

ATTACHMENT 1 – MODEL WRIT**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

(Special Original Jurisdiction)

W.P.No.

OF 2021

Arvind Mehta
 Aged 27 Years,
 17, Vishwasuba Phase II,
 Vidya Mandir Road
 Opp. Blueue House Hotel,
 50ft Road, Vasai (W),
 Maharashtra – 401202

.....Petitioner

Vs.

1) Shri. Narwari Bindas
 Hon'ble Speaker (Acting),
 Maharashtra Legislative Assembly
 Vidhan Bhavan, Mumbai

2) MLA Sangeetha Suhana
 Sakthi Niwas, First Floor,
 8-B, Old Silver Nest,
 XI, 50 Ft. Road, Opp. Bus Stand,
 Bayadur (East), Maharashtra - 401117

3) Maharashtra State Election Commission
 First Floor, New Administrative Building,
 Hutatma Rajguru Chowk,
 Madam Cama Road, Mumbai-400032

....Respondents

AFFIDAVIT OF ARVIND MEHTA

I, Arvind Mehta, aged 27 years, having residence at 17, Vishwasuba Phase II, Vidya Mandir Road, Opp. Blueue House Hotel, 50ft Road, Vasai (W), Maharashtra – 401202 do hereby solemnly affirm and sincerely state as follows:-

1. I submit that the 2nd Respondent is a member of the Maharashtra Legislative Assembly and has previously served as Mayor of the city of Mira in Bayadur Constituency. She stood for elections for the Maharashtra Legislative Assembly in 2019 as an independent candidate, and defeated Siddharth Mehta, a Lotus Alliance Party candidate. She won the elections by close to Fifteen Thousand Votes.
2. I submit that according to various news reports, the 2nd Respondent decided to stand for elections as an independent candidate after the Lotus Alliance Party denied her ticket for the 2019 assembly election. It is evident from the Affidavit dated 30.09.2019 which she submitted to the Election Commission, that she stood as an Independent Candidate in the 2019 elections.
3. I submit that in the month of October 2020, several Facebook posts from 24.10.2020 to 17.11.2020 that were posted by the 2nd Respondent, revealed that she has joined the Arrow Party. These posts also revealed that she visited the residence of Maharashtra CM and Arrow Party Chief Udhay Balaji where the 2nd Respondent was inducted into the party. Since the 2nd Respondent was elected as an independent candidate, her having joined Arrow Party party a year after the said election points towards the violation of the Anti-Defection Laws of India.
4. I submit that the provisions of the Anti-Defection Law were introduced in the Fifty-Second Amendment of The Constitution of India which changed four articles – 101(3)(a), 102(2), 190(3)(a), and 191(2), and added the Tenth Schedule that elucidates the Anti-defection laws of India.
5. I submit that Paragraph 2 sub-paragraph (2) of the Tenth Schedule of the Constitution of India reads, *“An elected member of House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if*

he joins any political party after such election” and that it thereby prevents any independent candidate from joining any political party post-election.

6. I submit that in the occasion that such defection is performed by an independent member, the Speaker of Legislative Assembly has been entrusted with the power of adjudicating disqualification on the ground of defection through Paragraph 6 of the Tenth Schedule of the Constitution of India, which reads, *“If any question arises as to whether a member of House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final.”*
7. I submit that in the current scenario, the 2nd Respondent, previously a member of the Lotus Alliance Party who stood for elections as an independent candidate and was elected as a Member of the Legislative Assembly representing the 145 constituency of Bayadur region in 2019, has later pledged allegiance to Arrow Party in October 2020.
8. I submit that this public defection of the 2nd Respondent to Arrow Party has violated the voters’ trust at large and is a gross misconduct on her part. As a result of the same, she is bound to incur disqualification as under Paragraph 2 sub-paragraph (2) of the Tenth Schedule of the Constitution of India.
9. I submit that the 2nd Respondent, by joining Arrow Party, has induced distrust in the minds of the responsible voters who gave their valuable votes to her with high hopes and legitimate expectations. In the case of ***Ram Pravesh Singh v. State of Bihar and Others (2006) 8 SCC 381***, the Hon’ble Supreme Court, while defining the term “legitimate expectation”, remarked that the same, although not a legal right, is an expectation of a benefit, relief or remedy that may ordinarily flow from a promise or established practice. It was further held by the Hon’ble Supreme Court that a person can be said to have a “legitimate

