

SYNOPSIS

The Petitioner is invoking the jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India praying for quashing the registration of All India Majilis-e-Ittehadul Musalimeen (for short AIMIM), as its constitution and working is against the law laid down by the Hon'ble Supreme Court in case of Abhiram Singh vs. C.D.Commachen(Dead) by L.rs. & Ors. reported in (2017) 2 SCC 629 and the party is disqualified to be registered as a political party as its aim and object are opposed to the concept of secularism as required to be fulfilled under Section 29-A(5) of the Representation of People Act, 1951 (for short R.P. Act).

The petitioner is also praying for issuance of appropriate writ, order or direction quashing the order dated 19th June, 2014 passed by Election Commission of India granting recognition of State party of Telangana to AIMIM.

Shiv Sena is a registered political party with the Election Commission of India and is a recognized State party for the State of Maharashtra.

The Petitioner is President of Shiv Sena of the State of Telangana for the last more than 4 years. In the General Election held in the year 2014 for Lok Sabha he had contested from Malkajgiri Constituency as Shiv Sena candidate. Shiv Sena wants to expand the party in other States including the State of Andhra and Telangana.

The meaning of 'All India Majilis-e-Ittehadul Musalimeen' (translated into English) is 'All India Council of the Union of Muslims.' The said party has its roots in the Majilis-e-Ittehadul Musalimeen founded in 1927 in the Hyderabad State of British India. This organization is committed to unite the followers of Islam and to enlarge the rights of Muslims in India.

It is noteworthy that AIMIM was founded as a political party in the year 1958 on the same lines and thinking on which Muslim League was formed before independence which forced the formation of

Pakistan by way of partition of mother India. A very valuable and large area of India was given to Pakistan without any justification.

It is noteworthy to mention that Muslims came from Arab country and ruled for considerable long time causing serious damage to the life, property, cultural heritage of the country and forced Hindus to embrace Islam at large scale adopting most barbaric methods. In 1946-47 the disruptive elements forced the then thinkers and persons at the helm of political affairs to accept the demand of Mohammed Ali Jinnah leader of Muslim League for giving major portion of India to Pakistan as they did not want to live with Hindu community.

The Petitioner is law abiding citizen, believe in the majesty of law and supremacy of the constitution and feels his bounden duty to preserve and protect the sovereignty and integrity of India and to fight against communal forces to ensure that such forces do not create panic situation arousing the feelings of Muslims again for another partition of the country.

It is noteworthy that the office bearers, leaders and workers of AIMIM are continuously abusing Hindu religion, their Gods Goddesses. A number of FIR's have been lodged against them. The Muslims are basically against idol worship. The idol worship is 'kufr' for them. The office bearers and leaders of the party abuse Hindu community and idol worship to attract members of Muslim community. The Petitioner can establish the said facts, if so required under the orders of Hon'ble Court.

The constitution of AIMIM clearly raises issues relating to Muslim community and thinks only for the welfare of Muslims, which is violative of the principles of secularism as envisaged by the Constitution of India.

The parliament by amending R.P. Act, 1951 in the year 1989 adding Section 29A to the said Act has clearly provided that every party intending to be registered must give a declaration to the effect that it will abide by the principles of socialism and secularism and will

uphold the sovereignty and integrity of India. The party having aim and object for the benefit of only Muslim community, formed on communal concept can in no way fulfill the object of secular principles. The declaration, given by AIMM to uphold the secular principles is farce and fraud on the law and the constitution.

Every political party is bound to follow the provisions contained in Section 123 of R.P. Act and to ensure that its candidates do not seek vote making religious appeal. No political party can muster votes on basis of religion either of the candidate or of the voters. No such action can be done for furtherance of election prospects of the candidates making any appeal on the basis of religion directly or indirectly.

AIMIM is bound to violate Section 123 of R.P. Act as its aim and objects are based on communal basis slanted in favour of Muslim community and is bound to indulge in corrupt activities prohibited by Section 123 of R.P. Act and the law laid down by the Apex Court in Abhiram Singh's case (Supra).

Section 123 prohibits to seek votes by making religious appeal either of the candidate or the voter. A political party also cannot seek votes on the basis of religion, creed, caste, language etc. If the very foundation of the political party is communal and religion based, it cannot remain secular and is bound to violate the very concept of free and fair election free from religious bias.

The golden words written in the Constitution and recognized in judicial pronouncements would be dead letters if bypassed by disgruntled persons playing fraud on the law and the Constitution.

It is very difficult for the Petitioner to muster public support in favour of his party, the Shiv Sena, as communal passion of Muslims is being spread by AIMIM and politics is being communalized. The Petitioner cannot survive unless he also indulges in arousing the feelings of Hindus but he, being committed to law and the Constitution and feeling his responsibility towards motherland, cannot indulge in nefarious activities.

Since AIMIM is a registered political party with the aim and objects on communal line committed for the rights and welfare of Muslim community, it will have freedom to propagate religion in strengthening the party and during elections to seek votes by making communal appeal, being protected as a registered and also a recognized State level party in the elections. The result would be that the thinking and working of the party will be a serious threat to the future of India. It would be very obnoxious position if wrong is not snubbed at the threshold to protect the rights of law abiding citizens. It is well established that a thing which cannot be achieved directly, cannot be achieved indirectly.

