

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

**SPECIAL CIVIL APPLICATION NO. 21079 of 2016**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MS.JUSTICE HARSHA DEVANI**

**and**

**HONOURABLE MR.JUSTICE A.S. SUPEHIA**

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|---|---|--|
| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ?  |  |
| 2 | To be referred to the Reporter or not ?   |  |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ?   |  |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? |  |

LILABEN KANTIBHAI SOLANKI....Petitioner(s)

Versus

STATE OF GUJARAT & 1....Respondent(s)

Appearance:

MR.HIREN M MODI, ADVOCATE for the Petitioner(s) No. 1

MR DHAWAN JAYSWAL, AGP for the Respondent(s) No. 1

MS ROOPAL R PATEL, ADVOCATE for the Respondent(s) No. 2

**CORAM: HONOURABLE MS.JUSTICE HARSHA DEVANI**

**and**

**HONOURABLE MR.JUSTICE A.S. SUPEHIA**

**Date : 26/12/2016**

**ORAL JUDGMENT**

**(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)**

1. Rule. Ms. Roopal Patel, learned advocate waives service of notice of rule on behalf of the respondent No.2 and Mr. Dhawan Jayswal, learned Assistant Government Pleader waives service of notice of rule on behalf of the respondent No.1.

2. Having regard to the controversy involved in the petition and the urgency of the matter, the case is taken up for final hearing today.

3. This petition is directed against the order against the order dated 14.12.2016 passed by the Election Officer, Asodar Village Panchayat, Taluka Anklav, District Anand whereby, the nomination of the petitioner has been rejected on the ground that the certificate of the competent authority certifying that the petitioner belongs to the Scheduled Tribes, has not been attached along with the nomination form.

4. The petitioner being desirous of contesting the election for the post of Member from Ward No.8, Asodar village, submitted her nomination papers on 10.12.2016 before the Election Officer, Asodar village. It is the case of the petitioner that the returning officer pointed out a defect to the petitioner that she had not attached a caste certificate with the nomination paper and called upon her to produce the same on or before 12.12.2016. However, in view of the fact that on 12.12.2016, the State Government has declared a public holiday, the petitioner presumed that she was required to

produce the same by 13.12.2016. It is the case of the petitioner that on 13.12.2016, she visited the office of the second respondent at 12:30 and assured him that she would submit the caste certificate and remove the defect. According to the petitioner, she produced the caste certificate at 04:30 p.m. on 13.12.2016, however, the second respondent refused to take it and informed her that her nomination papers had been rejected at 03:00 p.m. and information to that effect had been sent to the Government. Being aggrieved, the petitioner has filed the present petition.

5. Mr. Hiren Modi, learned advocate for the petitioner reiterated the grounds stated in the memorandum of petition.

6. Ms. Roopal Patel, learned advocate for the respondents opposed the petition by submitting that the petitioner did not produce the necessary caste certificate along with the nomination paper and as such, the returning officer was not in a position to ascertain as to whether or not the petitioner was qualified to contest the election to a seat reserved for the Scheduled Tribes. It was submitted that despite allowing time to the petitioner to rectify the defect, she failed to do so till the scrutiny was over and therefore, the returning officer was wholly justified in rejecting the nomination of the petitioner.

7. A perusal of Form No.4 as prescribed under sub-rule (1) of rule 12 of the Gujarat Panchayats Elections Rules, 1994 (hereinafter referred to as "the rules") reveals that in Part III thereof the candidate is inter alia required to fill up the following details:

*“(e) that I am a member of Scheduled Caste\* Scheduled Tribe\* Socially and Educationally Backward Class and a Certificate issued on (date) \_\_\_\_\_ in this behalf by \_\_\_\_\_ a competent authority is attached herewith.”*

8. A perusal of the nomination paper filed by the petitioner shows that while she has put a tick mark against Schedule Tribe in clause (e) she has left the other part blank. In other words, she has neither stated the date of the certificate issued by the competent authority nor the designation of the competent authority which has issued such certificate. It is also not the case of the petitioner that she had produced any other proof of her belonging to the Scheduled Tribes with the nomination paper. It is an admitted position that the petitioner is contesting the elections on a seat reserved for the Scheduled Tribes, therefore, for the purpose of contesting on such seat, it was necessary for her to show that she was qualified to do so. Moreover, on the date of scrutiny, the returning officer allowed time to the petitioner to rectify the defect, however, it appears that it till the list of validly nominated candidates was prepared and forwarded to District Election Officer as contemplated under rule 16 of the rules, the petitioner had not produced the caste certificate.

9. By a judgment and order of even date rendered in Special Civil Application No.20941 of 2016, this court has, for the detailed reasons stated therein, upheld the order of the returning officer rejecting the nomination form on similar grounds. For the detailed reasons set out in the said judgement and order, no infirmity can be found in the

impugned order passed by the returning officer.

10. For the foregoing reasons, the petition fails and is, accordingly dismissed. Rule is discharged with no order as to costs.

(HARSHA DEVANI, J.)

(A. S. SUPEHIA, J.)

parmar\*

