

**IN THE HON'BLE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)
PUBLIC INTEREST LITIGATION**

WRIT PETITION (CIVIL) NO. _____ OF 2020

IN THE MATTER OF: -

Dr. Jagannath Shamrao Patil

Petitioner

Versus

Union of India & Others

Respondents

With

I.A. NO OF 2020

An Application for exemption from filing Affidavit and Vakalatnama

**PAPER BOOK
(FOR KINDLY SEE INSIDE)**

DR.R.R.DESHPANDE & ASSOCIATES

Advocate for the petitioner.

SYNOPSIS AND LIST OF DATES

The present Writ Petition civil in the nature of Public Interest Litigation is filed under Article 32 of the Constitution of India by the Petitioner to enforce the fundamental rights which is enshrined under Article 14. Vide this writ petition the petitioner is seeking the issuance of the writ in the form of the mandamus as against the respondents from framing and finalizing the norms or criteria for the purpose of the nomination of the eligible and deserving person on the Maharashtra Legislative Council as members thereof, in consonance with the provision of Art.171 of the Constitution of India.

The clause 5 of the Art.171 of the Constitution of India, with the help of use of the word " Shall " has given mandate to the Respondent no.3 that the nomination shall consist ' **Persons having special knowledge or practical experience in respect of such matters as the following, namely: Literature, science, art, co-operative movement and social service**' and the petitioner has limited grievance that there are no any norms yet framed or finalized by the respondents for the purpose of the making the nominations from the above five prescribed categories.

It is most humbly submitted that the spirit or soul of the said provision indicates that in the policy matters these persons may enlighten the other members with the help of their special knowledge and it will be in the interest of the state.

It is most humbly submitted that the modus operandi followed for the nomination of these vacant posts is altogether different than anticipated and contemplated in the Constitution of India

and it is a matter of record that these appointments to said seats/posts have been always made under the political considerations which deprives the class of most eligible and deserving citizens from getting nominated to such seats.

NIL The Petitioner is a citizen of India, who is holding the educational qualification of M.Com, B.Ed.,M.J.,Ph .D., LL,B and presently working as Head Master in Shamrao Patil High School, Latur from the State of Maharashtra. He is the Ex-Member of Maharashtra State Secondary & Higher Secondary Educational State Board, Latur & Pune, Ex Senate Member (Governor Nominee) of S.R.T. Marathwada University, Nanded as well as Ex Senate Member Dr. Babasaheb Ambedkar Marathwada University, Aurangabad. At the same time he is the Chief Editor of Daily "Aaple Man".

30/10/2020 The petitioner had approached to the respondent no.3 and had sent a representation as on 30/10/2020 through the mail and same has been duly received by the Respondent no.3 however till this moment there is no any response received from the Respondent no.3 whereas on the other hand there is every possibility of the immediate nominations of the persons as members on the Maharashtra Legislative Council.

2/11/2020 Hence this present Writ Petition Civil (PIL)

**IN THE HON'BLE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)
PUBLIC INTEREST LITIGATION
WRIT PETITION (CIVIL) NO. ____ OF 2020**

(A Petition in the nature of Public Interest Litigation filed under Article 32 of the Constitution of India praying for a writ of Mandamus or any other appropriate writs seeking issuance of specific Directions to the respondents for framing and finalizing the norms or criteria for the purpose of the nomination of the eligible and deserving persons as members on the Maharashtra Legislative Council, in consonance with the provision of Art.171 (5) of the Constitution of India.)

IN THE MATTER OF:

Dr. Jagannath Shamrao Patil

Petitioner

VERSUS

1. Union of India,
Through the Cabinet Secretary,
Central Secretariat, New Delhi,
Delhi 110001.
- 2.The State of Maharashtra
Through its Chief Secretary,
Mantralaya building,Fort, Mumbai.
Maharashtra.
3. The Honourable Governor,
State of Maharashtra
Raj Bhavan, Walkehar Road,

Malabar Hill. Mumbai – 400 035

Maharashtra

Respondents

.....All Contesting

**WRIT PETITION IN THE NATURE OF PUBLIC INTEREST LITIGATION
FILED UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA PRAYING
FOR A WRIT OF MANDAMUS OR ANY OTHER APPROPRIATE WRITS
SEEKING ISSUANCE OF SPECIFIC DIRECTIONS TO THE RESPONDENTS
FOR FRAMING AND FINALIZING THE NORMS OR CRITERIA FOR THE
PURPOSE OF THE NOMINATION OF THE ELIGIBLE AND DESERVING
PERSONS AS MEMBERS ON THE MAHARASHTRA LEGISLATIVE COUNCIL,
IN CONSONANCE WITH THE PROVISION OF ART.171 (5) OF THE
CONSTITUTION OF INDIA.**

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA AND

HIS COMPANION JUSTICES

OF THE SUPREME COURT OF INDIA.

