

In The High Court Of Judicature At Patna

(CIVIL WRIT JURISDICTION)

C.W.J.C. No. _____/2020

In the matter of an application
under Article 226 of the
Constitution of India

AND

In the matter of:

Jai Vardhan Narayan, Advocate,

.....Petitioner in Person

versus

1. The Election Commission of India, through the Chief Election Commissioner of India, Nirvachan Sadan, Ashoka Road, New Delhi 110001.
2. The Chief Electoral Officer, Bihar, 7, Sardar Patel Marg, (Mangles Road), Patna – 800015.
3. The Union of India through the Principal Secretary, Department of Home, Government of India.
4. The Chief Secretary, Government of Bihar, Old Secretariat Building, Patna.

.....Respondents

To,

The Hon'ble Mr. Justice Sanjay Karol, the Chief Justice of the High Court of Judicature at Patna and his companion justices of the said Hon'ble Court.

The humble writ petition on
behalf of the petitioner above
named.

MOST RESPECTFULLY SHEWETH AS UNDER:

1. That this Public Interest Litigation is being filed by the Petitioner in Person who is a practicing Advocate in this Hon'ble Court of nine years standing and is a

member of Lawyers; Association, Patna High Court, Patna and also has a keen interest in the implication of the constitutional commands given by the Apex Court.

2. That the present Public Interest Litigation is being filed before this Hon'ble Court for issuance of direction order or writ in the nature of mandamus commanding the Respondents to defer the upcoming assembly election to be held in the State of Bihar in the year 2020 as the term of the Bihar Legislative Assembly ends in the month of November, 2020. It is apparent that the Constitution of India vide Article 19(1)(a) which deals with freedom of speech and expression and its scope of casting of votes by voters which is being fully covered by the aforesaid Article and hence voter's right to know the antecedents including criminal past of a candidate to membership of parliament or legislative assembly has been held as a fundamental right. This command of the Constitution has been dealt in detail by the Apex Court in ***Union of India (UOI) V. Association for Democratic Reforms and Anr. WITH People's Union for Civil Liberties***

(PUCL) and Anr. V. Union of India (UOI) and Anr. Reported in AIR 2002 SC 2112, (2002) 5 SCC 294

and it is confirmed that right to vote and getting information of a particular candidate in an election is a fundamental right and in the ensuing assembly election of the State of Bihar which is likely to be held in the month of September/October, it would not be possible at all to communicate the bio data of the candidates to the voters in entirety to all the constituencies of the State of Bihar on account of the pandemic COVID 19 and also the Representation of the People's Act, 1950 vide Section 126 which directs that:

***[Section 126. Prohibition of public meetings during period of forty-eight hours ending with hour fixed for conclusion of poll.—(1) No person shall—
(a) convene, hold or attend, join or address any public meeting or procession in connection with an election; or (b) display to the public any***

election matter by means of cinematograph, television or other similar apparatus; or (c) propagate any election matter to the public by holding, or by arranging the holding of, any musical concert or any theatrical performance or any other entertainment or amusement with a view to attracting the members of the public thereto, in any polling area during the period of forty-eight hours ending with the fixed for the conclusion of the poll for any election in the polling area. (2) Any person who contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both. (3) In this section, the expression "election matter" means any matter intended or calculated to influence or affect the result of an election.].

the aforesaid time is provided for making up minds of the people (little voters) so as to select a candidate of his choice for voting, here on account of the pandemic COVID 19, it would not be possible to get the information available to the voters in regard to candidate's bio-data etc. The reason behind it that the physical campaigning would not be possible and it would be a virtual canvassing which will be confined to limited workers and voters. But the voting will have to be done by total numbers of voters and this will deprive the constitutional command available to the voters. That it is also noteworthy to mention here that election campaign contains the ideas that the candidate wants to share with the voters. It is to get those who agree with their ideas to support them when running for a political position. The message often consists of several talking points about policy issues. Reliance on virtual/ digital campaigning is violative of Article 14 of the Constitution. A small party or independent candidate will neither have the resources nor the technology to reach out and present itself to

voters through digital medium. They will be denied the right and opportunity to carry out a free and fair election campaign. The command of the Hon'ble Supreme Court is very clear that democracy is one of the inalienable basic features of the Constitution of India and forms part of its basic structure.

