

**IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)
WRIT PETITION (CIVIL) NO. _____ OF 2019**

[UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA]

BETWEEN:

PARESHBHAI DHANANI

...PETITIONER

VERSUS

ELECTION COMMISSION OF INDIA

...RESPONDENT

WITH

I.A. NO. _____ /2019

An application for stay/direction

PAPER BOOK

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ADVOCATE FOR THE PETITIONER: ACE LEGAL

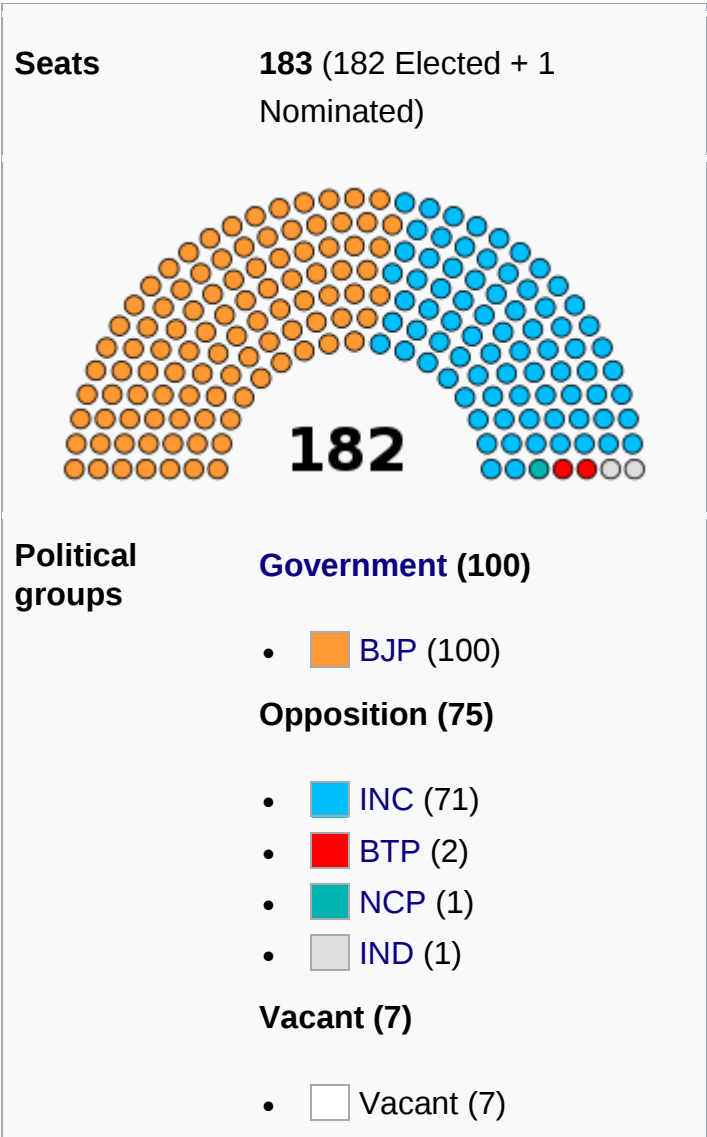
SYNOPSIS

1. The Petitioner herein is Leader of Opposition and Member of Legislative Assembly from Amreli Constituency in Gujarat belonging to the Indian National Congress (“**INC**”) Party, is constrained to approach this Hon’ble Court under Article 32 of the Constitution *inter alia* seeking appropriate reliefs directing the Respondent-Election Commission of India (“**ECI**”) to expeditiously hold simultaneous elections against the vacancies which were created in the Rajaya Sabha due to election of Shri Amitbhai Anil Chandra Shah and Shrimati Smriti Zubin Irani to 17th Lok Sabha in accordance with the provisions of the Representation of People’s Act 1951 (“**RP Act**”) viz. sub-section (2) of Section 69 of the RP Act read with Section 67A and sub-section (4) of Section 68 of RP Act.
2. The lack of appropriate decision by the Respondent despite several representations and exhortations by the Petitioner demonstrates abdication, indecision and a complete absence of justice, in ensuring a level playing field and ensuring the essence of minority representation through proportional representation to elect members to the Council of States for the State of Gujarat.
3. Further, the arbitrary action by the Respondent/ECI in issuing the Press Note No. ECI/PN/65/2019 dated 15th June 2019 thereby terming statutory vacancy so arisen qua two Rajaya Sabha seats in the State of Gujarat under sub-section (2) of Section 69 of the RP Act, 1951 read with Section 67A and sub-section (4) of

Section 68 RP Act as ‘Casual Vacany’ is in complete and direct violation of the provisions of RP Act.

SEPARATE ELECTIONS FOR 2 RAJYA SABHA SEATS IN THE STATE OF GUJARAT FALLING STATUTORILY VACANT WOULD UPSET THE SCHEME OF PROPORTIONAL REPRESENTATION AS MANDATED UNDER THE RP ACT.

4. The Petitioner submits that the current Legislative assembly structure in the State of Gujarat is as under –



5. That in view of the above structure of seats the Petitioner submits Article 80(4) stipulates that the representatives of each State in the Council of States shall be elected by the elected members of the Legislative Assembly of the State in accordance with the

system of proportional representation by means of the single transferable vote. Further, the system of proportional representation by means of the single transferable voting is based on first preference vote, original votes and surplus. Further, there is a provision of “quota” and any vote in excess of quota i.e. surplus votes, are transferred to the next candidate, in order of preference. It is an established principle of law that the object of introducing proportional representation in these elections is to give each minority group an effective share as per its strength in the present case INC, each elector has only one vote in the sense that it will be capable of electing one candidate only. It is an established principle of law that the object of introducing proportional representation in these elections is to give each minority group an effective share as per its strength.

6. The Petitioner thus submits that the exhaustive and detailed procedure in respect of the elections to Rajya Sabha recognized by the Supreme Court itself, would be rendered otiose if the elections for each vacancy were to be conducted separately. The conduct of election for each vacancy separately would only lead to one result i.e. the victory of the party which commands simple majority in the State Legislature. This would turn the very objective of proportional representation i.e. to give each minority group an effective share as per its strength, on its head.

