

IN THE SUPREME COURT OF INDIA

(ORIGINAL WRIT JURISDICTION)

WRIT PETITION (CIVIL) NO. _____ 2020

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:-

PARESH DHANANI

... PETITIONER

VERSUS

ELECTION COMMISSION OF INDIA

THROUGH THE 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 *INTER ALIA*
SEEKING QUASHING OF NOTIFICATION DATED 17.06.2020
ISSUED BY THE RESPONDENT DIRECTING POLLING
THROUGH POSTAL BALLOT IN CONDUCT OF BIENNIAL
ELECTIONS TO RAJYA SABHA.**

**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 quashing of notification dated 17.06.2020 issued by the Respondent directing polling through postal ballot in conduct of biennial elections to Rajya Sabha.
2. The Petitioner herein is Leader of Opposition and Member of Legislative Assembly from Amreli Constituency in Gujarat belonging to the Indian National Congress ("INC")
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 impugned actions on the part of the Respondent by issuing the Notification dated 17.06.2020 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. That the Petitioner is not involved in any

litigation before any other forum/court/authority, which has a nexus with the instant Petition.

4. That by issuing the Notification dated 17.06.2020 (hereinafter referred to as the '**Impugned Notification**') allowing the use of Postal Ballot for conducting polling in the biennial Elections to the Rajya Sabha 2020 scheduled on 19.06.2020 (hereinafter referred to as '**Rajya Sabha Elections**'), the Respondent has completely overlooked the prevalent rules, regulations and spirit of Electoral Laws.
5. That the Respondent is the Election Commission of India, which under Article 324 of the Constitution of India, is charged & vested with the superintendence, direction and control of all elections to be conducted in India.
6. In view of the above background, the following substantial questions of law arise for the consideration of this Hon'ble Court:
 - A. Whether Notification dated 17.06.2020 allowing the use of Postal Ballot for conducting polling in the biennial Elections to the Rajya Sabha 2020 scheduled on 19.06.2020, is completely contrary to the prevalent rules, regulations and spirit of Electoral Laws.

- B. Whether the Respondent Commission ought to have considered that under Rule 18 of the 1961 Rules the electors could not be declared to be eligible for polling by postal ballot unless the same was notified by a gazetted notification as prescribed in Rule 68(2) of the 1961 Rules?
- C. Whether the Respondent Commission ought to have considered that under Rule 68(2) of the 1961 Rules the Notification pertaining to use of Postal Ballot in an election has to be made before the last date for the withdrawal of candidatures at an election ?
- D. Whether the Respondent Commission completely overlooked the willingness or consent of the Electors in polling by way of Postal Ballots ?
- E. Whether notification issued by the Respondent Commission is illegal and in complete violation of rule 39AA of the 1961 Rules whereby the Elector is required to show his / her ballot paper to the Agent of its political party before such ballot paper is inserted in the ballot box?

- F. Whether the impugned notification completely nullifies the practice of verifying the vote cast by an Elector of a Political party by an authorized agent of the party as prescribed in proviso to Rule 42 of the 1961 Rules?
- G. Whether the impugned Notification has been issued by the Respondent Commission in complete violation of the 1961 Rules, without any authority and therefore void in law ?
- H. Whether the Commission has issued the impugned notification in the later half of 17.06.2020 around a day before the Rajya Sabha Elections and therefore completely violated principles of equity and fair play ?
- I. Whether an intimation is mandatorily required to be given by an Elector to poll by postal ballots as prescribed in Rule 19 of the 1961 Rules?
- J. Whether the impugned notification by prescribing postal ballots for certain Electors will increase the possibility of deliberate admission of Electors to hospitals and thereby bypass the rigors of disqualification by cross voting when

the provisions qua verification of votes by party's authorized agents do not apply?

- K. Whether in the alternative the Commission may be directed to ensure videography of the entire postal ballot process to ensure that the Electors are not under any coercion or duress during polling?
- L. Whether the Respondent Commission take any political party into consideration for issuing such untimely and illegal directions
- M. Whether in the present circumstances when Electors are being bought and lured by certain political parties, it was appropriate to prescribe alternative polling mechanism without following due process?
- N. Whether in the prevailing circumstances the effectiveness and consequences of 'whip' of a political parties as intended in 10th Schedule of the Constitution of India can be ensured when process of verification of ballot papers has been virtually neutered ?

- O. Whether powers under Article 324 of the Constitution have to be exercised in conformity with the law passed by the Parliament in connection with Elections and not in violation of the same?
- P. Whether the Respondent is bound to exercise its powers under Article 324 in conformity with rule of law, bona fides, fair-play and natural justice ?