A seven judges bench in Abhiram Singh's case (supra) of the apex Court has held that:-

“no candidate or any person acting on his behalf can seek vote in the name of religion, whether the appeal was in the name of the candidate's religion or that of the opponent or that of the voters. It has been held that an appeal in the name of religion, race, caste, community or language is forbidden under Section 123(3) of the R.P.Act. It has also been held that:- ‘so interpreted religion, race, caste, community or language would not be allowed to play any role in the electoral process and should an appeal be made on any of those considerations, the same would constitute a corrupt practice”.

Section 29-A (5) of R.P.Act. makes it clear that every political party is bound to follow the principles of secularism. Section 123 of the said Act prohibits the use of religion in election. The violation of said provision entails the election void for adopting corrupt practice and the candidate may be tried on criminal side for such act.

In the above situation, the Petitioner has no remedy except to knock the door of the Hon'ble Court for proper implementation of the judgment rendered by Apex Court in Abhiram Singh's case and for making the declaration given under Section 29-A(5) of R.P.Act meaningful, purposive and workable.

It has been held by the Apex Court in case of Indian National Congress(I) vs. Institute of Social Welfare & Ors. reported in (2002) 5 SCC 685 in para 17 that:-

“We are therefore, of the view that neither under the symbols order nor under Section 29-A of the Act, the Election Commission has been conferred with any express power to de-register a political party registered under Section 29-A of the Act on the ground that it has either violated the provisions of the Constitution or any provision of undertaking given before the Election Commission at the time of registration”.

Further in paragraph 41.2 it has been held that:-

“The Election Commission while exercising its power to register a political party under Section 29-A of the Act, acts quasi judicially and decision rendered by it in a quasi judicial order and once a political party registered, no power of review having been conferred on the Election Commission, it has no power to review the order registering a political party for having violated the provisions of the Constitution or for having committed breach of undertaking given to the Election Commission at the time of registration”.

In another judgment the Apex Court in case of Prabasi Bhalai Sangathan vs. Union of India reported in (2014) 11 SCC 477, while interpreting the powers of Election Commission has held in para 29 that:-

“In view of the fact that the Law Commission has undertaken the study as to whether the Election Commission should be conferred the power to derecognize a political party disqualifying it all its members, if a party or its members commit the offence referred to hereinabove. We request the Law Commission to also the examine the issues raised herein above thoroughly and also to consider if it deems proper, the defining the expression ‘hate speech’ and make recommendations to Parliament to strengthen the Election

Commission curb the menace of “hate speeches” irrespective of whether made.”

It is relevant to mention that the Parliament has not enacted any law conferring the power on the Election Commission to take action against a political party in case it violates the undertaking given under Section 29-A(5) and Section 123 of R.P.Act.

In view of the above legal proposition the Hon'ble Court may issue appropriate writ quashing of registration of AIMIM as a political party and order dated 19.06.2014 passed by Election Commission of India recognizing the said party as a State level party of State of Telangana.

LIST OF DATES

1958 A political party in the name and style 'the All India Majlis-e-Ittehadul Musalimeen, (hereinafter referred to as the 'Party') was founded by the members of Muslim community on the lines of erstwhile Muslim League. The head office of the party is at Darussalam Board, Hyderabad State of Andhra Pradesh (now State of Telangana).

9.8.1989 The Secretary of the Party vide letter dated 9.8.1989 informed the Election Commission of India that amendment in the constitution of the party has been made in accordance with requirement of Sub-Section (4) of Section 29-A of the Representation of Peoples Act (hereinafter referred as R.P.Act),1951 and that such amendment has been made within a period of 60 days of the commencement of amendment made adding Section 29-A to the R.P. Act.

After the amendment of the constitution of the party it is clear that same is purely a party formed to espouse the cause of Muslim community and

the same cannot be a secular party within the meaning of Section 29-A of the R.P.Act.

The word Majlis has been defined in para 2(a) to mean 'All India Majlis Ittehadul Muslimeen'.

The aim and object of the Majlis has been laid down in chapter 2 of the registered constitution of the party. From the aim and objectives of the party it is clear that same was formed in the same pattern the Indian Muslim League had been formed before partition of India. It is provided in the objective that:-

- (i) the party will work for social justice and economic upliftment of the backward sections of the society and the Muslims who are backward both economically and in the field of education.
- (ii) Strive for unity among the Muslims and safeguarding their rights and interest as guaranteed under the Constitution of India.
- (iii) Promote education both technical and non-technical.
- (iv) Promote Islamic Education (Deeni Taleem) among Muslims, the reading of Quraan and its understanding,
- (v) Create a general awakening among the Muslims to abide by the Shariat Laws.
- (vi) Resist all forms of discriminations in the recruitment to Government job and in Industrial Educational Institutions.
- (vii) Remove unemployment by securing employment in Government and Industrial Investment for Muslims and other backwards sections of the society in

proportion to their population and to establish self employments schemes.