**THE VACANCIES CREATED DUE TO ELECTION TO LOK SABHA ARE
STATUTORY VANCANCIES UNDER SECTION 69 OF THE RP ACT AND NOT
CASUAL VACANCIES**

7. The Petitioner herein submits that Shri Amitbhai Anil Chandra Shah and Shrimati Smriti Zubin Irani were elected to Rajya Sabha from Gujarat State Assembly on 08.08.2017. That subsequently, Shri Amitbhai Anil Chandra Shah got elected to 17th Lok Sabha from Gandhinagar Constituency on 23.05.2019 and Shrimati Smriti Zubin Irani got elected to 17th Lok Sabha from Amethi Constituency on 24.05.2019.
8. It is submitted that Section 68 of the RP Act provides for vacation of seats when elected to both Houses of Parliament. Section 69 of the RP Act provides for vacation of seats by persons already members of one House on election to other House of Parliament. Sub Section (2) of Section 69 stipulates that, if a person who is already a member of the Council of States and has taken his seat in such Council is chosen a member of the House of the People, his seat in the Council of States shall on the date on which he is so chosen, become vacant.
9. It is submitted that the vacation of seats in the case where a person gets elected to both the Houses of Parliament is a vacancy arising out of operation of Section 68 read with Section 69 of the RP Act, therefore, such vacancies are statutory vacancies.
10. It is also imperative to submit that Section 147 i.e. Part IX of the RP Act provides for casual vacancies in the Council of States. Sub Section (1) of Section 147 provides that when before the expiration of the term of office of a member elected to the Council of States, his seat becomes vacant or is declared vacant or his election to the Council of States is declared void, the Election

Commission shall by a notification in the Gazette of India call upon the elected members of the Legislative Assembly or the members of the electoral college concerned, as the case may be, to elect a person for the purpose of filling the vacancy so caused before such date as may be specified in the notification and provisions of this Act and of the rules and orders made thereunder shall apply, as far as may be, in relation to the election of a member to fill such vacancy. It is therefore submitted that the aforesaid vacancies created on account of operation Section 68 read with Section 69 are not a casual vacancy and therefore not covered under Section 147.

RAJAYA SABHA VACANCIES IN THE STATE OF GUJARAT FALL UNDER THE SAME CATEGORY AS MANDATED UNDER COUNCIL OF STATES (TERM OF OFFICE OF MEMBERS) ORDER, 1952, FOR WHICH THE ELECTIONS HAVE TO BE HELD SIMULTANEOUSLY

A. Rajya Sabha Membership divided into 3 categories to fulfill the constitutional mandate of rotational membership of 1/3rd members every two years

11. It is submitted that Clause (1) of Article 83 of the Constitution which provides for the Duration of Houses of Parliament, which states that The Council of States shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law. Further, Section 151A provides an outer limit of 6 months to conduct a bye-election for filling any vacancy

arising before the expiration of the term of office. Further, Section 151A provides an outer limit of 6 months to conduct a bye-election for filling any vacancy arising before the expiration of the term of office. Section 154 provides for the terms of office of members of the Council of States. In terms of Section 154(2), the President issued an order namely, ***Council of States (Term of Office of Members) Order, 1952***, to curtail the terms of office of some members of the initial council of states so that 1/3rd of its members retired every second year.

12. Therefore it is submitted that the entire scheme of the statutory law as well as the 1952 Order seems to sub-serve the requirement of Article 83 i.e. to ensure that as nearly as possible one-third of the members of the Rajya Sabha retire as soon as may be on the expiration of every second year.

B. *The reliance placed on A.K. Walia v. Union of India by the Respondent/ ECI is completely misplaced*

13. It is submitted that the Election Commission vide Press Note No. ECI/PN/65/2019 dated 15.06.2019 clarified that *“the vacancies for Bye-elections to all Houses, including the Rajya Sabha, are considered as separate vacancies and separate notifications are issued and separate poll is taken for each of the vacancies although the programme schedule for the bye-elections may be common. This is in conformity with the provisions of Section 147 to 151 of the Representation of the People Act, 1951, and has been the consistent practice of the Commission in such cases.*

Holding of separate elections has been upheld by the Hon'ble Delhi High Court in Civil W.P. No. 132 of 1994 (A.K. Walia Vs Union of India & Others)..." It is submitted that in the aforesaid case, the Delhi High Court had upheld the holding of separate elections for the 3 seats allotted to Delhi on the singular premise that each of the three seats were a part of one of the three categories specified in the Council of States, (Term of Office of Members) Order, 1952. The categorization made in the 1952 order, which divided the membership of the Rajya Sabha into three categories was to give effect to the stipulation of Article 83(1) of retirement of 1/3rd members every two years.

14. It is submitted that in the instant case, since the terms of the two vacancies are to get over on the same date i.e.18.08.2023 and not in a difference of 2 years, therefore falling under the same category. It is further submitted that, separate elections should not be held merely for the reason that the date of vacancy of seats were different. Furthermore, Section 69 (2) of the RP Act stipulates that if a member of the Rajya Sabha gets elected to the Lok Sabha, then the Rajya Sabha seat falls vacant on the date on which he/she gets elected to the Lok Sabha. It is therefore submitted that in terms of Section 69(2), both the seats have fallen vacant on 23.05.2019 itself and since the remainder of the term for both the seats is the same, the seats form a part of the same category and therefore, the elections to both the said seats ought to be common and not held by way of separate elections.

13. It is submitted that the Congress Legislative Party are minority in the Gujarat Legislative Assembly though having the requisite numbers in the Assembly to proportionately elect member to Council of States. The BJP which is running the Government at the Centre, in order to somehow have its party rule the Rajaya Sabha despite not having complete proportion to elect both seats to Council of States, is trying to use the Respondents's Office to somehow impede the mandate under RP Act to elect members to Council of States. It is submitted that such manoeuvring by the BJP and the Respondent to suit their political agenda actually amounts to a death knell to the democracy which is a basic feature of our Constitution.

It is submitted that the powers exercised for holding spate elections on statutory vacancies by the Respondent are not beyond the pale of judicial review and any illegal and arbitrary decision taken against the constitutional provisions and conventions is liable to be interfered with and struck down by this Hon'ble Court in exercise of its jurisdiction as a *sentinel on the qui vive* of the Constitution. It is submitted that discretionary powers under the Constitution conferred on the Respondent are not the *ipsi dixit* though have to be exercised within the constitutional norms and conventions guiding the exercise of such discretion.

