

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO.15914 of 2016**

=====

SANMUKHBHAI GOVINDJI DHIMAR....Petitioner(s)
Versus
STATE OF GUJARAT & 2....Respondent(s)

=====

Appearance:

MR DILIP B RANA, ADVOCATE for the Petitioner(s) No.1
MS MANISHA LAVKUMAR, GOVERNMENT PLEADER for the
Respondent(s) No.3
MS ROOPAL R PATEL, ADVOCATE for the Respondent(s) No.2
NOTICE SERVED BY DS for the Respondent(s) No.1

=====

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

Date : 23/11/2016

ORAL ORDER
(PER : HONOURABLE MS. JUSTICE HARSHA DEVANI)

1. By this petition under Article 226 of the Constitution of India, the petitioner seeks a direction to the respondent authorities to follow the provisions of the Rotation Rules, 1994 and to declare the office of Sarpanch for Kim Gram Panchayat as reserved for the OBC category and further seeks a direction to constitute the seats in accordance with the provisions of law. The petitioner has also challenged the order dated 8th May, 2015 issued by the Collector, Surat and State Election Officer under section 9(4) and 9(5) of the Gujarat Panchayats Act, 1993 (hereinafter referred to as "the Act"). The petitioner has further challenged the notification dated 30th April, 2016 issued by the Collector, Surat in exercise of powers under section 51 of the Act reserving offices of Sarpanch for the

Scheduled Tribes, Scheduled Castes and the socially and educationally backward classes as well as women for the village panchayats in Olpad taluka. The petitioner also seeks a direction to the District Collector to allot the office of Sarpanch of Ward No.14 to the OBC category instead of Ward No.3 considering the fact that the population of OBCs in the said ward is more.

2. The petitioner, an agriculturist, who belongs to the socially and educationally backward classes, is a resident of village Kim in taluka Olpad, district Surat. The grievance voiced by the petitioner in the petition is that the office of Sarpanch of Ward No.14 of village Kim has not been allotted for the socially and educationally backward classes, despite the fact that socially and educationally backward classes comprise 80% of the population thereof. The petitioner, therefore, seeks a declaration that the office of Sarpanch of Kim Gram Panchayat be reserved for the Socially and Economically Backward Classes.

3. Mr. D.B. Rana, learned advocate for the petitioner reiterated the contentions raised in the memorandum of petition.

4. On the other hand, Ms. Manisha Lavkumar, learned Government Pleader placed reliance on the affidavit-in-reply filed on behalf of the respondents and also invited the attention of the court to the relevant statutory provisions to submit that the entire petition is based upon a misconception of the relevant statutory provisions. It was submitted that the petitioner has jumbled up the facts with reference to irrelevant

provisions, inasmuch as, insofar as the reservation of the offices of Sarpanch is concerned, the same is governed by the provisions of section 51 of the Gujarat Panchayats Act, whereas section 9(5)(a)(ii) of the Act relates to the seats of the village panchayats and not to the office of Sarpanch. Attention was invited to the averments made in the affidavit-in-reply filed by the respondents and more particularly, paragraph 10 thereof, which contains a tabular form as regards how the rules have been operated while reserving the offices of Sarpanch for the reserved categories. It was pointed out that the allotment of office of Sarpanch has been made by rotation as prescribed under rule 10 of the Gujarat Village Panchayats Election of Sarpanch (Manner of Allotment of Reserved Offices of Sarpanch by Rotation) Rules, 1994 (hereinafter referred to as "the rules"). That insofar as allotment of offices of Sarpanch for the Scheduled Castes is concerned, the list has been operated till Special Serial No.16 and the present panchayat falls at Serial No.27. It was submitted that insofar as allotment of offices of Sarpanch for Scheduled Tribes is concerned, the list prepared as per the census of 2011 has been operated till Serial No.82 and the present panchayat being at Serial No.80, such special serial number has been reached and the office of Sarpanch has, therefore, been allotted to the Scheduled Tribes. It was submitted that insofar as the offices of Sarpanch reserved for the socially and educationally backward classes is concerned, the list has been operated up to the letter 'K' and the turn of allotment of office of Sarpanch of Kim village to the socially and educationally backward classes has come and hence, ordinarily the office of Sarpanch would be required to be allotted to the socially and educationally backward classes. However, since in the current election, the office of Sarpanch

for village Kim has already been allotted to the Scheduled Tribes, it is not possible to allot the same to the socially and educationally backward classes keeping in view the inter se priority amongst the reserved categories. It was, accordingly, submitted that the allotment of office of Sarpanch having been made strictly in accordance with the rules, the petition deserves to be dismissed as being devoid of any merit.

5. This court has considered the submissions advanced by the learned advocates for the respective parties and has perused the averments made and the contentions raised in the memorandum of petition as well as the documents annexed therewith and the contents of the affidavit-in-reply and the annexures thereto.

