

(2016) 12 GUJ CK 0044
In the Gujarat High Court

Case No : Special Civil Application No. 20941 of 2016

Jayaben Vijaybhai Vasoya

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 26-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) AIRCC 1303 : (2017) 1 GCD 699

Hon'ble Judges : Harsha Devani and A.S. Supehia, JJ.

Bench : Division Bench

Advocate : Mr. Bharat T Rao, Advocate, for the Petitioner No. 1; Mr. Dhawan Jayswal, Assistant Government Pleader, for the Respondent Nos. 1 and 5; Mr. Niraj R Mehta, Advocate, for the Respondents No. 2

Final Decision : Dismissed

Judgement

Harsha Devani, J.—The question that arises for consideration in this petition under Article 226 of the Constitution of India is as to whether non-production of a caste certificate together with the nomination paper in Form No. 4 as prescribed under sub-rule (1) of rule 12 of the Gujarat Panchayats Election Rules, 1994 (hereinafter referred to as "the rules") amounts to defect of a substantial character warranting rejection of the nomination paper.

2. The petitioner has called in question the order dated 13.12.2016 passed by the third respondent - Returning Officer, Sardhar Gram Panchayat (hereinafter referred to as "the returning officer"), whereby his nomination for the seat of member from ward No. 9 Sardhar Gram Panchayat which is reserved for the Scheduled Tribes, has been rejected.

3. The facts as averred in the petition are that the petitioner herein filed her nomination paper on 10.12.2016 in Form No. 4 as prescribed under sub-rule (1) of rule 12 of the rules for election as member from ward No. 9 of Sardhar village panchayat in respect of a seat which is reserved for the Scheduled Tribes. As per

the election programme, the scrutiny of nomination papers was fixed on 12.12.2016, however, 12.12.2016 having been declared to be a public holiday, the scrutiny was undertaken on the next day, that is, on 13.12.2016. On 13.12.2016, agent of the respondent No.7 raised an objection that the certificate by the competent authority certifying that the petitioner belongs to a Scheduled Tribe was not annexed along with the nomination form and hence, the same cannot be accepted. Pursuant to the above objection, the petitioner requested the returning officer to grant her one day's time for producing the necessary certificate. However, the returning officer did not accede to such request, and made an endorsement to the effect that the petitioner failed to produce the requisite certificate till closure of office hours, that is, up to 6:10 p.m. and rejected her nomination paper. It is the case of the petitioner that she had produced a copy of the certificate at 7:00 p.m. on 13.12.2016 itself, however, the returning officer refused to accept the same. Being aggrieved, the petitioner has filed the present petition.

4. Mr. B.T. Rao, learned advocate for the petitioner invited the attention of the court to rule 12 of the rules which makes provision for presentation of nomination form and requirements of valid nomination to submit that the returning officer is required to examine the nomination paper when it is filled up by a candidate and accept it on that date. It was submitted that under rule 15 of the rules, when an objection is raised during the course of scrutiny, the returning officer is mandated to allow time to the candidate to rebut such objection. Strong reliance was placed upon the proviso to sub-rule (5) of rule 15 of the rules to submit that the same provides for allowing time to the candidate to rebut the objection not later than the next day following the date of scrutiny. It was submitted that it was, therefore, incumbent upon the returning officer to grant time to the petitioner till the next day following the date of scrutiny to produce the requisite caste certificate. Under the circumstances, the returning officer was not justified in rejecting the nomination paper of the petitioner, inasmuch as, she had produced a copy of the certificate at 7:10 p.m. on 13.12.2016. It was submitted the rejection of the petitioner's nomination paper on the ground that it was not submitted within the prescribed time has resulted in defeating the petitioner's statutory right to contest the election.

4.1 Mr. Rao further submitted that when the returning officer had acceded to the request of the petitioner to grant time, he ought to have exercised such powers reasonably. According to the learned advocate, when the returning officer had exercised his discretion and thought it fit to allow time to produce the caste certificate, sufficient time ought to have been given to the petitioner, however, the respondent has failed to exercise the powers vested in him in a just and proper manner.

4.2 It was further submitted that the petitioner had attached the school leaving certificate along with the nomination form, which was sufficient evidence to indicate that she belongs to the Scheduled Tribes and hence, when there was

material before the returning officer to show that the petitioner belonged to a Scheduled Tribe, the returning officer was not justified in rejecting the nomination of the petitioner on the ground that the caste certificate was not produced during the office hours.

4.3 Reference was made to sub-rule (4) of rule 15 of the rules, which lays down that the returning officer shall not reject any nomination paper on the ground of any technical defect, which is not of a substantial character, to submit that non-production of a caste certificate can at best be said to be a technical defect, under the circumstances, the returning officer was not justified in rejecting the nomination paper of the petitioner without carrying out a summary inquiry, as contemplated under the sub-rule (2) of rule 15 of the rules.

4.4 In support of his submissions, the learned advocate placed reliance upon a decision of a learned Single Judge of this court in *Ramanbhai Kaljibhai v. Chief Election Officer*, 1986 G.L.H. (U.J). 58 wherein the court held that the non-submission of a caste certificate is in the nature of a technical defect not of a substantial character and that the returning officer was not justified in rejecting the nomination paper of the petitioner, particularly when he did not direct any summary inquiry as mentioned in rule 15(2) of the rules.

4.5 Reliance was also placed upon a decision of a learned Single Judge of this court in *Lajuben Jerambhai Bil v. Ahmedabad Municipal Corporation*, 1993 (1) G.C.D. 433, for the proposition that for consideration of validity of nomination papers utmost liberal approach is required to be taken because the consequences of a technical or narrow approach might ultimately result into setting aside the election for the entire ward and number of candidates would be put to unnecessary great hardships. On the other hand, even if there is a small doubt, the nomination paper has to be accepted leaving the question to be decided after the election by appropriate authority. In the facts of the said case, the petitioner had stated in her nomination that she belongs to the Bhil community which is a Scheduled Tribe. Along with that she had produced evidence that her husband belongs to the Scheduled Tribes. She had also produced similar certificate of her brother and had stated that she and her brother were children of the same parents. The court held that the fact that the candidate is required to produce a caste certificate does not mean that no other satisfactory proof of the candidate belonging to the reserved category cannot be furnished. It appears that along with the petition, the petitioner had also annexed a certificate regarding her caste. The court held that in view of these facts, it was clear that there was clear and sufficient evidence to treat the petitioner as belonging to the reserved category and that her nomination paper for the reserved seat ought to have been accepted.

