

IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRA-ORDINARY ORIGINAL CIVIL JURISDICTION)
[Under Article 226 Of The Constitution Of India]

WRIT PETITION (CIVIL) NO. OF 2020

IN THE MATTER OF :

Kiran Pal Singh Tyagi & Ors.

...Petitioners

VS

State of NCT of Delhi & Ors.

....Respondents

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VIPLAV SHARMA
Advocate & Counsel for Petitioners
A-148, 2nd Floor
Defence Colony
New Delhi – 110 024
Ph: 9599926159
Enrol No.UP-5545/90
Email-viplav.sharma512@gmail.com

Place : New Delhi
Dated :

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URGENT APPLICATION

To,

The Registrar,
Delhi High Court,
New Delhi

Sir,

Will you kindly treat the accompanying petition as an urgent one in accordance with the High Court Rules and orders. The grounds of urgency are –

Urgent Interim orders as prayed in the accompanying
Application for Ad interim Orders

FILED BY

VIPLAV SHARMA
Advocate & Counsel for Petitioners
A-148, 2nd Floor
Defence Colony
New Delhi – 110 024
Ph: 9599926159
Enrol No.UP-5545/90

Place : New Delhi

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vs

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NOTICE OF MOTION

Sir,

Please find enclosed herewith the complete set of the Petition on behalf of the Petitioner in the aforesaid matter and the same is likely to be listed before the Hon'ble Court on 27-01-2020 at 10:30 AM or on such subsequent date, as may be convenient to the Hon'ble Court. Please take notice.

Thanking you,

Yours sincerely,

VIPLAV SHARMA
Advocate & Counsel for Petitioners
A-148, 2nd Floor
Defence Colony
New Delhi – 110 024
Ph: 9599926159
Enrol No.UP-5545/90

Place : New Delhi
Dated :

To

1. State of NCT of Delhi
Through Chief Secretary
New Delhi – 110 001
2. Union of India
Through The Secretary,
Ministry of Law, Justice &
Company Affairs
(Legislative Department)
Shastri Bhawan
New Delhi – 110 001
3. The Election Commission of India
Nirvachan Sadan
New Delhi
Through
The Chief Election Commissioner
4. The Chief Electoral Officer
Office Of The Chief Electoral Officer-Delhi
Old St. Stephen's College Building
Kashmere Gate,
Delhi – 110 006.
5. Shri Rajesh Dhaiya
DEO/Returning Officer
12/1, Jam Nagar House,
Shahjahan Road,
New Delhi – 110 001

IN THE HIGH COURT OF DELHI AT NEW DELHI
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WRIT PETITION (CIVIL) NO. OF 2020

IN THE MATTER OF :

Mr Kiran Pal Singh Tyagi & Ors. vs ...Petitioners

State of NCT of Delhi & Ors.Respondents

MEMO OF PARTIES

1. Kiran Pal Singh Tyagi
S/o Late Shri Karam Chand Tyagi
House No. 45, Village Shakarpur Khaas
Delhi -110092
2. Pankaj Kumar
S/o Shri Rakesh Kumar
House No. B-11, Block B,
Shanti Nagar, Shiv Vihar,
Delhi – 110094
3. Pankaj Kumar
S/o Shri Davender Kumar
House No. 49, H-Block,
Ganga Vihar
Delhi – 110 094
4. Gopal Prasad
S/o Late Shri Vaidyanath Prasad
House No. 210, Street No. 3,
Pal Mohalla
Near Mohan Baba Mandir
Mandawali
Delhi – 110 092.
5. Ravinder Kumar
S/o Shri Munshi Singh
5333, Hoshiar Singh Marg
Sadar Bazar,
Delhi – 110 006.
6. Awadesh Kumar Singh
S/o Sh Kundan Singh
House No. S-606,
Block Shakarpur
Delhi – 110 092

7. Virendra Saxena
S/o Sh Gopal Ram Saxena
R/o House No. S-52, School Block
Shakarpur
Delhi – 110 092
8. Smt. Asha Shukla
D/o Shri H.D. Shukla
245/30 School Block
Mandawali
Delhi – 110 092
9. Jitendra Srivastava
S/o D N Prasad
C-36, C-Block, , Mahavir Vihar
Delhi - 110045
10. Niraj
S/o Sh Raja Ram
R/o E-706, Gali NO. 22,
E-Block, Ashok Nagar
Delhi – 110 093
11. Mahatma Mahto
S/o P. Mahto,
R/o 66, NDMC Flats,
Palika Gram
New Delhi – 110 023

Versus

1. State of NCT of Delhi
Through Chief Secretary
New Delhi – 110 001
2. Union of India
Through The Secretary,
Ministry of Law, Justice &
Company Affairs
(Legislative Department)
Shastri Bhawan
New Delhi – 110 001
3. The Election Commission of India
Nirvachan Sadan
New Delhi
Through
The Chief Election Commissioner
4. The Chief Electoral Officer
Office Of The Chief Electoral Officer-Delhi
Old St. Stephen's College Building
Kashmere Gate,
Delhi – 110 006.

5. Shri Rakesh Dhaiya
DEO/Returning Officer
12/1, Jam Nagar House,
Shahjahan Road,
New Delhi – 110 001

VIPLAV SHARMA
Advocate & Counsel for Petitioners
A-148, 2nd Floor, Defence Colony
New Delhi – 110 024
Ph: 9599926159
Enrol No.UP-5545/90

Place : New Delhi
Dated :

LIST OF DATES AND IMPORTANT EVENTS

DATES	DESCRIPTION
6.1.2020 and 14.1.2020	<p>As the term of existing Legislative Assembly of the State of NCT of Delhi is due to expire on 22nd February, 2020, the Election Commission of India ('ECI'), being committed to hold free, fair and transparent elections to the legislative Assembly of NCT of Delhi before the cessation of its term as per Article 324 read with 172(1) of the Constitution of India and Section 15 of the Representation of People Act, 1951 ('R.P. Act'), recommended for the same to the Lt. Governor of NCT of Delhi vide its Gazette Notification dated 6.1.2020 who pursuant to such recommendation of the ECI called upon all the Assembly Constituencies in the NCT of Delhi to elect members to the legislative Assembly of NCT of Delhi in accordance with the provisions of the RP Act and of the Rules and Orders made thereunder vide Gazette Notification dated 14.1.2020 and further, in pursuance thereto and Sections 30 and 56 of the RP Act, the ECI vide its' Gazette Notification dated 14.1.2020 issued the Election Schedule and thereby -</p> <p>A. appointed with respect to the said election in each of the constituencies –</p> <p>(a) the 21st January 2020 (Tuesday), as the last date for making nominations;</p> <p>(b) the 22nd January 2020 (Wednesday), as the date for scrutiny of nominations;</p> <p>(c) the 24th January 2020 (Friday), as the last date for withdrawal of candidatures;</p> <p>(d) the 08th February 2020 (Saturday), as the date on which a poll shall, if necessary, be taken; and</p> <p>(e) the 13th February 2020 (Thursday), as the date before which the election shall be completed; and</p> <p>(B) fixed the hours from 8.00 AM to 06.00 PM, as the hours during which the poll shall, if necessary, be taken on the date specified above, for the election.</p>
20.1.2020	<p>The Petitioners and many others in the wake of their democratic mind and collective decision made thereunder pursuant to the movement "Chaloo Chunaav Laade" decided to individually contest the elections against the sitting Chief Minister Shri Arvind Kejriwal and other few individuals known and seen as leaders of other political parties and thereby, oppose monopolization and the corporate election contest manned and controlled by them.</p>

The concerned Petitioners in order to successfully file their nomination for the Assembly Seat 40 (New Delhi) in said Delhi Assembly Elections 2020 reached with their filled nomination papers and supporting documents and security money (in cash) at the Election Office for the said constituency situate at 12/1, Jam Nagar House, Shahjahan Road, New Delhi – 110 001 much before the opening hours of the said election office.

It is stated that the petitioners when reached the above referred election office of the Assembly Seat 40 (New Delhi) they found that large number of candidates were there and also saw that many more reaching thereat for filing their nominations.