expectation” of a particular treatment, if any representation or promise is made by an authority, either expressly or impliedly, or if the regular and consistent past practice of the authority gives room for such expectation in the normal course. It is humbly submitted that the Public who voted for the 2nd Respondent had legitimate expectations from her to work for their welfare and to act fairly, that stemmed from the express and implied promise of the 2nd Respondent to do so. However, her aberrance from the image which she had previously put forth in order to win the elections in 2019, by relinquishing at present her identity as an independent political entity, has given valid reasons to question her intentions.

10. I submit that the 2nd Respondent had joined Arrow Party having an ulterior motive or seeking personal gains. I kindly draw the attention of this Hon’ble Court to the fact that there was no urgency on the part of the 2nd Respondent to join a Political Party as there remained four years of time for the next Vidhan Sabha Elections to be held in the State of Maharashtra. The fact that the 2nd Respondent managed to secure majority votes while standing as an independent candidate, makes it clear that she was not running out of any public support and had no compulsive need to join a Political Party. Therefore, it is humbly submitted that it is unreasonable to assume that the 2nd Respondent had joined the Arrow Party for the greater good of the people of her Constituency.
11. I submit that the Hon’ble Supreme Court in the case of **Jagjit Singh v. State of Haryana and Others (2006) 11 SCC 1**, held that it was important to bear in the mind the objects for enacting the defection law, namely, to curb the menace of defection and that a member cannot be permitted to get away with defection without facing the consequences of such defection only because of mere technicalities. It was further held that in such cases of defection, it would not be a valid plea for an independent member of the Assembly who may have otherwise joined a political party to contend that he has not filled up

the requisite membership form necessary to join a political party or has not paid requisite fee for such membership. The completion of such formalities would be inconsequential if facts otherwise show that the independent Member has joined a political party. Therefore, the 2nd Respondent cannot be allowed to claim that she had not completed the formalities of joining a political party while the facts are sufficiently clear as shown under Facebook posts that she had in fact joined Arrow Party.

12. I submit that Rule 6 of the Members of Maharashtra Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986 deals with the petition to be filed for disqualification and states “*A petition in relation to a member may be made in writing to the Speaker by any other member*”.
13. I submit that Rule 2(g) of the Maharashtra Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986, defines a “*member*” as a “*member of the Maharashtra Legislative Assembly*”.
14. I submit that although the scope of individuals that can submit petitions regarding disqualification to the speaker to the Members of the Maharashtra Legislative Assembly has statutorily been limited to Members of the Legislative Assembly, in the case of ***Speaker, Orissa Legislative Assembly v. Utkal Keshari Parida (2013) 11 SCC 794***, the Hon’ble Supreme Court of India held that, not only an MLA but any interested person is entitled to bring to the notice of the Speaker the fact that a member has incurred disqualification under the Tenth Schedule of the Constitution of India (anti-defection law) and that the presiding officer is bound to take action on the complaint.
15. I submit that in light of the petition dated 21.12.2020, submitted by me, under Rule 6 (2) of The Members of Maharashtra Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986, R/W Article 191(2) and Para 2(2) Of The Tenth Schedule Of The Constitution Of India, on 21st December, 2020 before the then Hon’ble

Speaker of the Maharashtra Legislative Assembly, Shri Mahaveer Desai, seeking disqualification of the 2nd Respondent herein and in light of the case law cited above, the 1st Respondent being the current presiding officer was bound to take action.