- (viii) Introduced an organize system of Zakath collection to help the poor and deserving members of the community.
- (ix) Promote harmonious and fraternal relations between Muslims and other communities to make them good citizens of India.
- (x) Help the victims of communal violence through rehabilitation programmes.
- (xi) Take part in the elections to Parliament, State Legislative Assemblies, Municipal Bodies and panchayats and set up candidates irrespective of caste and creed, to further the aims and objectives of the Majlis.
- (xii) Strive to see that Muslims ignore differences and factions, stick to their respective principles and cooperate in the maintenance of public peace, and morality subject to the religious, economic, social and other common problems.

In Chapter III the Constitution of the Majlis has been described.

Para 5 of the Constitution of Majlis runs as under:-

Membership and subscription:-

“Every citizen of India shall be eligible for membership of Majlis who pays annual subscription of Rs.2/- and agrees in writing to abide by the aims, objects of this constitution and as approved by the screening committee.

The entire constitution of the party is based on Islamic Principles. There is provision for meeting of Majlis Aameela, Majlis Shura.

Para 25 of the Constitution of the party runs as under:-

Representations of Communities:

The Majlist Shura shall possibly contain atleast two members from each of the Communities namely Sunni, Shia, AhlaHadees, Mahdavi, Sulaimani, Dawoodi and Ismailee. After the election, if it is learnt that any Community is not represented, then the Secretary shall fix a date and call such persons of said Community who are the General members of the Majlis. Their names will be submitted before the MujlisShura, And the Majlis Shura will elect out of them, the required numbers of members according to section 24 (b) and such elected members will be considered to be the members of Majlis Shura.

Alongwith the letter dated 9.8.1989 additional particulars have also been furnished for registration as a political party. According to the particulars furnished to the Election Commission it appears that in the meeting held on Generally 19-20.01.1989 at Nizamabad the earlier constitution was resolved to be amended reciting the mandate of amended Section 29A of R.P.Act to the effect that the party shall have faith and allegiance to the Constitution of India and will abide by the Principles of Socialism, Secularism and Democracy and would hold the sovereignty and integrity of India.

The above particulars also show that amendment was made in the aims and object of the party to show that it was a party working for Muslims but in essence and in substance the party continued and is continuing to work for the benefit of Muslim community.

The agenda of the party is completely communal.

The Election Commission could not have registered the party as a political party as infact and insprit it was committed to work for Muslim community and it could be treated as a secular party from any angle.

It is relevant to mention that in case of Indian National Congress (I) vs. Institute of Social Welfare and & Ors. reported in (2002) 5 SCC 685 the apex court in para 38 has held that:-

‘We have already extensively examined the matter and found that the Parliament consciously had not chosen to confer any power on the Election Commission to deregister a political party on the premise it has contravene the provisions of Sub-section(5) of Section 29-A. The question which arises for our consideration is whether in the absence of any express or employ power, the Election Commission is empowered the cancel the registration of political party in the strength of the provisions of Section 21 of the General Clauses Act.’

Further in para 39 it has been held that:-

‘But the order which is the commission is required to pass under Section 29-A is neither a legislative nor an executive order but is a quasi-judicial order. We have already examined this aspect of

the matter in the foregoing paragraph and held that the function exercisable by the Commission under Section 29-A is essentially quasi-judicial nature and order passed thereunder is quasi judicial order. In that view of the matter, the provisions of Section 21 of the General Clauses Act cannot be invoked to confer powers of de-registration/cancellation of registration after enquiry by the Election Commission'.

From the ratio of law declared by the apex court it is clear that the Petitioner are any citizen cannot approach the Election Commission to derecognize/cancel the registration of the party since it has been registered(though wrongly).

In view of the above the Petitioner has no remedy except to invoke the jurisdiction of the Hon'ble Court under Article 226 of the Constitution of India to get justice and prevent the fraud played by the party on the law and the Constitution.

19.06.2014 The Election Commission vide circular/order No.56/Review/2014/PPS-II dated 09.08.1989 and communicated to AIMIM has granted recognition of State Party in State of Telangana to All India Majlis-e-Ittehadul-Musalimeen. It is noteworthy that party has achieved the status of State party by playing communal cards arousing the feelings of Muslim community.

04.09.2018 Hence, the present Writ Petition.

IN THE HIGH COURT OF DELHI AT NEW DELHI

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) No. OF 2018

IN THE MATTER OF:

Tirupati NarashimaMurari
S/o Tirupati Narashima,
R/o. House No.5-84 ChinnaThokatta
New BowenpallySecunderabad,
Hyderabad, Telangana.

Petitioner

Versus

1. Union of India
Through Secretary
Ministry of Law & Justice
Central Secretariat
New Delhi.
2. Election Commission of India
Through Chief Election Commissioner,
NirvachanSadana,
Ashoka Road, New Delhi-110001.
2. All India Majlis-E-Ittehadul Muslimeen
Through its President
Darussalam Board Hyderabad,
State of Telangana.

