

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.7642 of 2017
and
W.M.P.No.8350 of 2017

Kameshwaran

.. Petitioner

Vs.

- 1 State,
rep. by its Chief Electoral Officer,
Secretariat,
Fort St. George,
Chennai - 600 009.
2. Returning Election Officer,
No.11, Dr. Radhakrishnan Nagar
Assembly Constituency,
Additional District Electoral Officer-cum-
Dy. Commissioner, North,
Greater Chennai Corporation,
Chennai - 600 021.
3. Assistant Returning Officer,
Zone Office,
R.K. Nagar Constituency,
Tondiarpet High Road,
Chennai.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus calling for the records with regard to nomination application of the petitioner dated 17.3.2017 and quash the impunged order dated 24.3.2017 in proceedings in R.C.No.A1/0972/2017 of the second respondent as illegal and arbitrary.

For Petitioner : Mr.M.Velmurugan

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 learned counsel for the parties.

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 on 17.3.2017 for contesting in coming assembly by-election in R.K. Nagar Constituency. Subsequent to the filing of nomination application, the petitioner was instructed to comply with three requirements, which were duly complied with by the petitioner. However, on 24.3.2017, the impugned order came to be passed by the second respondent rejecting the nomination application of the petitioner. Challenging the same, the petitioner has filed the writ petition.

5. The learned counsel for the petitioner submitted that initially on scrutiny of the nomination application, the respondents informed the petitioner to comply with three requirements. The petitioner duly complied with the requirements and re-submitted the application on 20.03.2017 and the same was duly received and acknowledged by the respondents on the said date itself. On 24.3.2017 when the petitioner appeared before the respondents after receiving phone call, they informed that his application was rejected as the second page of Form 26 was missing. The learned counsel would submit that immediately, the petitioner approached the first respondent and asked one hour time to rectify the said defect. Despite his request to rectify the defect, the impugned order came to be passed, which is against the principles enshrined under Article 14 of the Constitution of India and also violative of Sections 33(4) and 33(6) of the Representation of People Act, 1950.

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 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, he found that the second page of Form 26 was not annexed, 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 nomination application No.8 was scrutinized. On scrutiny the following decision was ordered
1) In your application, Form 26 declaration deed Page-2 has not been found in the enclosure."

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 one hour's time to rectify the defects pointed out by the Returning Officer, no opportunity was granted to him and the second respondent 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. Consequently, W.M.P.No.8350 of 2017 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bbr/sasi

To:

- 1 The Chief Electoral Officer,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Returning Election Officer,
No.11, Dr. Radhakrishnan Nagar Assembly Constituency,
Additional District Electoral Officer-cum-
Dy. Commissioner, North,
Greater Chennai Corporation, Chennai - 600 021.

3. The Assistant Returning Officer,
Zone Office,
R.K. Nagar Constituency,
Tondiarpet High Road,
Chennai.

+1cc to Mr.M. Velmurugan, Advocate, S.R.No.19381

ss(CO)
md(12/04/2017)

W.P.No.7642 of 2017



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