

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/WRIT PETITION (PIL) NO. 115 of 2020**

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FARSUBHAI M GOKLANI

Versus

OFFICE OF THE CHIEF ELECTORAL OFFICER

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Appearance:

MR PERCY KAVINA, SENIOR ADVOCATE WITH MR RUCHIR A

PATEL(7954) for the Applicant(s) No. 1

MR MIHIR JOSHI, SENIOR ADVOCATE WITH MR. SAHIL M SHAH(6318)

for the Opponent(s) No. 1,2

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**CORAM: HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH**

and

**HONOURABLE MR. JUSTICE J.B.PARDIWALA****Date : 31/08/2020****ORAL ORDER****(PER : HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH)**

1. This petition framed as Public Interest Litigation has been filed by one Farsubhai M. Goklani praying for the following reliefs :

*“(A) Your Lordships may be pleased to issue a writ of mandamus or any other writ, order or direction in the nature of mandamus directing the Respondent election authorities to defer the legislative assembly bye-elections in the eight assembly constituencies of (I) Abdasa – Kutch District, (ii) Morbi – Morbi district, (iii) Dangs – Dang District, (iv) Dhari – Amreli District, (v) Karjan – Vadodara District, (vi) Limbdi – Surendranagar District, (vii) Gadhada – Botol District and (viii) Kaprada – Valsad District in the State of Gujarat during the ongoing COVID-19 pandemic;*

*(B) Your Lordships may be pleased to issue a writ of mandamus or any other writ, order or direction in the nature of mandamus directing the Respondent No.2*

*authority to decide the representation of the Petitioner dated 30<sup>th</sup> June, 2020;*

*(C) Your Lordships may be pleased to grant such other and further reliefs as may be deemed fit and proper by this Hon'ble Court in the interest of justice;"*

2. We have heard Shri Percy Kavina, learned Senior Advocate assisted by Shri Ruchir Patel, learned counsel for the petitioner and Shri Mihir Joshi, learned Senior Advocate assisted by Shri Sahil M. Shah, learned counsel representing the respondents.

3. In the affidavit-in-reply filed on behalf of the respondents duly sworn by Shri Ajay S. Bhatt, Joint Electoral Officer, in paragraph-3, it is specifically stated that the election commission has still not scheduled the date for by-elections of the State of Gujarat. We are quoting paragraph 3 in toto to place on record the stand of the Election Commission of India as on date.

*"3. It is humbly submitted that the Election Commission of India always considers the prevailing situation before announcement of elections. At present also, Election Commission of India is assessing the situation including the pandemic and so far has not announced dates for the Bye-Elections in the State of Gujarat as well as those in other States. Election Commission of India will take an appropriate decision as to whether to announce elections at an appropriate time or if required to defer holding of elections after following due procedure as prescribed in law. As on date of filing of the present affidavit, Election Commission of India has not taken any decision, either way. It is humbly submitted that the decision of the*

*Election Commission of India cannot be pre-empted and that therefore the present petition deserves to be dismissed.”*

4. In view of the above, we find that the present petition is premature and we accordingly dismiss the same at this stage. Notice is discharged.

**(VIKRAM NATH, CJ)**

**(J. B. PARDIWALA, J)**

A. B. VAGHELA