
(2014) 04 GUJ CK 0096
In the Gujarat High Court
Case No : Application No. 5407 of 2014

Patel Atulkumar Karsanbhai	Vs	APPELLANT
Election Commissioner of India and 2 Ors.		RESPONDENT

Date of Decision : 22-04-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Government of Union Territories Act, 1963 — Section 14, 4
Representation of the People Act, 1951 — Section 30, 31, 33, 33(1), 34

Citation : (2014) 04 GUJ CK 0096

Hon'ble Judges : R.P. Dholaria, J;M.R. Shah, J

Bench : Division Bench

Advocate : H.K. Kini, Advocate for the Petitioner(s) No. 1, Advocate for the Appellant; P.B. Khambholja, Advocate for the Petitioner(s) No. 1 and Mr. Biren A Vaishnav, Advocate for the Respondent(s) No. 2, Advocate for the Respondent

Final Decision : Dismissed

Judgement

M.R. Shah, J.—By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed following main reliefs.

(i) issue appropriate writ, order or direction and be pleased to quash and set aside the illegal, illogical, arbitrary action of the respondent no. 3 of rejecting the Nomination Form of the petitioner that too without giving any opportunity to the petitioner to correct the typographical error cropped up in the Nomination Form though the petitioner remained present at the time of scrutiny on 10/4/2014 at 12.45 p.m. and, therefore, the action of respondent no. 3 of rejecting the Nomination Form of the petitioner may kindly be quashed and set aside and the order passed by the respondent no. 3 dated 10/4/2014 may be quashed and set aside.

(ii) issue appropriate writ, order or direction and be pleased to hold that the petitioner would be entitled to undertake correction of typographical error cropped-up in the Nomination form and be pleased to direct the respondent No.

3 to permit the petitioner to carry out correction in the Nomination Form as for typographical error cropped up in mentioning the name of proposer No. 3 and suitable directions be issued upon the respondent no. 3 to permit the petitioner to undertake correction accordingly and the respondents be directed to accept the Nomination Form of the petitioner for the forthcoming Lok Sabha Election i.e. for 03-Patan Constituency seat.

2. It is the case on behalf of the petitioner that the petitioner filled in the nomination form to contest the election of 03-Patan Parliamentary Constituency and Collector, Patan on 07.04.2014 in the prescribed form with the proposal of ten persons. It is the case on behalf of the petitioner that one Vishnubhai Mohanbhai Patel was shown as proposer No. 3. That there was a typographical error in mentioning serial number of said Vishnubhai Mohanbhai Patel in the voters list and part number in the voters' list. That the scrutiny of the nomination papers/forms was held and conducted by respondent No. 3 at 11.00 a.m. on 10.04.2014. However, at the time of scrutiny the petitioner could not remain present as while coming to the office of respondent No. 3, he and his proposers saw an accident in which some persons came to be injured and they were required to be taken to hospital and in fact they were taken to the hospital by petitioner and his proposers. It is case on behalf of the petitioner that thereafter, he came to know that his nomination form has been rejected by respondent No. 3 on the ground that out of ten proposers with respect to one proposer i.e. at Sr. No. 3 Vishnubhai Mohanbhai Patel number in the voters list as well as part number do not tally and there is a mismatch. It is the case on behalf of the petitioner that thereafter immediately at 2.05 p.m., he represented to respondent No. 3 and requested not to cancel his nomination form. However, nothing has been done and his form has been rejected by the Returning Officer and, therefore, the petitioner has preferred the present petition praying the aforesaid reliefs.

3. Mr. N.K. Majmudar, learned advocate appearing on behalf of the petitioner has vehemently submitted that before rejecting the nomination form of the petitioner no opportunity has been given to the petitioner to correct the defect/discrepancy in the serial and voters number of Vishnubhai Mohanbhai Patel - proposer No. 3.

3.1. It is further submitted that as such, for the purpose of scrutiny the date and time is fixed by respondent no. 3 was 10.04.2013 at 11.00 a.m. However, the time for scrutiny was required to be fixed between the hours of eleven O'clock in forenoon and three O'clock in the afternoon. It is submitted that therefore by not providing the aforesaid time for scrutiny the valuable right of the petitioner has been taken away.

3.2. It is further submitted by Mr. Majmudar, learned advocate appearing on behalf of the petitioner that even otherwise, respondent No. 3 has materially erred in considering the defect/discrepancy with respect to the proposer No. 3 of substantial nature. It is submitted that as such for the defect/discrepancy in the voters list and/or like discrepancies considering sub section (4) of section 33 of

the Representations of the People Act, 1951 (hereinafter referred to as "the Act, 1951"), an opportunity was required to be given to correct such mistakes/defects/discrepancies. It is further submitted that even as per sub section (4) of section 36 of the Act, Returning Officer shall not reject the nomination papers if the defect is not of a substantial character.