It is stated that after seeing such large numbers of persons having collected at the election office for filing their respective nominations, the Respondent No. 5 for administrative convenience decided to issue token to all the candidates who had and would reach the Election Office between the prescribed time i.e. 11:00 a.m. to 3:00 p.m. sharp for filing their nominations and conveyed to receive their nomination papers as per the serial number of their respective token.

As per the the election rules it is provided that it is mandatory for the Election Officer to receive the nomination papers of the candidate the same day if he reaches the the election office within the specified time and even if there is no time left for the election office to undertake the the scrutiny of the nomination papers the nomination papers are to be received as such and it would construe the proper filing of the nomination papers with the State Election Office.

It is stated that on 20.1.2020 the Office of the Respondent No. 5 issued queue tokens 50 plus and against issuance of such numbers of token the Respondent No. 5 accepted about 30 nomination papers and whereafter illegally in arbitrary refused to accept the nomination papers of concerned petitioners who were issued the said token and only required them to come next day (which being the last day of filing the nomination papers) file nomination papers in violation of the election byelaws.

21.1.2020 The Petitioners who were given the token on 20.1.2020 and whose nomination papers were illegally not accepted the same day and who were required to come next day with instructions that their said token would be effective with their position in queue to remain intact and they would be called first on 21.1.2020 before the fresh candidates reaching the elections on 21.1.2020, when reached the Election Office next day , the were shocked to see that the Respondent No. 5 had cancelled the token system and instead was noting

names of the candidates present there on blank sheets without any supporting election record. When the said petitioner raised objections , they completely disregarded. Even the noting of the names got changed by the Respondent No. 5 to the serious prejudice of the Petitioners upon the arrival of Shri Arvind Kejriwal, the sitting CM of NCT of Delhi who was taken in with the aid of the police force acting under the direct instructions of the said Respondent No. 5 which forcibly thrashed away candidates waiting in the queue standing outside as they objected to Kejriwal being wrongfully extended undue favour of getting him in to facilitate his immediate nomination. Thus, again breaching their own system of maintaining peace and order in the filing of the nomination by general public. The noting of the names of the candidates was not shown and was kept to the chest by the concerned officials. After the arrival of Shri Kejriwal, whole system of election process under the authority and control of Respondent No. 5 went haywire.

- 23.1.2020 Few of the Petitioners made representation to the Respondents Nos. 2 and 4, inter alia, recording the above referred incidents of 20.1.2020 and 21.1.2020 at the subject election office and wrongful actions/inactions of Respondent No. 5 and requested to inquire into the matter and cancel the submission of nomination paper of Shri Kejriwal owing to which the nomination papers of Petitioners were rejected and many candidates were not afforded the lawful opportunity to file their nomination papers against him
- 25.1.2020 As there came no response from Respondents Nos. 2 and 4 to the above referred representation the Petitioners on urgent basis is filing the present writ petition for seeking appropriate orders to facilitate holding of effective elections of Assembly Seat 40 (New Delhi) of legislative assembly of State of NCT of Delhi as already fixed by the said respondents.

IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRA-ORDINARY ORIGINAL CIVIL JURISDICTION)

WRIT PETITION (CIVIL) NO. OF 2019

IN THE MATTER OF :

1. Kiran Pal Singh Tyagi
 S/o Late Shri Karam Chand Tyagi
 R/o House No. 45, Village Shakarpur Khaas
 Delhi -110092
2. Pankaj Kumar
 S/o Shri Rakesh Kumar
 House No. B-11, Block B,
 Shanti Nagar, Shiv Vihar,
 Delhi – 110094
3. Pankaj Kumar
 S/o Shri Davender Kumar
 House No. 49, H-Block,
 Ganga Vihar
 Delhi – 110 094
4. Gopal Prasad
 S/o Late Shri Vaidyanath Prasad
 House No. 210, Street No. 3,
 Pal Mohalla
 Near Mohan Baba Mandir
 Mandawali
 Delhi – 110 092
5. Ravinder Kumar
 5333, Hoshiar Singh Marg
 Sadar Bazar,
 Delhi – 110006
6. Awadesh Kumar Singh
 S/o Sh Kundan Singh
 House No. S-606,
 Block Shakarpur
 Delhi – 110 092
7. Virendra Saxena
 S/o Sh Gopal Ram Saxena
 R/o House No. S-52, School Block
 Shakarpur
 Delhi – 110 092

8. Smt. Asha Shukla
D/o Shri H.D. Shukla
245/30 School Block
Mandawali
Delhi – 110 092
9. Jitendra Srivastava
S/o D N Prasad
C-36, C-Block, , Mahavir Vihar
Delhi - 110045
10. Niraj
S/o Sh Raja Ram
R/o E-706, Gali NO. 22,
E-Block, Ashok Nagar
Delhi – 110 093
11. Mahatma Mahto
S/o P. Mahto,
R/o 66, NDMC Flats,
Palika Gram
New Delhi – 110 023

Vs.

1. State of NCT of Delhi
Secretariate, IP Estate
Through Chief Secretary
New Delhi – 110 001
2. Union of India
Through The Secretary,
Ministry of Law, Justice &
Company Affairs
(Legislative Department)
Shastri Bhawan
New Delhi – 110 001
3. The Election Commission of India
Nirvachan Sadan
New Delhi
Through
The Chief Election Commissioner
4. The Chief Electoral Officer
Office Of The Chief Electoral Officer-Delhi
Old St. Stephen's College Building
Kashmere Gate,
Delhi – 110 006.
5. Shri Rakesh Dhaiya
DEO/Returning Officer
12/1, Jam Nagar House,
Shahjahan Road,
New Delhi – 110 001

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

MOST RESPECTFULLY SHOWETH :

1. The present Writ Petition is preferred against the wrongful, illegal, arbitrary, unconstitutional and malafide actions/inactions of Respondent No. 5 whereby the Petitioners were illegally and unconstitutionally deprived of exercising their constitutional rights in participating the democratic process of formation of Government of NCT of Delhi as guaranteed to them under Articles 5 and 173 of the Constitution.

2. The gross illegalities by the hands of Respondent No. 5 and his subordinate officials occurred was writ large and been captured in the official video recording and by many present in their mobile phones. . who could not for their own reasons join perforce got collected to collectively seek immediate indulgence of this Hon'ble Court by way of present petition after they were subjected to illegal, malafide, arbitrary and unconstitutional actions of Respondent No. 5 against them in his knowingly wrongfully obstructing the Petitioners to participate in the election process of legislative assembly elections of NCT of Delhi by seeking to put in their candidature in exercise of their legal and constitutional rights which, as aforesaid, were malafidely, illegally and unconstitutionally violated which warrant to be forthwith restored, protected and enforced by this Hon'ble Court.

3. The brief facts leading to filing of the present inherent Petition are as follows :

- i. The Petitioner No. 1 is a an agriculturist and does farming near ITO, Delhi and also runs business of boarding and lodging of CA students. The Petitioner No. 2 owns a coaching centres and professionally imparts tuitions to the students. The Petitioner No. 3 is a employed with private firm. The Petitioner No. 4 is a Delhi based professional content writer and a RTI activist. The Petitioner No. 5 is is a social worker and is involved with NGO serving Gao Sewa Samiti. The Petitioner No. 6 is a Delhi based freelance professional accountant. The Petitioner No. 7 is running the business of restaurant at Shakarpur, Delhi. The Petitioner No. 8 is involved in Yoga and naturalpathy classes that is being imparted by Gandhi Smrati, Rajghat, Delhi. The Petitioner No. 9 is ex serviceman . The Petitioner No. 10 is employed with private firm. The Petitioner No. 11 is former NDMC employee and presently involved in social service.
- ii. The Respondent Nos. 1 to 5 are 'State' within the meaning of Article 12 of the Constitution and thereby, amenable to writ jurisdiction of this Hon'ble Court.
- iii. As the term of existing Legislative Assembly of the State of NCT of Delhi is due to expire on 22nd February, 2020, the Election Commission of India ('ECI'), being committed to hold free, fair and transparent elections to the legislative Assembly of NCT of Delhi before the cessation of its term

as per Article 324 read with 172(1) of the Constitution of India and Section 15 of the Representation of People Act, 1951 ('R.P. Act'), recommended for the same to the Lt. Governor of NCT of Delhi vide its Gazette Notification dated 6.1.2020 who pursuant to such recommendation of the ECI called upon all the Assembly Constituencies in the NCT of Delhi to elect members to the legislative Assembly of NCT of Delhi in accordance with the provisions of the RP Act and of the Rules and Orders made thereunder vide Gazette Notification dated 14.1.2020 and further, in pursuance thereto and Sections 30 and 56 of the RP Act, the ECI vide its' Gazette Notification dated 14.1.2020 issued the Election Schedule and thereby -

B. appointed with respect to the said election in each of the constituencies –

- (f) the 21st January 2020 (Tuesday), as the last date for making nominations;
- (g) the 22nd January 2020 (Wednesday), as the date for scrutiny of nominations;
- (h) the 24th January 2020 (Friday), as the last date for withdrawal of candidatures;
- (i) the 08th February 2020 (Saturday), as the date on which a poll shall, if necessary, be taken; and
- (j) the 13th February 2020 (Thursday), as the date before which the election shall be completed; and

(B) fixed the hours from 8.00 AM to 06.00 PM, as the hours during which the poll shall, if necessary, be taken on the date specified above, for the election.