It is submitted that the impugned decision is solely directed against arbitrary, malafide and malicious act of the Respondent which issued the Press Note dated 15.06.2019 for conducting the

separate Bye Elections is exfacie unconstitutional is liable to be interfered with and set aside. In this background, the present Writ Petition is being filed.

The Petitioner most respectfully prays that this Hon'ble Court may be pleased to entertain and allow the instant writ petition at its earliest as any further delay would render the instant petition infructuous in view of the limited time span left for the elections to the Council of State.

Hence the present Writ Petition.

LIST OF DATES

DATE	PARTICULARS
30.09.1952	The President Promulgated the Council of States (Term of Office of Members) Order, 1952
21.08.1984	The Delhi high Court single bench passed a Judgement in the matter of Surender Pal Ratawal vs. Shamim Ahmed.
14.01.1994	The Delhi High Court in the Matter of AK Walia vs. UOI passed a Judgement dealing with the vacancies to be filled for the Council of States. It is imperative to state that the said Judgement of AK Walia relied upon in the Surender Pal Ratawal vs. Shamim Ahmed. It is noteworthy to mention that SLP was also preferred against the Ratawal Judgement, however the said SLP was dismissed and the question of Law was left open.
03.12.2010	This Hon'ble Court in the Matter of ECI vs. Telangana Rashtra Samiti & Anr. (2011) 1 SCC 370 passed a Judgement contemplating vacancies to be filled in Council of States.
14.07.2017	Mr. Amit Shah and Mrs. Smriti Irani were elected members of Rajya Sabha from Gujarat Legislative Assembly.

23.05.2019	Mr. Amit Shah elected to Lok Sabha from Gandhinagar Parliamentary Constituency.
24.05.2019	Mrs. Smriti Irani elected to Lok Sabha from Amethi Parliamentary Constituency.
28.05.2019	That Rajya Sabha vide Parliamentary Bulletin dated 28.05.2019 declared Mr. Amit Shah's Rajya Sabha membership have ceased from the date of his election as Member of the 17th Lok Sabha, i.e., the 23.05.2019.
29.05.2019	Rajya sabha vide Parliamentary Bulletin dated 28.05.2019 declared Mrs. Smriti Irani's Rajya Sabha membership have ceased from the date of her election as Member of the 17th Lok Sabha, i.e., the 24.05.2019.
30.05.2019	That the Indian National Congress vide representation dated 30.05.2019 had requested the Respondent No. 1 to hold the elections for the two vacated seats in Rajya Sabha Simultaneously as there was a strong apprehension that separate elections may be held by the Respondent No.1 for the two vacant seats in Rajya Sabha and such approach would not only be unfair and against the procedure established over the years but would also be arbitrary and unprecedented.
02.06.2019	The petitioner also made a representation to the

Respondent seeking declaration of vacant seats Smt
Smruti Zubin Irani and Shri Amit Anil Chandra Shah

13.06.2019	That another representation/memorandum reiterating the request/s under representation dated 30.05.2019 was submitted by the Indian National Congress to the Respondent No. 1.
15.06.2019	That while completely ignoring the representations submitted by the Indian National Congress, the Respondent vide Press Note No. ECI/PN/65/2019 published the schedule for bye-elections for filling six casual vacancies in the Council of States from Bihar, Gujarat and Odisha whereby date of polls has been declared to be 05.07.2019 for all six seats. However, the Respondent No. 1 erroneously clarified that the vacancies for bye-polls are considered separate vacancies and separate vacancies are issued and separate polls are taken for each of the vacancies, though programme schedule may be common for the same.
17.06.2019	Hence, the present Writ Petition.

**IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)
WRIT PETITION (CIVIL) NO. _____ OF 2019**

[UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA]

BETWEEN:

**PARESH DHANANI
LEADER OF OPPOSITION,
GUJARAT LEGISLATIVE ASSEMBLY
MAHVISHNUKRUPA,
GAJERAPARA, AMRELI (GUJARAT)**

ALSO AT:

**R/o Maha Vishnu Krupa Gajera Para,
Amreli-365601**

...PETITIONER

VERSUS

**ELECTION COMMISSION OF INDIA
THROUGH CHIEF ELECTION COMMISSIONER
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI – 110001**

...RESPONDENT

**WRIT PETITION UNDER ARTICLE 32 READ WITH ARTICLE 14 AND
21 OF THE CONSTITUTION OF INDIA SEEKING URGENT AND
NECESSARY DIRECTIONS TO THE RESPONDENT TO HOLD
SIMULTANEOUS BYE-ELECTIONS AND POLLING FOR FILLING
VACANCIES FOR THE COUNCIL OF STATES AS NOTIFIED VIDE
PRESS NOTE DATED 15.06.2019 IN ALL STATES INCLUDING THE
STATE OF GUJARAT.**

**To,
THE HON'BLE CHIEF JUSTICE
OF INDIA AND HIS COMPANION JUDGES
OF THE HON'BLE SUPREME COURT OF INDIA.**

**THE HUMBLE PETITION
OF THE PETITIONER ABOVE-NAMED**

MOST RESPECTFULLY SHOWETH:

1. The Petitioner is constrained to approach this Hon'ble Court by invoking Article 32 of the Constitution of India *inter alia* praying for directions to the Respondent to hold simultaneous bye-elections and polling for filling casual vacancies in the council of states from Gujarat
2. That the Petitioner herein is a Member of Legislative Assembly from Amreli Assembly Constituency and is the Leader of Opposition in Gujarat State Assembly.
- 2A. That the details of the Petitioner are as under:-
3. The Petitioner has no personal interest or private / oblique motive in filing the instant petition but only seeks the intervention of this Hon'ble Court in order to ensure the integrity of the ongoing elections and to ensure a level playing field for all candidates regardless of party affiliation. The actions, or inactions, on the part of the Respondent need to be corrected to ensure parity and compliance with the letter and spirit of our various laws passed to ensure the integrity of our electoral process. It must be ensured that a candidate, regardless of how high he or she may be, cannot violate the wide gamut of electoral laws that have been evolved to form the bedrock of our democracy. That the Petitioner is not involved in any litigation before any other forum/court/authority, which has a nexus with the instant Petition.
4. It is submitted that the Petitioner has approached the Respondent for the redressal of its grievances vide Representation dated 30.5.2019 and 13.06.2019, however the same have not been considered. That, as leader of the opposition and member of the

Gujarat Legislative Assembly, he is constrained to approach this Hon'ble Court, through the instant Petition which seeks to challenge the action on the part of the Election Commission issued vide Press Note dated 15.06.2019 whereby Bye-elections to all seats including the Rajya Sabha, are considered as separate vacancies and separate notifications are issued and separate poll is going to take place for each of the vacancies although the programme schedule for the bye-elections may be common.