16. I submit that despite my delivering a registered legal notice dated 13.06.2021, to the 1st Respondent giving valid reasons and requesting to initiate disqualification proceedings against the 2nd Respondent on the ground of defection, he had neither responded nor had he complied.
17. I submit that in ***Common Cause, A Registered Society v. Union of India and Ors. (1999) 6 SCC 667***, the Hon'ble Supreme Court held that under Article 226 of the Constitution of India, the High Court has jurisdiction not only to grant relief for the enforcement of fundamental rights but also for "any other purpose" which would include the enforcement of public duties by public bodies. Further, in light of the majority decision of the Hon'ble Supreme Court in ***Kihoto Hollohan v. Zachillhu and Ors. AIR 1993 SC 412***, the Bar of jurisdiction of Courts in matters relating to disqualification of members of State Legislature was removed while the constitutionality of the Tenth Schedule of the Constitution of India was being upheld. Hence, it is humbly submitted that this Hon'ble High Court is empowered under Article 226 to take cognizance of the present matter and to direct the 1st Respondent to perform his public duty, which he is bound by law to do, by initiating disqualification proceedings against the 2nd Respondent on the ground of defection.
18. Aggrieved by the inaction on the part of the 1st Respondent in the above matter I have no other alternative or efficacious remedy available except to invoke the jurisdiction of this Hon'ble Court under Article 226 of Constitution of India by filing the present writ petition as against the 1st Respondent seeking for a writ or order or direction more in the nature of WRIT OF MANDAMUS as against the 1st Respondent for the following among others.

GROUND

- (i) The act of the 1st Respondent in turning a blind eye to the defection committed by the 2nd Respondent is unjust, arbitrary and illegal.
- (ii) The act of the 1st Respondent in so far as he failed to initiate disqualification proceedings against the 2nd Respondent in spite of having received a legal notice regarding the same is unjust, arbitrary and illegal.
- (iii) The act of the 1st Respondent inasmuch as he remained dormant from performing his public duty of taking cognizance of the petition made by the Petitioner under Rule 6 (2) of The Members of Maharashtra Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986, R/W Article 191(2) And Para 2(2) Of The Tenth Schedule Of The Constitution Of India, is unjust, arbitrary and illegal.

For the reasons stated afore it is most respectfully prayed that this Hon'ble Court in exercise of its constitutional, equitable writ jurisdiction may be pleased to issue Writ or order or direction more in the nature of WRIT OF MANDAMUS or any other nature of Writ or direction mandating

- i. The 1st Respondent to initiate disqualification proceedings against the 2nd Respondent on the ground of defection,
- ii. The 3rd Respondent to conduct re-election in the Bayadur Constituency of Maharashtra

and pass such further or other orders as this Hon'ble Court may deem fit and proper and thus render justice.

Solemnly affirmed at Mumbai

On this ____ day of _____

2021 and signed in my Presence

Advocate: Mumbai

W.P.No. OF 2021

.....Petitioner

Vs.

- 3) Maharashtra State Election Commission
First Floor, New Administrative Building,
Hutatma Rajguru Chowk,
Madam Cama Road, Mumbai-400032

....Respondents

The address for service of all summons and process on the petitioner is that of his Counsel: Kunal Singh, aged 26 years, having office at No.13, Grove Street, Silver Jubilee Avenue, Opposite of LIC Office, 100ft Road, Vasai (W), Maharashtra – 401202.

The address of the respondents for service of all notices and processes is as mentioned above.

For the reasons stated afore it is most respectfully prayed that this Hon'ble Court in exercise of its constitutional, equitable writ jurisdiction may be pleased to issue Writ or order or direction more in the nature of WRIT OF MANDAMUS or any other nature of Writ or direction mandating

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Dated at Mumbai on this ____ day of ____ 2021.

