

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**(EXTRAORDINARY CIVIL JURISDICTION)**

**Re: Issuance of a direction to the Election Commission for framing rules for recovery of costs of election from the candidate who intends to resign and again contest the election with a view to escape the rigors of disqualification.**

**WRIT PETITION (PIL) NO. \_\_\_\_\_ OF 2020**

In the matter under Articles 14 and 226 of the Constitution of India;

**AND**

In the matter under Articles 102, 191 and 324 of the Constitution of India

**AND**

In the matter under the provisions of Representation of People Act, 1950.

**AND**

In the matter between:

Khemchand Rajaram Koshti,

...Petitioner

**VERSUS**

- 1 The Chief Election Commissioner  
(Notice to be served through  
The Election Commissioner  
or his agent in his office)  
situated at Ashoka Road,  
New Delhi.
  
  2. The Chief Electoral Officer,  
Gujarat Having its office at  
Second Floor, Block No. 7,  
Sachivalaya, Gandhinagar
  
  - 3 The Union of India  
Notice to be served through  
The Secretary  
Ministry of Law and Justice  
Department of Legal Affairs  
4<sup>th</sup> Floor, A Wing  
Shastri Bhawan  
New Delhi 11001
- ... Respondents

To

The Hon'ble Chief Justice  
And other Hon'ble Judges of the  
High Court of Gujarat at Ahmedabad.

The humble petition of  
the petitioner abovenamed:

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**Most Respectfully Sheweth that:-**

1. The present petition under Article 226 of the Constitution of India is filed by petitioner in public interest. The petitioner is a resident of Ahmedabad and the petitioner has no personal interest in the said litigation and the present petition is not guided by self gain or for gain of any other person/institution/body and that there is no oblique motive other than that of public interest in filing this petition.

By way of filing the present petition, a *pro bono* petition, under Article 226 of the Constitution of India the petitioner is seeking directions from this Honourable Court to the Election Commission directing the respondent Election Commission to frame rules incorporating therein the provision for recovery of expenses incurred by the Election Commission to conduct polls in the assembly constituencies from the concerned MLA/MLAs who resign from the party and seek reelections on the ticket of another political party as the resignation and re-election has caused loss of taxpayers' money, which comes to the tune of Rs 2 crores per constituency

2. The petitioner states and submits that the petitioner is a practising advocate for the last 26 years in this

Honourable Court and during the aforesaid period the petitioner filed several public interest litigations and other matters related to public cause, in the field of electoral reforms, issues related to provision of health services to the community at large and other issues for poor and down trodden people or weaker sections of Society of the State. It is hereby declared that the petitioner has not faced any proceedings in respect of the Contempt of Court Act and the present petition is covered under the item (viii) of Rules 3 and 5 of Public Interest Litigation Rules, 2010.

3. The petitioner respectfully submits that the present petition is being filed by the petitioner purely in public interest. The cost of the litigation, including the court fees and other expenses are borne by the petitioner himself, as a practicing Advocate of this Hon. Court and authorized to file the present public interest litigation. The petitioner has preferred public interest litigations earlier and the last one was on the subject of revival of Vadilal Sarabhai Hospital run by Ahmedabad Municipal Corporation and which is pending for hearing.
- 4 Brief facts of the case which reads as under:-

4.1

4.2 The petitioner states and submits that the instant writ petition is being filed in public interest seeking directions to the respondents to frame rules/regulations and/or issue notifications/circulars to direct such returning candidates who subsequently indulge in such malpractices by resigning for personal interests/reasons and thereafter stand for re-elections from the same /different constituency, albeit under a different political banner, to deposit the amount spent by the Election Commission of India, which is public money.

4.3 The petitioner states and submits that on 25<sup>th</sup> October 2017, the Election Commission has issued notification for Election of Gujarat Assembly-2017. As per the said declaration of the Election Programme the said Election was conducted in two phases i. e. On 9<sup>th</sup> December. and 14<sup>th</sup> December and counting of votes was held on 18/12/17. In the aforesaid election the contesting candidates of the present ruling party in power have returned in 99 constituencies while the candidates

belonging to the Indian National Congress Party have returned in 77 constituencies.

4.4 The petitioner states and submits that the petitioner has come to know from the local newspapers that out of the aforesaid 77 returned candidates belonging to the Indian National Congress Party, the following 15 returned candidates have tendered the resignations from being a Member of Gujarat Legislative Assembly citing their personal reasons. The following is the list of candidates who have tendered their resignations:

