

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 14502 of 2015

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HAMIDBHAI NURHUSSAIN BAVAN....Petitioner(s)

Versus

STATE OF GUJARAT & 3....Respondent(s)

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Appearance:

MR MAULIK VAKHARIYA, ADVOCATE for the Petitioner(s) No. 1

MR. CR BUDDHADEV, ADVOCATE for the Petitioner(s) No. 1

ADVANCE COPY SERVED TO GP/PP for the Respondent(s) No. 1

DS AFF.NOT FILED (N) for the Respondent(s) No. 1

MR RAXIT J DHOLAKIA, ADVOCATE for the Respondent(s) No. 2

NOTICE SERVED BY DS for the Respondent(s) No. 3 - 4

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CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**
and
HONOURABLE MR.JUSTICE MOHINDER PAL

Date : 30/09/2015

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

Draft amendment allowed.

Petitioner has challenged allotment of seat of Savgadha electoral division for District Panchayat election to woman general candidate. According to the petitioner this was done by retrospective application of amendment to Rule 7 of the Gujarat Taluka and District Panchayats Elections (Manner of Allotment of Reserved Seats by Rotation), Rules, 1994. According to the petitioner even after application of the said provision,

the allotment could not have been made in favour of woman candidate. In a separate order passed today in Special Civil Application No.13837 of 2015, where similar issues arose, we have dealt with these contentions in detail in following manner:

"1. Petitioner has challenged an order dated 10.08.2015 as at Annexure-A to the petition passed by the State Election Commission allotting seats in Dascrosi Taluka of Ahmedabad District for the purpose of conducting election to the ensuing elections to the District Panchayat. In particular, the petitioner's challenge is to the allotment of seat of Nandej Electoral Division to woman general category. According to the petitioner, such seat ought to have been allotted to general unreserved category.

2. Briefly stated facts are as under:-

2.1 For conduct of District Panchayat elections, the State Election Commission issued a preliminary mandate for allotment of seats to different categories of candidates on 21.07.2015. As per this order, Nandej Electoral Division was allotted to general unreserved category. This exercise was undertaken as per the provisions contained in Gujarat Taluka and District Panchayats Elections (Manner of Allotment of Reserved Seats by Rotation), Rules, 1994 (hereinafter to be referred as "the Rules of 1994"). By notification dated 05.08.2015, the Rules of 1994 were amended. Provisos were added to Rules 4, 5, 6 and 7. As per these provisos, seats were to be reserved for women candidates in the respective categories as provided in the respective proviso. The State Election Commission therefore, while issuing revised preliminary mandate on 10.08.2015, applied the amended Rules and this time round, Nandej Electoral Division was allotted to women general candidates. We are informed that subsequently, on 03.09.2015, final mandate was also issued. 3. The grievance of the petitioner, as noted, is with respect to allotment of seat of Nandej Electoral Division to women general candidates. The petitioner challenges the said order on three grounds. Firstly that the State Election

Commission has applied the amendment in Rules with retrospective effect. According to the Counsel, once exercise was initiated by the Election Commission for allotment of seats to different categories of candidates, the amendment in the Rules, which came later on, could not be applied. The next ground of challenge of the petitioner is that even as per the amended Rules, Nandej seat could not have been allotted to woman general candidate since the proviso to Rule 7 required rotation of seat for women in odd numbers. In the present case, this was not done. The last contention, which is also based on what petitioner describes as misapplication of the proviso of Rule 7, is that there has been enbloc allotment of seats for general women candidates, which is contrary to the proviso to Rule 7.

4. On the other hand, Counsel for the Election Commission contended that when the exercise of allotment of seats was still going on, Rule 7 was amended. The Election Commission therefore correctly applied such amended provisions. This exercise has been carried out strictly in compliance with the said Rules. Counsel produced on record a chart giving two tables containing breakup of allotment of seats in different Talukas of Ahmedabad District before and after preliminary mandate of 21.07.2015. Drawing our attention to contents thereof, Counsel submitted that earlier, the distribution of women candidates reserved as well as unreserved was uneven amongst different Talukas. Now, by virtue of operation of proviso to Rule 7, as far as possible, such distribution has been made even. Counsel pointed out that in the earlier scenario, four seats were allotted to women general candidates in Dascroi Taluka and two for unreserved general whereas after the amendment in the Rules, such distribution has been equally made by allotting three seats to each category.

