

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

CWP No.1239 of 2017 (O&M)

Date of Decision : 25.01.2017

Tarsem Lal

....Petitioner

Versus

Election Commission of India and another

....Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE DR.SHEKHER DHAWAN

....

Present: Petitioner in person.

.....

MAHESH GROVER, J. (Oral)

CM No.1035 of 2017

Allowed as prayed for.

CWP No.1239 of 2017 (O&M)

On oral request of the petitioner, the writ petition is preponed and taken on board.

This writ petition under Article 226/227 of the Constitution of India has been filed by the petitioner seeking issuance of an appropriate writ to quash the schedule of assembly elections in Punjab or to direct the respondents to ensure 15 days time for electioneering to the candidates set up by the registered but unrecognized parties and also the independent candidates.

Before we proceed with the determination of the matter, we may delineate the grievances of the petitioner; the challenge mounted and the prayer made in the following manner :-

- i) In para 9 of the petition he has averred that the election process in Punjab may be declared null and void;
- ii) The Commission be directed to issue fresh notification containing a stipulation for the allotment of election symbols on the very date of filing of nomination by any candidate of registered but unrecognized party or any independent candidate on 'first come first serve basis'.
- iii) The Court should defer the date of polling to a date 15 days after the acceptance of the petition.

Questions have been raised in para nos.3 and 4 followed by para no.7 as para Nos.5 and 6 do not find mention in the petition, the essence of which we may also set down herebelow :-

Para 3 – Whether the Election Commission has erred in denying the candidates set up by registered but unrecognized political parties and independent candidates equal level playing field to deny the constitutional rights to the contestants.

Para 4 - Whether the Election Commission's norm of allotting election symbols to the candidates set up by registered

and independent candidates on the last date of withdrawal of nomination is ultra vires provision of the constitution as it seeks to deprive such candidates of equal opportunity.

The aforesaid succinctly brings out the grievance and the challenge raised by the petitioner in the instant petition.

The petitioner, who is a retired Indian Revenue Services' official, has appeared in person and has contended that he filed his nomination papers on the last date prescribed i.e. 18.01.2017. The nomination papers were scrutinized on 19.01.2017 as in the cases of other contestants as well, but he withdrew his nomination papers under protest and filed the petition on 20.01.2017 which, however, came up before the Court on 23.01.2017.

It is contended that since the election symbol was not allocated to him on 18.01.2017 itself when he preferred the nomination papers, he was disadvantaged qua the other aspirants/contestants of the national political parties who already had a symbol allotted to them. In short, the grievance of the petitioner is that he as an independent candidate or a representative of a registered but unrecognized party should have been allotted a symbol the moment he filed his nomination so as to enable him to undertake electioneering as in the case of those who already have been allotted symbols. It is contended that this

has seriously affected his chances in the election if he had chosen to contest and not withdrawn his nomination papers. He has also placed reliance on a judgment of Madras High Court in W.P.No.33984 of 2016, decided on 04.10.2016.

We have heard the petitioner at some length. The petitioner has prayed in the petition that the election process in Punjab may be declared null and void and the Commission be directed to issue fresh notification containing a stipulation for allotment of election symbols on the very date of filing of nomination by any candidate of registered but unrecognized party or any independent candidate on 'first come first serve basis'.

We are afraid, we cannot intervene in the election process once it has been set in motion and the only remedy available to a unsuccessful contestant would be by way of election petition. In any eventuality it is the conceded case of the petitioner that he is not a contestant and has withdrawn his nomination papers though under protest and the cause espoused in any case has rendered the controversy illusory.

Nothing has been shown to the Court which would persuade us to opine that a candidate can withdraw his papers under protest to preserve his right to be revived after a challenge in a court of law to enable him to contest the election, which is already underway.

In the petition the petitioner has also prayed that this Court may defer the date of polling to a date 15 days after the acceptance of this petition which again cannot be accepted in view of the settled proposition of law as propounded over a period of time through numerous precedents of this Court and the Hon'ble Supreme Court that any election process once started cannot be stopped.

In *N.P.Ponnuswami v. The Returning Officer, Namakhal Constituency, Namakkal, Salem Dist., and others*, **1952 AIR (SC) 64** the Hon'ble Supreme Court observed that word 'election' has been used to embrace the whole procedure of election and not confined to final result and two remedies are available to an individual i.e. one under Article 226 of the Constitution of India during the process of election and the other after completion, under Representation of the People Act, 1951.

Insofar as the challenge to the notification is concerned, we are afraid it is too late in the day to even consider the same. Such schedule for election prescribing dates of nomination, scrutiny and withdrawal is notified well in advance and the petitioner being in the know of it, if aggrieved ought to have laid a challenge to it prior to filing of nomination papers or at least on a prior date before the election process was set in motion. Rather, he chose to submit his papers on 18.01.2017 and

then withdrew the same on 19.01.2017 though under protest whatever its significance may be.

When the Election Commission prescribes dates for nomination, scrutiny and withdrawal, the reason to do so is evident. In an election process there may be hoards of candidates who are affiliated to various political parties. Similarly, those candidates propped up by the national recognized parties as also the unrecognized one would also undergo the process of scrutiny for it is quite possible that in a given case the candidate from a recognized national political party may falter in information resulting in rejection of his candidature upon scrutiny. To avoid such situation it is common practice for political parties to provide a covering candidate. Therefore, the underlying essence of scrutiny of nomination papers is of utmost significance and an aspirant can be declared enabled to contest only if his nomination papers are found in order and it cannot be said that mere filing of nomination papers should entitle a contestant to allotment of symbol so as to declare him a contestant even when his papers have not been put to a scrutiny. All candidates including those of recognized parties are formally permitted the use of symbols after scrutiny. It is not the case of the petitioner that this procedure has been applied to him only and not across the board. There is no information supplied in the petition as to how many candidates

are in fray as far as the Pathankot Assembly Constituency is concerned. There may be independent candidates as well even though this argument of discrimination has not been raised by the petitioner but this contention manifests itself. Since this process has been applied across the board, the petitioner cannot raise this plea or even nurture such a grievance at all.

The judgment relied upon by the petitioner would be inconsequential to his cause and his reliance has to be negated for more than one reason. Firstly, it is a judgment of the learned Single Bench of Madras High Court and cannot be cited as a binding precedent before a Division Bench. Secondly, the facts of the case were totally distinct where a reservation of seats for Scheduled Tribes etc. in panchayat election was sought to be noticed at a belated stage. Therefore, the facts are completely distinguishable.

Petition dismissed.

(MAHESH GROVER)
JUDGE

25.01.2017
dss

(SHEKHER DHAWAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No