

IN THE HON'BLE HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR

W.P. No.

/2020 (PIL)

PETITIONER : Aman Sharma :

VERSUS

RESPONDENTS : The Chief Election Commissioner & Anr.
:

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Jabalpur

Submitted by,

Date: 12/06.2020

Abhinav Dhanodkar Advocate

IN THE HON'BLE HIGH COURT OF MADHYA PRADESH
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TO,

**THE HON'BLE THE CHIEF JUSTICE
HIGH COURT OF M.P.,
AND HIS OTHER COMPANION
JUSTICES OF THE HON'BLE**

MOST RESPECTFULLY SHOWETH THAT:

1. The present public interest litigation has been filed in order to bring to the knowledge of this Hon'ble Court that, notification number 37/2020 Dt. 01/06/2020 has been issued by the Respondents, by which announcement of biennial elections and date of Poll and fact of counting for M.P. having been deferred to Rajya Sabha on 23/03/2020 and after the outbreak of COVID – 19 pandemic, the elections were deferred and thereafter the announcement says that, the date of poll for 3 seats is 19/06/2020.
2. That, that as per section 24A of the Representation of People Act 1950, filling of seats allotted to union territories there shall be constituted Electoral College. As per the second schedule, the total no. of seats determined for Madhya Pradesh assembly is 230. 22 members of the Legislative Assembly have resigned and two seats are vacant on account of the demise of members. Thus total no. of the vacancies in MP State assembly is 24 out of the total strength of 230. Thus more than 1/10 of the house will not be represented in voting on 19/06/2020 for the election to the three vacancies of Madhya Pradesh in Rajya Sabha.

Jabalpur
Date: 12.06.2020

Submitted by,
Abhinav P. Dhanodkar Adv

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PRINCIPAL SEAT AT JABALPUR

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PETITIONER : Aman Sharma :

VERSUS

RESPONDENTS : The Chief Election Commissioner & Anr.

CHRONOLOGICAL LIST OF EVENTS

S. No.	Particulars	Date/Year
1.	Respondents have issued notification No. 37/2020 issued by which announcement of biennial elections and date of Poll and fact of counting for M.P. having been deferred to Rajya Sabha.	01/06/2020
2.	The announcement says that, the date of poll for 3 seats.	19/06/2020

Indore
Date: 12.06.2020

Submitted by,
Abhinav P. Dhanodkar Adv

**IN THE HON'BLE HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR**

W.P. No. /2020 (PIL)

PETITIONER : **Aman Sharma**

VERSUS

RESPONDENTS :

1. The Chief Election Commissioner
Nirvachan Sadan, Ashoka Road,
Pandit Pant Marg Area, Sansad Marg
Area,
New Delhi - 110001
2. Election Commission of India through
Secretary
Nirvachan Sadan, Ashoka Road,
Pandit Pant Marg Area,
Sansad Marg Area,
New Delhi - 110001

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

REGULAR PUBLIC INTEREST LITIGATION PETITION

The Petitioner above named humbly begs to submit as under:-

1. **PARTICULARS OF THE CAUSE/ORDER AGAINST
WHICH THE PETITION IS MADE:**
 - (1) **Date of Order/Notification/circular/
Policy/Decision etc.:** N.A.
 - (2) **Passed in (Case of file Number):** N.A.
 - (3) **Passed by (Name and Designation of the Court,
Authority and Tribunal etc.):** N.A.

(4) **Subject matter in brief:**

The present public interest litigation has been filed in order to bring to the knowledge of this Hon'ble Court that, notification number 37/2020 Dt. 01/06/2020 has been issued by the Respondents, by which announcement of biennial elections and date of Poll and fact of counting for M.P. having been deferred to Rajya Sabha on 23/03/2020 and after the outbreak of COVID – 19 pandemic, the elections were deferred and thereafter the announcement says that, the date of poll for 3 seats is 19/06/2020.

It is humbly submitted that as per section 24A of the Representation of People Act 1950, filling of seats allotted to union territories there shall be constituted Electoral College. As per the second schedule, the total no. of seats determined for Madhya Pradesh assembly is 230. 22 members of the Legislative Assembly have resigned and two seats are vacant on account of the demise of members. Thus total no. of the vacancies in MP State assembly is 24 out of the total strength of 230. Thus more than 1/10 of the house will not be represented in voting on 19/06/2020 for the election to the three vacancies of Madhya Pradesh in Rajya Sabha.

2. THE ANTECEDENTS OF THE PETITIONERS:

(1) That, the petitioner is a highly educated, responsible and law abiding citizen of India, at Address as mentioned in cause title. The petitioner is also involved in social services and various social activities. The petitioner has been raising the issues of social welfare at various platforms and always involved in activities of social and public welfare for public at large of State of Madhya Pradesh and the country.

