

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 177 of 2023

Date of Decision: 22.08.2023

Shri. Tennydard M. Marak

Vs.

The Election Commission of
India & Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) :

Mr. J.C. Gaur, Adv. with
Mr. U. Das, Adv.

For the Respondent(s)

Dr. N. Mozika, DSGI with
Ms. S. Rumthao, Adv. (For R 1 & 2)
Mr. A. Kumar, AG with
Mr. A.S. Pandey, Adv.
Mr. S. Sahay, GA
Ms. S. Laloo, GA (For R 3-6).

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| i) | Whether approved for reporting in Law journals etc.: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |

Oral:

1. The instant writ petition relates to the purported inaction on the part of the Election Commission of India, Chief Electoral Officer, State

of Meghalaya and the other official respondents on complaints by the petitioner about the violation of the provisions of the Representation of the People Act, 1951 as well as the Model Code of Conduct, during the general elections for the Legislative Assembly of the State of Meghalaya held in 2023 by the respondent No. 7, the returned candidate from 43, Williamnagar Assembly Constituency. The prayer of the writ petitioner is for directions for registration of a case on the basis of a complaint dated 23.02.2023 and FIR dated 03.04.2023.

2. Mr. J.C. Gaur, learned counsel for the petitioner submits that the writ petitioner is not challenging the election of the respondent No. 7, but is aggrieved only against the action of the respondent No. 7, which constitute offences punishable under Section 153A, 163 and 171F of the Indian Penal Code. Learned counsel submits that inspite of the 2 complaints, the Officer In-charge of Williamnagar Police Station, by letter dated 28.04.2023, had informed the petitioner that the matter is clearly under the RP Act, 1951 and the Conduct of Election Rules, 1961, instead of proceeding with registration of the case. It has further been submitted that, this Court under Article 226 of the Constitution, has ample discretion to pass appropriate orders directing for investigation and for action to be taken as per the provision of the RP Act, 1951. In support of his arguments, the learned counsel has cited the

case of *Benedict Denis Kinny vs. Tulip Brian Miranda & Ors.* reported in (2021) 12 SCC 780, with regard to jurisdiction under Article 226 of the Constitution, to pass interim or final orders in matters governed by statute and statutory authorities.

3. The learned Advocate General, Mr. A. Kumar, in reply has submitted that the allegations contained in the writ petition are totally confined to allegations against the respondent No. 7, for violation of the Model Code of Conduct and as such, the writ petition on this ground itself is not maintainable, as the same is barred by Article 329(b) of the Constitution, which has laid down that no election to either House of Parliament or to the House of the Legislature of a State shall be called in question except by an Election Petition. It is further submitted that Section 80 of the RP Act, 1951, specifically provides that no election shall be called in question except by an Election Petition presented in accordance with the provisions of this part, and as such, the instant writ petition is liable to be dismissed. In this context, the learned Advocate General has placed the decision of the Hon'ble Supreme Court rendered in the case of *N.P. Ponnuswami vs. Returning Officer, Namakkal Constituency & Ors.* reported in (1952) 1 SCC 94.

4. The learned Advocate General, has also drawn the attention of the Court to the fact that, the verbal submissions as made by the learned

counsel for the petitioner is not reflected anywhere in the pleadings of the writ petition and further that, even the complaint dated 23.02.2023, on which action is sought, was not even filed by the petitioner but by another person namely a candidate from South Tura named Leslee K. Sangma. The petitioner he submits, had already approached this Court, by way of Election Petition being Election Petition No. 8 of 2023, but withdrew the same on 25.05.2023, on realizing that the same was filed beyond the prescribed period of limitation and therefore, was not maintainable. He therefore submits that, the petitioner in filing the instant writ application is abusing the process of law, in view of the express bar by law in seeking such reliefs as prayed.

5. Dr. N. Mozika, learned DSGI representing the respondents No. 1 and 2, while endorsing and adopting the submissions made by the learned Advocate General, has also submitted that the results of the election were declared on 02.03.2023, and the complaint was submitted on 23.03.2023, after the election process was over and the Model Code of Conduct no longer in force. Once elections are over, he submits, the only remedy available to the petitioner, subject to establishing his locus standi was to file and pursue an Election Petition, which the petitioner failed to do within the prescribed time limit of 45(forty-five) days from

the date of declaration of election results. As such, he submits the writ petition is not maintainable and liable to be rejected in limine.

6. Heard learned counsels for the parties. Shorn of all unnecessary details, the only point for consideration in the instant writ application is whether the instant application is maintainable in the facts and circumstances of the case. As discussed earlier, the writ petitioner had approached this Court, by way of an Election Petition, but as the same was barred by limitation had withdrawn the same and has come again by way of the instant writ petition. A perusal of the averments and statements made in the writ petition clearly disclose that the entire cause of action is centered around the perceived violation of the Model Code of Conduct, by the respondent No. 7 during the course of the Assembly elections to 43, Williamnagar Constituency.

7. In this scenario, therefore Article 329(b) of the Constitution will definitely come into play. Article 329(b) of the Constitution of India, imposes a strict bar to the interference by Courts in electoral matters and for easy reference is quoted herein below.