3.3. It is further submitted that in the present case, with respect to proposer no. 3 - Vishnubhai Mohanbhai Patel through oversight and by mistake, his correct serial number in the voters list and part number in the voters list was not mentioned. It is further submitted that if an opportunity would have been given to the petitioner, the petitioner would have corrected such defect/discrepancy/mistake by making necessary correction of serial number of the said Vishnubhai Mohanbhai Patel in the voters' list and even in part number also. It is submitted that as such, Vishnubhai Mohanbhai Patel and Vishnubhai Godadbhai Patel, both were proposers and/or were ready to stand as proposers of the petitioner. It is submitted that even Vishnubhai Godadbhai Patel also remained present before respondent No. 3 along with the petitioner along with Vishnubhai Mohanbhai Patel. It is further submitted that if the proper and adequate opportunity would have been given to the petitioner, the petitioner even could have proposed the name of even Vishnubhai Godadbhai Patel instead of Vishnubhai Mohanbhai Patel, and/or serial number and part number of Vishnubhai Mohanbhai Patel could have been corrected. It is submitted that in any case, an adequate opportunity was not given to the petitioner to correct the mistake/discrepancy/defect and even as per sub section (4) of section 33 such mistake cannot be said to be substantial character, the impugned action of the respondent No. 3 in cancelling/rejecting the nomination form of the petitioner is absolutely arbitrary and against the principles of natural justice and without following due procedure as required under sub section (4) of section 33 of the Act, more particularly when the time fixed by respondent No. 3 for scrutiny at 11.00 a.m. was not conformity with the provisions of Sec. 33 of the Act meaning thereby the Returning Officer ought to have fixed the time of scrutiny between hours of eleven O'clock in the forenoon and three in the Afternoon. Therefore, it is requested to allow the present petition and grant the relief as prayed for by quashing and setting aside the action of respondent No. 3 in rejecting the nomination form of the petitioner and direct the respondent No. 3 to accept the nomination form of the petitioner and to permit the petitioner to contest the election of 03-Patan Parliamentary Constituency.

4. The petition is opposed by Mr. Kavina, learned counsel appearing with Mr. Biren A. Vaishnav, learned advocate appearing on behalf of the respondents. An affidavit-in-reply and further affidavit-in-reply has been filed on behalf of the respondents.

4.1. Mr. Kavina, learned counsel appearing on behalf of the respondents has tried to raise the objection with respect to the entertain ability and/or maintainability of the present petition under Article 226 of the Constitution of India against the

decision of respondent No. 3 rejecting the nomination form on the ground that the petitioner would have an alternative and/or only remedy by way of election petition only. However, without prejudice to his aforesaid contention, and such question to be kept open, he has submitted that even the present petition is required to be dismissed even on merits also.

4.2. It is submitted by learned counsel appearing on behalf of the respondents that fixing the time at 11.00 a.m. on 10.04.2014 for the purpose of scrutiny is absolutely in accordance with law and the provisions of the Act, 1951. It is submitted that as such under the Act and/or law there is no requirement that even for the purpose of fixing time for the purpose of scrutiny, the time shall be fixed by the Returning Officer between the hours of eleven O'clock in the forenoon and three O'clock in the Afternoon. It is submitted that so far as the scrutiny of the nomination paper is concerned, it is governed by section 36 of the Act and it provides that scrutiny may take place at such time and on such date fixed by the Returning Officer for scrutiny of the nomination u/s 30 of the Act. It is submitted that even the date for nomination etc. is provided u/s 30 of the Act. It is further submitted that whenever the legislation thought it fit to fix the time between the hours of eleven O'clock in the forenoon and three O'clock in the afternoon, it is so mentioned and/or provided, like section 33(1) of the Act. It is further submitted that even otherwise, there is a logic for fixing a particular time on a particular date for the purpose of scrutiny, so that on that date and at that time all the candidates, their agents and/or proposers as mentioned u/s 36(1) of the Act for the purpose of in presence of all the candidates or other persons, scrutiny and in their presence scrutiny of nomination papers takes place. It is submitted that otherwise, if the time is fixed between the hours of eleven O'clock in the forenoon and three O'clock in the Afternoon then the different candidates, agents, proposers will remain present at different time which will not be serve the purpose of scrutiny, in presence of all the candidates or other persons, as mentioned in section 36. It is submitted that as such, no error and/or illegality has been committed by respondent no. 3 in fixing time-11.00 a.m., on 10.04.2014 for the purpose of scrutiny of the nomination papers.