- (2) The present petition under Article 226 of the Constitution of India filed by way of Public Interest Litigation, (PIL) to secure the life and health of public at large, and there is no personal benefit of any petitioner involved in this petition.
- (3) That, the petitioner is filing the present petition by his own prerogative, and not at the instance of someone else. The litigation cost and the advocate's fees shall be borne by the petitioner himself.

3. FACTS IN BRIEF, CONSTITUTING THE CAUSE:

3.1 That, petitioner is citizen of India and residing under the vicinity of the territorial jurisdiction of this Hon'ble Court. The respondents, being statutory instrumentalities of the Union, fall within the purview of the "Union", under Article 12 and hence fall within the jurisdiction of this Hon'ble court.

Therefore, under Article 226 of Constitution of India, the present writ petition is filed before this Hon'ble Court.

3.2 That, a notification number 37/2020 dated 01/06/2020 has been issued by the election commission of India, by which announcement of biennial elections and date of Poll and fact of counting for M.P. having been deferred to Rajya Sabha on 23/03/2020. The announcement says that, the date of poll for 3 seats is 19/06/ 2020. A Copy of the notification dated 01/06/2020 is filed and marked as **Annexure – P/1.**

2.3 That as per the Representation of People Act 1950 under section 24A for filling of seats allotted to union territories there shall be constituted Electoral College. As per the second schedule, the total no. of seats determined for Madhya Pradesh assembly is 230. 22 members of the Legislative Assembly have resigned and two seats are

vacant on account of the demise of members. Thus total no. of the vacancies in MP State assembly is 24 out of the total strength of 230. Thus more than 1/10 of the house will not be represented in voting on 19th June 2020 for the election to the three vacancies of Madhya Pradesh in Rajya Sabha.

3.4 For the conduct of elections to Lok Sabha, Rajya Sabha and Legislative assembly are provided in the Conduct of Election Rules 1961. The concerned rules for election to Rajya Sabha are from Rule 71 to Rule 85. For the counting of votes when more than one seat is to be filled is provided in Rule 76 to Rule 81 Schedule to the Rules 1961, framed under Rule 83 provides as follows :

76. *Ascertainment of quota.—At any election where more than one seat is to be filled, every valid ballot paper shall be deemed to be of the value of 100, and the quota sufficient to secure the return of a candidate at the election shall be determined as follows:—*

(a) add the values credited to all the candidates under clause (c) of rule 74;

(b) divide the total by a number which exceeds by 1 the number of vacancies to be filled; and

(c) add 1 to the quotient ignoring the remainder, if any, and the resulting number is the quota.

77. *General instruction.—In carrying out the provisions of rules 78 to 82, the returning officer shall disregard all fractions and ignore all preferences recorded for candidates already elected or excluded from the poll.*

78. *Candidates with quota elected.—If at the end of any count or at the end of the transfer of any parcel or subparcel of an excluded candidate the value of ballot papers credited to a candidate is equal to, or greater than the quota, that candidate shall be declared elected.*

79. *Transfer of surplus.—(1) If at the end of any count the value of the ballot papers credited to a candidate is greater*

than the quota, the surplus shall be transferred, in accordance with the provisions of this rule, to the continuing candidates indicated on the ballot papers of that candidate as being next in order of the elector's preference.

(2) If more than one candidate have a surplus, the largest surplus shall be dealt with first and the others in order of magnitude: Provided that every surplus arising on the first count shall be dealt with before those arising on the second count and so on.

(3) Where there are more surpluses than one to distribute and two or more surpluses are equal, regard shall be had to the original votes of each candidate and the candidate for whom most original votes are recorded shall have his surplus first distributed; and if the values of their original votes are equal, the returning officer shall decide by lot which candidate shall have his surplus first distributed.

(4) (a) If the surplus of any candidate to be transferred arises from original votes only, the returning officer shall examine all the papers in the parcel belonging to that candidate, divide the unexhausted papers into sub-parcels 98 Conduct of Elections Rules, 1961 (Statutory Rules and Order) according to the next preferences recorded thereon and make a separate sub-parcel of the exhausted papers.

(b) He shall ascertain the value of the papers in each sub-parcel and of all the unexhausted papers.

(c) If the value of the unexhausted papers is equal to or less than the surplus, he shall transfer all the unexhausted papers at the value at which they were received by the candidate whose surplus is being transferred.

(d) If the value of the unexhausted papers is greater than the surplus, he shall transfer the sub-parcels of unexhausted papers and the value at which each paper shall be transferred shall be ascertained by dividing the surplus by the total number of unexhausted papers.

(5) If the surplus of any candidate to be transferred arises from transferred as well as original votes, the returning officer shall re-examine all the papers in the sub-parcel last transferred to the candidate, divide the unexhausted papers into sub-parcels according to the next preferences recorded

thereon, and then deal with the sub-parcels in the same manner as is provided in the case of sub-parcels referred to in sub-rule (4).

(6) The papers transferred to each candidate shall be added in the form of a sub-parcel to the papers already belonging to such candidate.

(7) All papers in the parcel or sub-parcel of an elected candidate not transferred under this rule shall be set apart as finally dealt with.

