" on August 12, 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 "The Times of India" on August 12, 2020 is annexed herewith and marked as **ANNEXURE P-1** at page No. 19 to 21.
3. 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.

4. 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 those flood hit people and test Covid 19 suspects in the population.
5. 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 14.08.2020 itself there has been increase of 1364 active cases in Bihar. A true copy of the chart showing Covid-19 cases in India uploaded by the Ministry of Health and Family Welfare, Govt. of India is annexed herewith and marked as **ANNEXURE P-2** at page No. 22 to 23
7. The brief facts leading to the filing of the present Writ Petition are as follows:-

- (ii) That the Petitioner has not been involved in any other civil or criminal or revenue litigation, which could have legal nexus with the issues involved in the present 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.

- (iv) That the Respondent No. 2 is Chief Electoral Officer, Bihar and is the nodal officer who is 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) That the respondent No.3 is State of Bihar through its chief secretary. A Chief Secretary functions as the central point of interdepartmental coordination at the departmental level and is classified as being in the Apex grade in Bihar.
- (vi) That the Respondent No. 4 is National Disaster Management Authority is a statutory body constituted under the National Disaster Management Act, 2005 and is organization and 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) That 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) That the Respondent No. 6 is Ministry of Home Affairs or Home Ministry is a ministry of the Government of India. As the interior ministry of India, it is mainly responsible for the maintenance of internal security and domestic policy.
- (ix) Hence, 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.
- (x) 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 the Prime Minister of India addressed the nation and announced the said lockdown. The said announcement was given

effect by an Order dated 24.03.2020 issued by the National Disaster Management Authority in exercise of the power under section 6(2)(1) of the National Disaster Management Act 2005. A True Copy of the Order dated 24.03.2020 issued by the National Disaster Management Authority is marked and annexed herewith as ANNEXURE-P/5. at page No. 28 .

(xi) The national lockdown was further extended till 03.05.2020 in wake of continuous rise of coronavirus infections. A True Copy of the Order dated 14.04.2020 issued by the National Disaster Management Authority is marked and annexed herewith as ANNEXURE-P/6. at page No. 29 to 30 .

(xii) 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.

(xiii) 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 copy of daily flood information bulletin dated 14.08.2020 issued by water resource department, Govt. of Bihar is marked and annexed herewith as ANNEXURE-P/7 at page No. 31.

5. Thus, the Petitioner is filing the present Writ Petition before this Hon'ble Court, inter alia, on the following Grounds:

GROUND

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, 1950 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 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.

- E. 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.
- F. 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.
- G. 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.

- H. BECAUSE for the first time since independence, country is in stagnation in the present scenario. Thus, initially except the essential services like electricity, gas, water supply and part of 3B, 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 muzaffarpur is a hotspot area so no relaxation has been given there and till date all the sectors are remained closes, except essential services.

- I. 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.
- J. 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.
- K. 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...."

- L. BECAUSE Article 21 along with 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.
- S. Because the universal adult suffrage conferred on the citizens of India by the Constitution has made it possible for millions

of individual voters to participate in the governance of our country.

T. Because on 26.06.2020 the petitioner lost his mother for want of proper treatment within time as several Hospitals at Patna refused to admit her unless report of Covid test clearance is presented. 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.

6. Therefore, 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.
7. The Petitioner has no effective or efficacious or alternative remedy under law except by way of the present Writ Petition.
8. That 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.

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 Govt. of Bihar to publish notification of election in official gazette under section 15 of the RP, Act 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.3 /State of Bihar to ensure proper facilities to its residents without focusing on the upcoming assembly election.; and/or
- c) Pass any other order or orders which may be deemed fit and proper in the facts and circumstances of the case and in the interest of justice.

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

Drawn By

Filed by

(ASHUTOSH THAKUR)
Advocate

(NEERAJ SHEKHAR)
Advocate for the Petitioner

Drawn on: 14.08.2020
Filed on: 16.08.2020