Respondents

**WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION
OF INDIA PRAYING FOR WRIT, ORDER OF DIRECTION IN THE
NATURE OF MANDAMUS DIRECTING**

TO,
THE HONBLE CHIEF JUSTICE
AND HIS HON'BLE COMPANION JUSTICES
OF THE HIGH COURT OF DELHI AT NEW DELHI

THE HUMBLE PETITION OF THE PETITIONER

MOST RESPECTFULLY SHOWETH:

1. The Petitioner, a resident of Hyderabad, State of Telanana and State President of Shiv Sena, a registered political party, is filing the present writ petition under Article 226 of the Constitution of India praying for quashing the registration of All India Majilis-e-Ittehadul Musalimeen (for short AIMIM), as its constitution and working is against the law laid down by the Hon'ble Supreme Court in case of

Abhiram Singh vs. C.D.Commachen(Dead) by L.rs. & Ors. reported in (2017) 2 SCC 629 and the party is disqualified to be registered as a political party as its aim and object are opposed to the concept of secularism as required to be fulfilled under Section 29-A(5) of the Representation of People Act,1951(for short R.P.Act).

The Petitioner is also praying for issuance of appropriate writ, order or direction quashing the order dated 19th June, 2014 passed by Election Commission of India granting recognition of State party of Telangana to AIMIM.

1A. That the Petitioner is filing this petition in his personal capacity. It is declared that this petition is not being filed as public interest litigation. The relief and the actions sought and challenged in the present petition affects the rights of the Petitioner's i.e. free and fair election which is the basic structure of the constitution and Indian democracy. The rights of the Petitioner granted under the representation of the People Act are also affected for which the present petition is filed in his personal capacity.

2. QUESTION OF LAW:

- 2.1 Whether there is any remedy if a political party is continuously propagating its ideas and seeking votes in the name of the religion before the declaration of Election notification under the provisions of R.P. Act?
- 2.2 Whether a political can have communal agenda in its constitution?
- 2.3 Whether a political party with the aim and object of working in favour of a particular religion or community can be allowed to function?
- 2.4 Whether a political party can make appeal to vote on religious and communal basis in violation of Section 123 of Representation of People Act, 1951?
- 2.5 Whether the election of a candidate is void abinitio as the party to which he belongs promotes and propagates particular

religion, may be of voters or its candidates within the prohibited zone of Section 123(3) of Representation of People Act, 1951?

- 2.6 Whether a political party can seek vote in violation of the ratio of law laid down by the Apex Court rendered in case of Abhiram Singh vs. C.D. Commachen reported in (2017) 2 SCC 629?
- 2.7 Whether a political party is bound by the declaration made by it under Section 29-A(5) and its violation will entail disqualification for the party to continue and operate as a political party?
- 2.8 Whether a political party in the Indian context can go against the very ethos of Indian culture, cultural heritage and moral values being perceived by the citizens of the country from ages?
- 2.9 Whether a political party can advocate the welfare of a particular religious community?

3. FACTS OF THE CASE:

- 3.1 That in the year 1958 a political party in the name and style 'the All India Majlis-e-Ittehadul Musalimeen, (hereinafter referred to as the 'Party') was founded by the members of Muslim community on the lines of erstwhile Muslim League. The head office of the party is at Darussalam Board, Hyderabad State of Andhra Pradesh (now State of Telangana). A copy of aim, object and the constitution of All India Majlis-e-Ittehadul Musalimeen is annexed hereto and marked as **ANNEXURE P-1**.
- 3.2 That the meaning of 'All India Majlis-e-Ittehadul Musalimeen' (translated into English) is 'All India Council of the Union of Muslims.' The said party has its roots in the Majlis-e-Ittehadul Musalimeen founded in 1927 in the Hyderabad State of British India. This organization is committed to unite the

followers of Islam and to enlarge the rights of Muslims in India.

3.3 That on 9.8.1989 the Secretary of the Party vide letter dated 9.8.1989 informed the Election Commission of India that amendment in the constitution of the party has been made in accordance with requirement of Sub-Section (4) of Section 29-A of the Representation of Peoples Act (hereinafter referred as R.P.Act),1951 and that such amendment has been made within a period of 60 days of the commencement of amendment made adding Section 29-A to the R.P. Act. A copy of letter dated 09.08.1989 sent by AIMIM to the Election Commission of India is annexed hereto and marked as **ANNEXURE P-2**.

3.4 That after the amendment of the constitution of the party it is clear that same is purely a party formed to espouse the cause of Muslim community and the same cannot be a secular party within the meaning of Section 29-A of the R.P.Act.

The word Majlis has been defined in para 2(a) to mean 'All India Majlis Ittehadul Muslimeen'.

The aim and object of the Majlis has been laid down in chapter 2 of the registered constitution of the party. From the aim and objectives of the party it is clear that same was formed in the same pattern the Indian Muslim League had been formed before partition of India. It is provided in the objective that:-

- (i) the party will work for social justice and economic upliftment of the backward sections of the society and the Muslims who are backward both economically and in the field of education.
- (ii) Strive for unity among the Muslims and safeguarding their rights and interest as guaranteed under the Constitution of India.