3. That the petitioner in person has got no personal direct or indirect interest save and except to safeguard the voters in the entire state of Bihar to avail their rights of voting which is their fundamental rights.
4. That this Public Interest Litigation is confined for deferment of the upcoming Assembly Election of the State of Bihar which is likely to be held in the month of September/October, 2020 by extending the date of the election and in case the election is at all to be held, the fundamental rights of the voters of the state of Bihar be first ascertained to be full filled otherwise the election be ordered to be deferred by means of available laws and remedy in the constitution in such a situation if the fundamental rights of the voters are

not possible to be achieved in the ensuing assembly election.

5. That the Apex Court in ***Union of India (UOI) V. Association for Democratic Reforms and Anr. WITH People's Union for Civil Liberties (PUCL) and Anr. V. Union of India (UOI) and Anr. Reported in AIR 2002 SC 2112, (2002) 5 SCC 294*** held that the election commission was directed to call for an affidavit by ensuing necessary orders in exercise of its powers under Article 324 of the Constitution from each candidate seeking election to Parliament or a State legislature as a necessary part of his nomination paper furnishing therein information on the following aspects:

“The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper,

furnishing therein, information on the following aspects in relation to his/her candidature:-

(1) Whether the candidate is convicted/acquitted/ discharged of any criminal offence in the past-if any, whether he is punished with imprisonment or fine?

(2) Prior to six months of filing of nomination whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the Court of law. If so, the details thereof.

(3) The assets (immovable, movable, bank balances etc.) of a candidate and of his/her spouse and that of dependants.

(4) Liabilities, if any, particularly whether there are any over dues of any public financial institution or Government dues.

(5) The educational qualifications of the candidate.

6. That Section 33A has been introduced after the aforesaid judgment of the Apex Court which reads as under:

[33A. Right to information.—

(1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) or section 33, also furnish the information as to whether –

(i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;

(ii) he has been convicted of an offence [other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8] and sentenced to imprisonment for one year or more.

(2) The candidate of his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form very fine the information specified in sub-section (1).

(3) The returning officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.]

7. That it is apparent that by the order of the Apex Court in ***People's Union for Civil Liberties (PUCL) and Anr. v. Union of India Anr. reported in AIR 2003 SC 2363, (2003) 4 SCC 399***, Section 33 B of the Representation of the People's Act, 1951 had been declared null and void. Section 33B reads as follows:

[33B. Candidate to furnish information only under the Act and the rules.—

Notwithstanding anything contained in any judgment, decree or order of any court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election which is not required to be disclosed or furnished under this Act or the rules made thereunder.]

8. That it is most respectfully submitted that due to the pandemic, it would not be possible for the voters to come out from their home to go to respective places where display of the bio-data of the contesting candidate would be hung or placed as has been directed by the Apex Court in ***People's Union for Civil Liberties (PUCL) and Anr. v. Union of India Anr. reported in AIR 2003 SC 2363, (2003) 4 SCC 399*** relevant page 418 para 2 which reads as under:

“There was an era when a powerful or a rich or a strong or a dacoit aged more than

60 years married a beautiful young girl despite her resistance. Except to weep, she had no choice of selecting her male. To a large extent, such situation does not prevail today. Now, young persons are selecting mates of their choice after verifying full details thereof.

Should we not have such a situation in selecting a candidate contesting elections? In a vibrant democracy--is it not required that a little voter should know bio-data of his/her would be Rulers, Law-makers of Destiny-maker of the Nation?"

9. In the light of the aforesaid Apex Court judgments, it is the duty of the Election Commission to look into the matter as to whether a little voter should know the bio data of his/her candidate and is it not required that the voters must know the bio data of the rulers law makers or destiny makers of the nation. The election commission must take into confidence this Hon'ble Court that the voters would be capable enough to

know the bio data of the contesting candidate which is most humbly prayed and submitted before this Hon'ble Court on behalf the petitioner in person that on account of the pandemic and other situation of flood which has spread throughout the State and half of the area of the State of Bihar have been fully submerged in the flood and in such a situation the election would be a mockery and it would violate the Apex Court's verdict in the instant matter.