5. That the Respondent is the Election Commission of India, which under Article 324 of the Constitution of India, is vested with the superintendence, direction and control of all elections to be conducted in India and entrusted to hold free and fair elections to uphold the democratic polity in the Country.
6. In view of the above background, the following substantial questions of law arise for the consideration of this Hon'ble Court:
 - A. Whether the Election Commission was right in issuing the Press Note No. ECI/PN/65/2019 dated 15.06.2019 thereby declaring schedule for holding separate Bye-Elections, despite several representations were made for holding simultaneous elections?
 - B. Whether the vacancies arising out of operation of law specifically by operation of Sub-Section (2) of Section 69 of the RP Act read with Section 67A and sub-section (4) of Section 68 of the RP Act are different from casual vacancies under Section 147?

- C. Whether Part IX of the RP Act mandates bye-elections only with respect to casual vacancies created under Section 147 to 151?
- D. Whether the law declared in the case of A.K. Walia vs. Union of India & Ors. whereby Delhi High Court upheld the holding of separate elections when the vacancies pertain to different categories as specified in the Council of States (Term of Office of Members) Order, 1952 is ?
- E. Whether, in view of the repeated and substantial representations filed before the Respondent, prompt and immediate action ought to have been taken by the Respondent?
- F. Whether the date of vacancy arising out of application of Section 69 (2) of the RP Act should be same as the date of declaration of results?
- G. Whether holding separate bye-elections would entail in undermining the underlying objective of the system of proportional representation by means of single transferable vote viz. to give each minority group an effective share as per its strength, on its head?

FACTS

- 7. The facts leading to the filing of the present Writ Petition are as under:

- (i) That on 30.09.1952, the President in pursuance of sub-section (2) of Section 154 of the RP Act, in consultation with the Election Commission passed the Council of States (Term of Office of Members) Order, 1952. Copy of the Gazette Notification dated 26th September, 1952 issued by the Gazette of India published on 30th September, 1952 is annexed herewith and marked as **ANNEXURE P – 1. [Page Nos. __ to __]**.
- (ii) That, the Delhi High Court passed an Order dated 21.08.1984 in the matter of Surendra Pal Ratawal vs. Shamim Ahmad. The Delhi High Court Passed a Judgement dated 14.01.1994 in the matter of A.K. Walia vs. Union of India & Ors. The Supreme Court passed a Judgement dated 03.12.2010 in the matter of Election Commission of India vs. Telangana Rastra Samithi.
- (iii) That on 14.07.2017 Mr. Amit Shah and Mrs. Smriti Irani Elected members of Rajya Sabha from Gujarat Legislative Assembly. A copy of the Gazette Notification dated 14.07.2017 issued by the Respondent No. 1 with a list of elected candidates is annexed herewith and marked as **ANNEXURE P - 2 [Page Nos. __ to __]**.
- (iv) That in General Parliamentary Elections 2019 Mr. Amit Shah was declared to be the elected candidate to Lok Sabha from Gandhinagar Parliamentary Constituency on 23.05.2019.
- (v) Similarly, Mrs. Smriti Irani was also declared to have been elected to Lok Sabha from Amethi Parliamentary Constituency on 24.05.2019. A copy of the Gazette Notification dated 25.05.2019 issued by the Respondent No. 1 with a list of elected candidates is

annexed herewith and marked as **ANNEXURE P - 3 [Page Nos. ____ to ____]**.

(vi) That Rajya Sabha vide Parliamentary Bulletin dated 28.05.2019 declared Mr. Amit Shah's membership from the date of his election as Member of the 17th Lok Sabha, i.e., the 23.05.2019 with reference to sub-section (2) of Section 69 of the Representation of the People Act, 1951 read with Section 67A and sub-section (4) of Section 68 of that Act. A copy of the Parliamentary Bulletin dated 28.05.2019 issued by Rajya Sabha is annexed herewith and marked as **ANNEXURE P - 4 [Page Nos. ____ to ____]**.

(vii) Similarly, Rajya Sabha vide Parliamentary Bulletin dated 28.05.2019 declared Mrs. Smriti Irani's membership from the date of her election as Member of the 17th Lok Sabha, i.e., the 24.05.2019. A copy of the Parliamentary Bulletin dated 29.05.2019 issued by Rajya Sabha is annexed herewith and marked as **ANNEXURE P - 5 [Page Nos. ____ to ____]**.

(viii) That as the terms of Mr. Amit Shah and Mrs. Smriti Irani were yet to be expired, it is incumbent upon the Respondent No. 1 to Notify the date and schedule of Elections for filling both the vacancies within 6 months in light of Section 147 read with Section 151A of the Representation of People Act, 1951.

(ix) That the Indian National Congress vide representation dated 30.05.2019 had requested the Respondent No. 1 to hold the elections for the two vacated seats in Rajya Sabha Simultaneously. That due to the different dates for vacation of

seats mentioned in the parliamentary bulletins dated 28.05.2019 & 29.05.2019 i.e 23.05.2019 & 24.05.2019 there was a strong apprehension that separate elections may be held by the Respondent No.1 for the two vacant seats in Rajya Sabha and such approach would not only be unfair and against the procedure established over the years but would also be arbitrary and unprecedented.

A copy of the Representation dated 30.05.2019 submitted by the Indian National Congress to the Respondent No. 1 is annexed herewith and marked as **ANNEXURE P - 6 [Page Nos. ____ to ____]**.

- (x) That another representation/memorandum dated 13.06.2019 reiterating the requests under representation dated 30.05.2019 was submitted by the Indian National Congress to the Respondent No. 1.

A copy of the memorandum being Ref. No. 0058A/2019 dated 13.06.2019 submitted by the petitioner herein is annexed herewith and marked as **ANNEXURE P - 7 [Page Nos. 76 to 77]**.

- (xi) However, on 15.06.2019 while completely ignoring the representations submitted by the Indian National Congress the Respondent vide Press Note No. ECI/PN/65/2019 published the schedule for bye-elections for filling six casual vacancies in the Council of States from Bihar, Gujarat and Odisha whereby date of polls has been declared to be 05.07.2019 for all six seats.