Petitioner

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INDEX TO TYPED SET OF PAPERS

Sl.No	Date	Description	Page Nos.
03	01.03.1985	Tenth Schedule of the Constitution of India.	
06	04.04.1987	Maharashtra Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986.	
11	18.02.1992	Judgment Delivered in Kihoto Hollohan v. Zachillhu and Ors. AIR 1993 SC 412.	

10	03.08.1999	Judgment Delivered in Common Cause, A Registered Society v. Union of India and Ors. (1999) 6 SCC 667.	
04	22.09.2006	Judgment Delivered in Ram Pravesh Singh vs. State of Bihar and Others (2006) 8 SCC 381.	
05	11.12.2006	Judgment Delivered in Jagjit Singh vs. State of Haryana and Others (2006) 11 SCC 1.	
07	17.01.2013	Judgment Delivered in Speaker, Orissa Legislative Assembly vs. Utkal Keshari Parida (2013) 11 SCC 794.	
01	30.09.2019	Affidavit of the 2 ^{nt} Respodent submitted to the Election Commission of India.	
02	24.10.2020 – 17.11.2020	Series of Facebook posts of the 2 nd Respondent indicating that she joined the Arrow Party.	
08	21.12.2020	Petition made by the Petitioner before the then Hon'ble Speaker of the Maharashtra Legislative Assembly, Shri Mahaveer Desai, seeking disqualification of the 2 nd Respondent on the ground of defection.	
09	13.06.2021	Registered Legal Notice delivered by the Petitioner to the 1 st Respondent requesting to initiate disqualification proceedings against the 2 nd Respondent.	

The above documents are certified to be the true copies of its respective originals /office copies.

Dated at Mumbai this ____ day of _____ 2021.

Petitioner

Sl.No	Date	Description
01	27.11.2019	2 nd Respondent takes oath and gets inducted into the Maharashtra State Legislative Assembly as an independent member.

02	24.10.2020	2 nd Respondent joins the Arrow Party.
03	21.12.2020	Petitioner submits a petition before the then Hon'ble Speaker of the Maharashtra Legislative Assembly, Shri Mahaveer Desai, seeking disqualification of the 2 nd Respondent on the ground of defection.
04	13.06.2021	Petitioner served registered legal notice to 1 st Respondent requesting to initiate disqualification proceedings against the 2 nd Respondent on the ground of defection.

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SYNOPSIS

1. The 2nd Respondent is a member of the Maharashtra Legislative Assembly. She stood for elections for the Maharashtra Legislative Assembly in 2019 as an independent candidate, and defeated Siddharth Mehta, a Lotus Alliance Party candidate. She won the elections by close to Fifteen Thousand Votes.

2. In October 2020, the 2nd Respondent visited the residence of Maharashtra CM and Arrow Party Chief Udhay Balaji where she was inducted into the Arrow party. She thereby violated the Anti-Defection Laws of India and the State of Maharashtra as under Paragraph 2 sub-paragraph (2) of the Tenth Schedule of the Constitution of India.
3. The Petitioner submitted a petition, under Rule 6 (2) of The Members of Maharashtra Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986, R/W Article 191(2) and Para 2(2) Of The Tenth Schedule Of The Constitution Of India, on 21st December, 2020, before the then Hon'ble Speaker of the Maharashtra Legislative Assembly, Shri Mahaveer Desai, seeking disqualification of the 2nd Respondent on the ground of defection.
4. Subsequently, the petitioner delivered a registered legal notice dated 13.06.2021, to the 1st Respondent, him being the current presiding officer, giving valid reasons and requesting to initiate disqualification proceedings against the 2nd Respondent on the ground of defection. To the same, the Petitioner received no response.
5. Inasmuch as the 1st Respondent had failed to initiate disqualification proceedings against the 2nd Respondent on the ground of defection thus failing his public duty as a Speaker of the Maharashtra Legislative Assembly, this Petitioner is constrained to seek the indulgence of this Hon'ble Court under Article 226 of the Constitution of India - him having no other alternative or efficacious remedy elsewhere. Hence this writ petition seeking a writ of mandamus.

Petitioner