4.3. It is submitted by learned counsel appearing on behalf of the respondents that an ample opportunity/opportunities were given to the petitioner as observed in the order passed by respondent No. 3 while rejecting nomination papers of the petitioner. It is submitted that the time fixed for scrutiny which was intimated to all the candidates, was at 11.00 a.m., on 10.04.2014. It is submitted that the scrutiny had taken place from at 11.10. a.m., in the presence of the General Observers and ended at 12.33 hours. It is submitted that the scrutiny of the nomination form of the petitioner was taken up after completion of scrutiny Sr. No. 9 at approximately 11.30 a.m. It is submitted that at that time it was found that out of ten proposers, one of which was at Sr. No. 3 bearing Part No. 142 and Sr. No. 26 and having name of Vishnubhai Mohanbhai Patel and signed accordingly as V.M. Patel. It is submitted that on scrutiny it was found that with respect to the said proposer No. 3, the part No. 142 and Sr. No. 46 carried the

name of Vishnubhai Godaddas Patel. It is submitted that as such, the Returning Officer did wait for the petitioner-candidate and/or his representative to make necessary correction so that necessary correction can be made. However, neither the petitioner remained present nor anybody represented the petitioner - candidate. It is submitted that therefore, it was decided to wait till completion of scrutiny process of the rest of the nomination forms. It is submitted to give fair chance and to rebut, it was decided to take up the instant case for scrutiny after completion of the rest of the nomination forms. It is submitted that even thereafter, till scrutiny of all the nominations forms were completed, neither the petitioner nor anybody remained present on behalf of the petitioner and, therefore, having found that there was a mismatch in the name of Vishnubhai Mohanbhai Patel and his part number and serial number in the voters list. It is submitted that thereafter, treating the same as the defect of substantial character, at the end and as the necessary corrections were not made, the respondent No. 3 had no alternative but to reject the nomination form of the petitioner and accordingly has rejected. It is submitted that therefore it cannot be said that the action of respondent No. 3 in rejecting the nomination form/paper of the petitioner is in violation of natural justice and no opportunity was given to cure the defects and/or discrepancies. Therefore, it is requested to dismiss the present petition on merits.

5. Heard learned advocates appearing on behalf of the respective parties.

6. Before considering the present petition on merits, the relevant provisions of the Representation of the People Act, 1951 which are necessary for the purpose of considering the present petition deserves to be considered which are as under:-

Section 30. Appointment of dates for nominations, etc.-As soon as the notification calling upon a constituency to elect a member or members is issued, the Election Commission shall, by notification in the Official Gazette, appoint-

(a) the last date for making nominations, which shall be the seventh day after the date of publication of the first mentioned notification or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(b) the date for the scrutiny of nominations, which shall be the day immediately following the last date for making nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(c) the last date for the withdrawal of candidatures, which shall be the second day after the date for the scrutiny of nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(d) the date or dates on which a poll shall, if necessary, be taken, which or the first of which shall be a date not earlier than the fourteenth day after the last date for the withdrawal of candidature; and

(e) the date before which the election shall be completed.

Section 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 u/s 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:

Provided also that in the case of a local authorities' constituency, graduates' constituency or teachers' constituency, the reference to "an elector of the constituency as proposer" shall be construed as a reference to ten per cent of the electors of the constituency or ten such electors, whichever is less, as proposers.

(1A) Notwithstanding anything contained in subsection (1), for election to the Legislative Assembly of Sikkim (deemed to be the Legislative Assembly of that State only constituted under the Constitution), the nomination paper to be delivered to the returning officer shall be in such form and manner as may be prescribed:

Provided that the said nomination paper shall be subscribed by the candidate as assenting to the nomination, and-

(a) in case of a seat reserved for Sikkimese of Bhutia-Lepcha origin, also by at least twenty electors of the constituency as proposers and twenty electors of the constituency as seconders;

(b) in the case of a seat reserved for Sanghas, also by at least twenty electors of the constituency as proposers and at least twenty electors of the constituency as seconders ;

(c) in the case of a seat reserved for Sikkimese of Nepali origin, by an elector of the constituency as proposer;

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.

