

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION NO.21390 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?	
2	To be referred to the Reporter or not?	
3	Whether their Lordships wish to see the fair copy of the judgment?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder?	

VAGHARI JASUBEN GORDHANBHAI....Petitioner(s)
 Versus
 STATE OF GUJARAT & 1....Respondent(s)

Appearance:

MR PATHIK M ACHARYA, ADVOCATE for the Petitioner(s) No. 1
 MR NIRAL R MEHTA, ADVOCATE for the Respondent(s) No. 1 - 2

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. Niral Mehta, learned advocate waives service of notice of rule on behalf of the respondents No.1

and 2.

2. By this petition, the petitioner has challenged the order dated 13th December, 2016 passed by the respondent No.2 – Election Officer, Dumali Gram Panchayat (hereinafter referred to as the “returning officer”) whereby he has rejected the nomination of the petitioner on the ground that she does not have the facility of water closet in her residential premises and is, therefore, disqualified under the provisions of section 30(1)(kk) of the Gujarat Panchayats Act, 1993 (hereinafter referred to as “the Act”).

3. The petitioner herein filed her nomination for the post of Sarpanch of Dumali Gram Panchayat. The last date for accepting the nomination forms was 10th December, 2016 and the scrutiny thereof was to take place on 12th December, 2016, however, 12th December, 2016 being declared to be a public holiday, the programme was rescheduled and the scrutiny was held on 13th December, 2016. It appears that alongwith the nomination form, the petitioner had submitted a certificate of the Talati-cum-Mantri of the Dumali Gram Panchayat certifying that she was having a water closet at the place of her ordinary residence. It appears that on the date of the scrutiny, an objection was raised pursuant to which the Talati once again made an inquiry and issued a certificate stating that the petitioner was jointly having the facility of water closet with her husband’s brother and that, therefore, she did not have a separate water closet. In the light of the subsequent certificate issued by the Talati-cum-Mantri, it appears that the second respondent – returning officer has rejected the nomination of the petitioner. Being aggrieved, the petitioner has filed the

present petition.

4. Mr. Pathik Acharya, learned advocate for the petitioner assailed the impugned order passed by the returning officer on the ground that once a certificate had already been issued by the Talati-cum-Mantri, it was not permissible to accept another certificate issued by the same Talati-cum-Mantri for the purpose of rejecting the nomination of the petitioner. It was submitted that even if the petitioner was jointly using a water closet with her husband's brother, the same would not attract the bar under section 30(1)(kk) of the Act. It was accordingly urged that the returning officer having wrongly rejected the nomination of the petitioner, the impugned order deserves to be quashed and set aside and the petitioner's name may be reflected in the list of contesting candidates.

5. Opposing the petition, Mr. Niral Mehta, learned advocate for the respondents submitted that initially the Talati had issued a certificate on the basis of a statement made by the petitioner that she had a water closet at her ordinary place of residence. However, upon an objection being raised, a proper inquiry came to be made which reflected that the petitioner did not have a water closet at her residence and that she was jointly using the same water closet with her husband's brother. Under the circumstances, the petitioner stood disqualified under section 30(1)(kk) of the Act and the returning officer was wholly justified in rejecting her nomination. It was also submitted that the election process having already commenced, in view of the bar contained in Article 2430 of the Constitution of India, this court may not

entertain the petition and that the petition being devoid of merits, deserves to be dismissed.

6. This court has considered the submissions advanced by the learned advocates for the respective parties and has perused the original record which was produced for the perusal of the court.

7. A perusal of the original record of the case reveals that the petitioner herein had filed the nomination paper completed in the form specified under sub-rule (1) of rule 12 of the rules. Alongwith the form, the petitioner had attached a certificate issued by the Talati-cum-Mantri of the village certifying that the petitioner had the facility of water closet at her residence. It appears from the record that the returning officer had initially accepted the nomination of the petitioner and had scored off the word 'rejected' from Part V of the nomination paper. However, it appears that subsequently an objection came to be raised by several persons before the Returning Officer at 13:50 hours on 13th December, 2016. Pursuant thereto, the returning officer got an inquiry made through the Talati-cum-Mantri, who got a panchnama drawn in respect thereof, and submitted a report that the petitioner's husband and his brother were jointly using the water closet and that the petitioner did not independently have a water closet at her residential premises. From the instructions obtained by the learned counsel from the respondent No.2 herein who is personally present before the court, it appears that the said report was received at around 9:30 at night on 13th December, 2016, much after the time of the scrutiny was over. Acting upon such report, the returning officer, despite

the fact that he had already accepted the nomination of the petitioner, has thereafter passed the impugned order after 9:00 p.m. rejecting the nomination of the petitioner on the ground that she is disqualified under clause (kk) of sub-section (1) of section 30 of the Act. Accordingly, the returning officer has scored off "accepted" in Part V of the nomination paper and ticked the already scored off "rejected" therein. Evidently therefore, the entire action of the respondent in rejecting the nomination form of the petitioner after the time of the scrutiny was over, is in flagrant violation of the Gujarat Panchayats Election Rules, 1994 (hereinafter referred to as "the rules"). Sub-rule (8) of rule 15 of the rules provides that the decision of the returning officer regarding acceptance or rejection of the nomination paper shall be final. The Act or the rules framed thereunder do not vest in the returning officer any power to review his order once it is passed. Under the circumstances, once the returning officer has accepted the nomination of the petitioner, he has no power to review the said order and thereafter, reject it.