4.6 The decision of a learned Single Judge of this court in the case of *Kalidas Karsanbhai Chavda v. Returning Officer*, 1981 (22) GLR 1015 : 1981 G.L.H. 167, wherein the court held thus:

"7. In Special Civil Application No. 8509 of 1992 the petitioner had stated in her nomination that she belong to Bhil community which is Scheduled Tribe. Along-with that she had produced evidence that her husband belongs to S.T. That proof is not disputed. She also produced similar certificate about her brother that he also belongs to S.T. and she also stated that she and his brother were both children of the same parents. However the petitioner nomination paper came to be rejected on the ground that she had failed to produce the proof of herself belonging to Scheduled Tribe and for that reliance was placed on the instruction para 6 (page 40 of the paper book) wherein it is provided that a candidate desiring to contest for the reserved seat for S.C./S.T. shall produce a certificate for appropriate Government Officer that the candidate belongs to such a category. This instruction in the Circular is treated as if it barred consideration of any other satisfactory proof of the candidate belonging to reserved category. For consideration of validity of nomination papers utmost liberal approach is required to be taken because the consequences of a technical or narrow approach might ultimately result into setting aside the election for the entire ward and number of candidates would be put to unnecessary great hardships. On the other hand even if there is a small doubt the nomination paper has to be accepted leaving the question to be decided after the election by appropriate authority. Once a person is allowed to contest the election there is no possibility of the entire election being set aside without clear proof that the election result is materially affected by improper acceptance of the nomination paper. Therefore if there is any doubt benefit of doubt should be given in favour of acceptance of the nomination paper and the nomination paper should be rejected only in clarets case. In the present case the nomination was supported by the evidence that not only the petitioners husband but her brother also belonged to the S.T. and on acceptance of this evidence inference could be readily drawn that the petitioner belongs to the same category. The petitioner had also stated that she and her brother were children of the same parents. That would have removed any further doubt. In this petition the petitioner has annexed a certificate regarding her caste also. In view of these facts it is clear that there was a clear and sufficient evidence to treat the petitioner belonging to reserved category and her nomination paper for the reserved seat ought to have been accepted."

4.7 Reference was made to the decision of the Supreme Court in Ramesh Rout v. Rabindra Nath Rout, (2012) 1 SCC 762, for the proposition that the use of the expression "not later than the next day but one following the date fixed for scrutiny" under the proviso to sub-section (5) of section 36 of the Act unmistakably shows that the returning officer has been vested with the discretion to fix time to enable a candidate to rebut an objection to the validity of his nomination paper and such discretion has to be fairly and judicially exercised. The refusal to grant an opportunity by the returning officer and rejecting the nomination paper would clearly amount to an arbitrary exercise of the discretion vested in him. It was contended that when the proviso to sub-rule (5) of rule 15 of the rules clearly empowers the returning officer to allow time to rebut the

objection not later than the next day immediately following the date fixed for scrutiny, the returning officer was not justified in not allowing time to the petitioner to produce the caste certificate till the next day.

4.8 It was submitted that in the light of the law laid down in the above decisions, the defect in the nomination paper cannot be said to be of a substantial character entailing rejection of the nomination of the petitioner and that in any case it was incumbent upon the returning officer to conduct a summary inquiry before rejecting the nomination paper by allowing time to the petitioner till the next day immediately following the date of scrutiny to rebut the objection. It was, accordingly, urged that the petition deserves to be allowed and that the impugned order passed by the returning officer rejecting the nomination of the petitioner deserves to be set aside and the petitioner should be permitted to contest the election.

5. Opposing the petition, Mr. Niral Mehta submitted that a candidate is required to attach a caste certificate along with the nomination form and that a nomination paper without such certificate is a defective one and cannot be accepted. It was submitted that the proviso to sub-rule (5) of rule 15 of the rules would not come into play in the facts of the present case, inasmuch as the same contemplates allowance of one day's time for rebutting the objection and not to remove the lacuna in the nomination paper. It was submitted that the nomination paper was submitted on 10.12.2016, whereas till 13.12.2016, the petitioner had not even applied for a caste certificate, which indicates lethargy on the part of the petitioner. It was contended that the proviso sub-rule (5) of rule 15 cannot be used as a tool for removal of defects or filling up the lacuna in the nomination paper and that in these circumstances, the returning officer was justified in rejecting the nomination of the petitioner.

5.1 The learned advocate for the respondents further raised a preliminary contention to the maintainability of the petition on the ground that a petition against the rejection of a nomination paper is not maintainable in view of the bar contained in article 243 O of the Constitution of India. In support of such submission, the learned advocate placed reliance upon a Division Bench decision of this Court in the case of *Thakore Shanabhai Gedalbhai v. State Election Commission*, 2005 (3) G.L.H. 686, wherein the court held that the bar contained under Articles 243-O, 243-Z and 329(b) is absolute and indicative of the intention of the Parliament to push out Article 226, where an election is called in question. The court held that order of returning officer, rejecting a nomination, cannot be challenged by way of a writ petition under Article 226 of the Constitution of India. It was, accordingly, submitted that the petition deserves to be dismissed on the preliminary ground of non-maintainability itself.

6. In the backdrop of the facts and contentions noted here-in-above, it would be germane to refer to certain statutory provisions as contained in the Gujarat Panchayats Act, 1993 (hereinafter referred to as "the Act") as well as the Gujarat Panchayats Election Rules, 1994.

7. Section 15 of the Act makes provision for election. Subsection (1) of section 15 lays down that the election of members to a panchayat shall be held on such date as the State Election Commission may appoint in this behalf. Sub-section (2) of section 15 says that such election shall be conducted in the prescribed manner. In the exercise of powers under sub-section (5) of section 274 read with sub-section (2) of section 15 of the Act, the Government of Gujarat has made rules called the Gujarat Panchayats Election Rules, 1994. Part IV of the rules deals with procedure with regard to elections. Rule 12 of the rules which is relevant for the present purpose provides for presentation of nomination papers and requirement for valid nomination and reads thus:

"12. Presentation of nomination papers and requirement for valid nomination. -

(1) A nomination paper in Form 4 shall be supplied by the returning officer to any person asking for the same.

