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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Date of Decision: 07.09.2018*

+ W.P.(C) 9390/2018

MOHAMMED SULTAN & ANR ..... Petitioners  
Through: Mr. Yogesh Kumar with Mr. Mukul  
Dev Mishra, Advs.

versus

ELECTION COMMISSION OF INDIA & ANR ..... Respondents  
Through: None.

**CORAM:**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**RAJENDRA MENON, CHIEF JUSTICE (ORAL)**

**CM APPL. 36383/2018** (*exemption*)

Allowed, subject to just exceptions.

The application stands disposed of.

**W.P.(C) No.9390/2018**

1. Petitioner, a practising Advocate, has filed this petition in public interest invoking the extraordinary jurisdiction of this Court *inter alia* contending that in the 14<sup>th</sup> Gujarat Legislative Assembly Election that was held on 9<sup>th</sup> and 14<sup>th</sup> of December, 2017 in the election campaign that preceded the elections there has been violation of the Model Code of Conduct declared by the Election Commission of India, various illegalities were committed in the process of election and in spite of these violations

being brought to the notice of the Election Commission of India no action has been taken. Further, certain allegations have been made with regard to the manner in which the election campaign preceded and it is indicated that the same amounts to violation of the Model Code of Conduct *inter alia* contending that various representations pointing out these illegalities have not been addressed in the right perspective or not even considered, this petition has been filed in public interest and the prayer made in the writ petition reads as under:

*“a. To issue a writ of mandamus or any appropriate writ, order or directions to direct the Election Commission of India to enquire the irregularities revealed in the representation and take appropriate actions against the erring candidates/members of the political parties.*

*b. To pass such other order(s) as it may deem fit and proper in the facts and circumstances of the case and in the interest of justice.”*

2. Having heard learned counsel appearing for the petitioner and after taking note of the various averments made in the writ petition, we find that the allegations made in the writ petition even though termed as violation of the Modal Code of Conduct amounts to illegalities, irregularities or misconduct in the conduct of election in question by various candidates and these would come within the purview of corrupt practices as contemplated under Part VII Chapter I of the Representation of the People Act, 1951 and would also be an electoral offence within the meaning of the aforesaid statutory provision.

3. That being the position, the remedy available for these illegalities are challenging the election by invoking the jurisdiction of the Election Tribunal

by way of an Election Petition and now after conduct of the election and after the statutory period for challenging the election is over, we are not inclined to invoke our extraordinary jurisdiction under Article 226 of the Constitution of India and interfere, that also in a Public Interest Litigation. Mere direction to the Election Commission to look into the matter would also be not in the interest of justice for the simple reason that we would be directing the Election Commission to call an enquiry with regard to an allegation which, in our considered view, for the present, after declaration of the election would not be permissible in law. The only remedy in such cases is to challenge the election on account of corrupt practices being exercised in the election in accordance with the procedure contemplated under the statute.

4. Accordingly, finding no ground to interfere, the petition stands dismissed.

**CHIEF JUSTICE**

**V. KAMESWAR RAO, J**

**SEPTEMBER 07, 2018**

**kks**