80. Exclusion of candidates lowest on the poll.—

(1) If after all surpluses have been transferred as hereinbefore provided, the number of candidates elected is less than the required number, the returning officer shall exclude from the poll the candidate lowest on the poll and shall distribute his unexhausted papers among the continuing candidates according to the next preferences recorded thereon; and any exhausted papers shall be set apart as finally dealt with.

(2) The papers containing original votes of an excluded candidate shall first be transferred, the transfer value of each paper being one hundred.

(3) The papers containing transferred votes of an excluded candidate shall then be transferred in the order of the transfers in which, and at the value at which, he obtained them.

(4) Each of such transfers shall be deemed to be a separate transfer but not a separate count.

(5) If, as a result of the transfer of papers, the value of votes obtained by candidate is equal to or greater than the quota, the count then proceeding shall be completed but no further papers shall be transferred to him.

(6) The process directed by this rule shall be repeated on the successive exclusions one after another of the candidates lowest on the poll until such vacancy is filled either by the election of a candidate with the quota or as hereinafter provided.

(7) *If at any time it becomes necessary to exclude a candidate and two or more candidates have the same value of votes and are the lowest on the poll, regard shall be had to the original votes of each candidate and the candidate for whom fewest original votes are recorded shall be excluded; and if the values of their original votes are equal the candidates with the smallest value at the earliest count at which these candidates had unequal values shall be excluded.*

(8) *If two or more candidates are lowest on the poll and each has the same value of votes at all counts the returning officer shall decide by lot which candidate shall be excluded.*

81. Filling the last vacancies.—

(1) *When at the end of any count the number of continuing candidates is reduced to the number of vacancies remaining unfilled, the continuing candidates shall be declared elected.*

(2) *When at the end of any count only one vacancy remains unfilled and the value of the papers of some one candidate exceeds the total value of the papers of all the other continuing candidates together with any surplus not transferred, that candidate shall be declared elected.*

(3) *When at the end of any count only one vacancy remains unfilled and there are only two continuing candidates and each of them has the same value of votes and no surplus remains capable of transfer, the returning officer shall decide by lot which of them shall be excluded; and after excluding him in the manner aforesaid, declare the other candidate to be elected.*

82. Provision for re-counts.—

(1) *Any candidate or, in his absence, his election agent or counting agent may, at any time during the counting of the votes either before the commencement or after the completion of any transfer of votes (whether surplus or otherwise) request the returning officer to re-examine and re-count the papers of all or any candidates (not being papers set aside at any previous transfer as finally dealt with), and the returning officer shall forthwith re-examine and re-count the same accordingly.*

(2) The returning officer may in his discretion re-count the votes either once or more than once in any case in which he is not satisfied as to the accuracy of any previous count:

Provided that nothing in this sub-rule shall make it obligatory on the returning officer to re-count the same votes more than once.

83. Illustration of the procedure as to the counting of votes under rules 76 to 81.—

An illustration of the procedure as to the counting of votes in accordance with the provisions of 1 [rules 76 to 81] is given in the Schedule to these rules.

84. Declaration of result and return by returning officers.—

(1) Upon the completion of counting, the returning officer shall, subject to the provisions of sub-rule (3) of rule 81,—

(a) declare the result under section 66 in Form 23 or Form 23A as may be appropriate, and send signed copies thereof to the appropriate authority, the Election Commission and the chief electoral officer;

(b) prepare and certify a return of the election in Form 23B and after reporting the result of the election under section 67, send signed copies of the said Form to the Election Commission and the chief electoral officer; and

(c) permit any candidate or his election agent or counting agent to take a copy of, or extract from, such return in Form 23B.]

[(2) The returning officer shall thereafter—

(a) place the valid ballot papers in one packet and the rejected ballot papers in another;

(b) seal with the seals of the returning officer and of such of the candidates, their election agents or counting agents as may desire to affix their seals, each of the packets referred to in clause (a) and the packet containing the declarations by electors and attestations of their signatures; and

(c) record on each of the sealed packets the descriptions of its contents and the date of election.]

[Provided that where such counting relates to an election to fill a seat or seats in the Council of States, the returning officer shall, before sealing the packets under clause (b), allow the authorised agent of a political party to verify as to whom the electors being members of that political party have cast their votes.]

85. Grant of certificate of election to returned candidate.—
As soon as may be after a candidate has been declared to be elected the returning officer shall grant to such candidate a certificate of election in Form 24 and obtain from the candidate an acknowledgment of its receipt duly signed by him and immediately send the acknowledgment by registered post to the Secretary of the Council of States or, as the case may be, the Secretary of the Legislative Council.

3.5 Rule 76 says that every valid ballot paper shall be deemed to be valued at 100 that is to determine the quota sufficient to secure returned of candidate, there are 230 electors for the first preference votes to be recorded in favour of a candidate for his return as a winning candidate.