(2) On or before the date appointed for making nominations under clause (a) of sub-rule (2) of rule 9, each candidate shall either in person or by his proposer, between the hours of eleven O'clock in the forenoon and three O'clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued under rule 10, a nomination paper completed in the form specified in sub-rule (1) and signed by the candidate and by a voter of the electoral division as proposer: Provided further that no paper purporting to be a nomination paper of a candidate which is -

(a) delivered to the returning officer before eleven O'clock in the forenoon or after three O'clock in the afternoon or on any day on which a nomination paper may be delivered in accordance with these rules; or

(b) delivered by a person other than the candidate or his proposer; or

(c) received by returning officer by post or in any other manner; shall be treated by the returning officer as a nomination paper and any such paper shall be rejected as soon as it is received by the returning officer and shall not be considered at the time of scrutiny,

Provided also that candidate not set up by the recognised political party for an election to any electoral division of taluka or a district panchayat shall not be deemed to be duly nominated candidate for election an electoral division unless the nomination paper is subscribed by one proposer and nine seconders, being voters of the electoral division.

(3) On the presentation of a nomination paper, the returning officer shall satisfy himself that the names and numbers in the list of voters of the candidate, his proposer and seconders as entered in the nomination paper are the same as those entered in the list of voters and if not, invite the attention of the candidate or the proposer or the seconder as the case may be, to his effect;

Provided that the returning officer shall permit any clerical or technical error in

the nomination paper in regard to the said names or numbers to be corrected in order to bring them in conformity with the corresponding entries in the list of voters.

(4) Where a candidate is a voter in a different electoral division, a copy of the list of voters of that division or of the relevant part thereof or a certified copy of the relevant entries in such list shall, unless it has been filed along with the nomination paper, be produced before the returning officer, at the time of the scrutiny.

(5) Nothing in this rule shall prevent any candidate from being nominated by more than one nomination paper; provided that not more than four nomination papers shall be presented by or on behalf of any candidate or accepted by the returning officer for election in the same electoral division.

(5A) A candidate shall be prohibited from filing nomination paper for election for more than two electoral divisions of the panchayat.

(6) No person shall sign as a proposer or seconder any nomination paper or papers of more than one candidate at the same election in an electoral division and if he does so, then, of all the nomination papers signed by him as proposer or seconder, only the nomination paper or papers of the candidate which or one of which is delivered first to the returning officer shall be accepted and the nomination paper or papers of all other candidates shall be rejected as soon as they are received by the returning officer and shall not be given any serial number and shall not be taken for scrutiny.

(7) The candidate or his proposed, as the case may be, shall, at the time of delivering to the returning officer the nomination paper also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in FORM-4."

8. On an analysis of the above rule, the requirements of a valid nomination can be culled out thus:

(I) the nomination paper shall be in Form 4;

(II) the nomination paper shall be completed in form specified in sub-rule (1);

(III) the nomination paper shall be signed by (i) the candidate and (ii) by a voter of the electoral division as proposer;

(IV) the nomination paper shall be delivered to the returning officer on or before the last date of making nominations between eleven O'clock in the forenoon and three O'clock in the afternoon;

(V) along with the nomination paper the candidate shall also deliver to the returning officer an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in FORM-4.

9. The first proviso to sub-rule (2) of rule 12 of the rules provides for the

eventualities under which a nomination form has to be rejected as soon as it is received, namely: (i) if it is delivered before or after the time and days specified; or (ii) if it is delivered by a person other than the candidate or his proposer; or (iii) if it is received by post or in any other manner and such nomination paper shall not be taken up for scrutiny. Another eventuality in which the nomination form can be rejected upon presentation is where the same person signs as a proposer for two or more candidates at the same election for the same electoral division, in which case the nomination paper submitted by a candidate first in point of time shall be accepted and the other nomination papers shall be rejected and not given any serial number or taken up for scrutiny. Thus, it is only in the circumstances referred to here-in-above, that a nomination paper can be rejected prior to the stage of scrutiny.

10. Insofar as examination of the nomination paper upon presentation thereof is concerned, sub-rule (3) of rule 12 of the rules provides for the limited scrutiny that the returning officer is required to make at the time when the nomination paper is presented to him, namely, that the returning officer shall satisfy himself that the names and numbers of the list of voters of the candidate or his proposer and seconders as entered in the nomination paper are the same as those entered in the list of voters, and if not, invite the attention of the candidate or his proposer or the seconder as the case may be, to this effect. The proviso to sub-rule (3) of rule 12 provides that the returning officer shall permit any clerical or technical error in the nomination paper in regard to the said names or numbers to be corrected in order to bring them in conformity with the corresponding entries in the list of voters. Therefore, it is only if the names and numbers in the list of voters of the candidate or his proposer or seconders as entered in the nomination paper are not as those entered in the list of voters, that the returning officer is required to draw the attention of the candidate or his proposer or seconder as the case may be, to this effect and to permit such error to be corrected to bring them in conformity with the corresponding entries in the list of voters. Except in the above circumstances, the statute does not require the returning officer to draw the notice of the candidate to any other deficiency nor does the returning officer appear to be empowered to permit the candidate to remove a deficiency other than that provided in sub-rule (3) of rule 12 of the rules.

11. Rule 15 of the rules provides for scrutiny of nomination papers and reads thus:

"15. Scrutiny of nomination papers. - One of the date fixed for the scrutiny of nomination under clause (b) of sub-rule (2) of rule 9, the candidates, the election agents one proposer, of each candidate and one other person duly authorised in writing by each candidate, but no other person, may stand at such time and place as the returning officer may appoint and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered other than those which have been

rejected by the returning officer under the proviso to sub-rule (2) of under sub-rule (6) of rule 12.

(2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion after such summary inquiry if any, as he thinks necessary, reject any nomination paper on any of the following grounds, namely,

(a) 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; or

(b) that the proposer is disqualified from subscribing a nomination paper; or

(c) that there has been a failure to comply with any of the provisions of rules 12 or 13; or

(d) that the candidate or the proposer or any seconder is not identical with the person whose electoral number is given in the nomination paper as number of such candidate or proposer or a seconder, as the case may be; or

(e) that the signature of the candidate or any proposer or any seconder on the nomination paper is not genuine or has been obtained by fraud.

(3) Nothing contained in clause (b), (c) or (d) of sub rule 92) shall be deemed to authorise the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

(4) The returning officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character.