A copy of the Press Note No ECI/PN/65/2019 dated 15.06.2019 issued by the Respondent/Election Commission of India is

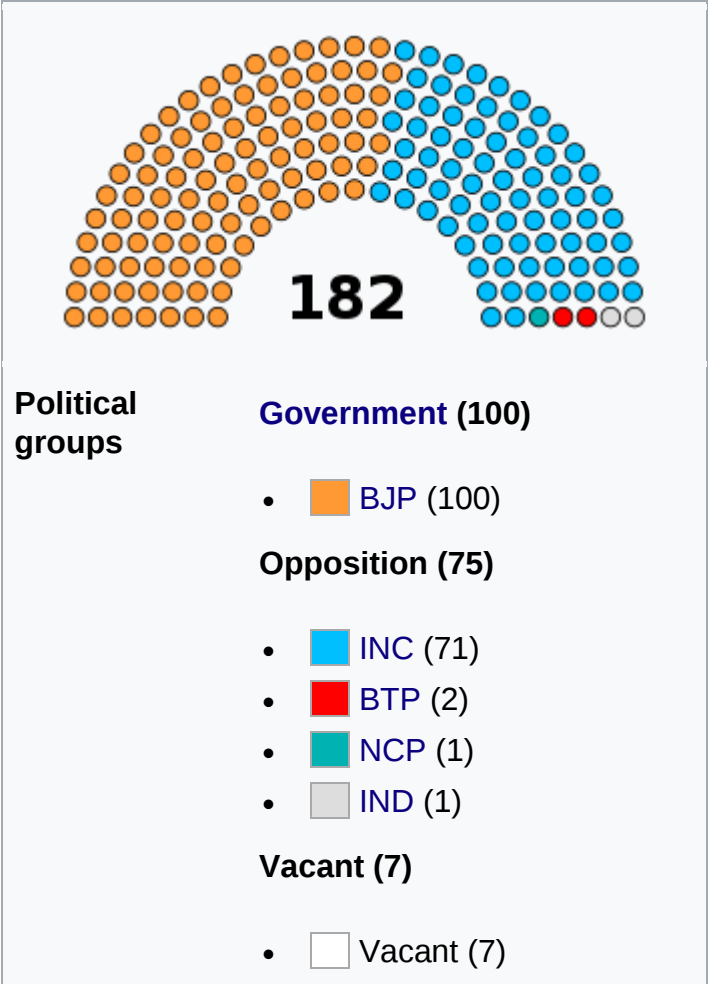
annexed herewith and marked as **ANNEXURE P - 8 [Page Nos. 78 to 79]**.

- (xii) The lack of appropriate decision by the Respondent despite several representations and exhortations by the Petitioner demonstrates abdication, indecision and a complete absence of justice, in ensuring a level playing field and ensuring the essence of minority representation through proportional representation to elect members to the Council of States for the State of Gujarat.
- (xiii) Further, the arbitrary action by the Respondent/ECI in issuing the Press Note No. ECI/PN/65/2019 dated 15th June 2019 thereby terming statutory vacancy so arisen qua two Rajya Sabha seats in the State of Gujarat under sub-section (2) of Section 69 of the RP Act, 1951 read with Section 67A and sub-section (4) of Section 68 RP Act as 'Casual Vacany' is in complete and direct violation of the provisions of RP Act.

SEPARATE ELECTIONS FOR 2 RAJYA SABHA SEATS IN THE STATE OF GUJARAT FALLING STATUTORILY VACANT WOULD UPSET THE SCHEME OF PROPORTIONAL REPRESENTATION AS MANDATED UNDER THE RP ACT.

- (xiv) The Petitioner submits that the current Legislative assembly structure in the State of Gujarat is as under –

Seats	183 (182 Elected + 1 Nominated)
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(xv) That in view of the above structure of seats the Petitioner submits Article 80(4) stipulates that the representatives of each State in the Council of States shall be elected by the elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote. Further, the system of proportional representation by means of the single transferable voting is based on first preference vote, original votes and surplus. Further, there is a provision of “quota” and any vote in excess of quota i.e. surplus votes, are transferred to the next candidate, in order of preference. It is an established principle of law that the object of introducing proportional representation in these elections is to give

each minority group an effective share as per its strength in the present case INC, each elector has only one vote in the sense that it will be capable of electing one candidate only. It is an established principle of law that the object of introducing proportional representation in these elections is to give each minority group an effective share as per its strength.

- (xvi). The Petitioner thus submits that the exhaustive and detailed procedure in respect of the elections to Rajya Sabha recognized by the Supreme Court itself, would be rendered otiose if the elections for each vacancy were to be conducted separately. The conduct of election for each vacancy separately would only lead to one result i.e. the victory of the party which commands simple majority in the State Legislature. This would turn the very objective of proportional representation i.e. to give each minority group an effective share as per its strength, on its head.

THE VACANCIES CREATED DUE TO ELECTION TO LOK SABHA ARE STATUTORY VANCANCIES UNDER SECTION 69 OF THE RP ACT AND NOT CASUAL VACANCIES

- (xvii). The Petitioner herein submits that Shri Amitbhai Anil Chandra Shah and Shrimati Smriti Zubin Irani were elected to Rajya Sabha from Gujarat State Assembly on 08.08.2017. That subsequently, Shri Amitbhai Anil Chandra Shah got elected to 17th Lok Sabha from Gandhinagar Constituency on 23.05.2019 and Shrimati Smriti Zubin Irani got elected to 17th Lok Sabha from Amethi Constituency on 24.05.2019.

- (xviii). It is submitted that Section 68 of the RP Act provides for vacation of seats when elected to both Houses of Parliament. Section 69 of the RP Act provides for vacation of seats by persons already members of one House on election to other House of Parliament. Sub Section (2) of Section 69 stipulates that, if a person who is already a member of the Council of States and has taken his seat in such Council is chosen a member of the House of the People, his seat in the Council of States shall on the date on which he is so chosen, become vacant.
- (xix). It is submitted that the vacation of seats in the case where a person gets elected to both the Houses of Parliament is a vacancy arising out of operation of Section 68 read with Section 69 of the RP Act, therefore, such vacancies are statutory vacancies.
- (xx). It is also imperative to submit that Section 147 i.e. Part IX of the RP Act provides for casual vacancies in the Council of States. Sub Section (1) of Section 147 provides that when before the expiration of the term of office of a member elected to the Council of States, his seat becomes vacant or is declared vacant or his election to the Council of States is declared void, the Election Commission shall by a notification in the Gazette of India call upon the elected members of the Legislative Assembly or the members of the electoral college concerned, as the case may be, to elect a person for the purpose of filling the vacancy so caused before such date as may be specified in the notification and provisions of this Act and of the rules and orders made thereunder shall apply, as far as may be, in relation to the election of a

member to fill such vacancy. It is therefore submitted that the aforesaid vacancies created on account of operation Section 68 read with Section 69 are not a casual vacancy and therefore not covered under Section 147.