3.6 The values of all first preferences is first gathered and thereafter 1 is added. As no. of members to be elected is 3 therefore it will be 4. As per the illustrations, the value of all ballots is added to gather and the total is divided by 8 i.e. number which exceed by one the number of vacancies to be filled. As per the **illustration**, the value of votes as per M.P. 3 seats are concerned, we have the following position:

- I.** If 230 seats are considered the value will be 23000.
 (230×100)
- II.** If the 24 vacancies are deducted then the value will be 20700 (207×100) .
- III.** This will be the quota sufficient to secure the return of the candidate.

IV. The vacancies are more than 1/10 of the total number of members. The sufficient quota is the basis for further counting and declaration of result. Thus 24 members of the Assembly will be deprived of the right to vote and the result on account of vacancies will be affected. Thus the elections will not be fair.

V. Part IV of Representation of People Act 1950, provides for the constitution of the Electoral College for filling the seats of Union territories. The Electoral College shall be constituted in the matters of the Union territories of Delhi, Pondicherry, etc.

VI. Section 27J of RP Act 1950 provides that Electoral College can be constituted even when vacancies are there and elections to Rajya Sabha shall be held even on existence of vacancies and holding of election will not be a ground to challenge election by members of the Electoral College to the Rajya Sabha.

VII. As for as, election from Legislative Assembly to the Rajya Sabha is concerned there is no provision like Section 27J in both Acts as well as conduct of election Rules.

VIII. The Parliament where-ever it felt, that vacancies are not relevant for election to the seats to the Rajya Sabha they have made a special provision like 27J of RP Act 1950.

No provision is made either under the Representation of People Act 1950 or Representation of People Act 1951, Nor in the Conduct of Elections Rules 1961 from Rule 76 to

Rule 85. Rule 76 to 85 has already been reproduced in foregoing para for ready reference of the Hon'ble Court.

3.7 That Section 12 of the Representation of People Act 1951 which empowers the Election Commission to issue a notification for filling vacant seats to the Rajya Sabha and call upon the elected members of the Legislative Assembly or as the case may be, the members of the electoral college of each state concerned to elect members in accordance with the provision of Act and the Rules.

3.8 As the elections to the Rajya Sabha are held by transferable votes, therefore sufficient quota must be determined for counting of votes and there will be wrong quota unless the vacancies are filled. Therefore the holding of polling and counting on 19th June 2020 is illegal, un constitutional and without jurisdiction.

3.9 The 24 assembly constituencies whose elected members are entitled to represent them and vote at the elections are deprived of their representation.

3.10 The polling and counting therefore will be void as more than 1/10 of the assembly constituencies are not represented at the polling on 19th June 2020.

3.11 That, being aggrieved by the previously mentioned loophole on the part of the respondents the petitioner prefers this Public Interest Litigation on the above-mentioned facts and grounds inter-alia.

4. SOURCE OF INFORMATION:

That, the petitioner is socially active person and has gathered the information from websites of Election Commission of India and the notifications published on its website.

5. NATURE AND EXTENT OF INJURY CAUSED /APPREHENDED :

That, these actions-inactions of the respondents are adversely affecting the right of the citizens of M.P., since the 24 assembly constituencies whose elected members are entitled to represent them and vote at the elections are deprived of their representation.

6. ISSUE RAISED WAS NEITHER DEALT WITH NOR DECIDED:

That, the petitioner says and submit that as per the best of the knowledge of the subject matter of the petition, which has been raised before this Hon'ble Court has never been filed by the any other person and the petitioner has also not filed any other petition except present petition in this regard before any authority or tribunal etc.

7. ANY REPRESENTATION ETC. MADE:

It is submitted that the petitioner has already sent a legal notice dated 10/06/2020 to the Respondents hence no further separate representation is required. A Copy of legal notice dated 10/06/2020 is filed and marked as **Annexure – P/2.**

8. GROUNDS:

8.1 That, the casual vacancies in the council of states (Rajya Sabha) governed by section 147 of RP Act 1951. It says that the election commission shall by notification in the gazette of India call upon the elected members of the Legislative Assembly or the members of the Electoral College concerned.

8.2 That, section 152 of RP Act 1951 says as the returning officer shall maintain a list of elected members of that assembly subsection (2) says returning officer for an election by the members of the electoral college for union territory to fill seats in the council.

8.3 That, section 151-A says that notwithstanding complained in section 147, 149, 150, and 151 a bye-election shall be held within 6 months from the date of the occurrence of the vacancy. Thus vacancies either in Rajya Sabha or Legislative Assembly should be held within 6 months date of the occurrence of the vacancy.

8.4 That, section 27-A of RP Act 1950 deals with seats in the council of state allotted to any union territory in the fourth schedule, there shall be an electoral college for such territory.

8.5 That, Section 27-H deals with the manner of filling seats in the council of states allotted to Union Territory by the members of the electoral college for the territory following the system of proportionate representation by means single transferable vote.