(7) Notwithstanding anything contained in subsection (6) or in any other provisions of this Act, a person shall not be nominated as a candidate for election,-

(a) in case of a general election to the House of the People (whether or to held simultaneously from all Parliamentary constituencies), from more than two Parliamentary constituencies;

(b) in the case of a general election to the Legislative Assembly of a State

(whether or not held simultaneously from all Assembly constituencies), from more than two Assembly constituencies in that State;

(c) in the case of a biennial election to the Legislative Council of State having such Council, from more than two Council constituencies in the State;

(d) in the case of a biennial election to the Council of States for filling two or more seats allotted to a State, for filling more than two such seats;

(e) in the case of bye-elections to the House of People from two or more Parliamentary constituencies which are held simultaneously, from more than two such Parliamentary constituencies;

(f) in the case of bye-elections to the Legislative Assembly of a State from two or more Assembly constituencies which are held simultaneously, from more than two such Assembly constituencies;

(g) in the case of bye-elections to the Council of States for filling two or more seats allotted to a State, which are held simultaneously, for filling more than two such seats;

(h) in the case of bye-elections to the Legislative Council of a State having such Council from two or more Council constituencies which are held simultaneously, from more than two such Council constituencies.

Section 35. Notice of nominations and the time and place for their scrutiny.

The returning officer shall, on receiving the nomination paper under sub-section (1) or, as the case may be, sub-section (1A) of Section 33, inform the person or persons delivering the same of the date, time and place fixed for the scrutiny of nominations and shall enter on the nomination paper its serial number, and shall sign thereon a certificate stating the date on which and the hour at which the nomination paper has been delivered to him; and shall, as soon as may be thereafter, cause to be affixed in some conspicuous place in his office a notice of the nomination containing descriptions similar to those contained in the nomination paper, both of the candidate and of the proposer.

Section 36 Scrutiny of nomination-

(1) On the date fixed for the scrutiny of nominations u/s 30, the candidates, their election agents, one proposer of each candidate, and one other person duly authorised in writing by each candidate but no other person, may attend 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 within the time and in the manner laid down in Section 33

(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 on any of the following grounds;

(a) that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely-

Articles 84, 102, 173 and 191

Part II of this Act, and Sections 4 and 14 of the Government of Union Territories Act, 1963(20 of 1963); or

(b) that there has been a failure to comply with any of the provisions of Section 33 or Section 34; or

(c) that the signature of the candidate or the proposer on the nomination paper is not genuine.

(3) Nothing contained in Clause (b) or Clause (c) of sub-section (2) 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 defect which is not of a substantial character.

(5) The returning officer shall hold the scrutiny on the date appointed in this behalf under Clause (b) of Section 30 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open 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 but one 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.

(7) For the purposes of this Section, a certified copy of an entry in the electoral roll for the time being in force of a constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, of the Representation of the People Act, 1950(43 of 1950)

(8) Immediately after all the nomination papers have been scrutinized and decisions accepting or rejecting the same have been recorded, the returning officer shall prepare a list of validity nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it to his notice board.

7. At the outset, it is required to be noted that the election programme declared by the Election Commission which reads as under:-

8. For the General Lok Sabha election more particularly with respect to 03-Patan Parliamentary Constituency, it appears that the aforesaid election programme came to be declared as per section 30 of the Act, 1951. As per the aforesaid election programme, the last date of filling up the nomination form is 09.04.2014 and the date of scrutiny of the nomination was 10.04.2014. Thus, as per the election programme declared u/s 30 of the Act, 1951, the date of scrutiny of the nomination was 10.04.2014. It appears and it is not disputed that all the candidates inclusive of the petitioner who filled the nomination papers with respect to 03-Patan Parliamentary Constituency were informed in advance the date and time of scrutiny of the nomination forms/papers and all were informed that scrutiny of nomination forms/papers will take place at 11.0 a.m., on 10.04.2014. Therefore as such and considering section 36(1) of the Act, 1955, the respective candidates, their representatives, agents and one of the proposer as mentioned in sub section (1) of section 36 of the Act, 1951 were required to be remain present at the time of scrutiny of nomination forms i.e. at 11.00 a.m., on 10.04.2014. It is an admitted position that for whatever reason neither the petitioner - candidate nor any of his proposer and/or representative, agent remained present at the time of scrutiny of the nomination papers at 11.00 a.m., on 10.04.2014 till the scrutiny of the nomination papers was completed. It is the case on behalf of the petitioner that the time of 11.00 a.m., fixed for the purpose of scrutiny of nomination forms/papers is illegal and bad in law. It is also the case on behalf of the petitioner that instead of giving a particular time i.e. 11.00 a.m., in the present case the returning officer and the concerned officer ought to have fixed the time between the hours of eleven O'clock in the forenoon and three O'clock Afternoon. Thus, according to the petitioner, for the purpose of scrutiny the time ought to have been fixed between 11.00 a.m. to 3.00 p.m., on 10.04.2014. The aforesaid has no substance. It is required to be noted that such time is required to be fixed between the hours of eleven O'clock in the forenoon and three O'clock in the Afternoon only with respect to the presentation of the nomination forms/papers as provided under sub section (1) of section 33 of the Act, 1951. There is no such requirement of fixing time between the hours of eleven O'clock in the forenoon and three O'clock in the Afternoon for the purpose of scrutiny of the nominations. There is no such requirement under the Act and/or the law. Whenever legislature has thought it fit to provide time between the hours the same has been provided like under sub section (1) of section 33 of the Act, 1951. When the legislature has thought it fit not to provide fixing of such time between the hours of eleven O'clock in the forenoon and three O'clock in the afternoon, as provided under sub section (1) of section 33, while scrutiny of nomination papers, the same cannot be read into u/s 36 of the Act, 1951. On the contrary, section 36(1) provides that on the date of fixed for the scrutiny of nominations u/s 30, the candidates, their election agents, one proposer of each candidate, and one other person duly authorised in writing by