RAJAYA SABHA VACANCIES IN THE STATE OF GUJARAT FALL UNDER THE SAME CATEGORY AS MANDATED UNDER COUNCIL OF STATES (TERM OF OFFICE OF MEMBERS) ORDER, 1952, FOR WHICH THE ELECTIONS HAVE TO BE HELD SIMULTANEOUSLY

A. *Rajya Sabha Membership divided into 3 categories to fulfill the constitutional mandate of rotational membership of 1/3rd members every two years*

- (xxi). It is submitted that Clause (1) of Article 83 of the Constitution which provides for the Duration of Houses of Parliament, which states that The Council of States shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law. Further, Section 151A provides an outer limit of 6 months to conduct a bye-election for filling any vacancy arising before the expiration of the term of office. Further, Section 151A provides an outer limit of 6 months to conduct a bye-election for filling any vacancy arising before the expiration of the term of office. Section 154 provides for the terms of office of members of the Council of States. In terms of Section 154(2), the President issued an order namely, ***Council of States (Term of Office of Members) Order, 1952***, to curtail the terms of office of some

members of the initial council of states so that 1/3rd of its members retired every second year.

(xxii). Therefore it is submitted that the entire scheme of the statutory law as well as the 1952 Order seems to sub-serve the requirement of Article 83 i.e. to ensure that as nearly as possible one-third of the members of the Rajya Sabha retire as soon as may be on the expiration of every second year.

B. The reliance placed on A.K. Walia v. Union of India by the Respondent/ ECI is completely misplaced

(xxiii) It is submitted that the Election Commission vide Press Note No. ECI/PN/65/2019 dated 15.06.2019 clarified that *“the vacancies for Bye-elections to all Houses, including the Rajya Sabha, are considered as separate vacancies and separate notifications are issued and separate poll is taken for each of the vacancies although the programme schedule for the bye-elections may be common. This is in conformity with the provisions of Section 147 to 151 of the Representation of the People Act, 1951, and has been the consistent practice of the Commission in such cases. Holding of separate elections has been upheld by the Hon’ble Delhi High Court in Civil W.P. No. 132 of 1994 (A.K. Walia Vs Union of India & Others)...”* It is submitted that in the aforesaid case, the Delhi High

Court had upheld the holding of separate elections for the 3 seats allotted to Delhi on the singular premise that each of the three

seats were a part of one of the three categories specified in the Council of States, (Term of Office of Members) Order, 1952. The categorization made in the 1952 order, which divided the membership of the Rajya Sabha into three categories was to give effect to the stipulation of Article 83(1) of retirement of 1/3rd members every two years.

(xxiv) It is submitted that in the instant case, since the terms of the two vacancies are to get over on the same date i.e.18.08.2023 and not in a difference of 2 years, therefore falling under the same category. It is further submitted that, separate elections should not be held merely for the reason that the date of vacancy of seats were different. Furthermore, Section 69 (2) of the RP Act stipulates that if a member of the Rajya Sabha gets elected to the Lok Sabha, then the Rajya Sabha seat falls vacant on the date on which he/she gets elected to the Lok Sabha. It is therefore submitted that in terms of Section 69(2), both the seats have fallen vacant on 23.05.2019 itself and since the remainder of the term for both the seats is the same, the seats form a part of the same category and therefore, the elections to both the said seats ought to be common and not held by way of separate elections.

It is submitted that the Congress Legislative Party are minority in the Gujarat Legislative Assembly though having the requisite numbers in the Assembly to proportionately elect member to Council of States. The BJP which is running the Government at

the Centre, in order to somehow have its party rule the Rajya Sabha despite not having complete proportion to elect both seats to Council of States, is trying to use the Respondents's Office to somehow impede the mandate under RP Act to elect members to Council of States. It is submitted that such manoeuvring by the BJP and the Respondent to suit their political agenda actually amounts to a death knell to the democracy which is a basic feature of our Constitution.

It is submitted that the powers exercised for holding state elections on statutory vacancies by the Respondent are not beyond the pale of judicial review and any illegal and arbitrary decision taken against the constitutional provisions and conventions is liable to be interfered with and struck down by this Hon'ble Court in exercise of its jurisdiction as a *sentinel on the qui vive* of the Constitution. It is submitted that discretionary powers under the Constitution conferred on the Respondent are not the *ipsi dixit* though have to be exercised within the constitutional norms and conventions guiding the exercise of such discretion.

It is submitted that the impugned decision is solely directed against arbitrary, malafide and malicious act of the Respondent which issued the Press Note dated 15.06.2019

for conducting the separate Bye Elections is ex facie unconstitutional is liable to be interfered with and set aside. In this background, the present Writ Petition is being filed.

(xxvi) The Petitioner most respectfully prays that this Hon'ble Court may be pleased to entertain and allow the instant writ petition at its earliest as any further delay would render the instant petition infructuous in view of the limited time span left for the elections to the Council of State.

(xxvii) That vide the said Press Note, the Respondent No. 1 erroneously clarified that the vacancies for bye-polls are considered separate vacancies and separate vacancies are issued and separate polls are taken for each of the vacancies, though programme schedule may be common for the same.

(xxviii) Aggrieved by the aforesaid Press Note and Clarifications issued thereunder, the Petitioner has no other remedy but to approach this Hon'ble Court through the instant Writ Petition.

8. That the Petitioner has paid the requisite Court fees on this Petition.

9. The Petitioner has not filed any other similar Petition before this Hon'ble Court or before any High Courts seeking similar reliefs except this present Petition.
10. The present Writ Petition has been filed without any delay or *laches* and there is no legal bar in entertaining the same. That the Petitioner has got no other alternative, less, efficacious remedy except to file the present Writ Petition before this Hon'ble Court, by invoking Article 32 of the Constitution of India.
11. That the Annexures are true and correct copies of their respective originals.
12. That in the circumstances mentioned hereinabove this Writ Petition in being preferred by the Petitioner *inter alia* on the following amongst other grounds without prejudice to each other:

GROUND

- A. BECAUSE categorization made in the 1952 order, which divided the membership of the Rajya Sabha into three categories was to give effect to the stipulation of Article 83(1) of retirement of 1/3rd members every two years.