Copies of the above referred ECI Gazette Notification dated 6.1.2020 and CEO Gazette Notification dated 14.1.2020 together and ECI Gazette Notification dated

14.1.2020 are annexed hereto and marked as **Annexure P1** and **Annexure P2** respectively.

- iv. The Petitioners and many others in the wake of their democratic mind and collective decision made thereunder pursuant to the movement “Chaloo Chunaav Laade’ decided to individually contest the elections against the sitting Chief Minister Shri Arvind Kejriwal and other few individuals known and seen as leaders of other political parties and thereby, oppose monopolization and the corporate election contest manned and controlled by them.
- v. The Petitioners in order to successfully file their nomination for the Assembly Seat 40 (New Delhi) in said Delhi Assembly Elections 2020 reached with their filled nomination papers and supporting documents and security money (in cash) at the Election Office for the said constituency situate at 12/1, Jam Nagar House, Shahjahan Road, New Delhi – 110 001 much before the opening hours of the said election office on 20.1.2020.
- vi. It is stated that the petitioners when reached the above referred election office of the Assembly Seat 40 (New Delhi) they found that large number of candidates were there and also saw that many more reaching thereat for filing their nominations.

vii. It is stated that after seeing such large numbers of persons having collected at the election office for filing their respective nominations, the Respondent No. 5 for administrative convenience decided to issue token to all the candidates who had and would reach the Election Office between the prescribed time i.e. 11:00 a.m. to 3:00 p.m. sharp for filing their nominations and conveyed to receive their nomination papers as per the serial number of their respective token.

viii. As per the the election rules it is provided that it is mandatory for the Election Officer to receive the nomination papers of the candidate the same day if he reaches the the election office within the specified time and even if there is no time left for the election office to undertake the the scrutiny of the nomination papers the nomination papers are to be received as such and it would construe the proper filing of the nomination papers with the State Election Office. The relevant election guidelines as extracted from the Hand Book of Returning Officer (Issued by the ECI) are reproduced below –

5.7 PRESENTATION OF NOMINATION PAPERS

-

5.7.1 A candidate may present his nomination paper on the very day of the notification or on any of the following days fixed for filing of nominations, which is not a public holiday.

5.7.2 Time and Place of Filing Nomination Papers: Nomination papers may be presented either before Returning Officer or before the Assistant Returning Officer specified in the public notice, on any of the notified days at the place or places specified in the

notice at any time between 11.00 a.m. and 3.00 p.m., and not at any other place and not at any other time. Nomination can be filed by the Candidate himself or by one of the proposers.

If a candidate or his proposer seeks to present a nomination paper either before 11.00 a.m. or after 3.00 p.m., Returning Officer or Assistant Returning Officer should not accept the nomination paper saying that under the provisions of the law neither the candidate has the right to deliver, nor the Returning Officer has the right to accept, a nomination paper outside the hours prescribed for the purpose. Returning Officer or the Assistant Returning Officer may, however, point out that if he so desires, he may present it within the prescribed hours the following day, provided it is one of the days notified for presenting nomination papers.

5.7.3 If more than one candidate or their proposers turn up in the Returning Officer's office at 3.00 p.m. or just prior to that for presenting their nominations, it will not be possible for the Returning Officer to deal with all such nominations by 3.00 p.m. In such cases, the Returning Officer shall receive nominations of all intending candidates who are present in the office of the Returning Officer at 3.00 p.m. for filing nomination and treat these nomination papers to have been delivered within the prescribed time under the law. For this purpose, Returning Officer may close the entry to his office room exactly at 3.00 p.m. and receive nomination papers of such candidates who are inside the given room at 3:00 PM.

5.7.4 It is further clarified, that intending candidate who enters in the Returning Officer's room at just or near to 3.00 PM should come along with all relevant and necessary documents like security deposit proof, Forms "A" and "B", affidavits etc. and no one should be allowed to enter Returning Officer's room after 3.00 PM for the purpose of delivering any such documents to any intending candidates.

5.7.5 If Commission's observer is present on that day, he will be present in Returning Officer's room. The entire proceedings of delivery and acceptance of nomination papers should be video graphed with time stamping facility.

5.7.6. Arrangements in the room specified for filing of Nomination papers:

(i) Arrangements for 360 degrees CCTV coverage shall be made inside the room specified for filing

nominations as well as at the exit gate of the room to cover the proceedings related to filing of nomination.

(ii) The recording of the CCTV footage shall be ensured with uninterrupted power supply.

(iii) If CCTV arrangement cannot be made, then there should be videography done with time stamping facility. The videography should cover the entire room. The entire process of receiving of each nomination should be captured. As per the standing instructions, uninterrupted/unedited videography should be done in the room from 2 PM onwards on the last date for making nomination till the process is completed.

(iv) The clock inside the room must be set to that of IST, in the AM/PM mode and it should be ensured that the clock is in perfect working condition.

(v) The clock of the video camera should also be adjusted to IST and should tally with the clock set by RO in the room.

(vi) The observer shall mention in his/her report about proper arrangement for CCTV/Videography.

(vii) The recording must be preserved appropriately to ensure easy retrieval.

(viii) In case of any requirement to send the recording to the Commission, the DEO must make the transfer of the footage along with print details of timeline indicating the details of the characters appearing in the footage.

(ix) Arrangements for receiving security deposit made in case at the time of filing nomination should be made in the same room in which nomination are received. Candidates should not be made to leave the room for making such deposit.

(x) Door of the room shall be closed exactly at 3 PM as per the clock in the room.

(xi) On the last date for making nominations after 2.30 PM, frequent announcements should be made outside the room that the room will not be permitted after 3 PM.

(xii) Slips signed by RO/ARO shall be distributed to candidates inside the room at 3 PM. No Person

should be allowed to enter the room once the door is closed at 3 PM.

(xiii) The Commission's instructions regarding the number of persons who may accompany a candidate for filing nomination should be strictly enforced to ensure smooth proceedings in the room.

5.8 RESTRICTIONS ON NUMBER OF VEHICLES AND PEOPLE AT THE TIME OF NOMINATION

5.8.1 Large number of vehicles and people accompanying some of the candidates at the time of filing nominations were causing serious concern about general law and order in the Offices of the Returning Officers. Keeping this in view, the maximum number of vehicles in the convoy of a candidate or accompanying him to be allowed to come within a periphery of 100 meters of Returning Officer's or the Assistant Returning Officer's Office has been restricted to three and the maximum number of persons who can be allowed to enter the Office of Returning Officer or the Assistant Returning Officer at the time of filing nomination has been limited to five (including the candidate). The periphery of 100 meters should be clearly demarcated. It is also to be ensured that only one door shall be kept open for entry of candidate plus four other authorized persons and all other doors should be closed. A CCTV camera should be placed at the entry door to record actual time of entry.

5.8.2 Police officer not below the rank of a Deputy Superintendent of Police should be appointed as a nodal Officer for not more than two constituencies, provided the headquarters of both the Returning Officers are stationed in a single office building, to ensure strict adherence to the above instructions on restricting the number of vehicles and persons accompanying the candidates. If the offices of Returning Officers are situated in different compounds or if there are more than two Returning officers whose headquarters are in a single office building, the Commissioner of Police or SP shall make suitable arrangements to ensure strict adherence to these instructions.