FACTS

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

(i) That the Respondent vide Notification dated 25.02.2020 announced schedule for poll and counting of votes for biennial Rajya Sabha elections. As per the schedule, elections were to be held on 26.03.2020, in several states including the State of Gujarat.

A copy of the Notification dated 25.02.2020 issued by Respondent is annexed and marked herewith as

ANNEXURE P-1 (Pgs 21 to 24)

(ii) That on 24.03.2020 the Respondent Commission issued a press release dated by which Election Commission of India deferred the Rajya Sabha elections on 55 seats scheduled on 26.03.2020 due to global COVID-19 pandemic.

A copy of press release dated 24.03.2020 issued by Respondent is annexed and marked herewith as

ANNEXURE P-2 (Pgs 25 to 26)

(iii) Consequentially, Biennial elections for 4 seats to the Rajya Sabha from the Legislative Assembly of Gujarat scheduled to be held on 26.03.2020 but were cancelled by directions issued by the Respondent Commission in light of the ongoing COVID-19 pandemic.

(iv) That on 01.06.2020 the Respondent Commission issued press release dated 01.06.2020 announcing schedule for poll and counting of votes for deferred Rajya Sabha elections for 55 seats from 17 states. Rajya Sabha elections were scheduled to be held on 19.06.2020.

A copy of press release dated 01.06.2020 issued by Respondent is annexed and marked herewith as

ANNEXURE P-3 (Pgs 27 to 28)

(v) That on 11.06.2020 a representation was filed by the AICC before Election Commission of India regarding misuse and abuse of official machinery by the ruling party to harass INC MLAs including Shri Punjabhai Vansh Congress MLA from Una constituency, for political benefit in the upcoming Rajya Sabha elections in the state of Gujarat to held on 19.06.2020

(vi) The Respondent Commission on 17.06.2020 issued the impugned notification no. 318/CS-Multi/BIEN/2020 *inter alia* granting facility of postal ballot paper for electors who are hospitalized on account of COVID-19.

A copy of Notification dated 17.06.2020 issued by Respondent is annexed and marked herewith as **ANNEXURE P-4 (Pgs 29 to 30)**

(vii) It is pertinent to state that the Respondent Commission in its Handbook for returning officers for Rajya Sabha Elections, 2016 Edition has categorically directed that in rare circumstances polling can be done by postal ballots subject to the condition that a notification under Rule 68 of 1961 rules is made before the last date of withdrawal of nominations. However, in the present case such notification under Rule 68 was not issued by the commission before the impugned notification.

Relevant extract of handbook for returning officer, 2016 edition issued by Respondent is annexed and marked herewith as **ANNEXURE P-5 (Pgs 31 to 34)**

(viii) The Respondent has also issued guidelines for issuing Postal Ballot Paper in 07.03.2014 in Elections.

Guidelines for issuing Postal Ballot Paper dated 07.03.2014 issued by Respondent is annexed and marked herewith as **ANNEXURE P-6 (Pgs 35 to 63)**

(ix) The Respondent has also issued additional guidelines for voting through Postal Ballot Paper on 04.10.2016.

Guidelines for voting through Postal Ballot Paper dated 04.10.2016 issued by Respondent is annexed and marked herewith as **ANNEXURE P-7 (Pgs 64)**

(x) Aggrieved by the Notification dated 17.06.2020 the Petitioner is constrained to approach this Hon'ble Court and hence, the present Writ Petition under Article 32 of the Constitution has been filed.

8. That the Petitioner has paid the requisite Court fees on this Petition.
9. The Petitioner has not filed any other Petition on the same subject matter or seeking similar reliefs either in this Hon'ble Court any High Courts except this present Petition. That in the present circumstances it is not expedient to approach the Respondent Commission to seek any reliefs and therefore, the Petitioner is constrained to file the present Writ 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 Notification dated 17.06.2020 allowing the use of Postal Ballot for conducting polling in the biennial Elections to the Rajya Sabha 2020 scheduled on 19.06.2020, is completely contrary to the prevalent rules, regulations and spirit of Electoral Laws.
- B. BECAUSE the Respondent Commission did not consider that under Rule 18 of the 1961 Rules the electors could not be declared to be eligible for polling by postal ballot unless

the same was notified by a gazetted notification as prescribed in Rule 68(2) of the 1961 Rules.