Explanation. For the purposes of this sub-rule a failure to complete, or a defect in completing the declaration, as to symbols in nomination paper in Form 4 shall not be deemed to be defect of a substantial character.

(5) The returning officer shall hold the scrutiny on the appointed date in this behalf under rule 9 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or violence or by causes beyond his control;

Provided 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 fixed for scrutiny and the returning officer shall record his decision on the date to which the proceedings have been adjourned.

(6) The returning officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected shall

record in writing a brief statement of his reasons for such rejection and supply a certified copy of the order to the candidate as soon as possible after the scrutiny is over, even in the absence of an application from him and without any cost.

(7) For the purposes of this rule, the production of a certified copy of an entry made in the list of voters for the time being in force of any electoral division shall be conclusive evidence on the right of any voter named in that entry to contest the election or to subscribe to a nomination paper, as the case may be, unless it is provided that the candidate or, the case may be, the proposer is disqualified, within the meaning of sub-section (2) of section 28 of the Act, to contest the elections.

(8) The decision of the returning officer regarding acceptance or rejection of the nomination paper shall be final."

12. Sub-rule (1) of rule 15 of the rules, provides for affording facility to all candidates to examine the nomination papers of all candidates except those that are rejected under sub-rules (2) and sub-rule (6) of rule 12. Sub-rule (2) of rule 15 provides that after complying with sub-rule (1), the returning officer shall then examine the nomination papers, and shall decide all objections which may be made to the nomination and may, either on such objection or on his own motion after such summary inquiry, if any, as he thinks necessary, reject any nomination paper on any of the grounds enumerated thereunder. Thus, when sub-rule (1) of rule 15 of the rules provides for affording facility to all candidates to examine the nomination papers, it is the nomination papers as shown to the candidates which should form part of the record before the returning officer. If subsequent to the nomination papers being examined by the candidates, any changes are permitted to be made in the nomination papers, it would defeat the purpose of the rule. Therefore, removal of defects can be only prior to the stage of scrutiny to the extent contemplated under sub-rule (3) of the rule 12 of the rules. Considering the overall scheme of the relevant provisions of the Act and the rules, there is nothing contained therein to suggest that the returning officer is empowered to permit a candidate to remove a defect in the nomination paper except where specifically provided for under rule 12 of the rules. It is probably for this reason that under sub-rule (5) of rules 12, a candidate is permitted to file as many as four nomination papers, so as to ensure that at least one of such nominations is a valid one.

13. Sub-rule (3) of rule 15 of the rules says that nothing contained in clause (b), (c) or (d) of sub-rule (2) shall be deemed to authorise rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of any other nomination paper in respect of which no irregularity has been committed. Thus, if a candidate has filed more than one nomination paper and any such nomination paper does not meet with the requirements of clause b) (c) or (d) of sub-rule (2), the nomination of such candidate shall not be rejected if no irregularity has been committed in respect of any of the other nomination papers

filed by him. Thus, out of the nomination papers filed by a candidate, what is necessary is that any one of such nomination papers should not suffer from any irregularity, in which case his nomination can be accepted. The logic behind the provision could be that since there is no provision for permitting a candidate to correct any errors in the nomination paper once it is presented before the returning officer, except to the limited extent provided under sub-rule (3) of rule 12, a candidate can rectify such mistake by filing another nomination paper, and if such nomination paper does not suffer from any irregularity his nomination cannot be rejected.

14. It may be noted that one of the grounds for rejection of the nomination is as provided under sub-rule (2) of rule 15 of the rules is as provided in clause (c) thereof, viz. that there has been a failure to comply with any of the provisions of rules 12 or 13;

15. Sub-rule (4) of rule 15 of the rules, which would principally arise for interpretation in this petition, postulates that the returning officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character. The Explanation thereto which would also bear some relevance, says that for the purposes of the sub-rule a failure to complete, or a defect in completing the declaration, as to symbols in nomination paper in Form 4 shall not be deemed to be defect of a substantial nature.

16. At this juncture, reference may be made to the provisions of section 33 of the Representation of People Act, 1951, which makes provision for presentation of nomination paper and requirements for a valid nomination, which to the extent the same is relevant for the present purpose, provides thus:

"33. Presentation of nomination paper and requirements for a valid nomination. -

(1) On or before the date appointed under clause (a) of section 30 each candidate shall, either in person or by his proposer, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer:

Provided that a candidate not set up by a recognised political party, shall not be deemed to be duly nominated for election from a constituency unless the nomination paper is subscribed by ten proposers being electors of the constituency:

Provided further that no nomination paper shall be delivered to the returning officer on a day which is a public holiday:

Xxxxxx

(1A) xxxxxx

Provided further that no nomination paper shall be delivered to the returning

officer on a day which is a public holiday.

(2) In a constituency where any seat is reserved, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a Scheduled Caste or, as the case may be, a Scheduled Tribe of the State. (3) Where the candidate is a person who, having held any office referred to in section 9 has been dismissed and a period of five years has not elapsed since the dismissal, such person shall not be deemed to be duly nominated as a candidate unless his nomination paper is accompanied by a certificate issued in the prescribed manner by the Election Commission to the effect that he has not been dismissed for corruption or disloyalty to the State. (4) On the presentation of a nomination paper, the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls:

Provided that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood; and the returning officer shall permit any such misnomer or inaccurate description or clerical, technical or printing error to be corrected and where necessary, direct that any such misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper shall be overlooked.

(5) Where the candidate is an elector of a different constituency, a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll shall, unless it has been filed along with the nomination paper, be produced before the returning officer at the time of scrutiny.

(6) Nothing in this section shall prevent any candidate from being nominated by more than one nomination paper: Provided that not more than four nomination papers shall be presented by or on behalf of any candidate or accepted by the returning officer for election in the same constituency."

17. On a conjoint reading of the provisions of the rules and the provisions of the Representation of the People Act, 1951 relating to conduct of elections, it appears that while framing the election rules, the rule making body has patterned the rules more or less along the lines of the provisions of that Act. Sub-rule (1) of rule 12 of the rules is in pari-materia to subsection (1) of section 33 of the said Act. However, there is no provision akin to sub-section (2) of section 33

which provides that in a constituency where any seat is reserved, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a Scheduled Caste, or as the case may be, a Scheduled Tribe of the State. Nonetheless, Form-4 as prescribed under sub-rule (1) of rule 12 of the rules provides for such a declaration and also requires the candidate to attach a certificate of the competent authority certifying that the candidate belongs to a particular reserved class.