5.10.4 Serial Number of Nomination Papers: Each nomination paper as soon as it is presented must be serially numbered without fail by Returning Officer or by the Specified Assistant Returning Officer receiving it, who must also note on the body of the nomination paper the date and exact time at

which it was received and should put his/her signature thereon. The nominations received by Returning Officer shall be serially numbered as (Number)/LA or HP/(Year)/ RO and those received by the Specified Assistant Returning Officers as (number)/LA or HP/(year)/ARO, if the Assistant Returning Officer is receiving nomination papers in a different place. Returning Officer or the Specified Assistant Returning Officer shall not make any entries on the nomination papers other than dated initials and serial number as above. In view of the limitation on the number of nomination papers that can be delivered by a candidate, Returning Officer should ask the Specified Assistant Returning Officer (who has been authorized by Returning Officer to receive nomination papers) to work in close collaboration with him if he is receiving nomination papers in a different place.

5.10.5 When a number of nomination papers are delivered to Returning Officer he/she must assign serial numbers to them in the order in which he dealt with them one after the other.

5.11 PRELIMINARY EXAMINATION OF NOMINATION PAPERS

5.11.1 As each nomination paper is filed, Returning Officer or the Specified Assistant Returning Officer, as the case may be, is required by law to examine it then and there from the technical standpoint as required under Section 33 (4) of the Act of 1951. But Returning Officer is not required to hold any formal scrutiny of any nomination papers at this stage. This preliminary examination is restricted to entries relating to the name and electoral roll details relating to the candidate and the proposer(s) as given in the nomination paper(s) and those as entered in the electoral roll. The following aspects may be examined at this stage:

i) If the candidate is an elector in Returning Officer's constituency, he should compare the entries in the nomination paper with the entries in the electoral roll relating to the serial number and name of the candidate and his proposer/s.

ii) If he comes from another constituency, Returning Officer or the Specified Assistant Returning Officer should compare the entries in the nomination paper with the entry relating to the candidate's name in the electoral roll of the constituency or the relevant part thereof or certified copy of such entry filed by him. The candidate is required by law to produce

before Returning Officer or the Specified Assistant Returning Officer such electoral roll or the relevant part thereof or a certified copy of relevant entries thereof [Section 33 (5)].

iii) Make sure that the electoral roll with which Returning Officer or the Specified Assistant Returning Officer makes such comparison is the one currently in force for the constituency in either case.

iv) Check whether the affidavit in revised Form 26 is duly filled up and attached along with the nomination paper. If not attached, Returning Officer or the Specified Assistant Returning Officer should bring it to his notice this requirement through a notice by way of the check list.

v) Check whether all columns of the affidavit are filled up, as incomplete affidavits are liable to be rejected leading to rejection of nomination paper. In case any of the columns are left blank by the candidate, Returning Officer or the Specified Assistant Returning Officer will mention it in the checklist and hand it over to the candidate against proper receipt. In such cases the candidate will have opportunity to file a fresh affidavit complete in all respects by the time fixed for commencement of scrutiny.

5.11.2. In respect of each candidate, Returning Officer or the Specified Assistant Returning Officer should maintain in duplicate, the check list of the documents or requirements to be fulfilled by the candidates. The check list is given below:

Original/ duplicate Original to be kept with nomination paper and Duplicate to be handed over to candidate)

- ix. It is stated that on 20.1.2020 the Office of the Respondent No. 5 issued queue tokens 50 plus inside election office in Room No. 4 within the vigil eye of the cctv/video camera and against issuance of such numbers of token the Respondent No. 5 accepted less than 29 nomination papers as the Petitioner No. 8 was given Token No. 29 whose nomination papers the said Respondent No. 5

refused to accept. The nomination papers of Petitioner No. 8 and other concerned petitioners who were issued the said token were required to come next day (which being the last day of filing the nomination papers) file nomination papers in violation of the election guide line 5.7.3 as contained in the Hand Book for the Returning Officer issued by the ECI which reads - .

“5.7.3 If more than one candidate or their proposers turn up in the Returning Officer’s office at 3.00 p.m. or just prior to that for presenting their nominations, it will not be possible for the Returning Officer to deal with all such nominations by 3.00 p.m. In such cases, the Returning Officer shall receive nominations of all intending candidates who are present in the office of the Returning Officer at 3.00 p.m. for filing nomination and treat these nomination papers to have been delivered within the prescribed time under the law. For this purpose, Returning Officer may close the entry to his office room exactly at 3.00 p.m. and receive nomination papers of such candidates who are inside the given room at 3:00 PM.”

- x. The Petitioners who were given the token on 20.1.2020 and whose nomination papers were illegally not accepted the same day in violation of the above referred guidelines and who were required to come next day with instructions that their said token would be effective with their position in queue to remain intact and they would be called first on 21.1.2020 before the fresh candidates reaching the elections on 21.1.2020, when reached the Election Office next day , the were shocked to see that the Respondent No. 5 had arbitrarily cancelled the token system which were issued a day before within the CCTV/video recording coverage and on 21.1.2020 the sub-ordinate staff of the

Election Officer, instead, was noting names of the candidates present there on blank sheets without any supporting election record and that too outside the election office where there was no cctv/video coverage to record as to how many candidates were present at the election office before or after or at the the time Shri Kejriwal reached to file his nomination. When the said petitioner raised objections, the Election Officer not completely disregarded the same but also was intimidated by the police force deployed thereat. It is a case of the Petitioners that the token system which was adopted by the Election Officer on 20.1.2020 was cancelled by him for favouring Shri Kejriwal in as much as had he continued with same, he would have been required to continue accepting the nomination papers of the leftover candidates of the previous day (i.e 20.1.2020 which included Petitioner No. 8 and other 20 plus candidates) and thereafter, he was to issue token to the large number of candidates who had reached the election office on 21.1.2020 before or at 11:00 am till about 12:30 pm when Shri Kejriwal reached the Election office which would have seen his getting token no. 115 or so and thereby, would have enabled 115 plus candidates file their nomination papers to run for election against Shri Kejriwal.

- xi. It is stated that even the noting of the names got changed by the Respondent No. 5 to the serious prejudice of the Petitioners upon the arrival of Shri Arvind Kejriwal, the sitting CM of NCT of Delhi who was taken in with the aid of

the police force acting under the direct instructions of the said Respondent No. 5 which forcibly thrashed away candidates waiting in the queue standing outside as they objected to Kejriwal being wrongfully extended undue favour of getting him inside the election office to facilitate his immediate nomination in gross violation of their own guidelines as as contained in Clause 1.6.1 of Handbook for Returning Officer which reads -

1.6.1 Returning Officer should ensure that the election management is transparent, so that there is no scope for complaint of partiality from any stakeholder. Being transparent also adds to the credibility of the election. The Commission takes a very serious note regarding the lack of neutrality on the part of any official.