THE WRIT PETITION OF

THE PETITIONER ABOVE

NAMED

MOST RESPECTFULLY SHOWETH

1. The present Writ Petition civil in the nature of Public Interest Litigation is filed under Article 32 of the Constitution of India by the Petitioner to enforce the fundamental rights which is enshrined under Article 14. Vide this writ petition the petitioner is seeking the issuance of the writ in the form of the mandamus as against the respondents from framing and finalizing the norms or criteria for the purpose of the nomination of the eligible and deserving person on the Maharashtra Legislative Council as

2.

members thereof , in as consonance with the provision of Art.171 of the Constitution of India.

Due to lack of specific Norms or criteria as referred above the several eligible and deserving Personalities are deprived from consideration of names for the purpose of their nominations as members of Maharashtra Legislative Council and thus fundamental right contemplated under Article 14 is being violated.

3. The Petitioner is a citizen of India, who is holding the

The Petitioner does not have any personal interest or any personal gain or private motive or any other oblique reason in filing this Writ Petition in Public Interest. 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. No similar petition has been filed before this court and any High court by the petitioner. The petitioner by way of this petition want to raise an important issue pertaining to the nomination of the members of the Maharashtra Legislative Council by the Honourable Governor of the concern state within the four corners of the provisions of the Constitution of India and only with this sole purpose this petition is being filed.

The petitioner, before filing this petition had approached to the respondent no.3 and had sent a representation as on 30/10/2020 through the mail and same has been duly received by the

Respondent no.3 however till this moment there is no any response received from the Respondent no.3 whereas on the other hand there is every possibility of the immediate nominations of the persons as members on the Maharashtra Legislative Council and so this writ petition has been filed urgently.

True copy of the Representation dated 30/10/2020 sent by the Petitioner to the Respondent no. 3 is enclosed herewith as Annexure P-1 (Page No. to)

3. The Respondent No. 1 is the Union of India, represented by the Cabinet Secretary whereas the the Respondent No.2 is the state of Maharashtra represented through the Chief Secretary and the Respondent no.3 is the Honourbale Governor of the State of Maharashtra.

4. The petitioner is well acquainted with the legal aspect of the matter that the Respondent no.3 has immunity and his actions are not subject to any challenge before the Court of Law still then it is made party being the petitioner is not challenging its any of the action but on the contrary vide this petition intends to aid the said authority in complying the provisions of the Constitution in its real spirit. So in the humble opinion of the petitioner the bar contemplated U/A 361(1) of the Constitution of India will not come in the way.

FACTS OF THE CASE;

6. It is a fact that there are 12 vacancies in the Maharashtra Legislative Councils and same are to be fulfilled by the Respondent no.3 in its discretion in consonance with the

provisions of Art.171 of the Constitution of India. Art. 171 is reproduced below for the ready reference of this Honourable court.

171. Composition of the Legislative Councils;

(1) The total number of members in the Legislative Council of a State having such a Council shall not exceed one third of the total number of members in the Legislative Assembly of that State: Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty

(2) Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3)

(3) Of the total number of members of the Legislative council of a State

(a) as nearly as may be, one third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;

(b) as nearly as may be, one twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university;

(c) as nearly as may be, one twelfth shall be elected by electorates consisting of persons who have been for at least three

years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;

(d) as nearly as may be, one third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;

(e) the remainder shall be nominated by the Governor in accordance with the provisions of clause (5)

(4) The members to be elected under sub clauses (a), (b) and (c) of clause (3) shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament, and the election under the said sub clauses and under sub clause (d) of the said clause shall be held in accordance with the system of proportional representation by means of the single transferable vote

(5) The members to be nominated by the Governor under sub clause (e) of clause (3) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely: Literature, science, art, co operative movement and social service.

7. As such the clause 5 of the Art.171 of the Constitution of India , with the help of use of the word " Shall " has given mandate to the Respondent no.3 that the nomination shall consist ' **Persons having special knowledge or practical experience in respect of such matters as the following, namely: Literature, science, art, co operative movement and social service**' and the petitioner is his limited grievance that

there are no any orms yet framed or finalized by the respondents for the purpose of the making the nominations from the above five prescribed categories and thus the political parties who are in governance are taking the undue advantage of this loophole and are making the recommendations of the names of the persons who are not from the prescribed category but who are either powerful in politics or to whom the political parties want to make powerful by way of such nomination.

8. There is no any mechanism made till date for the purpose of collection of the names for the purpose of the nomination as well as there is no any committee constituted for the said purpose and so basically the names of the most eligible and deserving persons from the state of Maharashtra are not coming before the Respondent no.3 and as such there is no any process of short listing and the consequent selection for the nomination. In view of this lacuna the very purpose of the constitutional provision is going to be frustrated.

9. The contribution of the experts from the five different fields i.e Literature, Science, Art, Co-operative movement and social service, who are having the special knowledge or practical experience is anticipated in the Constitution and there is no any process in existence at present to verify that the persons who are recommended or will be recommended by the Respondent no.2 do possess such special knowledge or the practical experience of the concern subject and if yes what are its better details. It is most humbly submitted that the spirit or soul of the said provision indicates that in the policy matters these persons may

enlighten the other members with the help of their special knowledge and it will be in the interest of the state.