each candidate but no other person, may attend at such time and place as the returning officer may appoint. Therefore, the contention on behalf of the petitioner that the respondent No. 3 has committed an error and/or illegality in fixing the specific time at 11.00 a.m., on 10.04.2014 for the purpose of scrutiny of nominations forms/papers has no substance.

9. Now so far as the contention on behalf of the petitioner that no sufficient opportunity has been given to the petitioner to correct the error and/or mistake in the nomination papers with respect to the proposer No. 3 is concerned, from the minutes drawn by the returning officer and the order passed by him and the affidavit-in-reply, the same does not appear to be true. From the order passed by respondent No. 3 while rejecting the nomination form of the petitioner, it appears that till the scrutiny of all the nominations papers were over, the authorised-respondent No. 3 waited for the petitioner - candidate, his representative and/or even his agent, so that the petitioner can correct the mistake and/or discrepancy and/or defect in serial number and in voter number of proposer No. 3. The order passed by respondent No. 3 rejecting the nomination form of the petitioner is self-explanatory and it does not require any further elaboration. Under the circumstances, as such, it cannot be said that no sufficient opportunity has been given to the petitioner to correct the error and/or mistake and/or defect and/or discrepancy in the nomination for with respect to the proposer No. 3.

10. It is also required to be noted that as such, the petitioner himself is not clear whether there was a mistake in the name of the proposer and/or in the serial number and/or part number of the particular proposer. On one hand, it is the case on behalf of the petitioner so pleaded in the petition that by mistake in place of Vishnubhai Godadbbhai Patel, the name of Vishbhubhai Mohandas Patel was mentioned. However, in the amendment, the petitioner has come out with the case that there was a mistake in mentioning serial number and part number in the voters list of Vishnubhai Mohanbbhai Patel and by mistake the serial number and part number of Vishnubhai Godadas Patel was mentioned instead of Vishnubhai Mohanbbhai Patel. Thus, the petitioner himself is not clear who was his proposer either Vishnubhai Mohanbbhai Patel or Vishnubhai Godadas Patel. If the case of the petitioner as pleaded at initial stage is considered i.e. instead of Vishnubhai Godadas Patel by mistake the name of Vishnubhai Mohanbbhai Patel is mentioned in that case as such there was a signature of V.M. Patel (Vishnubhai Mohanbbhai Patel). Therefore, the contention on behalf of the petitioner that instead of Vishnubhai Godadas Patel, the name of Vishnubhai Mohanbbhai Patel by mistake was mentioned cannot be accepted. In any case as the petitioner himself not clear and the petitioner has taken contrary stands, no relief can be granted to the petitioner in this petition in exercise of powers under Article 226 of the Constitution of India.

11. Now so far as the contention/submission on behalf of the petitioner that Vishnubhai Mohanbbhai Patel and Vishnubhai Godadas Patel both were his proposers and both remained present after scrutiny and rejection of the

nominations forms/papers and, therefore, if further opportunity would have been given to the petitioner, he could have shown either of them as proposers. The aforesaid cannot be accepted. A candidate is required to give names of the proposers at the time of filling of nomination forms and subsequently he cannot be permitted to change his proposer at the time of scrutiny. The aforesaid is not permissible under the law. Under the circumstances, the aforesaid has no substance.

12. In view of the above and for the reasons stated above, there is no substance in the present petition and the same deserves to be dismissed and accordingly, is dismissed. Notice is discharged.