

Writ Petition No. : \_\_\_\_\_/2020

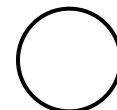
**BEFORE THE HON'BLE HIGH COURT OF M.P.**

**BENCH AT INDORE**

**PETITIONERS** :1. Mangilal Prajapati

**VERSUS**

**RESPONDENTS** : 1. Chief Election Commissioner,  
Election Commission of India,  
Nirvachan Sadan, Ashoka Road,  
New Delhi - 110001



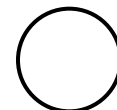
2. The Chief Electoral Officer,  
Madhya Pradesh  
Office of The Chief Electoral Officer  
Madhya Pradesh Nirvachan Sadan  
17, Arera Hills, Bhopal (M.P.)
3. District Election Officer (Collector  
Indore)  
Collector Office, Moti Tabela,  
Indore (M.P.)
4. Electoral Registration Officer  
(Sub-Divisional Magistrate Sanwer)  
Collector Office, Moti Tabela, Indore  
(M.P.)

**WRIT PETITION UNDER ARTICLE 226**  
**OF THE CONSTITUTION OF INDIA**

**1. Particulars of cause/ order against which the present petition is made :-**

- (1) **Date of Order** : NIL  
(2) **Passed in** : NIL  
(3) **Passed by** : NIL  
(4) **Subject Matter in Brief**

The Petitioners have approached this Hon'ble Court against the Respondents in not adhering to the Statutory provisions of the Representation of People Act, 1950 and Representation of People Act, 1951 which provide publication of Draft Electoral Roll prior to the bye-elections. The Respondents have also failed to act upon the objections raised by the Petitioners for deletion of the names of ineligible voters from the Electoral Roll of Sanwer Constituency. Looking to the testing and trying



time of COVID-19 and the manner in which the Government was toppled, it becomes more incumbent on the Respondents to earnestly adhere to the Statutory provisions of the Act, 1950 and Act, 1951 so that actual will of the people is reflected in the ensuing bye elections. The deliberate delay and lackadaisical attitude of the Respondents in not taking cognizance of the objections and even the legal notice is likely to impinge upon the basic tenet of democracy i.e. conduction of free and fair elections.

2. **A declaration that no proceeding on the same subject matter has been previously instituted in any Court, authority or tribunal. If insisted, the status or result thereof, along with a copy of the order:-**

The Petitioner hereby declares that no proceeding on the same subject matter has been instituted in any Court.

3. **Details of remedies exhausted:**

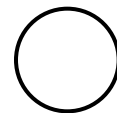
The Petitioners are not having any alternative efficacious remedy to challenge the in-action of the respondents.

4. **Delay, if any, in filing of the Petition & explanation therefor:**

There is no delay in filing the present Petition.

5. **Facts of the Case:-**

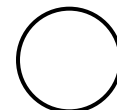
- a) That, the Petitioners are citizens of India and are residents of Sanwer, District Indore (M.P.).



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- b) That, the Respondent no.1 is the Constitutional body empowered and delegated the onerous responsibility by the Constitution of India to conduct and ensure free and fair elections in the country. The Respondent no. 2 to 4 are the officers of the state and supervise preparation, revision and correction of Electoral rolls.
- c) That, on 14.03.2020 on account of resignation of Mr. Tulsi Silawat who had won the election from Sanwer Constituency as a candidate of Indian National Congress in the year 2018 General Election of the Madhya Pradesh State Legislative Assembly, the seat of Sanwer constituency fell vacant. As a consequence, bye-election for the assembly seat of Sanwer Constituency is to be conducted within 6 months from the date of occurrence of vacancy or on such extended date as may be determined by the Election Commission of India in consultation with the Central Government as per the mandate of Section 151A of the Representation of People Act, 1951. For ready reference, Section 151A is reproduced hereunder :-

*“151A. Time limit for filling vacancies referred to in sections 147, 149, 150 and 151. - Notwithstanding anything contained in section 147, section 149, section 150 and section 151, a bye-election for filling any vacancy referred to in any of the said sections shall be held within a period of six months from the date of the occurrence of the vacancy: Provided that nothing contained in this section shall apply if—*