18. Adverting to the facts of the present case, the State Election Commission declared the election programme for holding elections of the wards of village panchayats of Rajkot Taluka on 5.12.2016. As per the election programme, the last date for filing nomination papers was 10.12.2016 and the date of scrutiny was 12.12.2016. The petitioner filled up and presented her nomination paper for ward No. 9 on 10.12.2016.

19. Part III of the prescribed nomination form, inter-alia, requires the candidate to fill up the following details:

(d) to the best of my knowledge and belief I am qualified under section (2) of section 28 of the Gujarat Panchayats Act, for being chosen to fill the seat in the panchayat of _____ village* taluka* district the office of sarpanch of _____ village panchayat.

(e) that I am a member of Scheduled Caste* Scheduled Tribe* Socially and Educationally Backward Class and a Certificate issued on (date) _____ in this behalf by _____ a competent authority is attached herewith. (Strike out (e) if not applicable)

20. A perusal of the nomination paper submitted by the petitioner shows that the above portion of Part III has been filled in by the petitioner in the following manner:

(d) to the best of my knowledge and belief I am qualified under section (2) of section 28 of the Gujarat Panchayats Act, for being chosen to fill the seat in the panchayat of Scheduled Tribe village* taluka* district the office of member sarpanch of Sadhar village panchayat. [The petitioner has scored off Sarpanch and written member]

(e) that I am a member of Scheduled Caste* Scheduled Tribe* Socially and Educationally Backward Class and a Certificate issued on (date) _____ in this behalf by _____ a competent authority is attached herewith.

21. Thus, the petitioner has left clause (e) which required her to state as to whether she belonged to the Schedule Castes, Scheduled Tribes or to a socially and educationally backward class, blank and has also not filled in details about the date of the certificate issued by the competent authority and the designation of the competent authority, but in column (d) she has stated that she believed

that she was qualified to contest a Scheduled Tribe seat.

22. It is an undisputed fact that the petitioner has filed her nomination for a ward which is reserved for the Scheduled Tribes. Apart from the fact that the petitioner has left column (e) blank, she has also not attached a certificate issued by a competent authority in support of her say that she belongs to the Scheduled Tribes. It appears that the petitioner has produced a school leaving certificate indicating that she belongs to the Hindu Bhil tribe, however, such certificate does not establish that the petitioner is a member of the Scheduled Tribes. From the facts as emerging from the record and as put forth by the learned counsel for the petitioner, at the time when the petitioner presented her nomination paper, she did not even possess a certificate issued by competent authority and had attached a school leaving certificate dated 23.6.2007 wherein her caste has been shown as Hindu Bhil. It may be noted that the petitioner has filled in the nomination form in her married name and her husband is not a member of the Schedule Tribes. Therefore, from her name it is not possible to ascertain that she belongs to a Scheduled Tribe. It may also be noted that along with the nomination form, the petitioner is also required to fill in a statement for the purpose of socio-economical and educational classification of candidates of democratic institutions like village panchayats, etc. In the said form the petitioner against the column (7) viz. caste of the candidate (SC, ST, OBC, OTHER) has filled in OTHER-general

23. On 13.12.2016, that is, on the date of scrutiny, the petitioner addressed a communication to the returning officer, Rajkot Taluka that she has applied to the officer of the TDO at about 4:00 O'clock for issuing a caste certificate, however, such certificate has not been given till 6 O'clock and hence, she may be given one day's time.

24. By the impugned order dated 13.12.2016, the returning officer has rejected the nomination of the petitioner on the ground that during the course of scrutiny, she has not submitted the caste certificate during office hours till 6:10 in the evening.

25. It has been contended on behalf of the petitioner, that in view of the proviso to sub-rule (5) of the rule 15 of the rules, which provides that in case a objection is raised by the returning officer or is made by any other person, the candidate concerned may be allowed to rebut it not later than the next day following the date fixed for scrutiny and the returning officer shall record his decision on the date to which the proceedings have been adjourned, the returning officer ought to have granted time till the next day following the date fixed for scrutiny to rebut the objection raised by him.

26. In the context of the above submission, it may be germane to refer to certain decisions of the Supreme Court, rendered in the context of the provisions of the Representation of People Act, 1951 which are in pari materia with the relevant provisions of rule 12 and 15 of the rules.

26.1 In *Brijendralal Gupta v. Jwalaprasad*, AIR 1960 SC 1049, the question before the Supreme Court was "Does the failure of a candidate to specify his age as required by the prescribed form of the nomination paper amount to a defect of a substantial character under Section 36(4) of the Representation of the People Act, 1951?" The court held thus: -

"6. It is clear that Section 33 requires that a nomination paper must be completed in the prescribed form and signed by the candidate and by the elector of the constituency as proposer. The form prescribed in that behalf is Form 2-B. The relevant portion of the prescribed form reads thus:

Form 2-B

Nomination Paper

(See Rule 4)

Election to the Legislative Assembly of ... (State)

(To be filled in by the proposer)

I hereby nominate..... as a candidate for election from the..... Assembly Constituency.

1. Full name of proposer.....
2. Electoral roll number of proposer
3. Name of candidates **father/husband
4. Full postal address of candidate
5. Electoral roll number of candidate

Date ... Signature of proposer.

(To be filled by the candidate)

I, the above-mentioned candidate, assent to this nomination and hereby declare -

- (a) that I have completed years of age;
- (b) that the symbols I have chosen are in order of preference
- (i) to (iii) ...

Date ... Signature of candidate.

** Strike out one of the alternatives as necessary.

It is common ground that the first part of the nomination paper which has to be filled in by the proposer was in order and the second part was duly signed by the candidate but failed to declare his age as prescribed by (a) above. When the returning officer noticed this omission he made an order rejecting Respondent 5's nomination. The brief statement of reasons which the returning officer has

recorded shows that he held that the failure of Respondent 5 to declare his age cannot be treated as clerical or technical error but is of a substantial nature since declaration as to age was necessary in order to entitle a candidate to be qualified under Article 173 of the Constitution. The returning officer has also noted that he took the objection suo motu and rejected the nomination paper of Respondent 5. Thus there is no doubt that Respondent 5 omitted to specify his age before he signed his nomination paper and in that sense his nomination paper has not been completed in the prescribed form. The question which arises for our decision is whether Respondent 5's omission to specify his age in his nomination paper amounts to a defect, and if yes, whether it is a defect of a substantial character under Section 36(4) of the Act.