<i>Sr.No</i>	<i>Name of the returned candidate</i>	<i>Constituency</i>	<i>Date of resignation</i>
01	Mr Kunvarjibhai Mohanbhai Bavaliya	72 Jasdan	03.07.2018
02	Dr Ashaben D Patel	21 Unjha	02.02.2019
03	Mr Jawaharbhaji P Chavada	85 Manavadar	08.03.2019
04	Mr Parsottam Ukabhai Sabariya	64 Dhrangadhra	08.03.2019
05	Mr Vallabhbhai V Dharaviya	77 Jamnagar	11.03.2019
06	<i>Mr Bharatsinhji Shankarji Dabhi</i>	<i>20 Kheralu</i>	<i>06.06.2019</i>
07	<i>Mr Hasmukhbhai Somabhai Patel</i>	<i>50 Amraiwadi</i>	<i>06.06.2019</i>
08	<i>Mr Ratansinh Magansinh Rathod</i>	<i>122 Lunawada</i>	<i>06.06.2019</i>
09	<i>Mr Parbatbhai S Patel</i>	<i>8 Tharad</i>	<i>06.06.2019</i>
10	Mr Alpesh Khodaji Thakor	16 Radhanpur	05.07.2019
11	Mr Dhavalsinh N Zala	32 Bayad	05.07.2019
12	Mr Pravinbhai Tidabhai Maru	106 Gadhada	14.03.2020
13	Mr Pradyumansinh M Jadeja	1 Abdasa	14.03.2020

14	Mr J.V. Kakadiya	94 Dhari	14.03.2020
15	Mr Somabhai Gandlal Koli Patel	61 Limbdi	14.03.2020
16	Mr Mangalbhai Gangajibhai Gavit	173 Dang	15.03.2020
17	Mr Jitubhai Harjibhai Chaudhari	181 Kaprada	03.06.2020
18	Mr Akshaykumar I Patel	147 Karjan	03.06.2020
19	Mr Brijesh Merja	65 Morbi	05.06.2020

The true copies of the relevant documents received by the petitioner under Right to Information Act are annexed herewith and marked as **ANNEXURE-A COLLY.** to this petition.

4.5 The petitioner states and submits that out of the aforesaid constituencies, bypoll for 72-Jasdan constituency took place on 20<sup>th</sup> December 2018 in which the returned candidate Shri Kunvarji Bavaliya switched sides and contested the by election on the ticket of BJP and won the seat.

It is respectfully submitted that the by election took place in the month of May 2019 for four assembly seats viz. Dhrangadhra, Manavadar, Unjha and Jamnagar. In all the aforesaid four seats the returned candidates belonging to Congress Party, who resigned citing personal reasons, have joined the arch rival Bharatiya

Janata Party and contested the by-elections as a candidates set up by Bharatiya Janata Party and won the elections, the details of which are as under:

<i>Sr.No</i>	<i>Name of the returned candidate</i>	<i>Constituency</i>	<i>Date of polling</i>
01	Dr Ashaben D Patel	21 Unjha	23.04.2019
02	Mr Jawaharbhai P Chavada	85 Manavadar	23.04.2019
03	Mr Parsottam Ukabhai Sabariya	64 Dhrangadhra	23.04.2019
04	Mr Vallabhbai V Dharaviya	77 Jamnagar	11.03.2019

It is respectfully submitted that again in the month of March 2020 five more MLAs resigned from their constituencies and three more MLAs resigned in the month of June 2020. Thus, in all eight MLAs belonging to Congress Party resigned and out of those MLAs five MLAs joined the BJP and are going to contest the bypolls on the ticket of BJP, the details of whom are as under:

<i>Sr.No</i>	<i>Name of the returned candidate</i>	<i>Constituency</i>	<i>Date of polling</i>
1	Mr Pradyumansinh M Jadeja	1 Abdasa	Nov. 2020
2	Mr J.V. Kakadiya	94 Dhari	Nov. 2020
3	Mr Jitubhai Harjibhai Chaudhari	181 Kaprada	Nov. 2020
4	Mr Akshaykumar I Patel	147 Karjan	Nov. 2020
5	<i>Mr Brijesh Merja</i>	65 Morbi	Nov. 2020



Thus, out of 15 INC MLAs who resigned as MLAs 10 of them re-contested the election on the ticket of BJP. The aforesaid maneuver was made only with a view to escape the provisions of disqualification. It is respectfully submitted that the aforesaid action on the part of law makers reeks of corruption and rampant horse-trading. The provisions of disqualification introduced by way of Schedule X of the Constitution of India does not address the aforesaid maneuver being performed by the political parties and their members. Therefore, necessary directions are required to be issued to the respondents herein to frame the rules inserting the provisions for recovering the expenses incurred by the Election Commission to conduct the polls from the MLAs who resigned from the party from July 2018 to June 2020 and now seeking re-election as BJP candidates from their respective seats in November 3 Assembly by polls. A copy of Schedule X to Constitution of India is produced herewith for kind perusal of this Honourable Court at **ANNEXURE-B** to this petition.

- 5 The petitioners state and submit that the facts pleaded in the petition is based on the basis of the information

received by the petitioner under the Right to Information Act.

6 The petitioner states and submits that petitioner has made a representation dated 8<sup>th</sup> June 2018 to the respondents to which till date the respondents have not replied. Copy of the aforesaid representation is annexed hereto and marked as **ANNEXURE-C** to the petition.

7 The petitioner respectfully submits that the present petition is filed by the petitioner purely in the public interest and not for any kind of personal interest and for the interest of any body/institution or persons and no petition or matters are pending before this Hon'ble Court from the same subject matter of the present petition.