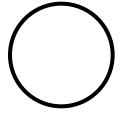


*(a) the remainder of the term of a member in relation to a vacancy is less than one year; or*

*(b) the Election Commission in consultation with the Central Government certifies that it is difficult to hold the bye-election within the said period.”*

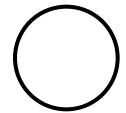
- d) That, the petitioners have examined the voter list of the Constituency and have checked and identified the voters of polling booths. On inspection of the registered voters, the Petitioners found that voters of below mentioned polling booth have either shifted to some other place and as such no more “ordinary residents” (as per Section 20 of the Representation of People Act, 1950) of the area or are dead or are registered in more than one polling station or are not available at the said place etc. Petitioners had filed objection in Form 7 before the Respondent no. 4 on 15.07.2020. For ready reference the details of the polling booth and the number of ineligible voters in the polling booths are reproduced hereunder :-

S.No.	Polling Booth Number	Total number of ineligible voters in the electoral roll
1.	221	160
2.	222	56
3.	223	78
4.	224	218



5.	225	201
6.	226	203
7.	227	233
8.	228	107
	Total Ineligible Voters	<b>1256</b>

- e) That, despite submitting their objections when no action was taken by the Electoral Registration Officer (SDM Sanwer), the Petitioners through their Advocate issued a legal notice on 07.08.2020 to the Respondents for taking cognizance in the matter and to direct the Registering Officer to “**Publish Draft Electoral Roll**” at the earliest after taking into consideration the objections filed by the Petitioners. Copy legal notice alongwith the list of objections are filed and marked as **ANEXURE P/1.**
- f) That, on receipt of legal notice, the office of Respondent no.3 vide letter dated 11.08.2020 directed Respondent no. 4 to investigate the matter within a period of one week and inform the same to the objectors. Copy of letter dated 11.08.2020 is filed and marked as **ANNEXURE P/2.**
- g) That, till date no action has been taken by the respondents for removing the name of ineligible voters. In order to rule out any foul play, the Petitioners have approached this Hon’ble Court to ensure that free and fair elections are held and the



basic tenet of the Constitution of India namely the democratic setup is maintained.

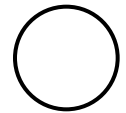
- h) That, the lackadisacal and illegal act of the Respondents is not only going to affect the outcome of the Elections but also adversely affect the democratic setup and the impartiality of the elections.
- i) That, Respondent no. 1 vide Press Release dated 04.09.2020 notified that elections in the State of Bihar and bye-elections in other states would be conducted before 29<sup>th</sup> November, 2020. Copy of Press Release dated 04.09.2020 is annexed hereto and marked as **Annexure P/3**.

That, being aggrieved by the inaction of the respondents, the present petition is being presented on the following grounds:-

**6. GROUNDS :-**

- a) **BECAUSE** the in-action of the respondents is likely to affect the outcome of the elections.
- b) **BECAUSE** Section 19 of the Representation of People Act, 1950 madates that only a person above the age of 18 years and an “ordinary resident” of the constituency is entitled to be registered in the electoral roll of the constituency. Extraction of Section 19 is reproduced hereunder :-

*“19. Conditions of registration. - Subject to the foregoing provisions of this Part, every person who –*



*(a) is not less than 5 [eighteen years] of age on the qualifying date, and*

*(b) is ordinarily resident in a constituency, shall be entitled to be registered in the electoral roll for that constituency”*

- c) **BECACUSE** Section 21 read with Section 22 of the Representation of People Act, 1950 mandates revision and correction of the Electoral Rolls before each bye-election to fill casual vacancy. Extract of Section 21 and 22 of the Act is reproduced hereunder:-

***“21. Preparation and revision of electoral rolls.***

*(1) The electoral roll for each constituency shall be prepared in the prescribed manner by reference to the qualifying date and shall come into force immediately upon its final publication in accordance with the rules made under this Act.*

*(2) The said electoral roll—*

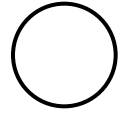
*(a) shall, unless otherwise directed by the Election Commission for reasons to be recorded in writing, be revised in the prescribed manner by reference to the qualifying date—*