10. That it would be very much pertinent to submit the conclusions in ***People's Union for Civil Liberties (PUCL) and Anr. v. Union of India Anr. reported in AIR 2003 SC 2363, (2003) 4 SCC 399*** of the Apex Court rendered by Hon'ble Three Judges Bench of the Apex Court which are vibrating given as under:

Conclusion by Justice M. B. Shah

78. What emerges from the above discussion can be summarised thus:-

(A) The legislature can remove the basis of a decision rendered by a competent Court thereby rendering that decision ineffective but the legislature has no power to

ask the instrumentalities of the State to disobey or disregard the decisions given by the Court. A declaration that an order made by a Court of law is void is normally a part of the judicial function. Legislature cannot declare that decision rendered by the Court is not binding or is of no effect.

It is true that legislature is entitled to change the law with retrospective effect which forms the basis of a judicial decision. This exercise of power is subject to constitutional provision, therefore, it cannot enact a law which is violative of fundamental right.

(B) Section 33-B which provides that notwithstanding anything contained in the judgment of any Court or directions issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information in respect of his election which is not required to be disclosed or furnished under the Act or the Rules made there under, is on the face of it beyond the legislative competence, as this Court has held that vote has a fundamental right under Article 19(1)(a) to know the antecedents of a candidate for various

reasons recorded in the earlier judgment as well as in this judgment.

Amendment Act does not wholly cover the directions issued by this Court. On the contrary, it provides that candidate would not be bound to furnish certain information as directed by this Court.

(C) The judgment rendered by this Court in ***Association for Democratic Reforms (supra)*** has attained finality, therefore, there is no question of interpreting constitutional provision which calls for reference under Article 145(3).

(D) The contention that as there is no specific fundamental right conferred on a voter by any statutory provision to know the antecedents of a candidate, the directions given by this Court are against the statutory provisions are, on the face of it, without any substance. In an election petition challenging the validity of an election of a particular candidate, the statutory provisions would govern respective rights of the parties. However, voters fundamental right to know antecedents of a candidate

is independent of statutory rights under the election law. A voter is first citizen of this country and apart from statutory rights, he is having fundamental rights conferred by the Constitution. Members of a democratic society should be sufficiently informed so that they may cast their votes intelligently in favour of persons who are to govern them. Right to vote would be meaningless unless the citizens are well informed about the antecedents of a candidate. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means to cleanse our democratic governing system and to have competent legislatures.

(E) It is established that fundamental rights themselves have no fixed content, most of them are empty vessels into which each generation must pour its content in the light of its experience. The attempt of the Court should be to expand the reach and ambit of the fundamental rights by process of judicial interpretation. During last more than half a decade, it has been so done by this Court consistently. There cannot be any distinction between the fundamental

rights mentioned in Chapter-III of the Constitution and the declaration of such rights on the basis of the judgments rendered by this Court.

79. In the result, Section 33-B of the Amended Act is held to be illegal, null and void. However, this judgment would not have any retrospective effect but would be prospective. Writ petitions stand disposed of accordingly.

Conclusion by Justice P. Venkatarama Reddi

123. Finally, the summary of my conclusions:

1. Securing information on the basic details concerning the candidates contesting for elections to the Parliament or State Legislature promotes freedom of expression and therefore the right to information forms an integral part of Article 19(1)(a). This right to information is, however, qualitatively different from the right to get information about public affairs or the right to receive information through the Press and electronic media, though, to a certain extent, there may be overlapping.

2. The right to vote at the elections to the House of people or Legislative Assembly is a constitutional right but not merely a statutory right; freedom of voting as distinct from right to vote is a facet of the fundamental right enshrined in Article 19(1)(a). The casting of vote in favour of one or the other candidate marks the accomplishment of freedom of expression of the voter.

3. The directives given by this Court in *Union of India v. Association for Democratic Reforms* [2002]3SCR696 were intended to operate only till the law was made by the Legislature and in that sense 'pro tempore' in nature. Once legislation is made, the Court has to make an independent assessment in order to evaluate whether the items of information statutorily ordained are reasonably adequate to secure the right of information available to the voter/citizen. In embarking on this exercise, the points of disclosure indicated by this Court, even if they be tentative or ad hoc in nature, should be given due weight and substantial departure there from cannot be countenanced.

4. The Court has to take a holistic view and adopt a balanced approach in examining the legislation providing for right to information and laying down the parameters of that right.

5. Section 33B inserted by the Representation of People (3rd Amendment) Act, 2002 does not pass the test of constitutionality firstly for the reason that it imposes blanket ban on dissemination of information other than that spelt out in the enactment irrespective of the need of the hour and the future exigencies and expedients and secondly for the reason that the ban operates despite the fact that the disclosure of information now provided for is deficient and inadequate.