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- (vi) Resist all forms of discriminations in the recruitment to Government job and in Industrial Educational Institutions.
- (vii) Remove unemployment by securing employment in Government and Industrial Investment for Muslims and other backwards sections of the society in proportion to their population and to establish self employments schemes.
- (viii) Introduced an organize system of Zakath collection to help the poor and deserving members of the community.
- (ix) Promote harmonious and fraternal relations between Muslims and other communities to make them good citizens of India.
- (x) Help the victims of communal violence through rehabilitation programmes.
- (xi) Take part in the elections to Parliament, State Legislative Assemblies, Municipal Bodies and panchayats and set up candidates irrespective of caste and creed, to further the aims and objectives of the Majlis.
- (xii) Strive to see that Muslims ignore differences and factions, stick to their respective principles and cooperate in the maintenance of public peace, and morality subject to the religious, economic, social and other common problems.

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- 3.5 That alongwith the letter dated 9.8.1989 additional particulars were also furnished for registration as a political party by AIMIM. According to the particulars furnished to the Election Commission it appears that in the meeting held on 19-20th January, 1989 at Nizamabad the earlier constitution was resolved to be amended reciting the mandate of amended Section 29A of R.P.Act to the effect that the party shall have faith and allegiance to the Constitution of India and will abide

by the Principles of Socialism, Secularism and Democracy and would hold the sovereignty and integrity of India.

- 3.6 That the above particulars also show that amendment was made in the aims and object of the party to show that it was not a party working for Muslims only but in essence and in substance the party continued and is continuing to work for the benefit of Muslim community. The agenda of the party is completely communal.
- 3.7 That the Election Commission could not have registered the party as a political party as infact and inspirit it was committed to work for Muslim community and it could be treated as a secular party from any angle.
- 3.8 That the Election Commission vide circular/order No.56/ Review/2014/PPS-II dated 19.06.2014 has granted recognition of State Party in State of Telangana to All India Majlis-e-Ittehadul-Musalimeen. It is noteworthy that party has achieved the status of State party by playing communal cards arousing the feelings of Muslim community. A copy of circular/order No.56/ Review/2014/PPS-II dated 19.06.2014 issued by the Election Commission of India granting recognition of State level party to AIMIM in the State of Telangana is annexed hereto and marked as **ANNEXURE P-3**.
- 3.9 That Shiv Sena is a registered political party with the Election Commission of India and is a recognized State party for the State of Maharashtra.
- 3.10 That the petitioner is President of Shiv Sena of the State of Telangana for the last more than 4 years. In the General Election held in the year 2014 for Lok Sabha he had contested from Malkajgiri Constituency as a candidate Shiv Sena. Shiv Sena wants to expand the party in other States including the State of Andhra and Telangana.

- 3.11 That it is noteworthy that AIMIM was founded as a political party in the year 1958 on the same lines and thinking on which Muslim League was formed before independence which forced the formation of Pakistan by way of partition of mother India. A very valuable and large area of India was given to Pakistan without any justification.
- 3.12 That it is noteworthy to mention that Muslims came from Arab country and ruled for considerable long time causing serious damage to the life, property, cultural heritage of the country and forced Hindus to embrace Islam at large scale adopting most barbaric methods. In 1946-47 the disruptive elements forced the then thinkers and persons at the helm of political affairs to accept the demand of Mohammed Ali Jinnah leader of Muslim League for giving major portion of India to Pakistan as they did not want to live with Hindu community.
- 3.13 That the Petitioner is law abiding citizen, believe in the majesty of law and supremacy of the constitution and feels his bounden duty to preserve and protect the sovereignty and integrity of India and to fight against communal forces to ensure that such forces do not create panic situation arousing the feelings of Muslims again for another partition of the country.
- 3.14 That it is noteworthy that the office bearers, leaders and workers of AIMIM are continuously abusing Hindu religion, their Gods Goddesses. A number of FIR's have been lodged against them. The Muslims are basically against idol worship. The idol worship is 'kufr' for them. The office bearers and leaders of the party abuse Hindu community and idol worship to attract members of Muslim community. The Petitioner can establish the said facts, if so required under the orders of Hon'ble Court.
- 3.15 That the constitution of AIMIM clearly raises issues relating to Muslim community and thinks only for the welfare of Muslims,

which is violative of the principles of secularism as envisaged by the Constitution of India.

- 3.16 That the parliament by amending R.P. Act, 1951 in the year 1989 adding Section 29A to the said Act has clearly provided that every party intending to be registered must give a declaration to the effect that it will abide by the principles of socialism and secularism and will uphold the sovereignty and integrity of India. The party having aim and object for the benefit of only Muslim community, formed on communal concept can in no way fulfill the object of secular principles. The declaration, given by AIMM to uphold the secular principles is farce and fraud on the law and the constitution.
- 3.17 That every political party is bound to follow the provisions contained in Section 123 of R.P. Act and to ensure that its candidates do not seek vote making religious appeal. No political party can muster votes on basis of religion either of the candidate or of the voters. No such action can be done for furtherance of election prospects of the candidates making any appeal on the basis of religion directly or indirectly.
- 3.18 That AIMIM is bound to violate Section 123 of R.P. Act as its aim and objects are based on communal basis slanted in favour of Muslim community and is bound to indulge in corrupt activities prohibited by Section 123 of R.P. Act and the laid down by the Apex Court in Abhiram Singh's case (Supra).
- 3.19 That Section 123 prohibits to seek votes by making religious appeal either of the candidate or the voter. A political party also cannot seek votes on the basis of religion, creed, caste, language etc. If the very foundation of the political party is communal and religion based, it cannot remain secular and is bound to violate the very concept of free and fair election free from religious bias.