- xii. It is also the case of the Petitioners that the Respondent No. 5 malafidely to favour the sitting Chief Minister, Shri Arvind Kejriwal and/or at Shri Kejriwal's his behest who was also the candidate for the election for the said assembly seat -40 (New Delhi) and was well aware that the huge number of citizens seeking to file their nomination against him, knowingly and willingly disregarded mandatory provision as contained in Clause 1.6.1. referred above and flouted the same and in complete disregard of the same arbitrarily and illegally used police force to facilitate Shri Kejriwal walk inside the election office out of turn evading the queue which wrongful action when opposed was sternly dealt with by him by the wrongful use of the police force and thereby, disrupting the whole election process of maintaining peace and order in the filing of the nomination

by the general public. Such wrongful and malafide actions/inactions of Respondent No. 5 warranted interference by Respondents Nos. 1, 2 and 3 and their failure to do so compelled the Petitioners to seek indulgence of this Hon'ble Court by way of present petition.

xiii. Without prejudice to above, the Petitioners further state that the noting of the names of the candidates was not shown and was kept to the chest by the concerned officials.

xiv. It is respectfully stated that all the Petitioners are social spirited Indian citizens and met at the above referred Election Office for the **Assembly Seat 40 (New Delhi) in Delhi Assembly Elections 2020** and owing to Respondent No. 5 and his subordinate officials working directly under his command and authority wrongfully, illegally, unconstitutionally and malafidely (i) denying to accept the nomination papers of the Petitioners who reached within the prescribed official time and were issued the respective queue token number on 20.1.2020 in gross violation of elections laws (ii) issuing wrongful notice of discrepancies on 21.1.2020 to Petitioners whose nomination papers were found to be in order and/or were to be cured for which the 22.1.2020 at 11:00 am was fixed the submissions of which was practically impossible as the various routes to the said election office was practically blocked in the morning hours owing to republic day parade practice. Their nomination papers, besides were also otherwise illegally, perversely

malafidely and mechanically rejected. Copies of the related documents of Petitioners are in seriatim annexed hereto and marked as **Annexure P3**, **Annexure P4**, **Annexure P5**, **Annexure P6**, **Annexure P7**, **Annexure P8**, **Annexure P9**, **Annexure P10**, **Annexure P11**, **Annexure P12**, and **Annexure P13** respectively (iii) issuing wrongful notice of discrepancies on 21.1.2020 illegally warranting to file a fresh affidavit when the same, as per the election laws, were allowed to be corrected at the time of submission of the nomination paper (iv) changed the queue token system adopted by them on 20.1.2020 and simply noted the names of the persons of their choice on blank-sheets with no back-up record and cctv/video coverage and left out very many candidates who were timely at the said Election office and denied to accept the nomination papers and to name few is (a) one Rahul Kumar whose nomination papers was denied by Respondent on 21.1.2020 and (b) one Shri Valmiki Jha who was given queue token No. 40 on 20.1.2020 and whose name was included in the above referred list at serial No. 23 on 21.1.2020 and thereby, they were deprived with their valuable constitutional rights to participate in the democratic process of present legislative assembly elections by offering their respective candidature.

- xv. It is stated that immediately thereafter on 23.1.2020 few of the Petitioners made representation to the Respondents Nos. 2 and 4, inter alia, recording the above referred

incidents of 20.1.2020 and 21.1.2020 at the subject election office and wrongful actions/inactions of Respondent No. 5 and requested to inquire into the matter and cancel the submission of nomination paper of Shri Kejriwal owing to which the nomination papers of Petitioners were rejected and many candidates were not afforded the lawful opportunity to file their nomination papers against him. True translated copies of said representations to Respondent No. 3 and 4 (which got duly received) are annexed hereto and marked as **Annexure 14** **colly.**

xvi. As there came no response from Respondents Nos. 2 and 4 to the above referred representation the Petitioners on urgent basis is filing the present writ petition for seeking appropriate orders to facilitate holding of effective elections of Assembly Seat 40 (New Delhi) of legislative assembly of State of NCT of Delhi as already fixed by the said respondents.

4. Thus, the present writ petition is filed on the following amongst many other grounds-

GROUND

a. Because as Respondent Nos. 1 to 5 are 'State' within the meaning of Article 12 of the Constitution of India and thereby, they all are amenable to Writ jurisdiction and

therefore, the present writ Petition is maintainable before this Hon'ble Court against the said respondents.

- b.** Because this Hon'ble Court in its extra-ordinary jurisdiction under Article 226 of the Constitution has jurisdiction to entertain and adjudicate the present writ petition on merits.
- c.** Because the gravity and seriousness of the whole matter of great public importance and the governance of the country in accordance with the Constitution as detailed in the present writ petition warrants interference of this Hon'ble Court
- d.** Because as the Petitioners were wrongly and unconstitutionally deprived of filing their respective nomination papers for the Assembly Seat 40 (New Delhi) in Delhi Assembly Elections 2020 with the margin of the time period they were entitled to and which they were deprived of owing to the illegal, malafide and unconstitutional actions/inactions of Respondent No. 5 and his officials against which the Respondent No 2 and 4 failed and neglected to appropriate action, thus, they have a locus standi to maintain the subject writ.
- e.** Because the Petitioners are citizen of India and are entitled to effectively file their nomination papers, with the aid and assistance of the State, if warranted, as per their constitutional rights guaranteed to them under Articles 5 and 173 of the Constitution.

- f. Because the Petitioners are seeking the restoration, protection and enforcement of their constitutional rights to participate in the election which is yet to take place.
- g. Because the case law Punnuswamy decided by Hon'ble Apex Court and subsequent case laws following case of N.P. Punnuswami Vs Returning Officer, Namakkal Constituency (1952 SCR 218) and/or the provisions of Article 329(b) of the Constitution are inapplicable as the same pertain to election and challenge to the same which is not the case in the present petition. It is stated that the said case law is per incuriam to the whole of the provisions of Sections 80, 100 and 101 of the RP Act, 1951. It is further stated that Section 100 of the RP Act is half considered by merely quoting clause () of Section 100 of the R.P. Act and completely missed out to consider the whole of the related part of the said provision which reads, thus, -

*100. Grounds of declaring elections to be void- (1)
Subject to the provisions of sub-section (2), if the
High Court is of opinion –*

(a) ; or

(b) ; or

*(c) that any nomination has been improperly
rejected; or*

(d)

*the High Court shall declare the election of the
returned candidate to be void.”*

It is stated that the said Punnuswami case the expression *the High Court shall declare the election of the returned candidate to be void.”* as concluding the said provision of Section 100 to give the full meaning, intent and purport of the said provision has been missed out to be considered as per the opinion

received and therefore the said case law is per incuriam to the said provision and Clause (c) thereto cannot be considered in isolation and in the absence of the meaning culled out from the above referred concluding expression of the said provision.

- h.** Because the present seeks appropriate directions against the respondents to enable the Petitioners and other Indian citizens to participate the election with strict observance of the guidelines laid down by the ECI.
- i.** Because the present conduct of Respondent No. 5 is illegal malafide and unconstitutional and in violation of the election process so declared in detail by the ECI for ensuring free, fair and transparent elections.
- j.** Because the Petitioners by way of the present petition seeks to ensure that the subject election of the legislative assembly of the NCT of the Delhi takes place strictly in terms of guidelines as laid down by the ECI in terms of Representation of Peoples Act, 1951 which have been grossly flouted by the wrongful, illegal, malafide and unconstitutional actions/inactions of Respondent No. 5 which warrants appropriate directions to Respondents Nos. 2 to 4 to forthwith inquire into the whole proceedings of 20.1.2020 and 21.1.2020 as per video recording and upon finding of the above referred wrongs, forthwith take appropriate measures in restoring,

protecting and enforcing their constitutional rights to participate in the present Election.

k. Because the present writ petition has been filed for restoration, protection and enforcement of the constitutional rights for which there is no alternate remedy other than invocation of Article 226 of the Constitution of India.

l. Because the Election Tribunal is not vested with the jurisdiction to restore, protect and enforce the constitutional rights of the Petitioners.

m. Because the provisions of Article 329(b) of the Constitution and the provisions of Sections 80, 100 and 101 of the R.P. Act, 1951 are totally inapplicable to the subject matter of the present case as the said provisions relate to challenging/questioning the election and/or the return of the candidate 'after elections' which is completely distinct and different from the subject matter of the present petition whereby the Petitioners seek to participate in the 'election which yet to take place' and it is because of the illegal, constitutional and malafide actions/inactions of Respondent No. 5 who wilfully or otherwise deviated from the stringent procedure carved out in the Hand Book for Returning Officer (February 2019 edition) by the ECI in exercise of its powers under Article 324 of the Constitution for ensuring free, fair and transparent election process which was malafidely violated by Respondent No. 5 at the apparent instance and/or under the

wrongful influence of Shri Kejriwal, the sitting CM of the State of NCT of Delhi who was also a candidate from same assembly seat – 40 (New Delhi). It is stated that the Petitioners and other Indian citizens who, as would be seen from the official video recording, timely reached the election process and were denied the filing of their respective nomination papers on 20.1.2020 and 21.1.2020.