6. The right to information provided for by the Parliament under Section 33A in regard to the pending criminal cases and past involvement in such cases is reasonably adequate to safeguard the right to information vested in the voter/citizen. However, there is no good reason for excluding the pending cases in

which cognizance has been taken by Court from the ambit of disclosure.

7. The provision made in Section 75A regarding declaration of assets and liabilities of the elected candidates to the Speaker or the Chairman of the House has failed to effectuate the right to information and the freedom of expression of the voters/citizens. Having accepted the need to insist on disclosure of assets and liabilities of the elected candidate together with those of spouse or dependent children, the Parliament ought to have made a provision for furnishing this information at the time of filing the nomination. Failure to do so has resulted in the violation of guarantee under Article 19(1)(a).

8. The failure to provide for disclosure of educational qualification does not, in practical terms, infringe the freedom of expression.

9. The Election Commission has to issue revised instructions to ensure implementation of Section 33A subject to what is laid down in this judgment regarding the cases in which cognizance has

been taken. The Election Commission's orders related to disclosure of assets and liabilities will still hold good and continue to be operative. However, direction No. 4 of para 14 insofar as verification of assets and liabilities by means of summary enquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information should not be enforced.

124. Accordingly, the writ petitions stand disposed of without costs.

Conclusion by Justice D. M. Dharmadhikari

125. I have carefully gone through the well considered separate opinions of Brothers MB Shah J. and P.V. Reddi JJ. Both the learned judges have come to a common conclusion that Section 33B inserted in the Representation of People Act, 1951 by Amendment Ordinance 4 of 2002, which on repeal is succeeded by 3rd Amendment Act of 2002, is liable to be declared invalid being violative of Article 19(1)(a) of the Constitution.

126. I am in respectful agreement with the above conclusion reached in common by both the learned brothers. I would, however, like to supplement the above conclusion.

127. The reports of the advisory Commission set up one after the other by the Government to which a reference has been made by Brother Shah J., highlight the present political scenario where money-power and muscle-power have substantially polluted and perverted the democratic processes in India. To control the ill-effects of money-power and muscle-power the Commission recommend that election system should be overhauled and drastically changed lest democracy would become a teasing illusion to common citizens of this country. Not only a half-hearted attempt in the direction of reform of the election system is to be taken, as has been done by the present legislation by amending some provisions of the Act here and there, but a much improved election system is required to be evolved to make the election process both transparent and accountable so that influence of tainted money

and physical force of criminals do not make democracy a farce - Citizen's fundamental 'right of information' should be recognised and fully effectuated. This freedom of a citizen to participate and choose a candidate at an election is distinct from exercise of his right as a voter which is to be regulated by statutory law on the election like the R.P. Act.

128. Making of law for election reform is undoubtedly a subject exclusively of legislature. Based on the decision of this Court in the case of Association for Democratic Reforms (supra) and the directions made therein to the Election Commission, the Amendment Act under consideration has made an attempt to fill the void in law but the void has not been filled fully and does not satisfy the requirements for exercise of fundamental freedom of citizen to participate in election as a well informed voter.

129. Democracy based on 'Free and fair elections' is considered as basic feature of the Constitution in the case of Keshvanand Bharati (supra). Lack of adequate legislative will to fill the vacuum in law for reforming

the election process in accordance with the law declared by this Court in the case of Association for Democratic Reforms (supra), obligates this Court as an important organ in constitutional process to intervene.

130. In my opinion, this Court is obliged by the Constitution to intervene because the legislative filed, even after the passing of the Ordinance and the Amendment Act, leaves a vacuum. This Court in the case of Association for Democratic Reforms (supra) has determined the ambit of fundamental 'right of information' to a voter. The law, as it stands today after amendment, is deficient in ensuring 'free and fair elections'. This court has, therefore, found it necessary to strike down Section 33B of the Amendment Act so as to revive the law declared by this Court in the case of Association for Democratic Reforms (supra).

131. With these words, I agree with conclusions (A) to (E) in the opinion of Brother Shah J. and conclusion Nos. (1), (2), (4), (5), (6), (7) & (9) in the opinion of Brother P.V. Reddi J.