- 3.20 That the golden words written in the Constitution and recognized in judicial pronouncements would be dead letters if bypassed by disgruntled persons playing fraud on the law and the Constitution.
- 3.21 That it is very difficult for the Petitioner to muster public support in favour of his party, the Shiv Sena, as communal passion of Muslims is being spread by AIMIM and politics is being communalized. The Petitioner cannot survive unless he also indulges in arousing the feelings of Hindus but he, being committed to law and the Constitution and feeling his responsibility towards motherland, cannot indulge in nefarious activities.
- 3.22 That since AIMIM is a registered political party with the aim and objects on communal line committed for the cause of the rights and welfare of Muslim community, it will have freedom to propagate religion in strengthening the party and during elections to seek votes by making communal appeal, being protected as a registered and also a recognized State level party in the elections. The result would be that the thinking and working of the party will be a serious threat to the future of India. It would be very obnoxious position if wrong is not snubbed at the threshold to protect the rights of law abiding citizens. It is well established that a thing which cannot be achieved directly, cannot be achieved indirectly.
- 3.23 That a seven judge bench in Abhiram Singh's case (supra) of the apex Court has held that:-

“no candidate or any person acting on his behalf can seek vote in the name of religion, whether the appeal was in the name of the candidate's religion or that of the opponent or that of the voters. It has been held that an appeal in the name of religion, race, caste, community or language is forbidden under Section 123(3) of the R.P.Act. It has also been held that:- 'so interpreted

religion, race, caste, community or language would not be allowed to play any role in the electoral process and should an appeal be made on any of those considerations, the same would constitute a corrupt practice”.

3.24 That Section 29-A (5) of R.P.Act. makes it clear that every political party is bound to follow the principles of secularism. Section 123 of the said Act prohibits the use of religion in election. The violation of said provision entails the election void for adopting corrupt practice and the candidate may be tried on criminal side for such act.

3.25 That the Apex Court in case of Indian National Congress(I) vs. Institute of Social Welfare & Ors. reported in (2002) 5 SCC 685 in para 17 has held that:-

“We are therefore, of the view that neither under the symbols order nor under Section 29-A of the Act, the Election Commission has been conferred with any express power to de-register a political party registered under Section 29-A of the Act on the ground that it has either violated the provisions of the Constitution or any provision of undertaking given before the Election Commission at the time of registration”.

In para 38 has held that:-

“We have already extensively examined the matter and found that the Parliament consciously had not chosen to confer any power on the Election Commission to deregister a political party on the premise it has contravene the provisions of Sub-section(5) of Section 29-A. The question which arises for our consideration is whether in the absence of any express or employ power, the Election Commission is empowered the cancel the registration of political party in the strength of the

provisions of Section 21 of the General Clauses Act.’

Further in para 39 it has been held that:-

“But the order which is the commission is required to pass under Section 29-A is neither a legislative nor an executive order but is a quasi-judicial order. We have already examined this aspect of the matter in the foregoing paragraph and held that the function exercisable by the Commission under Section 29-A is essentially quasi-judicial nature and order passed thereunder is quasi judicial order. In that view of the matter, the provisions of Section 21 of the General Clauses Act cannot be invoked to confer powers of de-registration/cancellation of registration after enquiry by the Election Commission’.

Further in paragraph 41.2 it has been held that:-

“The Election Commission while exercising its power to register a political party under Section 29-A of the Act, acts quasi judicially and decision rendered by it in a quasi judicial order and once a political party registered, no power of review having been conferred on the Election Commission, it has no power to review the order registering a political party for having violated the provisions of the Constitution or for having committed breach of undertaking given to the Election Commission at the time of registration”.

3.26 That in another judgment the Apex Court in case of Prabasi Bhalai Sangathan vs. Union of India reported in (2014) 11 SCC 477, while interpreting the powers of Election Commission has held in para 29 that:-

“In view of the fact that the Law Commission has undertaken the study as to whether the Election Commission should be confer the power to derecognize a political party disqualifying it all its members, if a party or its members commit the offence referred to hereinabove. We request the Law Commission to also the examine the issues raised herein above thoroughly and also to consider if it deems proper, the defining the expression ‘hate speech’ and make recommendations to Parliament to strengthen the Election Commission curb the menace of “hate speeches” irrespective of whether made.”