- B. BECAUSE the single most important task assigned to the Election Commission is to ensure a level playing field. This has been repeatedly affirmed by the Hon'ble Supreme Court in a series of judgments.
- C. BECAUSE despite multiple representations in writing and in person through official delegations, EC issued Press Note dated 15.06.2019 ignoring the aforesaid representations.
- D. BECAUSE in the present case, since the terms of the two vacancies are to get over on the same date and not in a difference of 2 years, it is quite clear that the seats belong to the same category and therefore, simultaneous elections should be conducted.
- E. BECAUSE the vacancies which have arisen on account of members being elected to Lok Sabha, is not a casual vacancy. Further, it is a vacancy created by operation of law or statutory vacancy on account of operation of sub-section (2) of Section 69 of the Representation of the People Act, 1951 read with Section 67A and sub-section (4) of Section 68 of that Act.
- F. BECAUSE the Press Note No ECI/PN/65/2019 dated 30.05.2019 issued by the Election Commission of India mentions that "there are six casual vacancies...". It is imperative to submit that the said press note is ex facie contrary to the Parliamentary Bulletin dated 28.05.2019 and 29.05.2019 wherein the vacation of seats in Rajya Sabha were declared in pursuance of the provision of sub-section (2) of Section 69 of the Representation of the People Act, 1951

read with Section 67A and sub-section (4) of Section 68 of that Act.

- G. BECAUSE the basic principle both under Constitution and the Representation of Peoples Act 1951 is that if the regular vacancies are existing at the time when the election is held it should be held together so that the system of proportional representation by means of single transferable vote can be applied to those elections.
- H. BECAUSE if the Election Commission is given free hand to issue one or more notification w.r.t. vacancies in Council of States and if separate elections are held for the same purposes, then it may result in abuse of power in as much as the majority party will always be able to arrange the matters in such a way that it gets maximum seats.
- I. BECAUSE it is imperative to submit that the the creation of a casual vacancy is only within the meaning of Part IX relating to bye-elections which contains [Section 147](#) and [Sections 149 to 151A](#). If such casual vacancy occurs in the State Legislative Assemblies or the State Legislative Councils, the provisions of [Sections 150](#) and [151](#) are attracted.
- J. BECAUSE Section 151A in Part IX of the Representation of the People Act, 1951, with effect from 1st August, 1996. Part IX of the said Act which deals exclusively with Bye- elections contains Section 147 and Sections 149 to 151 which deal with casual vacancies in the Council of States (Rajya Sabha), the House of

the People (Lok Sabha), the State Legislative Assemblies and the State Legislative Councils.

- K. BECAUSE this Hon'ble Court in the Case of ECI vs. Telangana Rastra Samithi (2011) 1 SCC 370 has held as under:

'Insofar as bye- elections are concerned, when once a declaration is made under Section 150 of RP Act by the Speaker - a vacancy that arises as contemplated under Constitution and/or the relevant statute; Section 151A comes into play and the bye- elections to the casual vacancies that arises under Sections 147, 149, 150 and 151 shall have to be conducted by ECI within the period mandated by the Parliament.'

- L. BECAUSE such deliberate and willful violations, when unaddressed by the Respondent, send a message of endorsement to all party functionaries down the line.

- M. BECAUSE Section 66 stipulates that the results of the election shall be declared forthwith on completion of counting by the returning officer, thus holding separate elections shall be *de hors* the mandate under the Representation of Peoples Act, 1951.

- N. BECAUSE Section 67 requires the Returning Officer to report the results to the appropriate authority as well as the ECI who shall then publish declarations in the official gazette containing the names of the elected candidates, thus holding separate elections shall be *de hors* the mandate under the Representation of Peoples Act, 1951.

- O. BECAUSE the Respondent has arbitrarily, malafidely, maliciously and under the dictats of the incumbent Government has invoked

its residuary powers under Article 324 of the Constitution of India and has arbitrarily issued the Press Note dated 15.06.2019 declaring separate elections for the Council of States where it stated that the vacancies for Bye-elections to all Houses, including the Rajya Sabha, are considered as separate vacancies and separate notifications are issued and separate poll is taken for each of the vacancies although the programme schedule for the bye-elections may be common.

- P. BECAUSE Section 69(2) stipulates that if a member of the Rajya Sabha gets elected to the Lok Sabha, then the Rajya Sabha seat falls vacant on the date on which he/she gets elected to the Lok Sabha.
- Q. BECAUSE the Petitioner's party in the Gujarat State Assembly is in minority though having proportional numbers to elect a member for Council of States, the BJP, which is running the Government at the Centre, has used the Respondents's Office for its political propaganda.
- R. Because the action of the Respondent is completely tainted with arbitrariness, malafide, partisanship and has been taken in an extremely hasty manner to pre-empt and impede the minority party in the state Assembly to elect a member for the Council of States. As such it is violative of Article 14 of the Constitution.
- S. Because the discretionary powers exercised by the Respondent are not beyond the pale of judicial review and any illegal and arbitrary decision taken against the constitutional provisions and conventions is liable to be interfered with and struck down by this

Hon'ble Court in exercise of its jurisdiction as a sentinel on the qui vive of the Constitution.

T. Because while moving the Draft Constitution in the Constituent Assembly on 4.11.1948, Dr. Ambedkar after quoting Grote, historian of Greece observed that:

“While everybody recognised the necessity of diffusion of Constitutional morality for the peaceful working of the democratic Constitution, there are two things interconnected with it which are not, unfortunately, generally recognised. One is that the form of administration must be appropriate to and in the same sense as the form of the Constitution. The other, that it is perfectly possible to pervert the Constitution, without changing its form by merely changing its form of administration and to make it inconsistent and opposed to the spirit of Constitution.”

U. Because the impugned action is brazenly opposed to the spirit of the Constitution as is reflected in Constitutional convention and practice having the force of law

V. BECAUSE the Petitioner craves leave of this Hon'ble Court to add, amend, alter, omit or vary any of the above grounds at an appropriate stage, if and when required.