132. With utmost respect, I am unable to agree with conclusion Nos. (3) & (8) in the opinion of Brother P.V. Reddy J., as on those aspects, I have expressed my respectful agreement with Brother Shah J.

11. That it is most humbly submitted that the complete bio data of the contesting candidates would never reach to the voters because the election campaign is likely to be concentrated on a virtual mode which will not enable the entire voters of the State of Bihar to know the bio data of the candidates
12. That it is very much pertinent that the judgment rendered by the Apex Court in Krishnamoorthy v. Shiv Kumar and Others reported in 2015 AIR SCW 2688, relevant page 2697 para 17(C), it has been categorically held by the Hon'ble Supreme Court that the judgment rendered by the Apex Court in Union of India (UOI) V. Association for Democratic Reforms and Anr. WITH People's Union for Civil Liberties (PUCL) and Anr. V. Union of India (UOI) and Anr. reported in AIR 2002 SC2 112, (2002) 5 SCC 294 has attained finality, therefore, there is no question of interpreting

constitutional provision which calls for reference under Article 145(3).

13. The Hon'ble Apex Court in the above judgment had further declared and conferred rights upon the little voters to the extent that:

“49-0. Elector deciding not to vote-If an elector, after his electoral roll number has been duly entered in the register of voters in Form 17-A and has put his signature or thumb impression thereon as required Under Sub-rule (1) of Rule 49-L decided not to record his vote, a remark to this effect shall be made against the said entry in Form 17-A by the Presiding Officer and the signature or thumb impression of the elector shall be obtained against such remark.

25. Testing the validity of the aforesaid Rules, a three-Judge Bench in People's Union for Civil Liberties and Anr. v. Union of India and Anr. Reported in AIR

***2014 SC (Suppl) 188, (2013) 10 SCC 1
after dwelling upon many a facet opined
thus:***

***“Democracy being the basic feature
of our constitutional set-up, there can be
no two opinions that free and fair
elections would alone guarantee the
growth of a healthy democracy in the
country. The "fair" denotes equal
opportunity to all people. Universal
adult suffrage conferred on the citizens
of India by the Constitution has made it
possible for these millions of individual
voters to go to the polls and thus
participate in the governance of our
country. For democracy to survive, it is
essential that the best available men
should be chosen as people's
representatives for proper governance of
the country. This can be best achieved
through men of high moral and ethical***

values, who win the elections on a positive vote. Thus in a vibrant democracy, the voter must be given an opportunity to choose none of the above (NOTA) button, which will indeed compel the political parties to nominate a sound candidate. This situation palpably tells us the dire need of negative voting.”

14. That the Apex Court in the aforesaid judgement had also held that *“voters' fundamental right to know the antecedents of a candidate is independent of statutory rights under the election law. A voter is first citizen of this country and apart from statutory rights, he is having fundamental rights conferred by the Constitution. Members of a democratic society should be sufficiently informed so that they may cast their votes intelligently in favour of persons who are to govern them. Right to vote would be meaningless unless the citizens are well informed about the antecedents of a candidate. There can be little doubt that exposure*

to public gaze and scrutiny is one of the surest means to cleanse our democratic governing system and to have competent legislatures.”

That it has been further held in the aforementioned judgment of the Apex Court that ***"If right to telecast and right to view sport games and the right to impart such information is considered to be part and parcel of Article 19(1)(a), we fail to understand why the right of a citizen/voter - a little man - to know about the antecedents of his candidate cannot be held to be a fundamental right under Article 19(1)(a). In our view, democracy cannot survive without free and fair election, without free and fairly informed voters. Votes cast by uninformed voters in favour of X or Y candidate would be meaningless. As stated in the aforesaid passage, one-sided information, disinformation, misinformation and non-information, all equally create an uninformed citizenry which makes democracy a farce. Therefore, casting of a vote by a misinformed and***

non-informed voter or a voter having one-sided information only is bound to affect the democracy seriously. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions. Entertainment is implied in freedom of "speech and expression" and there is no reason to hold that freedom of speech and expression would not cover right to get material information with regard to a candidate who is contesting election for a post which is of utmost importance in the democracy."