7. On behalf of the appellants it has been conceded before us that the omission in question undoubtedly constitutes failure to comply with the provisions of Section 33, and so it attracts the provisions of Section 36(2)(b) but it is urged that the said omission does not amount to a defect under Section 36(4) much less a defect which is of a substantial character. The argument is that Section 36(4) can apply only to such cases of noncompliance with Section 33 which can be said to amount to defects and not others, and since the omission in question is not a defect there is no scope for invoking the provisions of that sub-section.

8. On the other hand the dictionary meaning of the word "defect" is "lack or absence of something essential to completeness", and in that sense omission to specify the age can and would be treated as a defect under Section 36(4). Defect also means "a flaw or a fault or an imperfection"; but whether or not it includes an omission must necessarily depend upon the context in which the word is used. In our opinion, having regard to the context it would be unreasonable to hold that the word "defect" under Section 36(4) excludes all cases of omission to specify the details prescribed by the statute in the nomination paper. We must accordingly reject the appellants' argument that the omission in question is not a defect under Section 36(4).

9. The next question which we must consider is whether in the case of such an omission it was obligatory on the returning officer to hold an enquiry under Section 36(2) of the Act. The High Court has held that the returning officer ought to have held an enquiry under Section 36(2) (a) and satisfied himself whether or not Respondent 5 was eligible to stand for the election. In our opinion the High Court was in error in coming to this conclusion. If the nomination paper of Respondent 5 did not comply with the provisions of Section 33 the case fell squarely under Section 36(2)(b) and the only question which can arise in such a case is whether or not the defect arising from the failure to comply with the provisions of Section 33 is of a substantial character or not. If the defect is not of a substantial character the returning officer shall not reject the nomination paper on the ground of the said defect; if, on the other hand, the defect is of a substantial character the returning officer has to reject the nomination paper on the ground of the said defect. That is the effect of the provisions of Section 36(2)

(b) and (4) read together. An enquiry which is necessary under Section 36(2)(a) may and can be held for instance in cases where the nomination paper shows the age of the candidate as above 25, but an objection has been raised that in fact he is below 25 and as such incompetent to stand for election under Article 173 of the Constitution; in other words, the impugned nomination has complied with the provisions of Section 33 and as such does not fall under Section 36(2)(b) at all, nevertheless the validity of the nomination can be challenged on the ground that in fact Article 173 is not complied with. Case falling under this class must be distinguished from cases falling under Section 36(2)(b). In the latter class of cases the failure to comply with the provisions of Section 33 being established there is no scope for any enquiry under Section 36(2)(a). Once the alleged non-compliance is proved, the defective nomination falls to be accepted or rejected according as the defect is of an unsubstantial or of a substantial character. Therefore, it is not right to hold that even after the returning officer was satisfied that the omission to specify his age showed that the nomination paper of Respondent 5 had not complied with the provisions of Section 33, he should still have held an enquiry under Section 36(2)(a). Non-compliance with the provisions of Section 33 itself would justify the rejection of the nomination paper provided of course that the defect arising from the non-compliance in question is of a substantial character."

27. Adverting to the facts of the present case, rule 12 of the rules requires that a nomination paper must be completed in the prescribed form. The form prescribed is in Form 4 and the relevant portion of the form requires the candidate to state as to whether she is a member of the Scheduled Castes, Scheduled Tribes or socially and educationally backward classes and is also required to state the date of the certificate issued in this behalf by the competent authority. In the present case, as noted here-in-above, the petitioner has left column (e) of the form blank and has also not attached the caste certificate issued by the competent authority, thus there is an omission on the part of the petitioner in not stating that she belongs to the Scheduled Tribes as well as not attaching a certificate of the competent authority and filling in the necessary details as prescribed in the nomination paper. The petitioner has filed her nomination for a seat reserved for the Scheduled Tribes, hence, it is in this context that the omission to submit the caste certificate has to be viewed. Undoubtedly, unless the petitioner submits proof of her caste as required under the rules, her eligibility to contest the election on a reserved seat is under doubt. Therefore, an omission to state that she belongs to a Scheduled Tribe as well as the omission to submit the requisite caste certificate is in the nature of a defect in the nomination paper. Thus, there is a failure to comply with the provisions of rule 12 of the rules, inasmuch as the nomination paper is not completed as specified in sub-rule (1) of rule 12. The only question that then arises for consideration in such a case is whether or not the defect arising from the failure to comply with the provisions of rule 12 of the rules is of a substantial character or not.

28. In this regard, it appears that when the returning officer noticed the omission to produce the caste certificate, he had granted an opportunity to the petitioner to rectify the same. However, till office hours on the date fixed for scrutiny the petitioner did not produce the requisite certificate, whereupon the returning officer passed the impugned order rejecting the nomination of the petitioner.

29. The Supreme Court in *Shaligram Shrivastava v. Naresh Singh Patel*, (2003) 2 SCC 176, was dealing with a case where the candidate had not filled in the proforma prescribed by the Election Commission which was required to be filled up to ascertain as to whether the candidate had been convicted or not for any offence mentioned in section 8 of the Representation of the People Act, 1951. The candidate filed only a blank proforma. He had, however, filled the nomination paper on Form 2-B as prescribed under rule 4 of the Conduct of Election Rules, 1961 declaring that the candidate was qualified and was not disqualified for being chosen to fill the seat. It was contended before the Supreme Court that the nomination of the candidate could not have been rejected on the ground that he had not filled up the proforma prescribed by the Election Commission, since no such proforma was statutorily provided under the provisions of the Act or under the rules framed thereunder. The court held thus:

"10. At the time of scrutiny the Returning Officer is entitled to satisfy himself that a candidate is qualified and not disqualified. Sub-section (2) of Section 36 authorises him to hold an enquiry on his own motions, though summary in nature. The Returning Officer furnished a proforma to the candidates to be filled on affidavit and filed on or before the date and time fixed for scrutiny of the nomination paper. Therefore providing a proforma, eliciting necessary and relevant information in the light of Section 8 of the Act to enquire as to whether the person is qualified and not disqualified, is an act or function fully covered under sub-section (2) of Section 36 of the Act. The Returning Officer is authorised to seek such information to be furnished at the time or before scrutiny. If the candidate fails to furnish such information and also absents himself at the time of the scrutiny of the nomination papers, is obviously avoiding a statutory enquiry being conducted by the Returning Officer under sub-section (2) of Section 36 of the Act relating to his being not qualified or disqualified in the light of Section 8 of the Act. It is bound to result in defect of a substantial character in the nomination."