PRAYER

**IN VIEW OF THE ABOVE, THE PETITIONER MOST HUMBLY PRAYS
FOR THIS HON'BLE COURT TO:**

- a) pass an appropriate writ/order/direction declaring that action/order/ Press Note of the Respondent dated 15.06.2019 as unconstitutional, arbitrary, illegal, void-ab-initio, and violative of Article 14 of Constitution of India; and accordingly quash the same;
- b) Pass an appropriate writ, order or direction to the Respondent-Election Commission of India to hold simultaneous bye-elections and polling for filling of all vacancies in all States including the State of Gujarat for the Council of States.
- c) Pass such other and further orders as this Hon'ble Court may deem fit and proper.

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

DRAWN BY:

**VARUN K CHOPRA &
YAGYAVALK SHUKLA
ADVOCATES**

FILED BY:

[ACE LEGAL]
Advocate for the Petitioner

NEW DELHI
FILED ON: 17.06.2019

IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)
WRIT PETITION (CIVIL) NO. _____ OF 2019

[UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA]

IN THE MATTER OF:

PARESHBHAI DHANANI

...PETITIONER

VERSUS

ELECTION COMMISSION OF INDIA

...RESPONDENT

AFFIDAVIT

I, Paresh Dhanani s/o Dhirajlal Dhanani aged Leader of Opposition, Amreli, presently at New Delhi, do hereby solemnly affirm and declare on oath as under:

1. I am the petitioner in the present writ petition and fully conversant with the facts and circumstances of the case. I am competent to swear this affidavit.

2. That the contents of the accompanying Synopsis and List of Dates at pages B to M, writ petition from para 1 to 12 at pages 1 to 23 and the accompanying applications filed along with the writ petition are drafted under my instructions and having gone through the same, I state that the contents thereof are true and correct to my knowledge, belief and the records available with the petitioner.

3. That the annexures are true copies of their respective originals.

Deponent

Verification:

Verified today on 17th June, 2019 at New Delhi that the contents of this affidavit are true and correct and that nothing material is concealed therefrom.

Deponent

ELECTION COMMISSION OF INDIA
NOTIFICATION

New Delhi, the 25th May, 2019

O.N. 136(E).—Whereas, in pursuance of the Notifications No. H.11024(1)/2019-Leg-II, issued by the President of India on 18th March 2019, 19th March 2019, 28th March 2019, 2nd April, 2019, 10th April, 2019, 16th April, 2019 and 22nd April, 2019, under sub-section (2) of Section 14 of the Representation of the People Act, 1951 (43 of 1951), a General Election has been held for the purpose of constituting a new House of the People; and

Whereas, the results of the election to the House of the People in respect of all Parliamentary Constituencies (except 08-Vellore, PC of Tamil Nadu, where election process was rescinded on the recommendation of the Commission), have been declared by the Returning Officers concerned;

Now, therefore, in pursuance of Section-73 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby notifies the names of the members elected in respect of those Constituencies, along with their party affiliations, if any, in the SCHEDULE annexed to this Notification.

SCHEDULE

S.No.	No. and Name of parliamentary constituency	Name of the elected member	Party affiliation (if any)
Andhra Pradesh			
1.	1- Araku (ST)	Goddeti. Madhavi	Yuvajana Sramika Rythu congress party
2.	2- Srikakulam	Kinjarapu Ram Mohan Naidu	Telugu Desam
3.	3- Vizianagaram	Bellana Chandra Sekhar	Yuvajana Sramika Rythu congress party

SCHEDULE Sl. No. No. and Name of Parliamentary Constituency Name of the Elected Member Party Affiliation (if any) Andhra Pradesh 1. 1- Araku (ST) Goddeti. Madhavi Yuvajana Sramika Rythu Congress Party 2. 2- Srikakulam Kinjarapu Ram Mohan Naidu Telugu Desam 3. 3- Vizianagaram Bellana Chandra Sekhar Yuvajana Sramika Rythu Congress Party

I N D E X

Sr. No.	Particulars	Page Nos. of part to which it belongs		Remarks
		Part 1 (contents of paper book)	Part 2 (Contents of file alone)	
	Court Fees	Rs.	Rs.	
1.	Listing Proforma	A-A1	A-A1	
2.	Cover Page of Paper Book		A2	
3.	Index of Record of Proceedings		A3	
4.	Defect List			
5.	Note Sheet		NS1-	
6.	Synopsis and List of Dates			
7.	Writ Petition with Affidavit	1 –		
8.	APPENDIX: (i) Judgment dated 21.08.1984 passed by the High Court of Delhi at New Delhi in Election Petition No. 1 of 1984. (ii) Judgment dated 14.01.1994 passed by the High Court of Delhi at New Delhi in Civil Writ Appeal No. 132 of 1994. (iii) Judgment dated 3.12.2010 passed by this Hon'ble Court in SLP (c) No. 20590 of 2010.			
9.	<u>ANNEXURE P-1:</u> Copy of the Gazette Notification dated 26th September, 1952 issued by the Gazette of India published on 30th September, 1952.			
10.	<u>ANNEXURE P-2:</u> Copy of the press note No. ECI/PN/59/2017 dated 14th July, 2017 issued by			

	Election Commission of India.			
11.	<u>ANNEXURE P-3:</u> Copy of the notification dated 25.05.2019 issued by Election Commission of India.	56-71		
12.	<u>ANNEXURE P-4:</u> Copy of the Parliamentary Bulletin Part-II Nos. 58741-58742 dated 28.05.2019	72		
13.	<u>ANNEXURE P-5:</u> Copy of the Parliamentary Bulletin Part-II No. 58743 dated 29.05.2019	73		
14.	<u>ANNEXURE P-6:</u> Copy of the memorandum being Ref. No. 0058A/2019 dated 30.05.2019 filed by the Petitioner herein.	74-75		
15.	<u>ANNEXURE P-7:</u> Copy of the memorandum dated 13.06.2019 filed by the Petitioner herein.	76-77		
16.	<u>ANNEXURE P-8:</u> Copy of the press note No. ECI/PN/65/2019 dated 15 th June, 2019 issued by Election Commission of India.	78-79		
17.	<u>I.A. NO. /2019:</u> An application for stay/direction	80-81		
18.	Affidavit of urgency.	82-83		
19.	Filing Memo.		84	
20.	Vakalatnama.		85	