- 3.27 That in the above situation the Petitioner has no remedy except to knock the door of the Hon’ble Court for proper implementation of the judgment rendered by apex court in Abhiram Singh’s case and for making the declaration given under Section 29-A(5) of R.P.Act meaningful, purposive and workable.
- 3.28 That it is relevant to mention that the Parliament has not enacted any law conferring the power on the Election Commission to take action against a political party in case it violates the undertaking given under Section 29-A(5) and Section 123 of R.P.Act.
- 3.29 That in view of the above legal proposition the Hon’ble Court may issue appropriate writ quashing of registration of AIMIM as a political party and order dated 19.06.2014 passed by Election Commission of India recognizing the said party as a State level party of State of Telangana.
- 3.30 That from the ratio of law declared by the apex court it is clear that the Petitioner are any person cannot approach the Election Commission to derecognize/cancel the registration of the party.

3.31 That in view of the above the Petitioner has no remedy except to invoke the jurisdiction of the Hon'ble Court under Article 226 of the Constitution of India to get justice and prevent the fraud played by the party on the law and the Constitution.

4. That having no other efficacious remedy the Petitioner is invoking the jurisdiction of this Hon'ble Court under article 226 of the Constitution of India on amongst others, on the following:-

5. **GROUNDS**

5.1 Because a political party cannot have communal agenda in its constitution.

5.2 Because a political party with the aim and object of working in favour of a particular religion or community cannot be allowed to function.

5.3 Because a political party cannot make appeal to vote on religious and communal basis in violation of Section 123 of Representation of People Act, 1951.

5.4 Because the election of a candidate is void ab-initio as the party to which he belongs propagates particular religion, may be of voters or its candidates within the prohibited zone of Section 123(3) of Representation of People Act, 1951.

5.5 Because a political party cannot seek votes in violation of the ratio of law laid down by the apex court rendered in case of *Abhiram Singh vs. C.D. Commachen* reported in (2017) 2 SCC 629.

5.6 Because a political party is bound by the declaration made by it under Section 29-A(5) and its violation will entail disqualification for the party to continue and operate as a political party.

5.7 Because a political party in the Indian context cannot go against the very ethos of Indian culture, cultural heritage and

moral values being perceived by the citizens of the country from ages.

- 5.8 Because a political party cannot advocate the welfare of a particular religious community.
- 5.9 Because the Election Commission could not have registered the party as a political party as infact and inspirit it was committed to work for Muslim community and it could be treated as a secular party from any angle.
- 5.10 Because the Petitioner is law abiding citizen, believe in the majesty of law and supremacy of the constitution and feels his bounden duty to preserve and protect the sovereignty and integrity of India and to fight against communal forces to ensure that such forces do not create panic situation arousing the feelings of Muslims again for another partition of the country.
- 5.11 Because the office bearers, leaders and workers of AIMIM are continuously abusing Hindu religion, their Gods Goddesses. A number of FIR's have been lodged against them. The Muslims are basically against idol worship. The idol worship is 'kufr' for them. The office bearers and leaders of the party abuse Hindu community and idol worship to attract members of Muslim community. The Petitioner can establish the said facts, if so required under the orders of Hon'ble Court.
- 5.12 Because the constitution of AIMIM clearly raises issues relating to Muslim community and thinks only for the welfare of Muslims, which is violative of the principles of secularism as envisaged by the Constitution of India.
- 5.13 Because the parliament by amending R.P. Act, 1951 in the year 1989 adding Section 29A to the said Act has clearly provided that every party intending to be registered must give a declaration to the effect that it will abide by the principles of socialism and secularism and will uphold the

sovereignty and integrity of India. The party having aim and object for the benefit of only Muslim community, formed on communal concept can in no way fulfill the object of secular principles. The declaration, given by AIMM to uphold the secular principles is farce and fraud on the law and the constitution.

- 5.14 Because every political party is bound to follow the provisions contained in Section 123 of R.P. Act and to ensure that its candidates do not seek vote making religious appeal. No political party can muster votes on basis of religion either of the candidate or of the voters. No such action can be done for furtherance of election prospects of the candidates making any appeal on the basis of religion directly or indirectly.
- 5.15 Because AIMIM is bound to violate Section 123 of R.P. Act as its aim and objects are based on communal basis slanted in favour of Muslim community and is bound to indulge in corrupt activities prohibited by Section 123 of R.P. Act and the law laid down by the Apex Court in Abhiram Singh's case (Supra).
- 5.16 Because Section 123 prohibits to seek votes by making religious appeal either of the candidate or of the voter. A political party also cannot seek votes on the basis of religion, creed, caste, language etc. If the very foundation of the political party is communal and religion based, it cannot remain secular and is bound to violate the very concept of free and fair election free from religious bias.
- 5.17 Because it is very difficult for the Petitioner to muster public support in favour of his party, the Shiv Sena, as communal passion of Muslims is being spread by AIMIM and politics is being communalized. The Petitioner cannot survive unless he also indulges in arousing the feelings of Hindus but he, being committed to law and the Constitution and feeling his

responsibility towards motherland, cannot indulge in nefarious activities.

5.18 Because a seven judges bench in Abhiram Singh's case (supra) of the apex Court has held that:-

“no candidate or any person acting on his behalf can seek vote in the name of religion, whether the appeal was in the name of the candidate's religion or that of the opponent or that of the voters. It has been held that an appeal in the name of religion, race, caste, community or language is forbidden under Section 123(3) of the R.P.Act. It has also been held that:- ‘so interpreted religion, race, caste, community or language would not be allowed to play any role in the electoral process and should an appeal be made on any of those considerations, the same would constitute a corrupt practice”.

