

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SPECIAL CIVIL APPLICATION NO.21417 of 2016**=====  
MANSUKHBHAI AATUBHAI VALA....Petitioner(s)

Versus

STATE OF GUJARAT & 4....Respondent(s)  
=====

Appearance:

MR VIJAY H NANGESH, ADVOCATE for the Petitioner(s) No.1

MR SHIRISH H GOHIL, ASSISTANT GOVERNMENT PLEADER for the  
Respondent(s) No.1MR HARNISH V DARJI, ADVOCATE for the Respondent(s) No.2 - 3  
=====CORAM: **HONOURABLE MS. JUSTICE HARSHA DEVANI**

and

**HONOURABLE MR. JUSTICE A.S. SUPEHIA****Date : 23/12/2016****ORAL ORDER****(PER : HONOURABLE MS. JUSTICE HARSHA DEVANI)**

1. The petitioner is aggrieved by the rejection of his nomination by the third respondent – Election Officer on the ground that the petitioner does not have the requisite water closet facilities at his residence.

2. Mr. Vijay Nangesh, learned advocate for the petitioner submitted that the petitioner had approached the Talati-cum-Mantri of Chikhalkuba Gram Panchayat for issuance of a certificate to the effect that he has water closet facilities at his residence. However, the Talati informed the petitioner that since the village is situated in the forest area, such certificate can be issued only by the forest authorities. It was submitted that the Talati-cum-Mantri having refused to issue a

certificate, the petitioner was not in a position to attach the certificate alongwith the nomination form.

2.1 It was submitted that the returning officer, without allowing any time to the petitioner to rebut the objection against his nomination, had passed the impugned order which is contrary to the provisions of the proviso to sub-rule (5) of rule 15 of the Gujarat Panchayats Election Rules, 1994. It was submitted that the impugned order having been passed in breach of the principles of natural justice, therefore, deserves to be quashed and set aside.

3. Mr. Harnish Darji, learned advocate for the respondents No.2 and 3 submitted that the petitioner having not duly complied with the provision of sub-rule (2) of rule 12 of the rules namely, that he had not submitted the complete nomination form, inasmuch as, the necessary certificate of the Talati certifying that the petitioner had water closet facilities at his residence had not been attached, under the circumstances, the petitioner having not shown that he was qualified to contest the elections, has rightly rejected the nomination. It was submitted that upon receipt of an objection, the returning officer had caused an inquiry to be made through the Talati-cum-Mantri who had certified that the petitioner did not possess the requisite water closet facilities at his residence and hence, the nomination of the petitioner was rightly rejected. It was submitted that at this stage, when the election process is in progress, this court may not interfere.

4. This court has considered the submissions advanced on behalf of the learned counsel for the respective

parties and has perused the case papers annexed alongwith the petition.

5. From the facts as emerging from the record, it appears that the fact as to whether or not the petitioner possesses the requisite water closet facilities at his residence is a disputed question of fact. While the petitioner has asserted that he has the requisite water closet facilities at his residence, the Talati-cum-Mantri has issued a certificate to the contrary. Under the circumstances, since the petition involves a disputed question of fact, this court would not embark upon an inquiry and render a finding one way or the other. If the petitioner is aggrieved against the rejection of his nomination, he may challenge the same after the elections are over by way of filing appropriate proceedings under the relevant provisions of law. However, at this stage, when the election process is in progress and the petition involves disputed questions of fact, the court is not inclined to exercise discretion in favour of the petitioner. The petition, therefore, fails and is accordingly summarily dismissed.

**( Harsha Devani, J. )**

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

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