10. It is most humbly submitted that the modus operandi followed for the nomination of these vacant posts is altogether different than anticipated and contemplated in the Constitution of India and it is a matter of record that these appointments to said seats/posts have been always made under the political considerations which deprives the class of most eligible and deserving citizens from getting nominated to such seats. Therefore it is necessary to cease the traditional practices followed by the political parties in nomination of members of legislative and such appointments should be made by way of the absolute discretion of the Respondent no.3 based on certain criteria and /or norms and absolutely without the slightest intervention of political parties in nomination of these seats as prescribed in the Constitution of India.

11. The State of Maharashtra has been witnessing a lot of controversy regarding the position of office of Governor. Pertinently, Article 163 of the Constitution of India makes the Governor sole judge in matters in which he is required to act in his discretion.

12. The Constitutional provisions explicitly assign the discretionary powers to the Governor of any state in appointment of members of legislative councils. Article 171(5) of the Constitution clearly incorporates the qualification criteria for the members to be nominated by the Governor by which it states that the members to be nominated by the Governor shall consist of persons having the special knowledge or practical

experience in respect of matters namely “Literature, science, art, co-operative movement and social service”

13. The difference between Article 163 and 171(5) is that Article 163 of the Constitution speaks about any functions by the Constitution to be exercised by the Governor of any state on his discretion but on the condition of aid and advice of Ministers, whereas, Article 171(5) clearly and solely empowers the Governor to use his discretion in nominating the members of Legislative council. Therefore, it can be assumed and predominantly claimed that considering the present situation, it is the office of Governor who shall be exclusively exercising the nomination of the members as subjected to the eligibility and qualification criteria prescribed under 173(5) the Constitution of India.

14. This Honourable Court in the case of R.J Kapoor v. State of Punjab has held that, “weight of its authority to the point of view that the Governor is the nominal head of the Executive and that his position is the same as that of the King in England.” Similarly, in the very recent case of Shivraj Singh Chouhan & Ors. v. Speaker Madhya Pradesh Legislative Assembly, the Hon’ble Supreme Court of India while deciding the Constitutional role of the Governor made an observation that “in envisioning the role of the Governor as a constitutional statesman, care must be taken in the course of interpretation to ensure that the balance of power which was envisaged by the Constitution between the executive and the legislature is maintained by the gubernatorial office.”

15. It is very specifically submitted that if the recommendations made by the council of Ministers for the purpose of nomination under Article 171(5) of the Constitution of India are allowed to be considered as sole criteria then same will amount to amending the provision of Article 171(5) of the Constitution of India and carving out a new exception for the nominations under Article 171(5) of the Constitution of India.

There is a risk that the Respondent no.3 will lose its discretionary power and the same will go in the hands of the political parties which the Constitution of India does not allow and contemplate and so kind intervention of this Honourable Court is anticipated in this matter.

16. That, being the nominations are to be made by way of discretion and vacancies are to be filled strictly in accordance with Article 171(5) of Constitution without being influenced and guided by the other factors i.e. recommendations by the council of Ministers, the council of ministers has no role in the process of nomination but still then with the help of the provision of Art. 163 of the Constitution of India the council of ministers is trying to interfere and so only it is necessary to restrain it from doing the same.

17. Respondent no.3, being empowered under Article 163 and 171(5) of Constitution will ensure that there is no Constitutional failure in the State and the nominations under 171(5) will be made adhering strictly to the Constitutional provisions and will uphold the Constitution of India.

Art. 163 of the Constitution of India is reproduced below for the ready reference of this Honourable court.

Article 163 in The Constitution Of India 1949;

163. Council of Ministers to aid and advise Governor

(1) There shall be a council of Ministers with the chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this constitution required to exercise his functions or any of them in his discretion

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court

18. That, the Petitioner has not filed any other Petition before this Hon'ble Court or before any other Court seeking the same relief.

PRAYER;

In the said premises it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

a. Issue writ of mandamus / directions to the Respondents to act in consonance with the mandatory provision of the Art.171 (5) of the Constitution of India for the purpose of the

nominations of 12 persons as members of the Maharashtra Legislative Council and frame the norms and / or the specific criteria for the purpose of such nomination.

b. Issue writ of mandamus / directions to the Respondents to defer the nominations till the specific norms or the criteria as prayed above is framed and approved by the office of the Respondent no.3 or in the alternative it be directed to make such nominations under its sole discretion without any influence of the recommendation of the minister of councils of the Respondent no.2 .

c. Issue writ of mandamus / directions to the Respondent no.3 to make the nomination of the said post only in light of qualifications as prescribed under 171(5) of Constitution of India

d. During the pendency and final hearing of this writ petition the respondent no.2 may kindly be directed to not to intervene in the process of nomination so as to avoid the practice of nomination under political considerations.

e. grant any other appropriate relief which this Hon'ble Court may deem fit in the facts and circumstances of the case.

FOR THIS ACT OF KINDNESS THE PETITIONER/APPLICANT
HEREIN AS IN DUTY BOUND SHALL EVER PRAY.

FILED ON – 2/11/2020

DR. R. R. Deshpande

DR.R.R.DESHPANDE & ASSOCIATES

Advocate on record for the petitioner.