8.6 That, Section 27-H contained the words “or group of such states” which were deleted in 1956.

8.7 That, Section 27-J says that election can be held by members of the Electoral College even when any vacancy in the membership of such collage are in resistance.

8.8 That, therefore the elections to the council of states by State Legislative Assembly says that the elected member of Legislative Assembly of states will vote to fill seats in the council of states. While subsection (2) of section 52 says that

members of the electoral college for Union Territory shall vote to fill seats in the council of states.

8.9 That, Section 52 (1) & (2) make a difference that under subsection (1) members of the Legislative Assembly will vote to fill the seats while under subsection (2) members of the electoral college for union territory will vote to fill a seat in the council of states. In subsection (2) after Union Territory the words “all group of such states” omitted by Act 27 of 1956.

8.10 That, the Supreme Court in the case of Election Commission of India Vs. Ashok AIR 2000 Supreme Court 2979 in Para 32 (3) says “subject to the above, action taken or order issued by election commission is open to judicial review on the well-settled parameter which unable judicial review of decisions of statutory bodies such on a case of malafide or arbitrary exercise of power being made out statutory body being shown to have acted in breach of law.” Therefore Article 329 is not a bar to this petition.

8.11 That, the counting of votes when more than one seat is to be filled is governed by Rule 76 to 81 in the conduct of election Rules 1961. As per section 83 election procedure to count of votes under Rule 76 to 81. Illustration of the procedure has to count of votes is given in schedule under Rule 83. As per this procedure, each valid ballot paper is of the value 100 and valid ballot paper is one where first preference is given as per illustration, there are 7 seats to be filled 16 candidates are there, and 140 electors. The total of first preference to 16 candidates is 140 then the value of all papers is 14000 is divided by 8 and 1 is added to it which comes to 1751. The candidate H gets 19 valid votes so values come to 1900 and if the value of votes of H is 1900 and the number of sufficient quotas is 1751, therefore, he is elected and his 149 surplus votes are then spread

to rest of the candidates. According to available preferences therefore sufficient quota is the basis for the election. In the present case the number of electors is 230 and therefore the total value will be 23000 and it is divided by 8 and one is added then the sufficient quota will be 2886.

- 8.12** That, there are 24 vacancies therefore the number of electors will be reduced to 207×100 total will come to 20700 and if it is divided by 8 and one is added then it comes to 2813, therefore the entire basis for counting will be erroneous.
- 8.13** That, each of the 230 members is representative of a constituency and he votes as their representative. If 24 constituency are deprived of their rights to vote it will mean 1/10 of the consistencies or the people not voting thus the election is vitiated by non-representation of 24 constituencies.
- 8.14** That, these 24 vacancies have arisen about 4 months ago and therefore the elections to these vacancies should have been held. The election as per notification 01-06-2020 were conducted was 26-03-2020 but under section 153 of RP Act 51, the election commission decided that the poll and counting of votes for 3 seats of Madhya Pradesh must be held on 19-06-2020, as the polls were postponed.
- 8.15** That, under the above circumstances it was mandatory that the election commission should have taken immediate steps to fill in the three seats from Madhya Pradesh by issuing a notification for election and the election completed and thereafter this polling should have been held because 24 constituencies will go unrepresented this will be against the democratic elections which should be free and fair with the concerned people voting and be represented when the poll is taken for 3 seats this notification of 01-06-2020 is therefore

arbitrary and affect the rights of the people of 24 constituencies who should be represented.

8.16 That, Section 152 says that in subsection (1) members of the Legislative Assembly will be electors i.e. representing 230 constituencies but in this case, only 207 constituencies are people of 24 constituents deprived of their rights or representation and the voting by the members will make sufficient difference in the result of the poll.

8.17 That, it is the bounden duty under section 151-A RP Act 1951 should be held within 6 months from the date of occurrence of the vacancies. Section 147 relates to filling of casual vacancies in the council of states therefore action should have been taken under section 147 for filling 24 vacancies in the Legislative Assembly and then the election notification should have been issued for filling 3 seats in the council of states.

8.18 That, there is no alternative remedy to the petitioner's acceptance to file this petition on the legal grounds as the commission has acted arbitrary and contrary to law.

8.19 That, after the 24 seats are filled up the commission will have to issue a fresh notification for the nomination, scrutiny, withdrawal, and the polling therefore the polling 19-06-2020 should be stayed.

9. DETAILS OF REMEDIES EXHAUSTED:

The petitioner declares that there is no other remedy available.

10. DELAY, IF ANY, IN FILING THE PETITION AND EXPLANATION THEREFORE: N.A.

11. RELIEF SOUGHT:

It is, therefore, most humbly and respectfully prayed that the present petition may kindly be allowed and the Hon'ble Court may be pleased to:-

- a) The all 3 vacant seats of Rajya Sabha on 19-06-2020 must be deferred and the commission be directed to first fill the 24 vacant seats in Legislative Assembly and then election to 3 seats should be held.
- b) After the filling of 24 seats in assembly a fresh notification for the election to 3 seats of Rajya Sabha will have to be issued and thereafter for the poll is taken and result announce.
- c) Allow the present petition with costs.
- d) Any other relief this Hon'ble Court may deem fit in the facts and circumstances of the present matter.