15. That it is relevant to submit for consideration that as per the directions and mandates given in the aforementioned celebrated judgements by the Apex Court, it will not be possible to make available the bio-data of the contesting candidates to the entire voters of the State of Bihar through any medium, inter alia keeping in view that approx 40% citizens of Bihar are illiterate and the fundamental rights of the citizens of Bihar as guaranteed under Article 19(1)(a) of the

Constitution of India will be infringed. The election campaigns are difficult to compare with the average, Western-style election campaigns. The State's enormous size and cultural diversity, the large number of eligible voters and the high levels of poverty and illiteracy have limited the usefulness of media-based campaigns. Because a large part of the population is illiterate and lives in rural areas with limited media access, the print media, especially, has had limited effects as a political campaign tool. That Public meetings, mohalla meetings, door to door campaigning, which are the main medium of informing voters about the candidate and parties' policies will be unavailable or severely restricted due to Covid - 19 pandemic. Bihar has a total literacy rate of 63.82% (73.39% for males and 53.33% for females). More than 1/3rd population is illiterate. Bihar lies at the bottom of the list of states with 30% smart phone penetration. Thus limited virtual or digital campaigning will tantamount to destruction of the fundamental right of voter as the

vast majority will be excluded from receiving information to form opinion to cast their vote.

16. That this is the first time in India's history that an election is going to held in the pandemic. According to the World Health Organisation, Coronaviruses are a large family of viruses which may cause illness in animals or humans. In humans, several coronaviruses are known to cause respiratory infections ranging from the common cold to more severe diseases such as Middle East Respiratory Syndrome (MERS) and Severe Acute Respiratory Syndrome (SARS). The most recently discovered coronavirus causes coronavirus disease COVID-19. The most common symptoms of COVID-19 are fever, dry cough, and tiredness. Other symptoms that are less common and may affect some patients include aches and pains, nasal congestion, headache, conjunctivitis, sore throat, diarrhea, loss of taste or smell or a rash on skin or discoloration of fingers or toes. These symptoms are usually mild and begin gradually. Some people become infected but only have very mild symptoms. Most people (about 80%) recover

from the disease without needing hospital treatment. Around 1 out of every 5 people who gets COVID-19 becomes seriously ill and develops difficulty breathing. Older people, and those with underlying medical problems like high blood pressure, heart and lung problems, diabetes, or cancer, are at higher risk of developing serious illness. However, anyone can catch COVID-19 and become seriously ill. People of all ages who experience fever and/or cough associated with difficulty breathing/shortness of breath, chest pain/pressure, or loss of speech or movement should seek medical attention immediately. If possible, it is recommended to call the health care provider or facility first, so the patient can be directed to the right clinic.

17. That the World Health Organisation has published in its website that people can catch COVID-19 from others who have the virus. The disease spreads primarily from person to person through small droplets from the nose or mouth, which are expelled when a person with COVID-19 coughs, sneezes, or speaks. These droplets are relatively heavy, do not travel far

and quickly sink to the ground. People can catch COVID-19 if they breathe in these droplets from a person infected with the virus. This is why it is important to stay at least 1 meter away from others. These droplets can land on objects and surfaces around the person such as tables, doorknobs and handrails. People can become infected by touching these objects or surfaces, then touching their eyes, nose or mouth. This is why it is important to wash your hands regularly with soap and water or clean with alcohol-based hand rub. That the time between exposure to COVID-19 and the moment when symptoms start is commonly around five to six days but can range from 1 – 14 days.

18. That it is relevant to submit for consideration that according to the situation report no. 209 published by the World Health Organisation on dated 16.08.2020, approximately 25,89,682 cases so far have been detected in India and about 49,980 people have died due to the coronavirus. The transmission in India has

been classified as Cluster of cases by the World Health Organisation.

A Photostat copy of the situation report no. 209 published by the World Health Organisation on dated 16.08.2020 is annexed herewith and marked as **ANNEXURE – 1** to this Writ Petition.

19. That it is relevant to submit for consideration that according to another report published by World Health Organisation, People of all ages can be infected by the COVID-19 virus. Older people and younger people can be infected by the COVID-19 virus. Older people, and people with pre-existing medical conditions such as asthma, diabetes, and heart disease appear to be more vulnerable to becoming severely ill with the virus.
20. That the World Health Organisation had further released Public health surveillance for COVID-19 Interim Guidance dated 7 August 2020 wherein the Member States have been requested on the implementation of surveillance for COVID-19 and the reporting requirements for WHO. The WHO has been

keenly and grossly involved in spreading all sort of information related to proper handling the pandemic throughout the globe by taking all measures.

