

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 21065 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

TAUFIQ AYUB KADIWALA....Petitioner(s)

Versus

STATE ELECTION COMMISSION & 3...Respondent(s)

Appearance:

MR.DIVYESH G NIMAVAT, ADVOCATE for the Petitioner(s) No. 1

MR RAXIT J DHOLAKIA, ADVOCATE for the Respondent(s) No. 1, 4

MR DHAWAN JAYSWAL, ASSISTANT GOVERNMENT PLEADER 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 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.1 and 4 and Mr. Dhawan Jayswal, learned Assistant Government Pleader waives service of notice of rule on behalf of the respondents No.2 and 3.

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

3. This petition is directed against the order dated 13.12.2016 passed by the fourth respondent – Election Officer Kapodara Gram Panchayat, Taluka Ankleshwar, District Bharuch (hereinafter referred to as “the returning officer”), rejecting the nomination of the petitioner on the ground that the petitioner’s name finds place in the list of voters of ward No.9 of Kapodara, Taluka Ankleshwar as well as in the list of voters of Daheli village, Taluka Valiya.

4. The facts stated briefly are that the State Election Commission notified the election program for the general elections of the village panchayats in the State of Gujarat on 28.11.2016. The petitioner filed his nomination to contest for the seat of member of Ward No.9 of Kapodara Village Panchayat of Ankleshwar taluka. It is the case of the petitioner

that on the date of scrutiny, he had personally visited the office of the returning officer and was informed that his nomination was accepted. However, subsequently, at about 7:00 p.m. on 14.12.2016, the Talati-cum-Mantri of the village visited the petitioner's residential premises and pasted the impugned order rejecting the nomination of the petitioner on the ground that the nomination of the petitioner is invalid under the provisions of section 19(4) and (5) of the Gujarat Panchayats Act, 1993 (hereinafter referred to as "the Act"). Being aggrieved the petitioner has filed the present petition.

5. Mr. Divyesh Nimawat, learned advocate for the petitioner has submitted that impugned order has been passed in breach of the principles of natural justice inasmuch as the petitioner was not given any opportunity to rebut the objection raised against his nomination as contemplated under the proviso to sub-rule (5) of rule 15 of the Gujarat Panchayats Elections Rules, 1994 (hereinafter referred to as "the rules"). It was further submitted that the returning officer has rejected the nomination of the petitioner on the ground that his name is reflected in two different voters list, whereas there is no provision in the Act which disqualifies a candidate from being elected if his name finds place in more than one voters' list. It was submitted that moreover the petitioner's name has already been deleted from the list of voters of Daheli village and, therefore, even otherwise the nomination of the petitioner has been cancelled, on a factually incorrect premise.

6. On the other hand, Rakshit Dholakia, learned advocate for the respondents No.1 and 4 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. Insofar as reference to section 19(4) and (5) of the Act in the impugned order is concerned, it was submitted that the same is made due to inadvertence and that the same refers to the such provisions of the manual, which is provided to the concerned returning officer. It was submitted that the impugned order being in consonance with the provisions of law, therefore, does not warrant interference. It was further submitted that this petition against an order passed by the returning officer rejecting the nomination of the petitioner, is barred by the provisions of article 243O of the Constitution and therefore, deserves to be dismissed on the preliminary ground of maintainability.

7. From the facts and contentions noted hereinabove, it emerges that two-fold contentions have been raised on behalf of the petitioner. Firstly, regarding non-compliance with the mandate of the proviso to sub-rule (5) of rule 15 of the rules and secondly, that the petitioner’s nomination has been rejected on a ground which does not entail any disqualification under the Act and the rules.

8. Insofar as the first contention is concerned, the proviso to sub-rule (5) of rule 15 of the rules provides that in case an objection is raised by the returning officer or is made by any other person the candidate concerned may be allowed time to rebut it not later than the next day immediately following the

date fixed for scrutiny and the returning officer shall record his decision on the date to which the proceedings have been adjourned. In the present case, the nomination paper of the petitioner was completed in the form specified. It is not the case of the returning officer that on the basis of the information given in the nomination form he is not in a position to ascertain as to whether or not the petitioner is entitled to contest the election. In these circumstances, if there was any objection to the nomination of the petitioner it was incumbent upon the returning officer to give effect to the proviso to sub-rule (5) of rule 15 of the rules and allow time to the petitioner to rebut the objection, however, the returning officer has failed to do so, which is in clear contravention of the said provision rendering the impugned order unsustainable.

9. Adverting to the second ground which is on the merits of the impugned order, the nomination of the petitioner has been rejected on the ground that his name finds place in more than one voters' list. The question that, therefore, arises is that as to whether the same would be a disqualification so as to warrant rejection of the nomination of the petitioner.

10. 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.

11. 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.

12. In the aforesaid premises, the impugned order passed by

the returning officer being in breach of the proviso to sub-rule (5) of rule 15 of the rules as well as having been passed on a ground which does not entail any disqualification, is not sustainable.

13. 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 23rd 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.

14. 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.4 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.

15. Mr. Pratik Pravinbhai Patel, respondent No.4 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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