12. INTERIM RELIEF:- In view of the above mentioned facts and circumstances, the petitioner humbly prays the Hon'ble Court the election of Rajya Sabha scheduled on 19/06/2020 be deferred till the results of bye-election of 24 seats are declared.

13. CAVEAT: No notice of lodging a caveat by the opposite party is received.

Jabalpur
Date: 12.06.2020

Submitted by,
Abhinav P. Dhanodkar Adv

IN THE HON'BLE HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR

W.P. No.

/2020 (PIL)

PETITIONER : Aman Sharma

VERSUS

RESPONDENTS : The Chief Election Commissioner & Anr.
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LIST OF DOCUMENTS

S. No.	Particulars	Annexure	Certified/P hotocopy	Number of pages
1.	Copy of the notification dated 01/06/2020	P/1		<u>22 -23</u>
2.	Copy of legal notice dated 10/06/2020	P/2		<u>24 -30</u>

Indore Submitted by,

Date: 12.06.2020

Abhinav P. Dhanodkar Adv.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

No. ECI/PN/37/2020**Dated: 1st June, 2020****ANNOUNCEMENT OF DATE OF POLL AND COUNTING OF VOTES FOR DEFERRED RAJYA SABHA POLL**

On 25.02.2020, Election Commission of India announced elections to the Council of States to fill 55 seats of Members from 17 States, retiring in the month of April, 2020, which were notified vide Notification No. 318/CS-Multi/2020(1) dated 06.03.2020. After the last date of withdrawal on 18.03.2020, respective Returning Officers declared 37 seats from 10 States filled in uncontested. Further, as per the reports received from the concerned Returning Officers, the biennial elections for 18 seats from the States of Andhra Pradesh, Gujarat, Jharkhand, Madhya Pradesh, Manipur, Meghalaya and Rajasthan were to be conducted on 26.03.2020 (Thursday) and the date before which election was to be completed as earlier announced by the Commission was 30.03.2020 (Monday) as per the notification dated 06.03.2020.

2. Section 153 of the Representation of the People Act, 1951 specifies that the Election Commission for reasons which it considers sufficient, may extend the time for the completion of any election by making necessary amendments in the notification issued by it under section 30 or sub-section (1) of section 39 of the said Act. Accordingly, considering the prevailing unforeseen situation of public health emergency due to COVID-19 and related advisories in the country, the Election Commission, vide its press note, dated 24.03.2020, deferred the poll and extended the period of said election under the provisions of section 153 of the said Act and decided that the announcement of fresh date of poll and counting for the said biennial elections will be made by the ECI after reviewing the prevailing situation. The Press Note also specified that the list of contesting candidates already published for the said election by the respective Returning Officers, is to remain valid for the purpose of remaining activities as was prescribed under the said notification (dated 06.03.2020).

3. Now, Commission has reviewed the matter in detail. Considering all factors, including the guidelines dated 30.05.2020 issued by Union Home

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Secretary and Chairman, national Executive Committee (NEC) under the National Disaster Management Act, 2005, and taking into account the inputs obtained from the Chief Electoral Officers concerned, the Commission has decided that the date of poll and counting of votes in respect of the biennial elections for 18 seats from the States of Andhra Pradesh (4 seats), Gujarat (4 seats), Jharkhand (2 seats), Madhya Pradesh (3 seats), Manipur (1 seat), Meghalaya (1 seat) and Rajasthan (3 seats) shall be as per the following schedule:

Events	Date
Date of Poll	19 th June, 2020 (Friday)
Hours of Poll	09:00 am to 04:00 pm
Counting of Votes	19 th June, 2020 (Friday) at 05:00 pm
Date before which election shall be completed	22th June, 2020 (Monday)

4. Commission has also decided that the Chief Secretaries shall depute a senior officer from the State to ensure that the extant instructions regarding COVID-19 containment measures are complied with while making arrangements for conducting the elections.

5. Further Commission has appointed Chief Electoral Officer concerned as Observer for the election in the respective State.



Pawan Diwan
Under Secretary



A.C.

Chamber : 110 State Bar Council Building, High Court Campus, Indore
Office No. 1 : 102-19/1 South Tukoganj, Opp. Jall Auditorium,
Near Noble Hospital, Indore (M.P.) 452001
Office No. 2 : B-14, Ratlam Kothi, Kanchan Bag Road, Indore
Mobile : 98932-59260, 90391-70708 | E-mail : apd.law@gmail.com

Legal Notice

Through Speed Post/Email

Date: 10/06/2020

To,

1. The Chief Election Commissioner

Nirvachan Sadan New Delhi

2. Election Commission of India

Through secretary

Nirvachan Sadan New Delhi

Re: Stay of elections to three seats of Madhya Pradesh in Rajya Sabha till the 24 vacancies in Legislative Assembly of Madhya Pradesh are filled by bye-election.