A Photostat copy of the Public health surveillance for COVID-19 Interim Guidance dated 7 August 2020 issued by the World Health Organisation is annexed herewith and marked as **ANEXURE – 2** to this Writ Petition.

21. That it is also relevant to submit for consideration that during this period of pandemic, mental health and psychosocial condition of the citizens have also worsen due to the fear of the pandemic and the World Health Organisation had been repeatedly working on it to give a message that people should not be termed as **COVID-19 CASES or COVID-19 FAMILIES**. The WHO had shown deep concern in order to promulgate as to separate a person from having an identity defined by COVID-19, in order to reduce stigma.

A Photostat copy of the article published by the WHO on Mental

health and psychosocial considerations during the COVID-19 outbreak 18 March 2020 is annexed herewith and marked as **ANNEXURE – 3** to this Writ Petition.

22. That it is also relevant to submit for consideration that as per the order of the Ministry of Home Affairs, Government of India vide Notification No. 40-3/2020-DM-I(A) dated 29.07.2020, it has been directed by the Ministry of Home Affairs, Government of India that large public gathering shall continue to remain prohibited. That it is noteworthy to mention here that the election process requires involvement of large number of people which encompasses a large section of authorities including police force personnel and medical health care personnel and the present situation is not favouring at all rather will endanger the life of all the associated people involved in conducting the entire election process.

A Photostat copy of the order of the Ministry of Home Affairs, Government of India vide Notification No. 40-

3/2020-DM-I(A) dated 29.07.2020 is annexed herewith and marked as **ANNEXURE – 4** to this Writ Petition.

23. That it is also relevant to submit for consideration that as per the current data available approximately 117671 cases have been detected so far in the State of Bihar. The statics available on the official tweeter account of the health department are given as under:

COVID-19 UPDATE

Dated: 21-08-2020

• विगत 24 घंटे में COVID-19 से ठीक हुए व्यक्ति	: 3678
• अब तक कुल ठीक हुए व्यक्ति	: 91841
• बिहार राज्य में रिकवरी का दर	: 78.05%
• दिनांक 18/08/2020 को किये गए कुल जाँच की संख्या	: 108179
• दिनांक 18/08/2020 को जाँच के आधार पर COVID-19 के कुल मामले	: 2742
• दिनांक 19/08/2020 को किये गए कुल जाँच की संख्या	: 107945
• दिनांक 19/08/2020 को जाँच के आधार पर अबतक COVID-19 के प्रतिवेदित मामले	: 2295
• दिनांक 20/08/2020 को किये गए कुल जाँच की संख्या	: 112422
• दिनांक 20/08/2020 को जाँच के आधार पर अबतक COVID-19 के प्रतिवेदित मामले	: 1837
• विगत 24 घंटे में जुड़े नए मामले	: 2461
• वर्तमान में COVID-19 के Active मरीज़ की संख्या	: 25241
• अब तक बिहार राज्य में किये गये कुल जाँच	: 2228516

S No.	District	Positive Cases	Discharged	Dead	Active Case
1 .	अररिया	2294	1407	10	877
2 .	अरवल	1165	861	5	299
3 .	औरंगाबाद	2271	1725	6	540
4 .	बांका	1451	1173	4	274
5 .	बेगूसराय	4603	3449	17	1137
6 .	भागलपुर	4631	3801	41	789
7 .	भोजपुर	3083	2558	21	504
8 .	बक्सर	2668	2176	7	485
9 .	दरभंगा	1961	1364	15	582
10 .	गया	4013	3329	42	642
11 .	गोपालगंज	2253	1781	2	470
12 .	जमुई	1390	1200	6	184
13 .	जहानाबाद	2068	1487	7	574
14 .	कैमूर	1141	968	9	164

