

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 21067 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 ?	

SHANKARBHAI RAMJIBHAI VASAVA....Petitioner(s)

Versus

STATE OF GUJARAT & 4....Respondent(s)

Appearance:

MR DP KINARIWALA, ADVOCATE with MR JOY MATHEW, ADVOCATE for the Petitioner

MR SHIRISH GOHIL, AGP for the Respondent No. 1 and 3

DR YOGESH A SHELAT, ADVOCATE for the Respondent No. 5

MR PRAKASH G PANDYA, ADVOCATE for the Respondent No. 5

MS ROOPAL R PATEL, ADVOCATE for the Respondents No. 2 , 4

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. Ms. Roopal Patel, learned advocate waives service of notice of rule on behalf of the respondents No.2 and 4. Mr. Shirish Gohil, learned Assistant Government Pleader waives service of notice of rule on behalf of the respondents No.1 and 3 and Mr. Prakash Pandya, learned advocate waives service of notice of rule on behalf of the respondent No.5.

2. Having regard to the controversy involved in the present case, which lies in a very narrow compass and considering the urgency of the case, the matter was taken up for final hearing today.

3. This petition under article 226 of the Constitution of India is directed against the order dated 14.12.2016 passed by the third respondent – Election Officer (hereinafter referred to as “the returning officer”), rejecting the nomination of the petitioner for the election of member of Ward No.7 of Patlamahu Village Panchayat, on the ground that there was an allegation by the opponent party that the petitioner had produced a false affidavit.

4. The facts stated briefly are that the second respondent State Election Commissioner issued a notification dated 20.11.2016 declaring that the general elections of village panchayats in the State are to be held in the month of

December, 2016. As per the election program, the last date for filing nominations was 10.12.2016. Pursuant to the declaration of the election program, the petitioner filed nomination paper for the election of member of Ward No.7 of Patlamahu Village Panchayat. By the impugned order dated 14.12.2016, the nomination of the petitioner has been rejected, which has given rise to the present petition.

5. Mr. D. P. Kinariwala, learned advocate for the petitioner, submitted that the returning officer has rejected the nomination of the petitioner without providing a copy of the objection to the petitioner. Moreover, the ground on which the nomination has been rejected is in respect of a technical defect and that the defect in question not being of a substantial character, the returning officer ought not to have rejected the nomination. The petition therefore deserves to be allowed by quashing the impugned order and directing the returning officer to accept the nomination of the petitioner.

6. On the other hand, Ms. Roopal Patel, learned advocate for the respondents No.2 and 4 submitted that an objection had been raised before the returning officer that the petitioner had stated incorrect facts in the affidavit filed by him and that the petitioner had admitted to not having stated details about the bank loan availed by him in his affidavit. It was submitted that in view of the admission made by the petitioner that he had not stated details of the bank loan availed by him, the nomination of the petitioner has been rightly rejected by the returning officer. It was further submitted that the petition being against an order of the returning officer rejecting a nomination is barred by article 2430 of the Constitution of

India and as such the petition deserves to be dismissed on this ground alone.

7. From the facts and contentions noted hereinabove, the short controversy that arises for consideration in the present case is as to whether the returning officer was justified in rejecting the nomination of the petitioner on the ground that in the affidavit filed by him along with his nomination papers, he had not stated that he had availed of a loan from the District Cooperative Bank, which was outstanding. It is the case of the petitioner that upon such objection being raised, the returning officer has not informed the petitioner to explain the same. In this regard it may be noted that the proviso to sub-rule (5) of rule 15 of the Gujarat Panchayats Election Rules, 1994 (hereinafter referred to as "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 of scrutiny and the returning officer shall record his decision on the date to which the proceedings have been adjourned. In the present case, the petitioner had filed a completed nomination paper in the prescribed form. It was not as if the nomination paper was incomplete or did not contain the necessary information which would enable the returning officer to decide whether or not the petitioner was entitled to contest the election. Therefore, if there was any objection raised, either by the returning officer or by any other person, the returning officer ought to have put the petitioner to notice and allowed him time to rebut such objection. However, without affording any such opportunity, the returning officer has rejected the petitioner's nomination without even stating

as to what was the false statement made by him in the affidavit. The impugned order, therefore, suffers from the vice of being in breach of the proviso to sub-rule (5) of rule 15 of the rules.

8. Insofar as the merits of the ground of rejection of the nomination of the petitioner is concerned it may be pertinent to note that rule 15 of the rules provides for scrutiny of nomination papers. Sub-rule (2) thereof provides that the returning officer may reject the nomination on any of the grounds enumerated thereunder. The grounds stated therein, *inter alia*, are that there should be a failure to comply with any of the provisions of rules 12 or 13; that on the date fixed for scrutiny of nominations, the candidate is either not qualified or disqualified for being chosen to fill the seat under the Act or any other law for the time being in force.

9. In the present case, the nomination of the petitioner has been rejected on the ground that in the affidavit, he has not stated that there were any outstanding dues of the bank loan. In this regard, it may be germane to note that the disqualifications which are attached to a candidate are provided under sub-section (1) of section 30 of the Gujarat Panchayats Act, 1993 (hereinafter referred to as "the Act"). The disqualification regarding arrears of dues is provided under, clause (i) of sub-section (1) of section 30 of the Act which provides that no person shall be a member of a panchayat or continue as such who fails to pay any arrears of any kind due by him to the panchayat or any panchayat subordinate thereto or any sum recoverable from him in accordance with Chapter X of the Act, within three months

after a special notice in accordance with the rules made in this behalf has been served upon him. In the facts of the present case, it is not the case of the respondents that the petitioner has failed to pay any arrears of any kind of dues by him to the panchayat within the meaning of clause (i) of sub-section (1) of section 30 of the Act. The ground stated for rejection of the nomination of the petitioner is that the petitioner has made a false statement in the affidavit filed by him along with the nomination form, without stating as to what is the false statement made by him therein.

10. According to the respondents, the false statement made by petitioner in the affidavit is that in Part-IX of the nomination form the petitioner was required to describe the nature of any loan obtained by him and the amount outstanding on that date, wherein the petitioner has not mentioned the fact regarding a loan availed by him from the District Cooperative Bank which was outstanding. It may be noted that sub-rule (4) of rule 15 of the rules specifically 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. Insofar as the existence of an outstanding loan from a bank is concerned, the same does not amount to a disqualification under any of the provisions of the Act or the rules. Under the circumstances, not stating the fact regarding the outstanding dues of the bank in the affidavit is merely in the nature of a technical defect and cannot be said to be a defect of a substantial character so as to warrant rejection of the nomination form of the petitioner. Under the circumstances, in respect of such a defect which does not amount to a disqualification under the provisions of the Act and the rules,

the returning officer was not justified in rejecting the nomination of the petitioner.

11. 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 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.

12. For the foregoing reasons, the petition succeeds and is, accordingly, allowed. The impugned order dated 14.12.2016 passed by the Returning Officer is hereby quashed and set aside. The Returning Officer is directed to accept the nomination of the petitioner and show his name in the list of contesting candidates. Rule is made absolute accordingly with no order as to costs.

13. This order has been passed in the presence of Shri Parsingbhai Ramabhai Vasava, Returning Officer, Sagbara, Sagbara Taluka, District Narmada and he has been informed about the gist of this order and is, accordingly, instructed to act upon the same forthwith.

(HARSHA DEVANI, J.)

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(A. S. SUPEHIA, J.)