

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

**SPECIAL CIVIL APPLICATION NO. 21149 of 2016**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MS.JUSTICE HARSHA DEVANI**

**and**

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

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

NAYAK AMRABHAI NATUBHAI....Petitioner(s)

Versus

STATE OF GUJARAT & 3...Respondent(s)

Appearance:

MR ASIT B JOSHI, ADVOCATE for the Petitioner(s) No. 1

MR PM DAVE, ADVOCATE for the Petitioner(s) No. 1

MR SHIRISH GOHIL, ASSISTANT GOVERNMENT PLEADER for the Respondent(s) No. 1

MR RAXIT J DHOLAKIA, ADVOCATE for the Respondent(s) No. 2, 3

UNSERVED-REFUSED (N) for the Respondent(s) No. 4

CORAM: **HONOURABLE MS.JUSTICE HARSHA DEVANI**  
and  
**HONOURABLE MR.JUSTICE A.S. SUPEHIA**

Date : 23/12/2016

**ORAL JUDGMENT**

(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. Rule. Mr. Rakshit Dholakia, learned advocate waives service of notice of rule on behalf of the respondents No.2 and 3 and Mr. Shirish Gohil, 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 dated 13.12.2016 passed by the third respondent – Election Officer/Returning Officer of Bhoorkhal Village Panchayat & Senior Clerk, Panchayat R & B Sub-Division, Sahera taluka, Panchmahal district, whereby he has rejected the nomination of the petitioner for the post of Sarpanch of Bhoorkhal Village Panchayat for the election which is scheduled to be held on 27<sup>th</sup> December, 2016 on the ground that the petitioner's name is also reflected in the list of voters of village Karoli of Kalol Taluka, ward No.10 at serial No.50. In the impugned order, the returning officer declared the nomination of the petitioner to be invalid under the provisions of sections 21 and 22 of the Gujarat Panchayats Act, 1993 (hereinafter referred to as "the Act").

4. The petitioner filed nomination paper in Form No.4 prescribed under sub-rule (1) of rule 12 of the Gujarat Panchayats Elections Rules, 1994 (hereinafter referred to as "the rules") for the office of Sarpanch of Bhoorkhal Village Panchayat. It appears that an objection was raised to the nomination of the petitioner on the ground that his name was reflected in the voters list of Bhoorkhal village at serial No.76 and was included in the list of voters of Karoli village at serial No.50 under different names and surnames but with the same photographs. Upon receipt of the objection the petitioner submitted his explanation thereto and further submitted that inclusion of his name in two list of voters would not entail disqualification. By the impugned order the petitioner's nomination came to be rejected on the ground referred to hereinabove.

5. Mr. Asit Joshi, learned advocate for the petitioner submitted that the returning officer was not justified in rejecting the nomination of the petitioner on the ground that his name is reflected in two list of voters, inasmuch as, there is no provision in the Act which disqualifies a candidate from being elected if his name finds place in more than one list of voters.

6. On the other hand, Rakshit Dholakia, learned advocate for the respondents No.2 and 3 submitted that the name of the petitioner finds place in two list of voters. Section 28(2)(a) of the Act provides that a person whose name is in the list of voters shall be qualified to be elected from any electoral division. The expression used is "list of voters" which is in the

singular and, therefore, if the name of the candidate is found in more than one list of voters, he would stand automatically disqualified. It was submitted that the impugned order being in consonance with the provisions of law, therefore, does not warrant interference. It was also submitted that the petitioner had challenged an order of the returning officer rejecting his nomination and hence, the bar under article 243O of the Constitution would come into operation and therefore, this petition under article 226 of the Constitution is not maintainable and deserves to be dismissed on this very ground.

7. In the present case, the name of the petitioner has been rejected on the ground that his name finds place in more than one list of voters. The question that, therefore, arises is that as to whether the same would amount to a disqualification so as to warrant rejection of the nomination of the petitioner.

8. The disqualification for a member of a panchayat either to be elected or to continue is provided under sub-section (1) of section 30 of the Act. On a perusal of the eventualities enumerated thereunder it is amply clear that the same does not provide for any disqualification in case where a person's name is reflected in more than one list of voters. On a perusal of the provisions of the Act it can be seen that section 21 thereof provides that no person shall be entitled to have his name included in the list of voters for more than one electoral division in the same panchayat. In the present case, it is not the case of the respondents that the name of the petitioner is included in more than one electoral divisions of the same panchayat, and, therefore, the provisions of section 21 of the

Act would not be attracted. Section 22 of the Act provides that no person shall be entitled to have his name included in the list of voters for any electoral division more than once. Once again, it is not the case of the respondents that the name of the petitioner is included in the list of voters for the electoral division more than once, therefore, section 22 of the Act would not be applicable. The learned advocate for the respondents is not in a position to point out any provision of law that debars a person from contesting an election if his name is reflected in more than one list of voters.

9. Moreover, sub-rule (4) of rule 15 of the Gujarat Panchayats Election Rules, 1994 provides that the returning officer shall not reject any nomination paper on the ground of any technical defect which is not of substantial character. A defect of substantial character would mean a defect which goes to the root of the matter and would entail disqualification of a candidate. In view of the fact that no disqualification attaches to any candidate merely because his name is reflected in more than one list of voters, even if the name of the petitioner were to be shown in the two list of voters, the same could not be said to be a defect of substantial character so as to warrant rejection of the name of the petitioner. The returning officer was, therefore not justified in rejecting the nomination of the petitioner.

10. Insofar as the maintainability of this petition under article 226 of the Constitution against an order of the returning officer rejecting a nomination is concerned, for the reasons recorded by this court on the question of maintainability in its judgment and order dated 23<sup>rd</sup> November, 2016 rendered in the case of

***Dineshbhai Palabhai Patel v. Gujarat State Election Commission*** in Special Civil Application No.19261 of 2016, this petition is also held to be maintainable. With a view to avoid prolix and considering the urgency of the matter, the reasons are not reiterated herein. However, the reasons recorded in the above decision on the question of maintainability, may be read as forming part of this judgment.

11. For the foregoing reasons, the petition succeeds and is, accordingly, allowed. The impugned order dated 13.12.2016 passed by the returning officer is hereby quashed and set aside. The respondent No.3-returning officer is directed to accept the nomination of the petitioner and display the name of the petitioner in the list of contesting candidates. Rule is made absolute accordingly with no order as to costs.

12. Mr. S. M. Umarji, respondent No.3 returning officer is personally present before this court and this order has been passed in his presence and he has been explained about the gist of this order and is, accordingly, instructed to act upon the same forthwith.

Direct service is permitted.

**(HARSHA DEVANI, J.)**

**(A. S. SUPEHIA, J.)**

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