- n. Because the case law Punnuswami (supra) is distinguishable to the merits of the present case as the facts and pleas of both, Punnuswami case and the present case, are distinct and different in as much as in Punnuswami case, Their Lordships of the Hon'ble Apex Court
- o. Because as the nomination papers of Petitioners Nos. __ __ and __ were wrongly, illegally, arbitrarily and unconstitutionally rejected and thereby, they have been illegally and unconstitutionally deprived of their constitutional rights as guaranteed to them under Articles _____ thus, they have a locus standi to maintain the subject writ.
- p. Because the grounds of rejection of the nomination papers of the Petitioners are flimsy non-germane and are disregarded to be the grounds for rejecting a nomination paper by operation of the guidelines as contained Clauses 6.2, 6.7, 6.9 and 6.10.1(iv) of the in the Hand Book for Returning Officer (February 2019 edition) issued by the ECI in exercise of its powers under Article 324 of the Constitution for ensuring free,

fair and transparent election process which was malafidely violated by Respondent No. 5 at the apparent instance and/or under the wrongful influence of Shri Kejriwal, the sitting CM of the State of NCT of Delhi who was also a candidate from same assembly seat – 40 (New Delhi)

- q.** Because as the respective nomination papers of Petitioners Nos. ____ to ____ for the Assembly Seat 40 (New Delhi) in Delhi Assembly Elections 2020 were wrongly and arbitrarily rejected by the concerned Returning Officer, thus, they have a locus standi to maintain the subject writ.
- r.** Because it is the case of the Petitioners that the whole of the illegalities and arbitrariness that had been inflicted upon the Petitioners by the Respondents in their having deprived the Petitioners to contest for the Assembly Seat 40 (New Delhi) in Delhi Assembly Elections 2020 was at the behest of Shri Kejriwal who ensured so in gross abuse of privileges/powers of the office of the Chief Minister of State of Delhi.
- s.** Because the Petitioners fully qualify the eligibility criteria to file their respective nomination papers to contest for the Assembly Seat 40 (New Delhi) in Delhi Assembly Elections 2020.
- t.** Because though the Respondents No. 2 being the constitutional body and Respondents Nos. 3 to 5 being part of the said constitutional body are solely responsible holding 'free, fair and transparent' elections, they, however, knowingly indulged in wrongly, arbitrarily and unconstitutionally denying

to accept the nomination papers of the Petitioners and many others Indian citizens who were admittedly present in the office of the concern Returning Officer of Assembly Seat 40 (New Delhi) in Delhi Assembly Elections 2020 on 20.1.2020 and also on 21.1.2020. The said respondents, thereby, illegally and unconstitutionally deprived them to contest for the Assembly Seat 40 (New Delhi) in Delhi Assembly Elections 2020.

- u. Because the Respondent No. 5 failed to follow the binding law declared by the Hon'ble Apex Court in the case UOI Vs Association of Democratic Reforms [(2002) 5 SCC 294], declaring, inter alia –

“ The limitation on plenary character of power is when Parliament or State Legislature has made a valid law relating to or in connection with elections, the Commission is required to act in conformity with the said provisions.”

- v. Because the Respondent No. 5 has taken the nomination of the Petitioners in very casual and mechanical manner and failed to discharge its judicial functions expected of it (Refer of the Hand Book for Returning Officer) while wrongly mechanically, unconstitutionally and malafidely rejecting the same..

- w. Because the whole of the conduct of the Respondent No. 5 while scrutinising the Nomination Papers of the Petitioners have been in gross violation of Clause 6.2 of the Hand Book of for the Returning Officer which reads,-

6.2 SCRUTINY – A QUASI-JUDICIAL DUTY 6.2.1
Scrutiny of nomination papers is an important quasi-judicial function. Returning Officer therefore has to discharge this duty with complete judicial detachment and in accordance with the highest judicial standards. Returning Officer must not allow any personal or political predilections to interfere with the procedure that he/she follows or the decision he/she takes in any case. Returning Officer should be fair, impartial and treat all candidates equally. Returning Officer must also conduct himself/herself in such a manner that it would appear to all concerned that he/she is following this high code of conduct. Even if a candidate or his agent is difficult or cantankerous, Returning Officer must be courteous and patient, but firm. Returning Officer is expected to be prompt and orderly. Returning Officer should not take any direction from any superior authority including the CEO or the Commission's Observer in deciding the validity or otherwise of a nomination paper. Returning Officer should only be guided by the provisions of the law and the instructions given by the Commission from time to time.

5. The petitioners crave leave of the Hon'ble court to raise or argue any other or further grounds at the time of arguments.
6. That the balance of convenience is also in the favor of the petitioners and petitioners shall suffer grave irreparable injury in case the present petition is not allowed and the reliefs prayed hereunder are not granted.
7. That the Petitioner has not filed any other writ petition against the touching upon subject matter of the present petition, before this Hon'ble Court.

8. That the present Petition is being filed bonafide and in the interest of justice.

PRAYER

In the facts and circumstances of the present case, it is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to :-

- i. issue writ, order or direction in the nature of writ of mandamus or like order commanding respondents Nos 2 to 5 take appropriate measures in affording lawful opportunity to the Petitioners and all concerns within shortest possible reasonable time to file their nomination papers for the assembly elections to Seat 40 (New Delhi) for the legislative elections for State of NCT of Delhi as per the schedule already fixed vide Notification dated 14.1.2020 of Respondent No. 3 and 4 ;
- ii. issue writ, order or direction in the nature of writ of mandamus or like order commanding respondents Nos. 2-4 to make effective appropriate arrangements to facilitate / afford all candidates a deasible mechanism to assist the candidates, if warranted by them, in filing their respective

nomination papers at ease without being faced with and/or subjected to any complexities that may stare at them owing to their lack of knowledge, experience in filing /submitting their nomination papers with the concerned election officer and thereby restore, protect and enforce their constitutional rights to participate in the forthcoming elections of the NCT of Delhi in terms of their constitutional rights as guaranteed in Articles 5, 14 and 173 of the Constitution;

- iii. issue writ, order or direction in the nature of writ of mandamus or like order commanding respondents respondent no. 2 to direct respondent no. 3 to take appropriate measures in respect of (i) forthwith making appropriate guidelines in terms of prayer (b) above to the extent facilitating the smooth filing of the nomination papers by all candidates from all walks of Indian society (ii) to make provisions / guidelines for requiring the candidates to submit identical copy of their nomination papers to be submitted to Returning Officer / Election Officer, the whole copy whereof be thereafter returned to the candidates after scrutiny with the order of finding the such nomination to be found valid or rejected.

IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRA-ORDINARY ORIGINAL CIVIL JURISDICTION)
[Under Article 226 Of The Constitution Of India]

C.M.A NO. OF 2020
IN
WRIT PETITION (CIVIL) NO. OF 2020

IN THE MATTER OF :

Mr Kiran Pal Singh Tyagi & Ors. vs ...Petitioners

State of NCT of Delhi & Ors.Respondents

APPLICATION UNDER SECTION 151 CPC FOR AD INTERIM ORDERS

The applicant above named

MOST RESPECTFULLY SHOWETH:

1. The Applicant is preferring today the accompanying writ petition against the wrongful, illegal, arbitrary, unconstitutional and malafide actions/inactions of Respondent No. 5 whereby the Petitioners were illegally and unconstitutionally deprived of exercising their constitutional rights in participating the democratic process of formation of Government of NCT of Delhi as guaranteed to them under Articles 5 and 173 of the Constitution.
2. That the facts and ground leading to the filing of the present petition have been already stated in the petition, and the same are not being repeated herein for the sake of brevity,

but crave leave of the court to refer and rely upon the same at the time of hearing of the present application.

3. That the Petitioners have a genuine and good case and most likely to succeed before the Hon'ble Court.
4. This application is being made bona fide and in the interest of justice.