"15. Since such information is necessary and relevant for the purpose of scrutiny of the nomination paper under Section 36(2), in the light of Section 8 of the Act, it can well be furnished on a format provided to the candidate by the Returning Officer and it becomes his duty to furnish such information so that a Returning Officer may discharge his statutory duty to scrutinize the nomination paper effectively, properly and in consonance with the provisions of law."

"17. In the case in hand the candidate had failed to furnish such information as sought on the proforma given to him and had also failed to be present personally or through his representative at the time of scrutiny. The statutory duty/power of

the Returning Officer for holding proper scrutiny of nomination paper was rendered nugatory. No scrutiny of the nomination paper could be made under Section 36(2) of the Act in the light of Section 8 of the Act. It certainly rendered the nomination paper suffering from defect of substantial character and the Returning Officer was within his rights in rejecting the same."

30. In the facts of the case before the Supreme Court, the proforma was prescribed by the Election Commission which was in the nature of executive instructions. In the facts of the present case, the proforma of the affidavit to be filed along with the nomination paper is prescribed under the rules, and therefore, has statutory force. It was therefore, incumbent upon the petitioner to furnish the details as required along with the nomination paper to enable the returning officer to determine as to whether or not she was qualified to contest the election. Even at the time of scrutiny, though the returning officer, afforded her an opportunity to rectify the defect, the petitioner was not in a position to do so within the time allowed by the returning officer. As noticed earlier, from the details furnished in the nomination paper and the affidavit filed with it, it was not clear as to whether or not the petitioner was qualified to contest on a seat reserved for the Scheduled Tribes inasmuch as, in the nomination paper she had not stated as to which reserved category she belongs nor had she attached the requisite caste certificate issued by the competent authority in the nomination form. Despite the aforesaid position, the returning officer instead of rejecting the nomination paper for want of compliance with the provisions of sub-rule (2) of rule 12 of the rules, did grant an opportunity to the petitioner to produce the caste certificate on the date of scrutiny. However, till the conclusion of office hours on the date of scrutiny, the petitioner failed to produce the certificate resulting in the returning officer passing the impugned order.

31. It has been contended on behalf of the petitioner, that the returning officer ought to have granted an opportunity to the petitioner to rebut the objection raised by the returning officer. Such contention is clearly misconceived, inasmuch as, it is not as if the returning officer has called upon the petitioner to meet with an objection raised by him or by any person as contemplated under the proviso to sub-rule (5) of rule 15 of the rules, but has granted an opportunity to the petitioner on the date of scrutiny, to remove the defect in the nomination paper by producing the requisite caste certificate. The question of rebuttal would arise provided the nomination paper presented by the petitioner was complete in all aspects and an objection was raised on any ground, including the ground that the petitioner did not belong to the Scheduled Tribes, in which case, the returning officer would be required to afford an opportunity to the petitioner to rebut the objection and would be required to make an inquiry into the objection and render his decision thereon. In the present case, when there is an omission on the part of the petitioner in not filling in the column stating that she belongs to the Scheduled Tribes (which the returning officer has not even taken note of probably because the petitioner has submitted an affidavit stating that she belongs to the Hindu Bhil community) as well as in not attaching a caste

certificate issued by the competent authority along with the nomination paper, which can be said to be a defect of substantial character given that the petitioner has filed nomination for a seat reserved for the Scheduled Tribes, the petitioner ought to have at least removed the defect on the date of the scrutiny. The petitioner having failed to do so, no fault can be found with the returning officer in rejecting the nomination of the petitioner.

32. A candidate who wants to contest an election on a reserved seat, should obtain a caste certificate issued by the competent authority prior to filing of the nomination paper in view of the fact that as per the prescribed proforma, such certificate should be attached along with the nomination paper inasmuch as the rules do not contemplate furnishing of such certificate at a later date. This is clear when one reads sub-rule (4) of rule 12 of the rules, which provides that when a candidate is a voter of a different electoral division, a copy of the list of voters of that division or of the relevant part thereof or a certified copy of the relevant entries in such list shall, unless it has been filed along with the nomination paper be produced before the returning officer at the time of scrutiny. Therefore, when the rule making authority wanted to permit furnishing of a document at a later stage, it has been expressly provided in the rule whereas there is no such provision for furnishing a caste certificate at a later date. Besides, as is apparent on a perusal of the record of the case, even after filing the nomination paper, the petitioner did not immediately take steps to obtain the caste certificate so as to remove the defect, but waited till the date of scrutiny to apply for such certificate. It may be noted that caste certificates are ordinarily issued after making some inquiry by the competent authority and cannot be issued for the asking. Therefore, the petitioner should have made attempts to obtain such certificate well in advance and ought not to have waited till the last date. Besides, a perusal of the affidavit made by the petitioner reveals that she has stated that she belongs to the Hindu Bhil community which has also been classified as a socially and educationally backward class as per the Baxi Commission Report, whereas the seat for which the nomination has been filed is reserved for the Scheduled Tribes. In fact, in her affidavit the petitioner has also stated that she belongs to the Hindu Bhil caste which is included in the list of castes as per the Baxi Panch Report. In these circumstances, it was incumbent upon the petitioner to attach a certificate of the competent authority along with the nomination paper, or at least to produce the same on the date of scrutiny, to establish that she belongs to a Scheduled Caste and is, therefore, qualified to contest the election for a seat reserved for the Scheduled Tribes.