Sir,

Under Instructions of our client Dr. Aman Sharma is R/o. Indore and his name appears in the electoral rolls for assembly constituency, you are hereby given notice as under : -

1. A notification number 37/2020 Dt. 01st June 2020 has been issued by the election commission of India, by which announcement of biennial elections and date of Poll and fact of counting for M.P. having been deferred to Rajya Sabha on 23/03/2020. The announcement says that, the date of poll for 3 seats is 19th June 2020. A copy of the notification is annexed.



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2. That as per the Representation of People Act 1950 under section 24A for filling of seats allotted to union territories there shall be constituted Electoral College. As per the second schedule, the total no. of seats determined for Madhya Pradesh assembly is 230. 22 members of the Legislative Assembly have resigned and two seats are vacant on account of the demise of members. Thus total no. of the vacancies in MP State assembly is 24 out of the total strength of 230. Thus more than 1/10 of the house will not be represented in voting on 19th June 2020 for the election to the three vacancies of Madhya Pradesh in Rajya Sabha.
3. For the conduct of elections to Lok Sabha, Rajya Sabha and Legislative assembly are provided in the Conduct of Election Rules 1961. The concerned rules for election to Rajya Sabha are from Rule 71 to Rule 85. For the counting of votes when more than one seat is to be filled is provided in Rule 76 to Rule 81 Schedule to the Rules 1961, framed under Rule 83 provides as follows :
4. Rule 76 says that every valid ballot paper shall be deemed to be valued at 100 that is to determine the quota sufficient to secure return of candidate, there are 230 electors for the first preference votes to be recorded in favour of a candidate for his return as a winning candidate.
5. The values of all first preferences is first gathered and thereafter 1 is added. As no. of members to be elected is 3 therefore it will be 4. As per the illustrations, the value of all ballots is added to gather and the total is divided



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by 8 i.e. number which exceed by one the number of vacancies to be filled. As per the illustration, the value of votes as per M.P. 3 seats are concerned, we have the following position.

- I. If 230 seats are considered the value will be 23000. (230x100)
- II. If the 24 vacancies are deducted then the value will be 20700 (207x100).
- III. This will be the quota sufficient to secure the return of the candidate.
- IV. The vacancies are more than 1/10 of the total number of members. The sufficient quota is the basis for further counting and declaration of result. Thus 24 members of the Assembly will be deprived of the right to vote and the result on account of vacancies will be affected. Thus the elections will not be fair.
- V. Part IV of Representation of People Act 1950, provides for the constitution of the Electoral College for filling the seats of Union territories. The Electoral College shall be constituted in the matters of the Union territories of Delhi, Pondicherry, etc.
- VI. Section 27J of RP Act 1950 provides that Electoral College can be constituted even when vacancies are there and elections to Rajya Sabha shall be held even on existence of vacancies and holding of election will not be a ground to challenge election by members of the Electoral College to the Rajya Sabha.



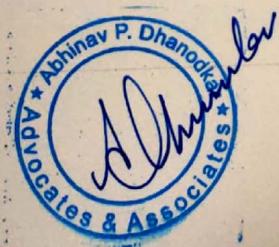
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VII. As for as, election from Legislative Assembly to the Rajya Sabha is concerned there is no provision like Section 27J in both Acts as well as conduct of election Rules.

VIII. The Parliament where-ever it felt, that vacancies are not relevant for election to the seats to the Rajya Sabha they have made a special provision like 27J of RP Act 1950.

No provision is made either under the Representation of People Act 1950 or Representation of People Act 1951, Nor in the Conduct of Elections Rules 1961 from Rule 76 to Rule 85.

6. That Section 12 of the Representation of People Act 1951 which empowers the Election Commission to issue a notification for filling vacant seats to the Rajya Sabha and call upon the elected members of the Legislative Assembly or as the case may be, the members of the electoral college of each state concerned to elect members in accordance with the provision of Act and the Rules.
7. As the elections to the Rajya Sabha are held by transferable votes, therefore sufficient quota must be determined for counting of votes and there will be wrong quota unless the vacancies are filled. Therefore the holding of polling and counting on 19th June 2020 is illegal, un constitutional and without jurisdiction.



8. The 24 assembly constituencies who's elected members are entitled to represent them and vote at the elections are deprived of their representation.
9. The polling and counting therefore will be void as more than 1/10 of the assembly constituencies are not represented at the polling on 19th June 2020.

You are therefore requested not to hold the poll on 19th June 2020 but postpone the poll till the by-elections are held to the vacancies of 24 assembly constituencies. It has been learnt that the Election Commission is going to hold the bye-elections to 24 assembly constituency at an early date. There is no urgency for this poll as already the polls have been postponed for 3 months on account of the Corona epidemic. If the polls on 19th June 2020 are not stayed, our client will be compelled to file a Writ Petition in the High Court of Madhya Pradesh at Indore under Act 226 and 227 of Constitution.