P R A Y E R

In view of the above facts and circumstances of the case, it is respectfully prayed that the Hon'ble Court may graciously be pleased to:

- a.** Issue appropriate direction to the respondents Nos. 2 to 4 to not to finalise the list of the candidates for the elections of Assembly Seat – 40 (New Delhi) to the election of legislative assembly for the State of NCT of Delhi and if the said list of alleged validly nominated candidates got made as per Form 4, then to kindly stay the effect and operation thereof pending final disposal of the present Application;
- b.** direct the Respondents Nos. 2 and 4 to forthwith inquire into the whole day incident of 20.1.2020 and

21.1.2020 at the whole of the outside campus and inside election office and scientifically examine as to the strict observance of all the guidelines 5.7.6 that are issued by Respondent No. 3 in respect of (i) installation and continued uninterrupted video/cctv recording during the whole time functioning of the subject election office for Assembly Seat – 40 (New Delhi) at Jam Nagar Election Office on the above referred dates (ii) the mode and manner the candidates were dealt with by the Election Officer (Respondent No. 4) and his subordinate staff directly under his control and authority (iii) the out of turn entry of Shri Arvind Kejriwal inside the election office and the occurrence of abruption/commotion which led to the unwarranted use of police force against the candidates standing outside in queue for hours which led to law and order situation and deprivation of the proper submissions of the nomination of the Petitioners and other concerns;

- c.** pass ex parte ad interim orders in terms of prayers (a) to and (b) above pending final disposal of the accompanying petition ; and

d. Pass any other order in view of the facts and circumstances of the present case, in the interests of justice.

AND FOR THIS ACT OF KINDNESS THE APPLICANT, AS IN DUTY BOUND, SHALL FOR EVER PRAY.

PETITIONERS

Through:

**VIPLAV SHARMA
Advocate & Counsel for Petitioners
A-148, 2nd Floor, Defence Colony
New Delhi – 110 024
Ph: 9599926159
Enrol No.UP-5545/90**

**Place : New Delhi
Dated :**

IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRA-ORDINARY ORIGINAL CIVIL JURISDICTION)
[Under Article 226 Of The Constitution Of India]

C.M.A NO. OF 2020
IN
WRIT PETITION (CIVIL) NO. OF 2020

IN THE MATTER OF :

Mr Kiran Pal Singh Tyagi & Ors.	...Petitioners
vs	
State of NCT of Delhi & Ors.Respondents

**APPLICATION UNDER SECTION 151 OF CPC FOR EXEMPTION
FROM FILING FAIR TYPED COPIES OF DIM ANNEXURES.**

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

MOST RESPECTFULLY SHOWETH:

1. The Applicant is preferring today the accompanying writ petition against against the wrongful, illegal, arbitrary, unconstitutional and malafide actions/inactions of Respondent No. 5 whereby the Petitioners were illegally and unconstitutionally deprived of exercising their constitutional rights in participating the democratic process of formation of Government of NCT of Delhi as guaranteed to them under Articles 5 and 173 of the Constitution.

2. That the facts and grounds leading to the filing of present petition have been stated therein and the same is not being repeated herein for the sake of brevity, but the petitioners crave leave of the court to refer and rely upon the same at the time of hearing of the present application and facts and grounds and submissions made in the Petition may kindly be considered as part and parcel to the present Application.
3. It is respectfully submitted that in view of urgency the Petitioner is filing the present petition with other relevant dim annexures, the fair typed copies whereof could not be prepared urgently. Hence the petitioner may kindly be exempted from filing fair typed copies of other relevant dim annexures.
4. That this application is being made bona fide and in the interest of justice.

P R A Y E R

It is therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

- i. exempt the Petitioner from filing fair typed copies of other relevant dim annexures.; and

IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRA-ORDINARY ORIGINAL CIVIL JURISDICTION)
[Under Article 226 Of The Constitution Of India]

C.M.A NO. OF 2020
IN
WRIT PETITION (CIVIL) NO. OF 2020

IN THE MATTER OF :

Mr Kiran Pal Singh Tyagi & Ors.	vs	...Petitioners
State of NCT of Delhi & Ors.	Respondents

**APPLICATION UNDER SECTION 151 OF CPC FOR EXEMPTION
FROM FILING OFFICIAL TRANSLATION.**

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

MOST RESPECTFULLY SHOWETH:

1. The Applicant is preferring today the accompanying writ petition against against the wrongful, illegal, arbitrary, unconstitutional and malafide actions/inactions of Respondent No. 5 whereby the Petitioners were illegally and unconstitutionally deprived of exercising their constitutional rights in participating the democratic process of formation of Government of NCT of Delhi as guaranteed to them under Articles 5 and 173 of the Constitution.

2. That the facts and grounds leading to the filing of present petition have been stated therein and the same is not being

repeated herein for the sake of brevity, but the petitioners crave leave of the court to refer and rely upon the same at the time of hearing of the present application and facts and grounds and submissions made in the Petition may kindly be considered as part and parcel to the present Application.

3. It is respectfully submitted that in view of urgency the Petitioner is filing the present petition with other true translated copy of Annexure P14 colly, the official translation whereof whereof could not be prepared urgently. Hence the petitioner may kindly be exempted from filing official translated copy of the said Annexure and take on record the true translated copy thereof.
4. That this application is being made bona fide and in the interest of justice.

P R A Y E R

It is therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

- i. Exempt the Petitioners from filing official translated copy of the said Annexure and take on record the true translated copy thereof:

- ii. Pass any other order in view of the facts and circumstances of the present case, in the interests of justice.

AND FOR THIS ACT OF KINDNESS THE APPLICANT, AS IN DUTY BOUND, SHALL FOR EVER PRAY.

PETITIONER No. 1

Through:

**VIPLAV SHARMA
Advocate & Counsel for Petitioners
A-148, 2nd Floor, Defence Colony
New Delhi – 110 024
Ph: 9599926159
Enrol No.UP-5545/90**

**Place : New Delhi
Dated: 25/1/2020**

IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRA-ORDINARY ORIGINAL CIVIL JURISDICTION)
[Under Article 226 Of The Constitution Of India]

WRIT PETITION (CIVIL) NO. OF 2020

IN THE MATTER OF :

Mr Kiran Pal Singh Tyagi & Ors. vs ...Petitioners

State of NCT of Delhi & Ors.Respondents

CERTIFICATE OF NON FILING

That the Petitioners have not filed any similar petition before any Court within the territory of India any petition touching upon the subject matter of the above noted writ petition. May it be categorically submitted that before this writ petition the petitioners have not filed any petition touching upon the subject matter of the above noted writ petition before this Hon'ble Court order on the Supreme Court of India. Additionally, complete record relating to the subject matter of the above noted writ petition has been annexed along with the writ petition.

PETITIONERS

Through:

VIPLAV SHARMA
Advocate & Counsel for Petitioners
A-148, 2nd Floor, Defence Colony
New Delhi – 110 024
Ph: 9599926159
Enrol No.UP-5545/90

Place : New Delhi
Dated: 25/7/2019

1/2 रजिस्ट्रार
मुख्य चुनाव आयुक्त
नियमन चुनाव आयुक्त
रजिस्ट्रार-1
सेवा में,



श्रीमान मुख्य निर्वाचन अधिकारी,
राष्ट्रीय राजधानी क्षेत्र,
पुराना हिन्दू कॉलेज, कश्मीरी गेट,
दिल्ली-110006

विषय :- नई दिल्ली विधानसभा क्षेत्र-40 के निर्वाचन अधिकारी द्वारा चुनाव आयोग के नियमों/दिशा-निर्देशों के विपरीत जाकर अरविंद केजरीवाल के नामांकन करवाने में पक्षपात करने एवं अन्य प्रत्याशियों के साथ भेदभाव व दुर्व्यवहार करने के चलते अरविंद केजरीवाल का नामांकन रद्द करवाने के सम्बंध में।

महोदय,

हम सभी प्रत्याशी आपको यह अवगत करवाना चाहते हैं कि कल दिनांक 21.01.2020 को निर्वाचन अधिकारी के कार्यालय पर समय से पहले पहुंच कर अपने नामांकन हेतु निर्वाचन अधिकारी के निर्देशानुसार लाईन में लगे थे। निर्वाचन अधिकारी द्वारा हम यह भी सूचित किया गया था कि सभी प्रत्याशियों को क्रम अनुसार टोकन देकर नामांकन हेतु अंदर बुलाया जायेगा तथा बिना क्रम व टोकन के किसी को भी नामांकन हेतु अंदर आने की अनुमति नहीं दी जायेगी चाहे वह किसी भी पार्टी से सम्बंधित हो या कोई महत्वपूर्ण व्यक्ति हो।

