

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 21245 of 2016

MAKWANA AGARJI RADHUJI & 3....Petitioner(s)

Versus

STATE OF GUJARAT & 2....Respondent(s)

Appearance:

MS ARCHANA U AMIN, ADVOCATE for Petitioners No.1-4
ADVANCE COPY SERVED TO GP/PP for Respondent(s) No.1
MR RAXIT J DHOLAKIA, ADVOCATE for Respondent No. 2

CORAM: HONOURABLE MS.JUSTICE HARSHA DEVANI

and

HONOURABLE MR.JUSTICE A.S. SUPEHIA

Date : 23/12/2016

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE A.S. SUPEHIA)

(1) In the present writ petition, the petitioners have prayed for issuance of writ, order or directions directing the Respondent no.3 i.e. Election Officer, Dharisan Gram Panchayat, to accept the forms seeking withdrawal of their candidature from Election.

(2) The factual matrix leading to the filing of the present petition are as under:

2.1) Pursuant to the Election programme declared on 05.12.2016, the petitioner no.1 filled the nomination form contesting election for the post of Sarpanch, whereas the petitioner nos.2 to 4 filled the forms for contesting election for the posts of members from 3 different wards.

- 2.2) Thereafter the petitioners with a view to get the benefit of Samras Panchayat Scheme of the State Government, on the advise of elderly residents of Dharisana Village, decided to withdraw their nominations from the elections. The petitioners went to the office of the respondent no.3 on 14.02.2016 with the requisite withdrawal forms for withdrawing their candidature. On 14.12.2016, the respondent no.3 refused to accept the withdrawal forms of the petitioner as the same were presented after 3:00 pm. The said action of Respondent no.3 has constrained them to file the present petitioner.
- (3) The sole contention raised by Ms.Archna Amin, learned Advocate appearing on behalf of the petitioners is that the petitioners were unable to present the withdrawal forms before 3:00 p.m. since the office of the Respondent no.3 was overcrowded on 14.12.2016 as the same being the day of withdrawal of the nomination forms. She has submitted that the Respondent no.3 should have accepted the withdrawal forms after 3:00 p.m. looking to the heavy rush.
- (4) In our considered opinion, in absence of any statutory power bestowed on the Election Officer for withdrawal of the nomination forms

after 3:00 p.m., the Respondent no.3 was justified in rejecting the same. Rule 17 of the Gujarat Panchayat Election Rules, 1994 reads as under:

"RULE 17 : Notice of withdrawal of candidature

(1) Any candidate may withdraw his candidature by a notice in writing in Form 6 subscribed by him and delivered before three O'clock in the afternoon on the day fixed under clause (c) of sub-rule (2) of rule 9 to the returning officer either by such candidate in person or by his proposer or by his election agent who has been authorised in this behalf in writing, by such candidate:

Provided that a notice of withdrawal shall not be accepted by the returning officer unless the scrutiny of nominations is completed.

(2) No person who has given a notice of withdrawal of his candidature under sub-rule (1) shall be allowed to cancel the notice.

(3) The returning officer shall on being satisfied as to the genuineness of the notice of withdrawal and the identity of the person delivering it, cause the notice to be affixed at some conspicuous place in his office. Before affixing the notice, he shall not thereon the date and time at which it was delivered to him."

The aforesaid Rule distinctly provides that any candidate may withdraw the candidature by a notice in writing in Form-6 subscribed by him and delivered before "three O'Clock" in the afternoon. In the present case, it is admitted position, that the petitioners have presented their withdrawal forms after the time specified in the Rule. It is the case of the petitioners that in order to avail the benefits under Samras Panchayat Scheme, they withdrew their nominations. At this juncture it is relevant to

mention that the State Government has introduced a scheme of granting Rs.5,00,000/- to the gram panchayat, which is a Samras Gram Panchayat, meaning thereby the panchayat wherein the persons are elected without any elections. Though the reason assigned by the petitioners can be said to be a benevolent one, this Court in the exercise of its jurisdiction under Article 226 of the Constitution of India cannot compel any government or a public authority to act *de hors* the statutory rules. This Court is not conferred with the powers akin to Article 142 of the Constitution of India so as to grant the relief prayed by the petitioners in the present petition. The action of the Respondent no.3 refusing to accept the withdrawal forms of the petitioners is in conformity of Rule 17 of the Gujarat Panchayat Election Rules, 1994. Hence, no case is made out which necessitates interference of this Court.

- (5) The writ petition, therefore, fails and is hereby dismissed. No order as to costs.

Sd/-

[HARSHA DEVANI, J]

Sd/-

[A. S. SUPEHIA, J]

*Bhavesh-[pps]**