“329. Bar to interference by courts in electoral matters.- [Notwithstanding anything in this Constitution[]]***

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State

shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.”

8. Furthermore, Section 80 of the RP Act, 1951, has also provided that no election shall be called in question, except by an Election Petition presented in accordance with the provisions of that part which prescribes the presentation of an Election Petition before the High Court. Section 81 and 86 prescribe the manner of presentation and trial of an Election Petition. Section 80, 81 and 86 are reproduced herein below.

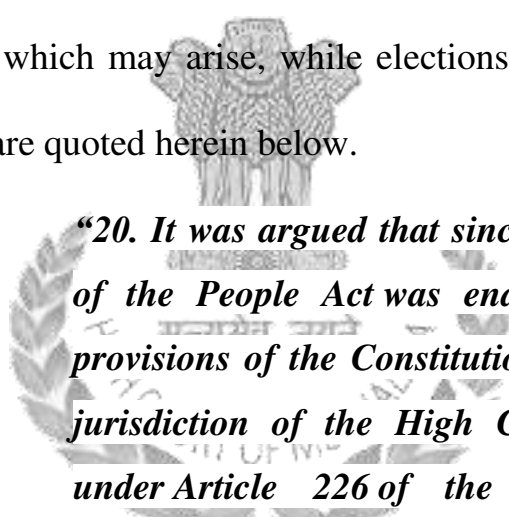
“80. Election petitions.—No election shall be called in question except by an election petition presented in accordance with the provisions of this Part.

81. Presentation of petitions.—(1) An election petition calling in question any election may be presented on one or more of the grounds specified in [sub-section (1)] of section 100 and section 101 to the [High Court] by any candidate at such election or any elector [within forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates].

86. Trial of election petitions.—(1) The High Court shall dismiss an election petition which does not

comply with the provisions of section 81 or section 82 or section 117.”

9. The Hon’ble Supreme Court in the case of *N.P. Ponnuswami vs. Returning Officer, Namakkal Constituency & Ors.(supra)* cited by the learned Advocate General, at Paras – 20 and 21, held that the language used in Article 329(b) of the Constitution, and Section 80 of the RP Act, 1951, exclude the jurisdiction of the High Court, to deal with any matter which may arise, while elections are in progress. The said paragraphs are quoted herein below.



“20. It was argued that since the Representation of the People Act was enacted subject to the provisions of the Constitution, it cannot bar the jurisdiction of the High Court to issue writs under Article 226 of the Constitution. This argument however is completely shut out by reading the Act along with Article 329(b). It will be noticed that the language used in that article and in Section 80 of the Act is almost identical, with this difference only that the article is preceded by the words “notwithstanding anything in this Constitution”. I think that those words are quite apt to exclude the jurisdiction of the High Court to deal with any matter which may arise while the elections are in progress.

21. It may be stated that Section 107(1) of the Representation of the People Act, 1949 (12 & 13 Geo. 6, c. 68) in England is drafted almost in the same language as Article 329(b). That section runs thus :-

“No parliamentary election and no return to Parliament shall be questioned except by a petition complaining of an undue election or undue return (hereinafter referred to as a parliamentary election petition) presented in accordance with this Part of this Act.”

10. In the case of *Ashok Shankarrao Chavan vs. Madhavrao Kinhalkar & Ors.* reported in (2014) 7 SCC 99, the Supreme Court re-affirmed this position by declaring in Para – 35, as follows.

“35. Apart from the above provisions, under Article 329(b), it is specified that an Election to either House of Parliament or either House of the Legislature of a State, cannot be called in question except by an election petition presented to such authority in such manner as may be provided for by or under any law made by the appropriate legislature. While Articles 101 to 103 and 191 to 192 deals with the disqualification of an elected member either to

Parliament or to the State Legislature, Article 329(b) relates to the validity of a member elected to any constituency in an election held in accordance with law and such validity can be examined only by a prescribed authority under the law made by the appropriate legislature. Reading Article 329(b) and Sections 80 to 116 of the Act together, the position emerges that the status of a validly elected candidate in an election can be called in question only before the Election Tribunal (the High Court) by way of an election petition and such election petition to be decided by the Election Tribunal (the High Court) in the manner prescribed under the abovereferred provisions by following the procedures laid down therein. It further emerges that the validity of an election to either of the House of Parliament or the State Legislature cannot be called in question in any other manner other than what has been prescribed under the provisions of the Act, as has been set out in Sections 80 to 116 of the Act.”

11. The position of law being crystal clear, the writ petition seeking invocation of the writ jurisdiction of this Court, in an attempt to unseat the respondent No. 7, is therefore not maintainable and is liable

to be dismissed. The judgment placed by the learned counsel for the petitioner being of no assistance to his case is not discussed.

12. Accordingly, the writ petition for the reasons aforementioned is dismissed with costs of Rs.15,000/- (Rupees Fifteen Thousand) only to be paid to the Meghalaya State Legal Services Authority for the purposes of legal aid, within 15(fifteen) days from the date of this order.

Judge

Meghalaya
22.08.2023
"D.Thabak-PS"

