

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2017

CORAM

THE HON'BLE MR.HULUVADI G.RAMESH, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.No.7654 of 2017

R.Ravikumar ... Petitioner -in-Person

Vs.

1 The Chief Election Commissioner,
Fort St. George,
Chennai - 600 009.

2. The Election Officer,
R.K. Nagar Constituency,
No.11, Dr.Radhakrishnan Nagar,
Chennai - 600 021. ... Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus calling for the records and quash the order of the second respondent in R.C.No.A1/0972/2017 dated 24.03.2017 and directing the respondents 1 and 2 to accept nomination of the petitioner to contest the by election for No.11, Dr. R.K. Nagar Constituency for the election to be conducted on 12.04.2017 as independent candidate.

For Petitioner : Mr.R.Ravikumar
Petitioner-in-person

For Respondents : Mr.Niranjan Rajagopalan
for M/s.G.R. Associates

ORDER

(Order of the Court was made by the Acting Chief Justice)

Mr.Niranjan Rajagopalan, learned counsel takes notice for the respondents.

2. Heard the petitioner in person and the learned counsel for the respondents.

3. The petitioner has filed this writ petition seeking to quash the order of the second respondent dated 24.3.2017 rejecting the nomination application of the petitioner.

4. It is the case of the petitioner that he has filed nomination application for contesting in R.K. Nagar Constituency for the election to be held on 12.04.2017. His nomination application was assigned Serial No.85. On the date of scrutiny, even though the candidates from major political parties were allotted more than one hour time, besides such of those candidates were permitted to make corrections, additions, deletions etc., because of non-mentioning of age by the petitioner in Form-2B, Part III in respect of 'B' Column, his application was rejected vide impugned order dated 24.3.2017, which is challenged in this writ petition.

5. The petitioner appearing in person submits that he has filed nomination application to contest in the by-election of R.K. Nagar Constituency. He submits that 24th March, 2017 was fixed for scrutiny of the applications. On that date, he was present before the respondent authorities and he was assigned Serial No.85. During scrutiny, major political parties were allotted more than one hour time and were permitted to make corrections, additions etc. When his turn comes, he was not allotted even two minutes time to make corrections and the second respondent simply rejected his nomination. He further submits that the moment the respondents handed over the rejection letter, the police who was standing nearby dragged him and pushed him out of hall. The scrutiny of the application was not done on proper application of mind. Therefore, he seeks interference of this Court.

6. The learned counsel for the respondents submits that the writ petition is not maintainable and the remedy open to the petitioner is to file election petition. He further submits that as per Article 329(b) of the Constitution of India, no election either to the Parliament or to the Legislature of a State shall be called in question except by an election petition. In support of his contention, the learned counsel for the respondents relies upon the judgment of the Apex Court in

N.P.Ponnuswami v. The Returning Officer, Namakkal Constituency, Namakkal, Salem District and others, AIR (39) 1952 Supreme Court 64.

7. For an election to R.K. Nagar Constituency, the petitioner in person and others have filed nominations. On 24.3.2017, the Returning Officer took up for scrutiny the nomination paper of the petitioner and others. At that time, the Returning Officer found that in Form-2B, Part-III in respect of 'B' column, the age of the petitioner was not mentioned, which resulted in rejecting the nomination application of the petitioner.

8. The operative portion of the impugned order of the Returning Officer reads as under:-

"Your election nomination Form No.85 was considered carefully and the following order is passed:

In the election nomination form in part III there is no mention of your age under oath. Not filling up the age in the election nomination form is a big mistake and is sufficient enough to reject nomination. The contention of the candidate that since he has mentioned his true age in the affidavit together with his nomination is in order is not acceptable, since as per the Constitution of India the eligible age is 25 years and therefore your nomination is rejected."

9. Before proceeding further, it is relevant to refer to Article 329(b) of the Constitution of India and Section 80 of the Representation of People Act, 1950, which read as under:-

"Article 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."

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

10. A bare reading of Clause (b) of Article 329 of the Constitution of India shows that it starts with a non-obstante

clause which provides that notwithstanding anything contained in the Constitution, no election to either House of Parliament or to either House of the Legislature of State shall be called in question except by an election petition. Similarly, Section 80 of the said Act states that no election shall be called in question except by an election petition presented in accordance with the provisions of the Act.

11. In Ponnuswami case cited supra, the word "election" is used to embrace the whole procedure of election and is not confined to final result thereof and held that rejection or acceptance of nomination paper is included in the term "election". After a detailed analysis of all the relevant provisions of the Constitution and the Representation of the People Act, the Apex Court held that an election can be questioned only in the manner provided by Article 329 (b) and not otherwise, notwithstanding the provisions of Article 326. The Apex Court also held that the nomination is a part of an election. In paragraph 16, it has been held thus:-

"(1) Having regard to the important functions which the Legislatures have to perform in democratic countries it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time schedule, and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over so that the election proceedings may not be unduly retarded or protracted.

