

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.2669 of 2015
Date of decision: 19.2.2015**

Madhu Khanna

.....Petitioner

Vs.

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. SNEH PRASHAR**

Present: Mr.Vishal Sodhi, Advocate for the petitioner.
Mr. Vinod S.Bhardwaj, Addl.A.G.Punjab.

Ajay Kumar Mittal,J.

1. Challenge in this petition filed under Articles 226/227 of the Constitution of India is to the order dated 12.2.2015, Annexure P.1 passed by respondent No.4 – Returning Officer, Office of Deputy Commissioner, Hoshiarpur, whereby the nomination paper of the petitioner for contesting the election to Ward No.39, Municipal Corporation, Hoshiarpur has been rejected by the respondents, being contrary to the provisions of Section 41 of the Punjab State Election Commission Act, 1994 (in short, “the Act”). Prayer has been made for directing the respondents to accept the nomination paper of the petitioner and allow her to contest the election on the basis of nomination papers as filed by her or in the alternative to stay the process of election of Ward No.39, Hoshiarpur during the pendency of the present

petition.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is resident of Hoshiarpur City. The Government of Punjab through Department of Local Government vide notification dated 2.2.2015 issued process to conduct general elections to six Municipal Corporations i.e. Pathankot, Phagwara, Hoshiarpur, Sahibzada Ajit Singh Nagar, Moga and Bathinda and also to conduct by-elections of some of the wards of the Municipal Corporations of Jalandhar and Patiala. As per notification, elections for all these municipal corporations are notified to be held on 22.2.2015. Respondent No.2 issued the programme for conduct of the election by issuing a notification dated 7.2.2015 as per detail below:-

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|----------------|---|
| (i)11.2.2015 | Last date for making nominations. |
| (ii)12.2.2015 | Date for scrutiny of nominations. |
| (iii)13.2.2015 | Last date for withdrawal of candidatures. |
| (iv)22.2.2015 | Date of Poll. |

The petitioner is a social worker in the City of Hoshiarpur and allied with the Indian National Congress. The name of the petitioner has been proposed by the Indian National Congress and she has been given ticket to contest the election from the Congress party from Ward No.39, Municipal Corporation of Hoshiarpur which is being kept reserved for a woman candidate. On 11.2.2015, which was the date fixed for filing the nomination, the petitioner filed her nomination paper to contest the election. She prepared all the necessary documents by signing the nomination form etc. i.e. Form No.20 as prescribed under the Punjab Municipal Election Rules, 1994 (in short,

“the Rules”) and submitted the same to the Returning Officer. The said nomination papers were duly checked and scrutinized by three officers who were present in the office of respondent No.4. They duly accepted the nomination papers of the petitioner and issued receipt of the same to her. At that time, no objection with regard to non-appending of signatures on the form was pointed out by the office of respondent No.4 on 11.2.2015. On 12.2.2015, the petitioner was called for scrutiny of nomination papers as per Rule 39 of the Rules and section 41 of the Act by respondent No.4 alongwith proposer. The petitioner appeared in the office of respondent No.4. She was surprised to know by the officers of respondent No.4 that in the nomination form which was filed by her had neither been signed by her nor by her proposer. The petitioner did not believe the version of the officers that she missed her signatures on the nomination form since she filled her form in all respects. The petitioner requested the officers to show her the original nomination form but the same was not shown to her. However, the petitioner was told by the officers that they would rectify the form by allowing her to sign the same on the condition that she would accept that she committed a mistake in her nomination form by not appending her signatures. On their saying, the petitioner wrote an application stating that she missed her signatures inadvertently on the form as the officers allured her that they would rectify it. According to the petitioner, non signature of a candidate on nomination form was merely an irregularity and not an illegality and therefore the same can be rectified at the stage of scrutiny of nomination. As per averments in the petition, the officials of respondent No.4 were following the guidelines and instructions

of the ruling party i.e. BJP. They were rejecting and accepting the nomination papers of the candidates as per their choice and will. The petitioner was surprised to know in the evening that her nomination paper had been rejected on the ground that neither the candidate nor her proposer had signed the same i.e. Form No.20 as provided under Rule 36 of the Rules. The petitioner went to the office of respondent No.4 and asked for the copy of the order but the same was not given to her. However, after making efforts, the petitioner got the copy of the order dated 12.2.2015 passed by respondent No.4. According to the petitioner, she had been defrauded by the office of respondent No.4 as her nomination form had been changed/replaced. Further, there was cutting and tampering in the original form made by respondent No.4. Aggrieved by the action of respondent No.4 in rejecting the nomination paper of the petitioner, she has filed the instant writ petition.

3. Notice of motion was issued. Shri Vinod S. Bhardwaj, Additional Advocate General, Punjab has appeared and has produced the original record for perusal of the Court.

4. We have heard learned counsel for the parties and perused the record.

5. Learned counsel for the petitioner contended that the nomination paper of the petitioner had been replaced whereas the original nomination paper was signed by her. It was also urged that it was the duty of the Returning Officer to have procured the signatures of the petitioner after pointing out the infirmities in the nomination form. Support was drawn from the judgments of the Apex Court in *Shaligram Shrivastava vs. Naresh*

Singh Patel, AIR 2003 SC 2128 and *Resurgence India vs. Election Commission of India and another*, AIR 2014 SC 344. It was also argued that non-signing of the form was an irregularity and not an illegality which could entail rejection of the form by the Returning Officer. Reliance was also placed on Section 41 of the Act and Rule 39 of the Rules.