15 .	कटिहार	4018	2961	5	1052
16 .	खगड़िया	2085	1769	8	308
17 .	किशनगंज	1607	1247	6	354
18 .	लखीसराय	1542	1174	4	364
19 .	मधेपुरा	1712	1241	5	466
20 .	मधुबनी	3690	2300	5	1385
21 .	मुंगेर	2187	1710	28	449
22 .	मुजफ्फरपुर	5033	3691	22	1320
23 .	नालंदा	4190	3410	25	755
24 .	नवादा	1986	1721	12	253
25 .	पश्चिम चंपारण	3061	2381	15	665
26 .	पटना	18402	15132	116	3154
27 .	पूर्वी चंपारण	4238	2863	23	1352
28 .	पूर्णिया	3283	2561	4	718
29 .	रोहतास	3961	3302	28	631
30 .	सहरसा	2658	1823	1	834
31 .	समस्तीपुर	2880	2438	15	427
32 .	सारण	3765	2807	22	936
33 .	शेखपुरा	1569	1195	3	371
34 .	शिवहर	619	492	1	126
35 .	सीतामढ़ी	2311	1729	6	576
36 .	सिवान	2721	2257	13	451
37 .	सुपौल	2024	1649	7	368
38 .	वैशाली	3137	2709	22	405
	Total	117671	91841	588	25241

24. That it is relevant to submit for consideration that if the number of cases rises much more in Bihar just before the election schedule, how can the commission hold an election without any contingency plan?

25. That it is further very much relevant to submit for consideration that the entire election related materials and articles will come in contact with all most all the personnel involved in the election procedure which will have a very high impact of getting the personnel infected with COVID 19 virus if at all a single person in the team is infected. Election itself could become a Covid-19 spreader endangering the life, health and well being of government employees on election duty, vast number of party cadres and general population.
26. That it is also very much relevant to submit for consideration that the State of Bihar is combating flood and according to the available report dated 21.08.2020 uploaded on the website of the Disaster Management, Government of Bihar, all together 16 Districts have been badly affected with the flood and approximately 8292464 people have been affected. The causality in regard to total deaths is reported to be approximately 27. The deluge has swamped 1,232 panchayat areas in 125 blocks of the 16 districts. According to the news reports, Rivers such as

Baghmati, Burhi Gandak, Kamlabalan, Adhwara, Khiroi and Ghaghra are flowing above the danger levels. Ganga is also flowing 17 cm above the danger mark at Kahalgaon in Bhagalpur. The river's water level rose by 1-4 cm at various places in the State.

A Photostat copy of the report dated 21.08.2020 uploaded on the website of the Disaster Management, Government of Bihar is annexed herewith and marked as **ANNEXURE – 5** to this Writ Petition.

27. That the Election Commission of India vide Document No. 324.6.EPS.OT.001.2020 have issued a guideline on dated 21.08.2020 for conduct of election during the COVID 19 and mere going through the aforesaid document will make it crystal as clear that the aforesaid guidelines pertaining to conduct of elections during COVID 19 will never achieve the commands of the Apex Court as also the protection of fundamental rights of the citizens of the State of Bihar as guaranteed in the Constitution of India. It is pertinent

to mention here that the Constitution provides the right to live a dignified life to all its citizens and throwing the people under the garb of infection in the name of election will also infringe the right to life and personal liberty of the citizens of the State of Bihar as guaranteed under Article 21 of the Constitution of India. It is as important to protect the democracy as it is equally important to protect the life of the citizens who are pillars of the democracy.

A Photostat copy of the guidelines published by the Election Commission of India is annexed herewith and marked as **ANNEXURE – 6** to this Writ Petition.

28. That it is relevant to submit for consideration that taking into account the entire submissions made hereinabove, the situation is not at all favouring for conducting elections during this pandemic and the citizens fundamental right to freedom of speech and expression under Article 19(1)(A) of the Constitution of India includes the right to know the bio data of the

contesting candidates which is also the command of the Apex Court as a fundamental right of the voters will never be complied with in the prevailing situation and as such the ensuing election will be conducted against the provisions of the statutory norms as well as the rights conferred upon the citizens by the Constitution.

29. That the petitioner has not filed earlier any Public Interest Litigation in the instant matter concerning Bihar Assembly Election.
30. That this writ petition is being filed through email and is not accompanied by duly sworn Affidavit and Court Fees. The Petitioner in Person through whom this Writ Petition is being filed undertakes that the same would be subsequently provided when called upon to do so.

It is, therefore, prayed that this Hon'ble Court may graciously be pleased to admit this Public Interest Litigation, issue show cause notice to the Respondents as to why not the upcoming Bihar Assembly Elections

2020 be deferred and after hearing the party or parties order to defer the upcoming Bihar Assembly Election 2020 or pass such other order/ orders which this Hon'ble Court may deem fit and proper.

And for this the petitioner in person shall ever pray.