

(2009) 01 GUJ CK 0035

In the Gujarat High Court

Case No : Special Civil Application No. 15934 of 2008

Amitkumar Bhikhala Jethva

APPELLANT

Vs

Chief Election Officer

RESPONDENT

Date of Decision : 16-01-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Representation of the People Act, 1950 — Section 17, 31

Citation : (2009) 1 GLH 388

Hon'ble Judges : M.S. Shah, J; Harsha Devani, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mohit S. Shah, J.—In this petition under Article 226 of the Constitution, the petitioner, resident of Village Khambha in Amreli District, has prayed for a writ of mandamus to direct the District Election Officer, Amreli to lodge appropriate complaint against respondent Nos. 3 and 4 u/s 31 of the Representation of People Act, 1950 for violation of the provisions of Section 17 of the said Act. The petitioner has also prayed for quashing and setting aside the communication dated 14.11.2008 (Annexure-A) of the said second respondent informing the petitioner that it was not considered necessary to lodge the complaint as requested by the petitioner.

2. The petitioner contested election to the Gujarat Legislative Assembly from Kodinar Constituency in 2007. The petitioner was an independent candidate and there were two other candidates sponsored by two major political parties and the election was held on 11.12.2007. Before the elections, the petitioner had noticed that names of respondent Nos. 3 and 4 were registered in the electoral rolls of Amreli Constituency as well as Kodinar Constituency. When this fact was brought to the notice of the election authorities, the election authorities issued notices to the said parties calling upon them to choose as to in which Constituency they would like to have their names registered as voters. Respondent Nos. 3 and 4

opted to have their names registered in the voters list for Amreli Constituency. Respondent No. 3 is an officer of Amreli Municipality and is serving under the Municipality for a number of years and respondent No. 4 is the wife of respondent No. 3.

3. When their statements were recorded on 10.10.2008, respondent No. 3 informed the concerned officer that they have been residing at Amreli for a very long period and that they were not aware that their names were continued in the voters list for Kodinar Constituency because they had already left Khambha before many years and therefore, they assumed that their names must have been deleted from Kodinar Constituency under which Khambha village falls.

4. In view of the above, the names of respondent Nos. 3 and 4 have been deleted from the voters list of Kodinar Constituency and their names have continued to remain in the voters list for Amreli Constituency. The petitioner, however, persisted that even after deletion of their names from Kodinar Constituency, the election authorities should lodge a complaint against respondent Nos. 3 and 4 u/s 31 of the Act. The District Election Officer and Collector, Amreli by the impugned communication dated 14.11.2008 has informed the petitioner that respondent Nos. 3 and 4 have not deliberately or knowingly got their names included in the voters list for two Constituencies and that they were of the bonafide belief that their names must have been deleted from Kodinar Constituency (under which Khambha Village falls) because they had left Khambha long back and were settled in Amreli for a number of years.

5. It is the aforesaid communication which is under challenge in this petition and the petitioner has also prayed for a direction to the election authority to lodge the complaint against respondent Nos. 3 and 4 u/s 31 of the Act.

6. Mr Malkan for the petitioner has vehemently submitted that since the names of third and fourth respondent were found in the voters list for two Constituencies, there was a clear violation of Section 17 and therefore, the election authority was bound to lodge the complaint u/s 31 of the Act.

7. Sections 17 and 31 of the Representation of People Act, 1950 read as under:

17. No person to be registered in more than one constituency - No person shall be entitled to be registered in the electoral roll for more than one constituency.
31. Making false declarations - If any person makes in connection with - (a) the preparation, revision or correction of an electoral roll, or (b) the inclusion or exclusion of any entry in or from an electoral roll, a statement or declaration in writing which is false and which he either knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

8. The submission made on behalf of the petitioner overlooks the ingredients of the offence u/s 31(b) of the Act. In the first place, the concerned person ought to have made the statement in writing or a declaration in writing for the purpose of

inclusion of his name in the electoral roll. Secondly, such submission must have been false. Thirdly, it must be shown that the maker of the statement believed the statement or declaration to be false or he did not believe the same to be true at the time of making the statement or declaration.

It is only if all the ingredients are satisfied, then only the act of making the statement or declaration of the concerned person would amount to an offence so as to be punishable u/s 31 of the Act.

9. The petitioner has not produced or referred to any such statement or declaration in writing of respondent Nos. 3 and 4. In any case, respondent Nos. 3 and 4 had during the inquiry stated that when they were residing at Khambha in Kodinar area, their names might have been entered in the voters list, but they had left Khambha long back and had settled in Amreli for a long time and therefore, they assumed that their names must have been deleted from the Kodinar Constituency under which Khambha Village falls. The explanation given by the said respondents has rightly been accepted by the election authority as plausible and the election authority has rightly refused to lodge the complaint against respondent Nos. 3 and 4.

10. In view of the above discussion, we do not find any merit in the petition. The petition is, therefore, summarily dismissed.