5. Having thus heard learned Counsel for the parties and having perused documents on record, we notice that prior to amendment of 2015, detailed procedure was provided in the Rules of 1994 for allotment of seats reserved for various reserved categories, i.e. SC, ST and socially and educationally backward class and for allotment of seats to others. Rule 7 of the said

Rules pertained to allotment of seats to others and read as under:-

"The Election Commission shall after having allotted seat reserved for the Scheduled Castes, Scheduled Tribes and Socially and Educationally backward classes under rules 4, 5 and 6 allot the remaining seats (including those reserved for women) serially to electoral divisions bearing general serial number which seats reserved for the Scheduled Castes, the Schedules Tribes and the Socially and Educationally backward classes are not allotted under rules 4, 5 and 6 so however that preference shall be given to allotment of seats reserved for women other than the women belonging to the Schedules Castes, Scheduled Tribes and Socially and Educationally Backward Classes."

6. Rule 8 pertained to computation of reserved seats for women and read as under:-

"(1) The number of seats to be reserved for women belonging to the Scheduled Castes, the Scheduled Tribes or as the case may be the Socially and Educationally backward classes shall be derived by dividing the number of seats to be reserved for the Scheduled Castes, the Scheduled Tribes or as the case may be the Socially and educationally backward classes by three.

(2) The remaining number of seats to be reserved for women shall be determined by first deriving the number by dividing the total number of seats by three and number so derived shall be reduced by the aggregate of the number of seats to be reserved for the women belonging to the Scheduled Castes, the Scheduled Tribes and the Socially and Educationally backward classes, under sub-rule (1):"

7. By the amendment of 2015, provisos have been added to Rules 4, 5, 6 and 7. Since we are not concerned with the allotment of seats for different reserved categories, we may notice only the proviso added to Rule 7 which pertains to allotment of seats to others. Such proviso added to Rule 7 reads as under:- "Provided that in case of allotment of seats to others for the district panchayat, the State Election Commission, while allotting the seats in the

taluka where more than one seat is to be allotted, shall, after having allotted the seats reserved for the Scheduled Castes, the Scheduled Tribes and the Socially and Educationally Backward Classes under rules 4, 5 and 6, allot the remaining odd number of seats i.e. 1st, 3rd and so on to the woman from amongst the electoral divisions falling in the taluka as per general serial number to which seats reserved for the Scheduled Castes, the Scheduled Tribes and Socially and Educationally Backward Classes are not allotted under rule 4, 5 and 6 ensuring that every Taluka the representation of women remain as nearly as may be one-half of the total number of seats including the women belonging to the Scheduled Castes, the Scheduled Tribes and Socially, and Educationally Backward Classes and also that such allotment does not exceed the number of total seats determined as per the provisions of section 11 of the Gujarat Panchayats Act, 1993."

8. It can thus be seen that of the seats to be allotted under Rule 7, would now have to be done in the manner provided in the proviso to the said Rule, which essentially requires that while allotting such seats in a Taluka where more than one seat is to be so allotted, odd number of seats, i.e. 1st, 3rd and so on would be allotted to women general category, while ensuring that every Taluka has representation of women as nearly as one half of the total number of seats including women belonging to SC, ST and OBC so that the total allotment does not exceed the number of total seats determined as per the provisions of Section 11 of the Gujarat Panchayats Act, 1993.

9. We note that computation of reserved seats for women as provided in Rule 8 of the Rules of 1994 has not undergone any change by virtue of the amendments 2015. Thus, the computation and resultantly the total number of seats to be reserved for women during such elections would remain the same. It is the manner of allotment of such seats to women candidates has been somewhat altered by adding proviso to Rules 4 to 7 of the Rules of 1994. 10. When the amendment Rule of 2015 was promulgated on 05.08.2015, only

step taken by the State Election Commission was to issue preliminary mandate for allotment of seats. Several other stages were yet to be finalized before seat allotment could be completed, which will include issuance of the provisional order of allotment followed by final order of allotment. The election programme could be issued thereafter. Thus, when the amendments were brought into the Rules with effect from 05.08.2015, the same had to be applied to the pending process of allotment of seats to different categories of candidates. Such application therefore cannot be seen as giving retrospective effect to the Rules without so provided by the legislation. In other words, when the State Election Commission was carrying out the process of allotment of seats to various categories of candidates, reserved as well as unreserved, amendment in the Rules had to be applied since such amendment was brought into force long before such exercise was completed.