*(i) before each general election to the House of the People or to the Legislative Assembly of a State; and*

*(ii) before each bye-election to fill a casual vacancy in a seat allotted to the constituency; and*

*(b) shall be revised in any year in the prescribed manner by reference to the qualifying date if such revision has been directed by the Election Commission: Provided that if the electoral roll is not revised as aforesaid, the validity or continued operation of the said electoral roll shall not thereby be affected.*





*(3) Notwithstanding anything contained in sub-section (2), the Election Commission may at any time, for reasons to be recorded, direct a special revision of the electoral roll for any constituency or part of a constituency in such manner as it may think fit:*

*Provided that subject to the other provisions of this Act, the electoral roll for the constituency, as in force at the time of the issue of any such direction, shall continue to be in force until the completion of the special revision so directed.*

## **22. Correction of entries in electoral rolls.**

*If the electoral registration officer for a constituency, on application made to him or on his own motion, is satisfied after such inquiry as he thinks fit, that any entry in the electoral roll of the constituency—*

*(a) is erroneous or defective in any particular,*

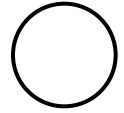
*(b) should be transposed to another place in the roll on the ground that the person concerned has changed his place of ordinary residence within the constituency, or*

*(c) should be deleted on the ground that the person concerned is dead or has ceased to be ordinarily resident in the constituency or is otherwise not entitled to be registered in that roll,*

*the electoral registration officer shall, subject to such general or special directions, if any, as may be given by the Election Commission in this behalf, amend, transpose or delete the entry after proper verification of facts in such manner as may be prescribed:*

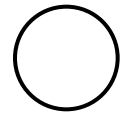
*Provided that before taking any action on any ground under clause (a) or clause (b) or any action under clause (c) on the ground that the person concerned has ceased to be ordinarily.”*

- d) **BECAUSE** as per Section 151A of the Representation of People Act, 1951 the bye-election for the assembly seat of Sanwer Constituency is required to be conducted within 6



months or on such extended date as may be determined by the Election Commission of India in consultation with the Central Government. The period of six months has already been elapsed on 14.09.2020 and the elections are likely to be held before 29<sup>th</sup> November, 2020.

- e) **BECAUSE** the Respondent no. 1's Manual on Electoral Rolls in Chapter 10: Pre-Revision Activities categorically stipulates that updation of Electoral Rolls is a continuous process and claims/ objection for inclusion/ deletion of names can be lodged at any time point of time. Copy of Chapter 10 of the Manual on Electoral Rolls is annexed hereto and marked as **Annexure P/4**.
- f) **BECAUSE** Section 17 of the Representation of People Act, 1950 mandates that an elector shall not be registered in more than one constituency. Extract of Section 17 is reproduced hereunder :-
- “17. No person to be registered in more than one constituency.—No person shall be entitled to be registered in the electoral roll for more than one constituency”*
- g) **BECAUSE** Rule 10 of the Registration of Electors Rules, 1960 requires publication of Draft Electoral Roll in Form 5 as soon as it ready. Till date, the Draft Electoral Roll for the constituency of Sanwer District has not been published by the Respondents. Rule 12 of the Registration of Electors



Rules, 1960 provides a period of 30 days or such shorter period of not less than 15 days as may be fixed by Respondent no. 1 for raising objection of the Draft Electoral Roll. Extract of Rule 10 and 12 are reproduced hereunder :-

***“10. Publication of roll in draft.—As soon as the roll for a constituency is ready, the registration officer shall publish it in draft by making a copy thereof available for inspection and displaying a notice in Form 5—***

*(a) at his office, if it is within the constituency, and*

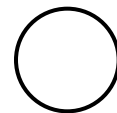
*(b) at such place in the constituency as may be specified by him for the purpose, if his office is outside the constituency ; or in the official website of the Chief Electoral Officer of the concerned State:*

*Provided that where such draft contains names of overseas electors, the copies of such rolls shall also be published in the Electronic Gazette or in the official website of the Chief Electoral Officer of the concerned State.*