6. Shortly stated, the grievance voiced in the present petition is regarding non-allotment of the office of Sarpanch of Kim village panchayat to the socially and educationally backward classes despite the fact that majority of the population of the said village is comprised of Socially and Economically Backward Classes.

7. On a perusal of the averments made in the memorandum of petition and the reliefs prayed for, it is evident that the petitioner has jumbled up facts as well as provisions of law, inasmuch as, though the petitioner seeks reservation of office of Sarpanch of village Kim for the socially and educationally backward classes, he has made reference to the provisions of sub-section (5) of section 9 of the Act which relates to reservation of seats of members of a village panchayat for the Scheduled Castes and the Scheduled Tribes

as well as to the socially and educationally backward classes. Evidently therefore, the petitioner has approached this court on a misconception of the relevant statutory provisions.

8. Reservation of offices of Sarpanch in a taluka is governed by clause (a) of sub-section (2) of section 51 of the Act which provides for reservation of the offices of Sarpanch for the Scheduled Castes and the Scheduled Tribes in the same proportion as the total number of offices of Sarpanch in the village panchayat as the population of the Scheduled Castes or, as the case may be, of the Scheduled Tribes, bears to the total population of the State. The said clause further provides for reservation of ten percent of the offices of Sarpanch of the village panchayats for the socially and educationally backward classes. The allotment of the offices of Sarpanch under clause (a) of sub-section (2) of section 51 of the Act is required to be made in terms of the rules. Rule 4 of the rules provides for "Manner of Reservation of Offices of Sarpanch". Sub-rule (1) thereof postulates that the reservation of offices of Sarpanch of village panchayats in the State of the Scheduled Castes, the Scheduled Tribes and the socially and educationally backward classes under clause (a) of sub-section (2) of section 51 of the Act shall be in the manner specified thereafter. Sub-rule (2) of rule 4 of the rules provides for reservation of offices of Sarpanch for the Scheduled Castes and the Scheduled Tribes in proportion to the total number of offices of Sarpanch of village panchayats in a taluka as the population of the Scheduled Castes or, as the case may be, of the Scheduled Tribes bears to the total population of the taluka. Sub-rule (3) of rule 4 provides for reserving ten percent of the offices of Sarpanch in a taluka for the socially and educationally backward classes.

Rule 5 of the rules provides for allotment of the offices of Sarpanch to the Schedule Castes. In terms of the said rule, a list has to be prepared of the villages in the taluka as per the percentage of population of the Scheduled Castes in the said villages in descending order. The offices of Sarpanch reserved for the Scheduled Castes are required to be allotted serially as per the said list. Similarly, in the case of Scheduled Tribes also, a list of the villages in the taluka is required to be prepared on the basis of the percentage of the population of the Scheduled Tribes in the concerned villages in descending order and the list is to be operated serially while allotting the offices of Sarpanch to the Scheduled Tribes. In the allotment to the offices of Sarpanch, firstly the same has to be allotted to the Scheduled Castes and thereafter to the Scheduled Tribes. After allotment of offices to the Scheduled Castes and Scheduled Tribes is over, the offices of Sarpanch are required to be allotted to the socially and educationally backward classes to the extent of ten percent of offices of Sarpanch of the village panchayats in the taluka. However, insofar as the socially and educationally backward classes are concerned, a list of villages where the population of the socially and educationally backward classes is more than five percent is required to be prepared in alphabetical order and such offices of Sarpanch reserved for the socially and educationally backward classes are required to be allotted in serial number. Moreover, in view of the provisions of rules 10 and 11 of the rules, in each succeeding election, the list is required to be operated further till the same is exhausted. In the facts of the present case, since village Kim is situated at Serial No.43 in the list prepared for reservation of offices of Sarpanch for the socially and educationally backward classes, the same has already been

reached this year. However, since offices of Sarpanch for the Scheduled Tribes are required to be given priority over the socially and educationally backward classes in the matter of allotment, having regard to the fact that in the present case, the office of Sarpanch of Kim Village Panchayat is required to be reserved for the Scheduled Tribes as per the list prepared for the said class, it is not possible to allot the office of Sarpanch of Kim village panchayat to the socially and educationally backward classes in this election. It is in these circumstances that the office of Sarpanch has not been allotted to the socially and educationally backward classes.

9. In view of the aforesaid facts and circumstances, it is evident that while allotting the offices of Sarpanch to the different classes, the respondents have duly complied with the provisions of the Act and the rules. The non-allotment of the office of Sarpanch of village Kim to the socially and educationally backward classes, therefore, does not suffer from any legal infirmity warranting interference.

10. In the above view of the matter, the petition fails and is accordingly dismissed. Notice is discharged with no order as to costs. The interim relief granted earlier shall stand vacated.

(Harsha Devani, J.)

(A.S. Supehia, J.)

hki