33. In *Kalidas Karsanbhai Chavda v. Returning Officer*, (supra), which decision has been followed in the other decisions cited by the learned counsel for the petitioner, the first petitioner had produced evidence that her husband belongs to a Scheduled Tribe. She had also produced a caste certificate of her brother and had stated that she and her brother were children of the same parents. However, her nomination paper was rejected on the ground that she had failed to produce the proof of herself belonging to a Scheduled Tribe and for that reliance was

placed on the instruction para 6 wherein it was provided that a candidate desiring to contest for the reserved seat for S.C./S.T. shall produce a certificate of the appropriate Government Officer that the candidate belongs to such category. The court held that for consideration of validity of nomination papers utmost liberal approach is required to be taken because the consequences of a technical or narrow approach might ultimately result into setting aside the election for the entire ward and number of candidate would be put to hardship. In the opinion of this court, before accepting a nomination paper, the returning officer is required to scrutinise the same and ascertain as to whether or not the candidate is qualified to contest the election. For the purpose of ascertaining as to whether or not the candidate is qualified the necessary details have to be furnished by the candidate in the proforma prescribed under the rules. If on account of failure on the part of the candidate to furnish an information necessary to determine the eligibility of the candidate to contest the election, the returning officer is not in a position decide as to whether or not the candidate is qualified, such defect can be said to be a defect of substantial character warranting rejection of the nomination paper.

34. Moreover, this court does not agree with the principle enunciated in the above decision that in case where a caste certificate is not produced along with the nomination form and the caste is not mentioned therein, the candidate is required to be allowed time for rebutting the objection, inasmuch as, the question of rebuttal would arise provided the nomination paper is complete in all respects. At this juncture reference may be made to the decision of the Supreme Court in *Prahladdas Khandelwal v. Narendra Kumar Salave*, (1973) 2 SCC 104, wherein the court has held thus:

"8. xxxxxxxx We concur with the High Court that the form on which the nomination of the appellant was made (Ext. P-2) was the one which had been statutorily prescribed and that there was a complete omission to mention the name of the Parliamentary Constituency for which the appellant was being mentioned as a candidate. Furthermore the Assistant Returning Officer had drawn the attention of the appellant to this omission and yet the defect was not cured. This was done notwithstanding the fact, as will be presently seen, that where the defect is of a substantial character and is not of the nature contemplated by the Act and the rules it is not the duty of the Returning Officer to get this defect rectified or omission completed.

9. The next question is whether the omission to mention the name of the 26th Betul Parliamentary Constituency in Ex.P-2 was a defect of a substantial character by reason of which the nomination paper must be rejected by the Returning Officer. Section 33 deals with the presentation of the nomination paper and requirements for a valid nomination. It has to be presented after being completed in the prescribed form and signed by the candidate and by an elector of the Constituency as proposer. Sub-section (4) of that section is to the following effect:

"On the presentation of a nomination paper, the Returning Officer shall satisfy that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral roll."

Section 36 deals with scrutiny of nominations. Subsection (2) thereof provides that the Returning Officer shall examine the nomination papers and decide all objections which may be made to any nomination and may, either on such objection or on his own motion after a summary inquiry, reject the nomination paper on the ground given in clauses (a), (b) and (c). Clause (b) is "that there has been a failure to comply with any of the provisions of Section 33 or Section 34". Sub-section (4) furnishes the key to the point under consideration. According to it the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. The proviso to Rule 4 may also be noticed. It says that a failure to complete or defect in completing the declaration as to symbols in a nomination paper in Form 2-A or Form 2-B shall not be deemed to be a defect of a substantial character within the meaning of sub-section (4) of Section 36. It is thus clear that in the statute and the rules those defects have been indicated for which the nomination paper cannot be rejected and the Returning Officer has to permit the correction of those defects; [vide proviso to Section 33(4) of the Act and Rule 4 of the Rules]. But Section 36(4) clearly contemplates that where the defect is of a substantial character the Returning Officer is not enjoined to have it rectified and he has to reject that nomination paper. The matter is not *res integra* and is settled by a series of decisions of this Court. We need refer only to two of such decisions viz. *Rattan Anmol Singh v. Atma Ram*, AIR 1954 SC 510 and *Ram Dayal v. Brijram Singh*, (1969) 2 SCC 218. In the first case it was laid down in categorical terms that Section 36 is mandatory and enjoins the Returning Officer to refuse any nomination when there has been any failure to comply with any of the provisions of Section 33. The only jurisdiction the Returning Officer has at the scrutiny stage is to see whether the nominations are in order and to hear and decide objection. He cannot at that stage remedy essential defects or permit them to be remedied. It is not open to him to reject a nomination paper on the ground of a technical defect which is not of a substantial character. But he cannot remedy that defect. He must leave it as it is. If it is technical and non-substantial it will not matter.

Xxxxxxx.

10. There can be no manner of doubt that in the present case there has been a failure to comply with the provisions of Section 33 inasmuch as the name of the Constituency was not stated in the nomination paper which, therefore, could not be treated as having been completed in the prescribed form as required by Section 33(1) of the Representation of People Act. This defect was essential of a substantial character and did not fall within those provisions where the Returning Officer is enjoined either to get the defect rectified or ignore it. It was not the

duty of the Returning Officer at the stage of the scrutiny to draw the attention of the appellant to the aforesaid substantial defect for the purpose of getting the same cured. The Returning Officer was fully justified in rejecting the nomination paper."

35. In the light of the law laid down in the above decision it is amply clear that except for the defects which are permitted to be removed under the Act and the rules, the returning officer is not enjoined to either get the defect rectified or ignore it. It was not the duty of the returning officer at the stage of scrutiny to draw the attention of the petitioner to the substantial defect referred to here-in-above for the purpose of getting the same cured. Nonetheless, the returning officer did draw the attention of the petitioner to the defect in her nomination paper and the supporting affidavit with a view to enable her to remove the defect. However, the petitioner failed to do so within the time granted by the returning officer. The returning officer was therefore fully justified in rejecting the nomination paper.

36. Insofar as the decision of the Supreme Court in the case of Ramesh Rout v. Rabindra Nath Rout (*supra*) on which the learned advocate for the petitioner has placed reliance is concerned, in the opinion of this court, the said decision would have no applicability to the facts of the present case inasmuch as the same has been rendered in the context of an objection to the validity of a nomination of a candidate and not in a case where there is an omission on the part of the candidate in filling in the proforma which is required to be submitted along with the nomination form and which is necessary for the purpose of ascertaining as to whether or not a candidate is qualified to contest the election.

37. 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 held to be 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.

38. In the light of the above discussion, the court is of the view that the impugned order passed by the returning officer does not suffer from any legal infirmity warranting interference. The petition, therefore, fails and is, accordingly, dismissed.