किन्तु निर्वाचन अधिकारी द्वारा सभी नियमों एवं निर्देशों को नज़रअंदाज करते हुए निर्वाचन अधिकारी ने नामांकन के लिये अरविंद केजरीवाल को बिना लाईन में लगाये उनका टोकन चुनाव अधिकारी ने स्वयं जारी कर दिया जोकि नियमों का सरासर उल्लंघन है एवं व्यक्ति विशेष को विशेष सुविधा प्रदान करने वाला है। इससे यह साफ जाहिर होता है कि अरविंद केजरीवाल ने निर्वाचन अधिकारी के सहयोग से जहां एक ओर चुनावी मशीनरी का दुर्पयोग किया है वहीं दूसरी ओर भारतीय संविधान की उद्देशिका सामाजिक, आर्थिक और राजनैतिक न्याय, विचार, अभिव्यक्ति और स्वतंत्रता, प्रतिष्ठा और अवसर की समानता के अधिकार का उल्लंघन किया है।

निर्वाचन अधिकारी द्वारा सभी प्रत्याशियों एवं उनके प्रस्ताव को जिसमें कई वरिष्ठ नागरिक व महिलाये भी सम्मिलित थीं को चुनाव आयोग के नियमों का हवाला देकर लगभग पूरे दिन भूखा रहने पर मजबूर करते हुए शारीरिक एवं मानसिक रूप से भी प्रताड़ित किया गया एवं अरविंद केजरीवाल से विशेष व्यवहार करते हुए उनके खाने की व्यवस्था प्रवेक्षक कक्ष में की गई। प्रत्याशियों के विरुद्ध करने के बाद लगभग 6 घण्टे उपरान्त उन्हें नामात्र का नाशता उपलब्ध कराया गया। इस दौरान निर्वाचन अधिकारी ने सीसीटीवी कैमरों को अपने हिसाब से प्रचारित किया।

अतः संविधान के अनुसार चुनाव प्रक्रिया राजा व प्रजा दोनों के लिये समान होनी चाहिये। भारत का चुनाव आयोग चुनाव लड़ने व जीतने का अवसर तो देता है, लेकिन समानता का अवसर नहीं देता। इसलिये राजा (राजनैतिक दल) एवं राजनेता सहित समक्ष प्रजा को भी चुनाव लड़ने व जीतने का समान अवसर उपलब्ध हो इसलिये आप लोगों को चुनाव में आरक्षण देना जरूरी हो गया है। चुनाव आयोग इस पर अपनी स्थिति स्पष्ट करे?

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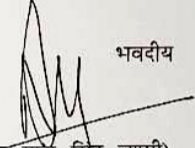
मुख्यमंत्री एवं विधायक के रूप में राज्य, समाज एवं व्यक्ति के प्रति ली गई शपथ समानता, निष्ठा एवं संप्रभुता को अक्षुण्ण रखने व संविधान के अनुच्छेद 14 में दिये गये समानता के अधिकार का उल्लंघन हुआ है। मुख्यमंत्री द्वारा किये गये इस आपराधिक कृत्य एवं संविधान की निष्ठा के उल्लंघन के चलते नई दिल्ली विधानसभा क्षेत्र से राष्ट्र, संविधान, व्यक्ति एवं समाजहित में अरविंद केजरीवाल का नामांकन रद्द किया जाये।


अतः आपसे निवेदन है कि हमारी शिकायत पर उचित कार्यवाही करते हुए अरविंद केजरीवाल का नामांकन रद्द करने की कृपा करें इसके लिये हम सदैव आपके कृतज्ञ रहेंगे।

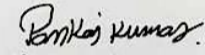
धन्यवाद सहित,

दिनांक :- 22.01.2020

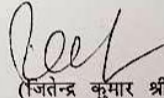
23-01-2020


(किरण पाल सिंह त्यागी)
45, गांव शकरपुर खास,
दिल्ली-110092
फोन - 9871421221
ईमेल-kiranpalsingh2241@gmail.com


(विरेन्द्र सक्सेना)
S-52, स्कूल ब्लॉक, शकरपुर,
दिल्ली-110092
फोन :- 9711971913
ईमेल-saxena1913@gmail.com


(पंकज कुमार)
B-11, शांति नगर,
दिल्ली
फोन :- 9873770670


(अवधेश कुमार सिंह)
S-606, स्कूल ब्लॉक, शकरपुर,
दिल्ली-110092
फोन :- 9212433890
ईमेल-aksingh3867@gmail.com


(जितेन्द्र कुमार श्रीवास्तव)
RZC-36, महावीर विहार, पालम
सेक्टर-1, दवारका, नई दिल्ली
फोन :- 9868352757
ईमेल-jitendraddda0@gmail.com

Seal of Election Commission

To
Chief Election Commissioner
Election Commission of India
New Delhi

Chief Electoral Officer
National Capital of Territory
Old Hindu College
Kashmere Gate
Delhi

Subject: Wrongful favour extended to Arvind Kejriwal by Election Officer
New Delhi Assembly - 40 in getting his nomination done in
violation of the rules/ directions of the election commission and in
discriminating and misbehaving with other candidates warranting
the cancellation of nomination of Arvind Kejriwal

Sir

All of us candidates wish to inform you that yesterday dated 21.1. 2020 Reached much before the time at the office of the Election Officer for purpose of submitting the nomination before the returning officer And as per is directions standing in the queue it was also informed to us by the election officer that all the candidates will be given token in seratem And would be called inside for purpose of filing their nomination papers and without turn and to INR nobody would be permitted to come inside for submitting the nomination papers even he belongs to any political party or even may be any important person.

However in complete disregard of the rules and directions made by the Election Officer, in order to facilitate the nomination of Arvind Kejriwal without his having joined the queue, the Election Officer himself issued token To him which was clearly violation of the rules and special treatment to special person. from this it is clear that Arvind Kejriwal at with the support of the Election Officer misused the election machinery on one hand and on the other hand, He had also violated rights of JUSTICE, social, economic and political, LIBERTY of thought, expression, belief, faith and worship and EQUALITY of status and of opportunity as contained in the Preamble of the constitution.

All the candidates and their proposers which included senior citizens and ladies were starved whole day and thereby, Physically and mentally tortured by citing the rules of of the election commission of India by the Election Officer and affording special treatment to Arvind Kejriwal and arrangement of refreshment was made in the guest room. All strong objections being raised by the candidates they were made available in namesake refreshment after 6 hours and during this time the Election Officer operated the cctv cameras as per his own convenience.

Therefore, as per constitution the election process for the ruler and subject should be same. the election commission of India a force and opportunity to contest and win election but does not afford the equality for the same. Therefore, To contest and win elections against the ruler (political party) the equal opportunity is required to be given and for that purpose, it

is necessary to provide reservations in the election. The Election Commission request to clarify its position in this regard.

The Chief Minister and the member of legislative assembly taking oath for the state, society and person has been violated with the violation of oath of equality, keeping integrity and sovereignty intact and the right of equality guaranteed under Article 14 of the Constitution. In the wake of the criminal actions and breach of the faith on the Constitution by the Chief Minister and therefore, in the interest of Nation, Constitution, person and in the interest of society the nomination of Arvind Kejriwal be kindly rejected.

Therefore, it is requested that necessary action be kindly taken on out this complaint by rejecting the nomination of Kejriwal for which shall remain ever grateful.

Thanking you,

Yours faithfully

Sd/- (illegible)

(Kiran Pal Singh Tyagi)
45, Vilage Shakarpur
Delhi – 110092
Phone – 9871421221
Email- kiranpalsingh2241@gmail.com

Sd/- (illegible)

(Virendra Saxena)
S-52, School Block
Shakarpur
Delhi – 110092
Phone – 9711971913
Email- saxena1913@gmail.com

Sd/- (illegible)

(Avadhesh Kumar Singh)
S-606, School Block
Shakarpur
Delhi – 110092
Email-
kiranpalsingh2241@gmail.com

Sd/- (illegible)

(Pankaj Kumar)
B-11, Vilage Shakarpur
Delhi – 110092
Phone – 9873770670

Sd/- (illegible)

(Jitendra Kumar Srivastava)
RZC 36, Mahavihar Viar
Palam
Sector 1
Dwarka
New Delhi
Phonne – 9868352757
mail- jintendraadda@gmail.com

True Translation