***12. Period for lodging claims and objections.—Every claim for the inclusion of a name in the roll and every objection to an entry therein shall be lodged within a period of thirty days from the date of publication of the roll in draft under rule 10, or such shorter period of not less than fifteen days as may be fixed by the Election Commission in this behalf:***

*Provided that the Election Commission may, by notification in the Official Gazette, extend the period in respect of the constituency as a whole or in respect of any part thereof.”*

- h) **BECAUSE** Section 23 of the Representation of People Act, 1950 mandates that no correction in the Electoral Roll shall



take place after the last of making nomination. Extract of Section 23 is reproduced hereunder :-

***“23. Inclusion of names in electoral rolls. -***

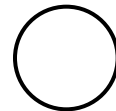
*(1) Any person whose name is not included in the electoral roll of a constituency may apply to the electoral registration officer for the inclusion of his name in that roll.*

*(2) The electoral registration officer shall, if satisfied that the applicant is entitled to be registered in the electoral roll, direct his name to be included therein after proper verification of facts in such manner as may be prescribed*

*Provided that if the applicant is registered in the electoral roll of any other constituency, the electoral registration officer shall inform the electoral registration officer of that other constituency and that officer shall, on receipt of the information, strike off the applicant's name from that roll after proper verification of facts in such manner as may be prescribed.*

*(3) No amendment, transposition or deletion of any entry shall be made under section 22 and no direction for the inclusion of a name in the electoral roll of a constituency shall be given under this section, after the last date for making nominations for an election in that constituency or in the parliamentary constituency within which that constituency is comprised and before the completion of that election.”*

- i) **BECAUSE** the Section 30 of the Representation of People Act, 1951 mandates that the poll shall be conducted on a date not earlier than 14 days after the last date of withdrawal of candidature. Last date of withdrawal of candidature is on the 2<sup>nd</sup> day from the last of filing of nominations. Extract of



Section 30 of the Representation of Pople Act, 1951 is reproduced hereunder :-

*“30. Appointment of dates for nominations, etc. - As soon as the notification calling upon a constituency to elect a member or members is issued, the Election Commission shall, by notification in the Official Gazette, appoint—*

*(a) the last date for making nominations, which shall be the seventh day after the date of publication of the first mentioned notification or, if that day is a public holiday, the next succeeding day which is not a public holiday;*

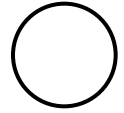
*(b) the date for the scrutiny of nominations, which shall be the day immediately following the last date for making nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday*

*(c) the last date for the withdrawal of candidatures, which shall be the second day after the date for the scrutiny of nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;*

*(d) the date or dates on which a poll shall, if necessary, be taken which or the first of which shall be a date not earlier than the fourteenth day after the last date for the withdrawal of candidatures; and*

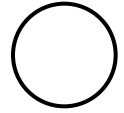
*(e) the date before which the election shall be completed.”*

- j) **BECAUSE** a conjoint reading of the aforesaid provision would reveal that draft electoral roll shall be published at least 31 days to 46 days prior to the date of polling (depending on the period provided to raised objection under Rule 12).



- k) **BECAUSE** the Petitioners have already raised objection w.r.t. names of electors who are not “ordinary residents” or have entries in more than one constituency or are dead or are registered in more than one polling station or are not available at the address mentioned in the last final electoral roll.
- l) **BECAUSE** despite letter dated 11.08.2020 no action has been taken by the Respondents, for the reasons best known to them. This lackadaisical act of respondent is likely to affect the election results of Sanwer Constituency.
- m) **BECAUSE** defective electoral roll cannot be a ground to set-aside an election of a returned candidate and therefore no election petition can be filed on the ground of defective electoral roll, and therefore, the Petitioners have approached this Hon’ble Court under Article 226 of the Constitution of India. Reliance is placed upon the judgment delivered by the Hon’ble Supreme Court in the case of *Shyamdeo Pd. Singh v. Nawal Kishore Yadav (2000) 8 SCC 46* wherein the Hon’ble Court has categorically held as under :-