8. Apart from the fact that there was no power to review, the entire manner in which the impugned order has been passed leaves a lot to be desired. The returning officer is required to accept or reject the nomination on the date of the scrutiny within the time prescribed for taking such action. However, the returning officer, much after the time of the scrutiny was over, on the basis of a report received at 9:30 at night on 13th December, 2016, has subsequently passed an order rejecting the nomination of the petitioner by revoking the earlier order passed by him whereby he has accepted her nomination. The impugned action of the second respondent –

returning officer in rejecting the nomination of the petitioner is, therefore, in complete breach of the provisions of sub-rule (8) of rule 15 of the rules. Besides, in case the returning officer had received any objection, in view of the proviso to sub-rule (5) of rule 15 of the rules, he was required to allow the candidate concerned, time to rebut such objection not later than the next day immediately following the date fixed for scrutiny. Whereas, in the facts of the present case, no such time has been allowed to the candidate nor was she called upon to rebut the objection raised against her nomination. The impugned order, therefore, having been passed in total contravention of the statutory provisions, cannot be sustained.

9. Insofar as the conduct of the Talati-cum-Mantri is concerned, he has utterly failed to uphold the dignity of his office and the faith reposed in him while authorising him to issue certificates which could make or break the future of a candidate. When, a statutory authority like the Talati is vested with powers to issue certificates based upon which, the nomination of a candidate could be rejected, it is expected of him to exercise the same with honesty and sincerity and with due diligence and not in the manner as has been done in the present case. As is evident from the facts of the present case, the Talati-cum-Mantri has initially issued a certificate stating that the petitioner had the facility of water closet at her residence and thereafter, below the very same certificate, he has stated that she does not possess the necessary certificate. Under the circumstances, it would not be possible to attach any sanctity to the certificates issued by the Talati, if this is the manner in which certificates are to be issued.

10. In case after case, that is coming before this court in relation to the General Panchayat Elections, 2016, the returning officer has arbitrarily, without reference to any provision of law, in breach of the principles of natural justice as well as in breach of the provisions of the proviso to sub-rule (5) of rule 15 of the rules, rejected nominations of candidates in a large number of matters. In some cases like the present one, despite the fact that the acceptance or rejection of a nomination is final and there is no power of review vested in the returning officer after accepting a nomination, the returning officer, without affording any opportunity to the candidate to rebut any objection raised against his/her nomination, has rejected the nomination by reviewing the earlier order. This is the sad state of affairs prevailing so far as the conduct of elections to the village panchayats in the State of Gujarat is concerned. Apart from the fact that the returning officers as in the present case, are woefully lacking in knowledge about the relevant statutory provisions relating to conduct of such elections, there is rampant and flagrant abuse of powers in the matters of acceptance and rejection of nomination papers. In all the matters which have come before this court invoking its writ jurisdiction under Article 226 of the Constitution of India, the normal refrain of the respondent authorities is that the matter pertains to electoral matters and that in view of the bar contained in Article 243O of the Constitution, the petition is not maintainable. The crucial question that arises is can the High Court be a mute spectator to the rampant illegalities being committed by the returning officers emboldened by the fact that their orders right, wrong or arbitrary cannot ordinarily be questioned, except by way of an election petition that may be filed after the elections are

over.

11. The Supreme Court in ***Election Commission of India v. Ashok Kumar and others***, (2000) 8 SCC 216 has clearly held that power vested in a functionary like the Election Commission is a trust and in view of the same having been vested in high functionary can be expected to be discharged reasonably, with objectivity and independence and in accordance with law. The possibility, however, cannot be ruled out where the repository of power may act in breach of law or arbitrarily or mala fide. The court held that a dispute raised may not amount to calling in question an election if it subserves the progress of the election and facilitates the completion of the election. The Election Commission may pass an order which far from accomplishing and completing the process of election may thwart the course of the election and such a step may be wholly unwarranted by the Constitution and wholly unsustainable under the law. The court held that an order which would have the effect of preventing an election and not promoting it, the court's intervention in such a case will facilitate the flow and not stop the election stream. It is in the above backdrop that the court in paragraph 32 of the judgment concluded that the action taken or orders issued by the Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

12. This court can take judicial notice of the fact that more often than not, in the cases which have come up before

this court, the repository of power namely, the Returning Officer/Election Officer, has acted in breach of law or arbitrarily or mala fide. Therefore, the disputes raised in such petitions do not amount to calling in question any election as it subserves the progress of the election and facilitates the completion thereof. If the court does not intervene at this stage, the Returning Officer succeeds in the mala fide attempt to oust a candidate from the election process for the reasons which are obvious and need not be stated.

13. In the light of the above discussion, the petition succeeds and is accordingly allowed. The impugned order dated 13th December, 2016 passed by the Returning Officer rejecting the nomination of the petitioner is hereby quashed and set aside. The second respondent – Returning Officer is directed to include the name of the petitioner in the name of contesting candidates. Rule is made absolute accordingly with no order as to costs.

14. This order is passed in the presence of Mr. Kanubhai Haribhai Padheriya, Returning Officer and Gram Sevak and he is aware of the gist of the order.

Direct Service is permitted.

(Harsha Devani, J.)

(A.S. Supehia, J.)

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