- C. BECAUSE as in the case of service voters, special voters, voters on election duty, it is necessary that the willing voter gives notifies the returning officer his / her wish to vote through ballot paper.
- D. BECAUSE the handbook of returning officer for elections to the council of States issued by the Respondent itself prescribes that :

“Facility of Postal Ballot

20. In rare cases, it may be desirable to allow postal ballot facility for voters in remote and inaccessible areas in a Council Constituency for whom no polling station can be set up within a reasonable distance. In such cases, the Election Commission may, on the recommendation of the Chief Electoral Officer, issue a notification under rule 68 of the Conduct of Elections Rules, 1961 at any time before the last date for withdrawal of candidatures at the election directing that the method of voting by postal ballot shall be followed in the whole or specified part of the Constituency. Electors

subjected to preventive detention and electors on election duty, if any, are also entitled to vote by post in the Constituency...”

From the aforesaid it is incontrovertible that Notification under Rule 68 of the 1961 rules must be issued for conducting polls by postal ballots. Further, it is necessary that the same is done before the last date of withdrawal of candidature.

- E. BECAUSE the Respondent Commission did not consider that under Rule 68(2) of the 1961 Rules the Notification pertaining to use of Postal Ballot in an election has to be made before the last date for the withdrawal of candidatures at an election.
- F. BECAUSE the Respondent Commission completely overlooked the willingness or consent of the Electors in polling by way of Postal Ballots.
- G. BECAUSE notification issued by the Respondent Commission is illegal and in complete violation of rule 39AA of the 1961 Rules. It is pertinent to note that Rule 39AA of

the 1961 rule, in order to ensure that the mandate and whip issued by the political party is followed *stricto sensu*, prescribes that the Elector shall show the ballot paper to the agent of the political party before inserting the same in the ballot box and if the same is refused by the Elector, the ballot paper of the Elector will be discarded by the Presiding Officer.

- H. BECAUSE the impugned notification completely nullifies the practice of verifying the vote cast by an Elector of a Political party by an authorized agent of the party as prescribed in proviso to Rule 42 of the 1961 Rules
- I. BECAUSE the impugned Notification has been issued by the Respondent Commission in complete violation of the 1961 Rules, without any authority and therefore void in law.
- J. BECAUSE the Respondent Commission in various litigations before Hon'ble High Courts has repeatedly submitted that provisions for postal ballot on health grounds are not prescribed under law.

- K. BECAUSE the Commission has issued the impugned notification in the later half of 17.06.2020 around a day before the Rajya Sabha Elections and therefore completely violated principles of equity and fair play.
- L. BECAUSE the Respondent Commission did not take any political party into consideration for issuing such untimely and illegal directions.
- M. BECAUSE the impugned notification by prescribing postal ballots for certain Electors will increase the possibility of deliberate admission of Electors to hospitals and thereby bypass the rigors of disqualification by cross voting when the provisions qua verification of votes by party's authorized agents do not apply.
- N. BECAUSE in the alternative the Commission may be directed to ensure videography of the entire postal ballot process to ensure that the Electors are not under any coercion or duress during polling.
- O. BECAUSE in the present circumstances when Electors are being bought and lured by certain political parties, it was

not appropriate to prescribe alternative polling mechanism without following due process.

- P. BECAUSE in the prevailing circumstances the effectiveness and consequences of 'whip' of a political parties as intended in 10th Schedule of the Constitution of India cannot be ensured when process of verification of ballot papers has been virtually neutered by the impugned notification.
- Q. BECAUSE this Hon'ble Court has time and again held that powers under Article 324 of the Constitution have to be exercised in conformity with the law passed by the Parliament in connection with Elections and not in violation of the same.
- R. BECAUSE this Hon'ble Court has held that the Respondent is bound to exercise its powers under Article 324 in conformity with rule of law, bona fides, fair-play and natural justice.
- S. For that 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 or direction quashing the Notification 17.06.2020 issued by the Respondent and all proceedings / orders issued thereunder.

OR

b) In the alternative, pass an appropriate writ, order or direction in the nature of Mandamus, or any other similar writ, order or direction to the Respondent-Election Commission of India to ensure that the polling is done without any coercion or duress to the electors;

c) pass an appropriate writ, order or direction in the nature of Mandamus, or any other similar writ, order or direction to the Respondent-Election Commission of India to ensure that the each polling is videographed by a neutral agency from an appropriate distance so as to preserve the secrecy of voter;

d) 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.**

FILED BY:

DRAWN BY:

VARUN K CHOPRA
GURTEJPAL SINGH
SHUBHAM SHARMA

ADVOCATES

NEW DELHI

DRAWN ON: 17.06.2020

FILED ON: 18.06.2020

[VKC LAW OFFICE]

Advocate for the Petitioner