8

**GROUND**

(a) The petitioner states and submits that Article 324 of the Constitution of India empowers the Election Commission to control and conduct the elections to Parliament as well as Legislature of every State. The Election Commission is required to conduct a free and fair elections in exercise of its power invested in it by

virtue of Article 324 of the Constitution. Therefore, it is required to curb the aforesaid malpractice being perpetrated by the political parties as well as its returned candidates.

- (b) The petitioner states and submits that the expenses for conducting an assembly constituency is roughly one crore to two crores, which comes from public exchequer. It is respectfully submitted that though the term of each returned candidate is five years and he has won the election because of confidence reposed in him by the public. The member of legislative assembly is not expected to break the confidence of people who have reposed faith in him/her and just for achieving his personal goals or for his personal enrichment he cannot resign from the seat at his sweet will and then recontest the election on the same seat as a candidate belonging to different political party. It is respectfully submitted that though provisions of disqualification introduced by way of Schedule X of the Constitution of India for stemming the evil of defections, the aforesaid provision does not address the aforesaid maneuver being performed by the political parties and their

members. Therefore, necessary directions are required to be issued to the respondents herein to frame the appropriate rules by providing the recovery of the expenses of elections from such candidate because of whose maneuver the repoll becomes inevitable. The public money of Rs.2 crore for each such repoll cannot be spent on such mala fide and ill-motive exercise of power to resign by the member of legislative assembly.

- (c) The petitioner states and submits that though the right to resign from the legislative assembly is an infeasible right, but the same cannot be without accountability. Such a legislative member is required to be saddled with the liability of repaying the expenses incurred by the Election Commission for conducting the repoll and public money should not be wasted for convening the repoll.
- (d) The petitioner states and submits that the law maker is expected to act fairly and is expected to protect the interests of the public at large. However, in the present case the corruption is being perpetrated by the very law makers who are required to protect the law rather than breaking the same. It is respectfully

submitted that as Schedule X to Constitution of India does not address the need to prevent such illegal practice being perpetrated by the political parties and its MLAs necessary directions are required to be issued to the Election Commission to insert the provision of recovering the expenses incurred by the Election Commission to conduct the polls from the MLAs who resigned from the party necessitating the bypolls.

- (e) The petitioner states and submits that the provisions of anti defection law were made in the year 1985 through 52<sup>nd</sup> Amendment to the Constitution of India by inserting Tenth Schedule to the Constitution of India for combating the evil of political defections. Therefore, this Honourable Court in exercise of its power under Article 226 of the Constitution of India can direct the Election Commission to suitably amend the rules so as to fill in the vacuum.
- (f) The petitioners crave leave to add, alter, amend, rescind any of the grounds mentioned hereinabove in the interests of justice.

**9 GROUND FOR INTERIM RELIEF.**

(a) It is respectfully submitted that the petitioner craves leave of this Honourable Court to refer to and rely upon the averments made in paragraph 4 and 8 of the petition memo at the time of hearing of the petition and the same may be treated as grounds for interim relief.

10 The petitioner states and submits that the petitioner has have not filed any other proceedings, appeal, application before any court of law or authorities including the Hon'ble Supreme Court of India in the subject matter of the present writ petition.

11 The petitioner has no other alternative or effective remedy except to approach to this Hon'ble Court by way of this present petition under Article 226 of the Constitution of India and the petitioner craves leave to add, amend, alter or rescind any of the para or paras as and when requires.

12 In the facts and circumstances of the above case, the petitioner prays that:-

A Your Lordships may be pleased to allow the present writ petition (P.I.L.);

- B Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ/order/direction directing the respondent Election Commission to frame rules incorporating therein the provision for recovery of expenses incurred by the Election Commission to conduct polls in the assembly constituencies from the concerned MLA/MLAs who resign from the party and seek reelections on the ticket of another political party as the resignation and re-election has caused loss of taxpayers' money, which comes to the tune of Rs 2 crores per constituency;
- C Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ/order/direction directing the respondent Election Commission to frame rules incorporating therein the provision mandating each returned Member of Legislative Assembly to file an undertaking to the effect that they will not resign from the said constituency till their term is over;
- E Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ/order/direction directing the respondent Election

Commission to frame rules incorporating therein the provision for mandating the Members of Legislative Assembly who resign from the party and seek reelections on the ticket of another political party to deposit the amount paid by the other candidates contesting the elections from the said constituencies;

D Pending admission, hearing and final disposal of the present petition, the Honourable Court may be pleased to direct the Election Commission to direct each and every candidate who contest the assembly elections to file an undertaking to the effect that in case they win the election, they will not resign from the said constituency till their term is over;

E Pending admission, hearing and final disposal of the present petition, the Honourable Court may be pleased to direct the Election Commission to place before the Honourable Court the expenses it incurs to conduct the elections to each assembly segment;

F Pending admission, hearing and final disposal of the present petition, the Honourable Court may be



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pleased to direct the Election Commission to place before the Honourable Court the actions taken by it pursuant to the representation made by the petitioner;

Any other and further relief/s may kindly be granted in the interest of justice.

Ahmedabad.

(K. R. Koshti)

Date: /10/2020

Advocate for the Petitioner