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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ EL.PET. 1/2017 & IA No.4071/2017 (for directions)

A. MEENAKSHI CHANDELA A. Petitioner
Through: Mrs. Kawaljit Kochar, Ms. Vasundhra
Singh and Ms. Krishna Parkhani,
Advs.

Versus

STATE ELECTION COMMISSIONER AND ORS Respondents
Through: Mr. Sumeet Pushkarna, Adv. for R-1.
Mr. P.R. Chopra and Mr. Y.R.
Sharma, Advs. for R-4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **30.03.2017**

1. In this election petition, challenge is to the acceptance (on 22nd March, 2017) by the Returning Officer (RO) for the Bye-Election (for the constituency of Rajouri Garden) to the Legislative Assembly of Delhi, of the nomination of Mr. Manjinder Singh Sirsa.
2. Besides the RO and Mr. Manjinder Singh Sirsa, State Election Commissioner and Chief Election Commissioner have also been impleaded as respondents.
3. The petition is filed invoking Section 80A read with Section 100(d)(i) of the Representation of the People Act, 1951 (RP Act) and has come up today for admission.
4. Neither of the aforesaid provisions provide for challenge to the acceptance by the RO of the nomination.

5. The counsel for the petitioner has contended that once it is clear as day light that Mr. Manjinder Singh Sirsa is not eligible to contest the election (for the reasons pleaded) and that the acceptance of his nomination is illegal, to hold that the petitioner is entitled to challenge the same only after the result of the election is announced, tantamounts to allowing the State exchequer to waste huge amount of monies in holding the election process and which should be avoided.
6. The counsel for petitioner otherwise is unable to cite any provision of RP Act providing for challenge to illegal acceptance of nomination by the RO by way of election petition before this Court.
7. The petitioner presumes that acceptance of the nomination will lead to the said Mr. Manjinder Singh Sirsa being declared as the winning candidate.
8. The counsel for the petitioner is reminded of what was observed by the Supreme Court as far back as in ***Jyoti Basu Vs. Debi Ghosal*** (1982) 1 SCC 691 as under:

“8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at common law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statutory (sic for statute) creating it. Concepts familiar to common law and equity must remain strangers to election law unless statutorily

embodied. A court has no right to resort to them on considerations of alleged policy because policy in such matters as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, court is put in a straight-jacket. Thus the entire election process commencing from the issuance of the notification calling upon a constituency to elect a member or members right up to the final resolution of the dispute, if any, concerning the election is regulated by the Representation of the People Act, 1951, different stages of the process being dealt with by different provisions of the Act. There can be no election to Parliament or the State legislature except as provided by the Representation of the People Act 1951 and again, no such election may be questioned except in the manner provided by the Representation of the People Act. So the Representation of the People Act has been held to be a complete and self-contained code within which must be found any rights claimed in relation to an election or an election dispute.....”

9. The counsel for the Chief Election Commissioner appearing on advance notice though contending that the Chief Election Commissioner is neither a necessary nor a proper party, has also drawn attention to Section 81 of the RP Act as under:

“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.

Explanation—In this sub-section, “elector” means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition, and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.”
(emphasis added)

and has rightly contended that the words “but not earlier than, the date of election of the returned candidate...” in fact create a bar to such a petition.

10. The counsel for the State Election Commissioner also appearing on advance notice has referred to ***A. Dayanand Chandela Vs. Chief Electoral Officer*** (2009) 162 DLT 89 to contend that the RO is not competent to reject an affidavit of declaration filed along with the nomination, even if contains false averments and the only remedy is to challenge the same in an election petition under Section 81 read with Section 100 of the RP Act.

11. Reference in this regard may also be made to ***Kisan Shankar Kathore Vs. Arun Dattatray Sawant*** (2014) 14 SCC 162 holding that in case of improper acceptance of nomination, the question of rejection is deferred to a later date, after finding to this effect is returned in an election petition.

12. I have also in ***Nand Kishore Garg Vs. Jitender Singh Tomar*** MANU/DE/3475/2016 held so.

13. The arguments in common law urged, cannot be invoked in aid of such a statutory remedy.

14. Resultantly, the petition is not maintainable and is dismissed.

No costs.

15. The counsel for the petitioner states that the petitioner be granted liberty to take alternate remedies.

16. Such remedies are always available, as the petition is held to be not maintainable.

MARCH 30, 2017

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RAJIV SAHAI ENDLAW, J.