6. Section 41 of the Act and Rule 39 of the Rules read thus:-

Section 41 : Scrutiny of nominations (1) On the date fixed for the scrutiny of nominations under section 35, the candidates, their election agents, one proper of each candidate and one other person duly authorized 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 38.

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 the nomination on the following ground, namely:-

(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 this Act; or

(b) that there has been a failure to comply with any of the provisions of section 38 or section 39.

(3) Nothing contained in clause (b) and 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 endorse on such 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.

(6) For the purposes of this section, a certified copy of an entry in the electoral roll for the time being in force of the constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to a disqualification specified under this Act.

(7) 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 validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it to the notice board of his office.”

“Rule 39. Scrutiny of Nomination papers – The Returning Officer shall examine the nomination papers at the date, time and place appointed in this behalf, hear objections if any, made by other candidates or their authorized agents as to the eligibility of any candidate and decide these objections after such enquiry as he may consider necessary. The decision rejecting or accepting a nomination paper shall be recorded on the nomination paper and signed by the Returning officer and if a nomination paper has been rejected, reasons thereof shall also be briefly recorded on the nomination papers.”

7. The original record was produced. The Additional Advocate General, Punjab referred to proceedings on 12.2.2015 wherein the petitioner had accepted that due to ill-health of her husband who was serious, she

could not sign the nomination form by mistake. However, a perusal of the same shows that no request or prayer was made to the Returning Officer for signing the nomination form by her and also by her proposer. In such circumstances, when petitioner had accepted that nomination form was inadvertently not signed by her and the proposer, it cannot be said that the original nomination form filed by the petitioner was replaced. Further whether the form was signed or not raises a disputed question of fact. On a query being put to the learned counsel for the petitioner as to why the nomination form was not signed by her, no satisfactory explanation was furnished except to urge that it was by undue influence that the form was not got signed from the petitioner. However, in the absence of any material, no definite conclusion in favour of the petitioner can be arrived at. Further, on perusal of the original nomination form, it appears that in accordance with the provisions of the Act and the Rules, the Returning Officer passed the order after recording reasons.

8. Examining the scope of writ jurisdiction under Article 226 of the Constitution of India where disputed questions of facts are involved, a Division Bench of this Court in *N.C.Mahendra v. Haryana State Electricity Board and others*, AIR 1984 Punjab 26 had laid down that ordinarily a writ would not issue in favour of a person where disputed questions of facts are raised. The relevant portion reads thus:-

“12. An identical legal position ensures within this country and High Courts have repeatedly held that the exercise of jurisdiction under Article 226 of the Constitution is discretionary and not obligatory without being exhaustive, it is settled law that the Court would not ordinarily issue a writ in favour of a person, who has (i) an adequate alternative

remedy, (ii) who is guilty of delay which is unexplained, (iii) who is guilty of conduct disentitling him to relief, (iv) where the interest of justice do not require that relief should be granted, (v) where the petitioner raises a disputed question of fact, (vi) where the grant of writ would be futile, and (vii) where the impugned law has not come into force. It would follow from the above that the grant or refusal of a writ is within the judicial discretion of the Court and that indeed is the line which divides the extra ordinary remedy from the ordinary one by of a civil suit.” (Emphasis supplied).

The Hon'ble Supreme Court in State Cadre Authority and another v. K.S.Bajpal and others, 1990(Suppl.) SCC 713, Bhagubhai Dhanabhai Khalasi and another v. The State of Gujarat and others, 2007(4) SCC 241 and Mukesh Kumar Agrawal v. State of UP and others, 2009(13) SCC 693 has held that wherever disputed question of fact is raised in writ proceedings, the writ petition was not an appropriate remedy. Reference may also be made to the judgment of the Apex Court in *Dwarka Prasad Agarwal (D) by Lrs. and another vs. B.D.Agarwal and others*, AIR 2003 SC 2686, wherein it was observed as under:-

“We may, however, hasten to add that as at present advised we do not intend to enter into the contention of the petitioners that their fundamental right under Article 19 of the Constitution of India had been infringed. This Court would have entered into the question, if the facts were undisputed or admitted. The question as regard infringement of fundamental right and that too under Article 19 of the Constitution of India cannot be gone into when the facts are disputed. Whether Dwarka Prasad Agarwal and consequently the substituted petitioners are owners of the newspapers and if so to what extent being disputed, it cannot be said, that by reason of the impugned order dated

3.9.1992 passed by the first respondent herein alone, the fundamental right of the petitioners under Article 19 had been infringed.”

9. Further, no benefit can be derived in the light of the aforesaid facts from the judgments relied upon by the learned counsel for the petitioner being based on individual fact situation involved therein. Consequently, finding no merit in the petition, the same is hereby dismissed. However, it shall be open to the petitioner to take recourse to statutory remedies as may be available to her in accordance with law.

10. The original record be handed over to the learned counsel for the State under proper receipt.

(Ajay Kumar Mittal)
Judge

February 19, 2015

(Sneh Prashar)
Judge

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