(2) In conformity with this principle, the scheme of the election law in this country as well as in England is that no significance should be attached to anything which does not affect the 'election'; and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the 'election' and enable the person affected to call in question they should be brought up before a Special Tribunal by means of an election petition and not be made the subject of a dispute before any Court while the election is in progress.

12. That apart, in Mohinder Singh Gill And Another V. The Chief Election Commissioner, New Delhi And Others (1978) 1 SCC 405, a Constitution Bench of the Supreme Court reiterated that

Article 329(b) of the Constitution of India is a blanket ban on litigative challenges to electoral steps taken by the Election Commission and its Officers carrying forward the process of election to its culmination in the formal declaration of the result. The Supreme Court observed that under Article 329(b) of the Constitution of India, the sole remedy for an aggrieved party is an Election Petition and the exclusion of all other remedies includes constitutional remedies like jurisdiction under Article 226 because of the non obstante clause.

13. In the case on hand, the plea made before us is that even though the petitioner requested for two minutes time to rectify the defects pointed out by the Returning Officer, no opportunity was granted to him and the second respondent has hurriedly rejected the nomination application.

14. In the light of the law enunciated in the decisions referred supra, without going into the merits and demerits of the rejection of the nomination, we hold that any ground of attack against the same should be by way of filing an election petition and does not warrant exercise of our extraordinary jurisdiction under Article 226 of the Constitution, overlooking the clear bar mandated by Article 329(b) of the Constitution of India and Section 80 of the Representation of People Act, 1950.

15. For the foregoing reasons, the writ petition is dismissed giving liberty to the petitioner to file election petition, if so advised. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bbr

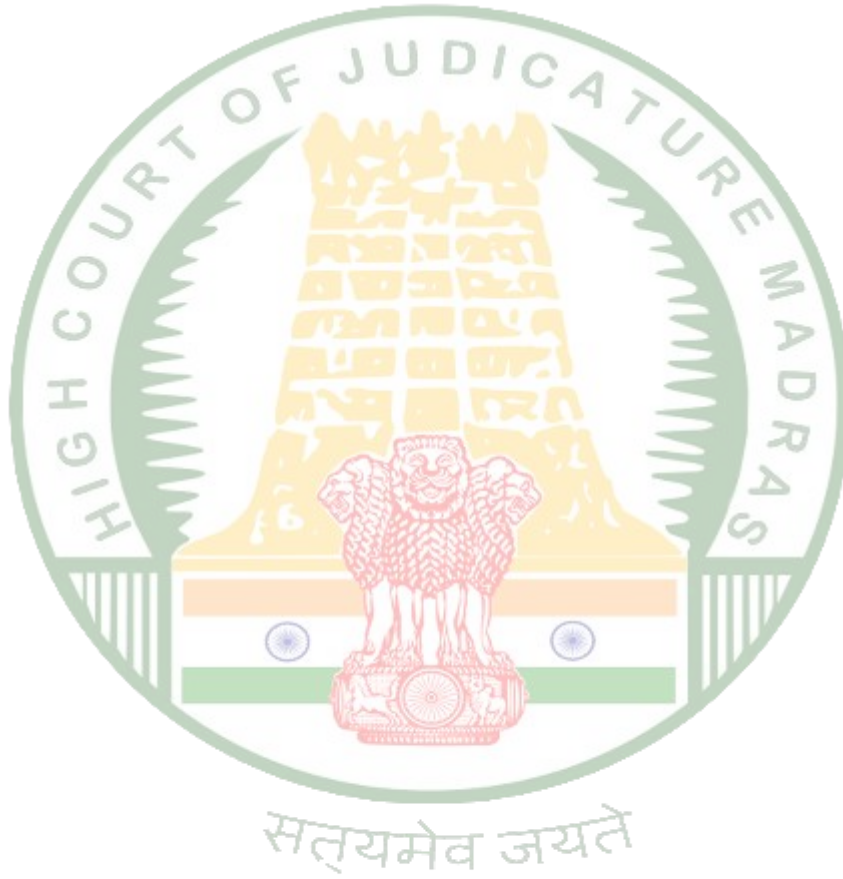
To:

- 1 The Chief Election Commissioner,
Fort St. George,
Chennai - 600 009.

2. The Election Officer,
R.K. Nagar Constituency,
No.11, Dr.Radhakrishnan Nagar,
Chennai - 600 021.

W.P.No.7654 of 2017

SS (CO)
MD : 12.04.2017



WEB COPY