11. The next question is, did the Election Commission apply such Rules correctly or, as suggested by the petitioner, committed an error. As noted, as per Rule 7, after allotting seats reserved for SC, ST and SEBC candidates under Rules 4, 5 and 6, remaining seats would be allotted bearing general serial number giving preference to allotment of seats reserved for women other than those belonging to reserved categories. As per the proviso to Rule 7, any Taluka where such seats are more than one, would be allotted to women candidates in odd numbers, i.e. 1st, 3rd and so on. While doing so, the Election Commission would ensure that in every Taluka, the representation of women remains as nearly as may be one-half of the total number of seats including women belonging reserved categories so as to see that such allotment would not exceed the number of total seats determined as per the provisions of Section 11 of the Gujarat Panchayats Act, 1993. Therefore, proviso to Rule 7 brings in a formula by which the distribution of seats is as far as possible evenly distributed amongst all Talukas. In this context, as correctly pointed out by the Counsel for the State Election Commission, previously there was a possibility that a given Taluka may have seats reserved only for women general candidates whereas other Talukas may have

allotment of only general unreserved category, thereby completely distorting the representation of women in different Talukas. The proviso would, in fact, ensure that as far as possible, such allotment is equally distributed.

12. In view of this background, if we peruse the facts on hand, in the preliminary order for allotment of seats prior to amendment of the Rules, Dascroi Taluka had four seats allotted to women general and two for unreserved general. As per the provisional order, by taking into account the proviso to Rule 7, in same Taluka, now three seats are allotted to each category. Counsel also pointed out that in the first order, in Sanand Taluka there was not a single seat reserved for women general and four were earmarked for unreserved general, which has now been changed to allotment of two seats to each of these categories.

13. We do not find that the respondents have committed any error either in applying amended Rule 7 of the Rules of 1994 or in working out the formula provided thereunder. The contention that there has been no rotation in the odd number of seats as provided in the proviso is also ill-founded since the Counsel for the petitioner is drawing our attention to the consolidated list at page No.28 of the compilation and this table does not give breakup Taluka-wise and rotation in odd numbers is to be made Taluka-wise and not across the entire District.

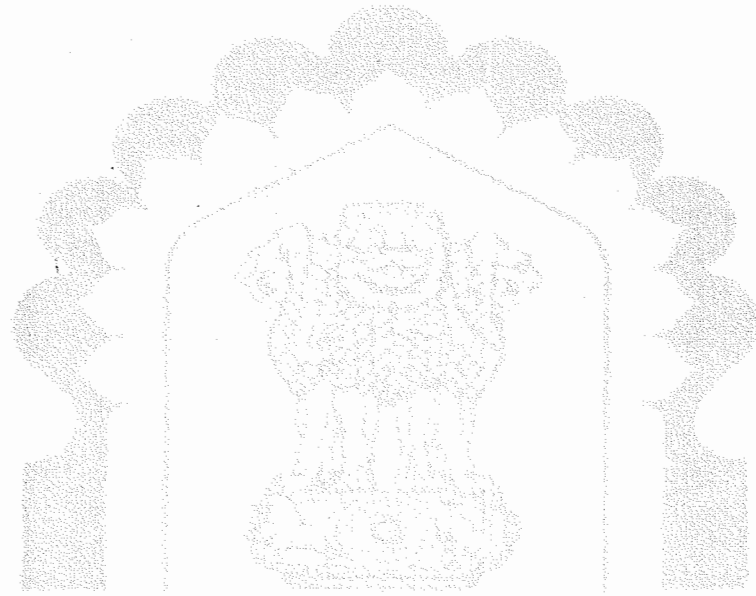
14. For such reasons, the petition is dismissed. Notice is discharged".

In the result, issues being similar, this petition is also dismissed.

(AKIL KURESHI, J.)

(MOHINDER PAL, J.)

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THE HIGH COURT
OF GUJARAT

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