5.19 Because Section 29-A (5) of R.P.Act makes it clear that every political party is bound to follow the principles of secularism. Section 123 of the said Act prohibits the use of religion in election. The violation of said provision entails the election void for adopting corrupt practice and the candidate may be tried on criminal side for such act.

5.20 Because a seven judges bench in Abhiram Singh's case (supra) of the apex Court has also held that:-

“no candidate or any person acting on his behalf can seek vote in the name of religion, whether the appeal was in the name of the candidate's religion or that of the opponent or that of the voters. It has been held that an appeal in the name of religion, race, caste, community or language is forbidden under Section 123(3) of the R.P.Act. It has also been held that:- ‘so interpreted religion, race, caste, community or language would not be allowed to play any role in the electoral process and

should an appeal be made on any of those considerations, the same would constitute a corrupt practice”.

- 5.21 Because Section 29-A (5) of R.P.Act. makes it clear that every political party is bound to follow the principles of secularism. Section 123 of the said Act prohibits the use of religion in election. The violation of said provision entails the election void for adopting corrupt practice and the candidate may be tried on criminal side for such act.
- 5.22 Because section 29-A (5) of R.P.Act. makes it clear that every political party is bound to follow the principles of secularism. Section 123 of the said Act prohibits the use of religion in election. The violation of said provision entails the election void for adopting corrupt practice and the candidate may be tried on criminal side for such act.
- 5.23 Because in view of law laid down in case of Indian National Congress (I) Vs Institute of Social Welfare & Ors. Reported in 2002 (5) SCC Page 685 the Election Commission has no power to deregister a political party even though it violates the undertaking given U/s 29A (5) of R.P. Act or violates provisions contained in Sec.123 of R.P. Act.
- 5.24 Because the Parliament has not enacted any law conferring the power on the Election Commission to take action against a political party in case it violates the undertaking given under Section 29-A(5) and Section 123 of R.P.Act.

PRAYER

Therefore, it is most respectfully prayed that the Hon'ble Court be pleased to:-

- (a) Issue an appropriate writ or order quashing the registration granted to All India Majlis-e-Ittehadul Musalimeen as a political party by the Election Commission of India ;

- (b) Issue an appropriate writ or order quashing the circular/order No.56/Review/2014/PPS-II dated 09.08.1989 issued by the Election Commission of India granting recognition to All India Majlis-e-Ittehadul Musalimeen as a State level party in the State of Telangana (Annexure P-3);
- (c) Issue an appropriate writ or direction in the nature of mandamus restraining the Election Commission of India from recognizing and treating the All India Majlis-e-Ittehadul Musalimeen as registered political party hence ; and
- (d) Issue any other writ, order or direction as the Hon'ble Court may deem fit and proper to do complete justice in the case.

THROUGH

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Drawn on: 05.08.2018
Filed on: 04.09.2018
Place: New Delhi

IN THE HIGH COURT OF DELHI AT NEW DELHI

CIVIL ORIGINAL JURISDICTION

W.P. (C) NO. OF 2018

IN THE MATTER OF:

Tirupati NarashimaMurari

Petitioner

Versus

Union of India & Others

Respondents

URGENT APPLICATION

To
The Registrar
High Court of Delhi
New Delhi

Dear Sir,

Kindly treat the accompanying application as on an urgent basis and the grounds of urgency are mentioned in prayer.

Thanking you,

HARI SHANKAR JAIN
VISHNU SHANKAR JAIN
Advocate for the Petitioner
115 UGF World Trade Centre,
Barakhamba Road, near Bengali Market
New Delhi-110001
Phone:011-43710565,8826957565

Date: 04.09.2018

Place: New Delhi

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NOTICE OF MOTION

The enclosed application in the aforesaid matter as being filed on behalf of the Petitioners and is likely to be listed on _____ or any date, thereafter. Please take notice accordingly.

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MEMO OF PARTIES

Tirupati NarashimaMurari
S/o Tirupati Narashima,
R/o. House No.5-84 ChinnaThokatta
New BowenpallySecunderabad,
Hyderabad, Telangana.

Petitioner

Versus

1. Union of India
Through Secretary
Ministry of Law & Justice
Central Secretariat
New Delhi.
2. Election Commission of India
Through Chief Election Commissioner,
NirvachanSadan,
Ashoka Road,
New Delhi-110001.
2. All India Majlis-E-Ittehadul Muslimeen
Through its President
Darussalam Board Hyderabad,
State of Telangana.

Respondents

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7.	<u>ANNEXURE P-2:</u> A copy of letter dated 09.08.1989 sent by AIMIM to the Election Commission of India	
8.	<u>ANNEXURE P-3:</u> A copy of circular/order No.56/ Review/2014/PPS-II dated 19.06.2014 issued by the Election Commission of India granting recognition of State level party to AIMIM in the State of Telangana	

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Date: 04.09.2018

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