*“26. To sum up we are of the opinion that inclusion of person or persons in the electoral roll by an authority empowered in law to prepare the electoral rolls, though they were not qualified to be so enrolled, cannot be a ground for setting aside an election of a returned candidate under sub-clause (iii) or (iv) of clause (d) of sub-section (1) of Section 100 of the Representation of the People Act, 1951. A person*



*enrolled in the electoral list by an authority empowered by law to prepare an electoral roll or to include a name therein is entitled to cast a vote unless disqualified under sub-sections (2) to (5) of Section 62 of the Representation of the People Act, 1951. A person enrolled in the electoral roll cannot be excluded from exercising his right to cast vote on the ground that he did not satisfy the eligibility requirement as laid down in Section 19 or 27(5) of the Representation of the People Act, 1950.”*

- n) **BECAUSE** as per section 13A and 13AA of the Representation of People Act, 1950 it is the statutory duty of the Respondent no. 2 and 3 to ensure and to supervise the preparation, revision and correction of all electoral rolls. Extract of Section 13A and 13AA of the Act of 1950 is reproduced hereunder:-

***“13A. Chief electoral officers.—***

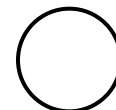
*(1) There shall be for each State a chief electoral officer who shall be such officer of Government as the Election Commission may, in consultation with that Government, designate or nominate in this behalf.*

***(2) Subject to the superintendence, direction and control of the Election Commission, the chief electoral officer shall supervise the preparation, revision and correction of all electoral rolls in the State under this Act.***

***13AA. District election officers.—***

*(1) For each district in a State, the Election Commission shall, in consultation with the Government of the State, designate or nominate a district election officer who shall be an officer of Government*





*Provided that the Election Commission may designate or nominate more than one such officer for a district if the Election Commission is satisfied that the functions of the office cannot be performed satisfactorily by one officer.*

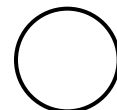
*(2) Where more than one district election officer are designated or nominated for a district under the proviso to sub-section (1), the Election Commission shall in the order designating or nominating the district election officers also specify the area in respect of which each such officer shall exercise jurisdiction.*

*(3) Subject to the superintendence, direction and control of the chief electoral officer, the district election officer shall coordinate and supervise all work in the district or in the area within his jurisdiction in connection with the preparation and revision of the electoral rolls for all parliamentary, assembly and council constituencies within the district.*

*(4) The district election officer shall also perform such other functions as may be entrusted to him by the Election Commission and the chief electoral officer”*

- o) **BECAUSE** only an ordinary resident is entitled to vote in an election. If any person - other than the ordinary resident of that area - is allowed to vote, the same is likely to not only affect the outcome of the Elections but also affect the democratic setup and the constitutionality of the elections. Therefore, the names of the voters who are not entitled to vote in the constituency must be deleted at the earliest.
- p) **BECAUSE** despite direction of conducting necessary action within a period one week, no investigation or action has been





passed by the Concerned officials for removal of the names of ineligible voters.

- q) That, the Petitioner craves for liberty to raise other grounds during the course of arguments.

**7. Reliefs Prayed for :-**

In light of the aforesaid facts, this Hon'ble Court may be pleased to issue the following directions, or orders, or writ in the nature of Mandamus, or any other writ be issued:-

- a) Direct the Respondents to delete the name of ineligible voters from the Electoral Roll of Sanwer Constituency.
- b) Direct Respondents to initiate the Election Process in accordance with the Statutory provisions and publish the Draft Electoral Roll of Sanwer Constituency after deletion of the names of ineligible voters, so that the Statutory Right of the Petitioners is protected.
- c) Any other relief in favour of the Petitioner which this Hon'ble Court may deem fit.

**8. Interim order/ writ, if prayed for:- NIL**

**9. Document relied upon not in possession of the Petitioner:-Nil.**

**10. Caveat :-No Notice of lodging Caveat by the Opposite Party is received.**

**INDORE**

**SUBMITTED BY**

**DATED**

**ADVOCATE FOR THE PETITIONER  
RAVINDRA SINGH CHHABRA**