

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 20945 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

SHARDABEN MAHESHBHAI VASAVA....Petitioner(s)

Versus

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

Appearance:

MR SP MAJMUDAR, ADVOCATE for the Petitioner(s) No. 1

MR. HJ KARATHIYA, ADVOCATE for the Petitioner(s) No. 1

MR DHAWAN JAYSWAL, ASSISTANT GOVERNMENT PLEADER for the Respondent(s) No. 1

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

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

Date : 20/12/2016

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

1. Leave to join the State Election Commission as respondent No.3
2. Rule. Mr Rakshit Dholakia, learned advocate waives service of notice of rule on behalf of the respondents No.2 and 3 and Mr. Dhawan Jayswal, learned Assistant Government Pleader, waives service of notice of rule on behalf of the respondent No.1.
3. Having regard to the controversy involved in the present case, which lies in a very narrow compass as well as urgency of the matter, the matter is taken up for final hearing today.
4. The petitioner is aggrieved by the action of the respondent No.2 of rejecting her nomination on the ground that the name reflected in the police clearance certificate submitted by the petitioner along with the nomination paper is incorrect.
5. The petitioner is desirous to contest the election of member of Sayajipura Gram Panchayat scheduled to be held on 27.12.2016. The petitioner submitted her nomination form under sub-rule (1) of rule 12 of the Gujarat Panchayats Election Rules, 1994 (hereinafter referred to as "the rules") in the

prescribed form. The petitioner also made an application to the Police Commissioner, Vadodara city on 10.12.2016 to issue her a certificate to the effect that there is no criminal case or any civil offence pending against her. Pursuant thereto, a certificate dated 10.12.2016 came to be issued by the Commissioner of Police, Vadodara. However, on account of a typographical error by the concerned office, the name of the petitioner was typed as Vasava Shardaben Pareshbhai instead of Vasava Shardaben Maheshbhai. On the date of scrutiny, the second respondent rejected the nomination of the petitioner on the ground that the name of the petitioner in the police clearance certificate is Vasava Shardaben Pareshbhai instead of Vasava Shardaben Maheshbhai. Being aggrieved, the petitioner has filed the present petition.

6. Mr. S. P. Majmudar, learned advocate for the petitioner submitted that the discrepancy in the name of the petitioner in the police clearance certificate is not a defect of a substantial nature so as to warrant rejection of the nomination of the petitioner. It was submitted that even otherwise, in view of the provisions of the proviso to sub-rule (5) of rule 15 of the rules, it was incumbent upon the Returning Officer to afford an opportunity to the petitioner to rebut the objection and/or to rectify the defect, if any. It was submitted that furnishing a police clearance certificate is not a requirement either under the Act, the rules or even in terms of the nomination form. Under the circumstances, a mistake in the police clearance certificate, could not have been a ground for rejection of the nomination paper of the petitioner.

7. On the other hand, Mr. Rakshit Dholakia, learned

advocate for the respondents No.2 and 3 submitted that it was the petitioner who had voluntarily furnished a police clearance certificate which reflected an incorrect name and, therefore, the second respondent was wholly justified in rejecting the nomination of the petitioner. The learned advocate, however, is not in a position to point out any statutory requirement either in the Act, the rules or in the nomination form which mandates a candidate to furnish a police clearance certificate. It was submitted that it is by way of abundant caution that such a certificate is submitted by the candidates.

8. From the facts and contentions noted hereinabove, it is evident that the sole ground on which the nomination of the petitioner is rejected is that her name in the police clearance certificate presented by her before the Election Officer, is incorrect.

9. On a perusal of the provisions of the Act, the election rules as well as Form No.4 as prescribed under sub-rule (1) of rule 12, it is amply clear that there is no requirement for a candidate to furnish a police clearance certificate. It appears that out of abundant caution, the petitioner had furnished the police clearance certificate in support of the averments made by her in the nomination form to the effect that there is no offence registered against her either criminal or civil.

10. Sub-rule (4) of rule 15 of the rules provides that the Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character. In the facts of the present case, the fact that an incorrect name was mentioned in the police clearance

certificate which otherwise was not required to be furnished under any provision of law, cannot be said to be a defect, which is of a substantial character. Under the circumstances, in the absence of any defect of substantial character in the nomination paper submitted by the petitioner, the second respondent was not justified in rejecting the nomination.

11. While it is true that the election process is already in progress, however, in view of the fact that the elections are to be held on 27.12.2016, permitting the petitioner to participate in the election would not in any manner obstruct the election process. Under the circumstances, the petition deserves to be allowed in terms of the reliefs, as prayed for.

12. For the foregoing reasons, the petition succeeds and is, accordingly, allowed. The impugned order dated 13.12.2016 passed by the Election Officer Sayajipura Gram Panchayat and Deputy Mamlatdar, Vadodara city (East) (Annexure-H to the petition) is hereby quashed and set aside qua the petitioner herein. The second respondent is directed to accept the nomination paper of the petitioner and to show her name in the list of contesting candidates. Rule is made absolute accordingly with no order as to costs.

Direct service is permitted.

(HARSHA DEVANI, J.)

(A. S. SUPEHIA, J.)

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