Abhinav P. Dhanodkar
Advocate

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

No. ECI/PN/37/2020

Dated: 1st June, 2020

ANNOUNCEMENT OF DATE OF POLL AND COUNTING OF VOTES FOR DEFERRED RAJYA SABHA POLL

On 25.02.2020, Election Commission of India announced elections to the Council of States to fill 55 seats of Members from 17 States, retiring in the month of April, 2020, which were notified vide Notification No. 318/CS-Multi/2020(1) dated 06.03.2020. After the last date of withdrawal on 18.03.2020, respective Returning Officers declared 37 seats from 10 States filled in uncontested. Further, as per the reports received from the concerned Returning Officers, the biennial elections for 18 seats from the States of Andhra Pradesh, Gujarat, Jharkhand, Madhya Pradesh, Manipur, Meghalaya and Rajasthan were to be conducted on 26.03.2020 (Thursday) and the date before which election was to be completed as earlier announced by the Commission was 30.03.2020 (Monday) as per the notification dated 06.03.2020.

2. Section 153 of the Representation of the People Act, 1951 specifies that the Election Commission for reasons which it considers sufficient, may extend the time for the completion of any election by making necessary amendments in the notification issued by it under section 30 or sub-section (1) of section 39 of the said Act. Accordingly, considering the prevailing unforeseen situation of public health emergency due to COVID-19 and related advisories in the country, the Election Commission, vide its press note, dated 24.03.2020, deferred the poll and extended the period of said election under the provisions of section 153 of the said Act and decided that the announcement of fresh date of poll and counting for the said biennial elections will be made by the ECI after reviewing the prevailing situation. The Press Note also specified that the list of contesting candidates already published for the said election by the respective Returning Officers, is to remain valid for the purpose of remaining activities as was prescribed under the said notification (dated 06.03.2020).

3. Now, Commission has reviewed the matter in detail. Considering all factors, including the guidelines dated 30.05.2020 issued by Union Home

Secretary and Chairman, national Executive Committee (NEC) under the **30**

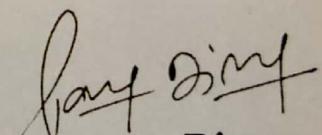
National Disaster Management Act, 2005, and taking into account the inputs obtained from the Chief Electoral Officers concerned, the Commission has decided that the date of poll and counting of votes in respect of the biennial elections for 18 seats from the States of Andhra Pradesh (4 seats), Gujarat (4 seats), Jharkhand (2 seats), Madhya Pradesh (3 seats), Manipur (1 seat), Meghalaya (1 seat) and Rajasthan (3 seats) shall be as per the following schedule:

Events	Date
Date of Poll	19 th June, 2020 (Friday)
Hours of Poll	09:00 am to 04:00 pm
Counting of Votes	19 th June, 2020 (Friday) at 05:00 pm
Date before which election shall be completed	22th June, 2020 (Monday)

4. Commission has also decided that the Chief Secretaries shall depute a senior officer from the State to ensure that the extant instructions regarding COVID-19 containment measures are complied with while making arrangements for conducting the elections.

5. Further Commission has appointed Chief Electoral Officer concerned as Observer for the election in the respective State.

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Pawan Diwan
Under Secretary

IN THE HON'BLE HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR

W.P. No.

/2020 (PIL)

PETITIONER : Aman Sharma

Versus

RESPONDENTS : The Chief Election Commissioner & Anr.

APPLICATION FOR HEARING DUE TO EXTREME URGENCY
DURING COVID - 19

The petitioner most humbly submits as under:-

1. The present public interest litigation has been filed in order to bring to the knowledge of this Hon'ble Court that, notification number 37/2020 Dt. 01/06/2020 has been issued by the Respondents, by which announcement of biennial elections and date of Poll and fact of counting for M.P. having been deferred to Rajya Sabha on 23/03/2020 and after the outbreak of COVID – 19 pandemic, the elections were deferred and thereafter the announcement says that, the date of poll for 3 seats is 19/06/2020.
2. That, that as per section 24A of the Representation of People Act 1950, filling of seats allotted to union territories there shall be constituted Electoral College. As per the second schedule, the total no. of seats determined for Madhya Pradesh assembly is 230. 22 members of the Legislative Assembly have resigned and two seats are vacant on account of the demise of members. Thus total no. of the vacancies in MP State assembly is 24 out of the total strength of 230. Thus more than 1/10 of the house will not be represented in voting on 19/06/2020 for the election to the three vacancies of Madhya Pradesh in Rajya Sabha.

Prayer

In view of the above mentioned facts and circumstances, the petitioner humbly prays that the present application may kindly be allowed and the present petition deserves to be heard immediately due to extremely urgent situation, in the interest of justice.

Place: Indore

Date: 12/06/2020

Submitted by

Counsel for petitioner