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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **W.P.(C) 3056/2017**

**SURJEET SINGH**

..... Petitioner

Through: Mr.R.K.Bali, Mr.G.S.Randhawa, Advs.

versus

**RETURNING OFFICER/SCRUTINISING OFFICER .....** Respondent

Through: Mr.Sanjay Dewan, Ms.Palak, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**ORDER**

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**10.04.2017**

1. The challenge in this petition is to the order dated 8<sup>th</sup> April, 2017 whereby the nomination paper of the petitioner for MCD Councillor elections was rejected.
2. The case set up by the petitioner in the writ petition is that he had filed the nomination paper for the MCD Councillor elections due on 23<sup>rd</sup> April, 2017 for Ward No.012E (Patparganj) on 3<sup>rd</sup> April, 2017. He was handed over a check-list in which it is stated that there is a defect and the petitioner has to submit a fresh affidavit before the commencement of the scrutiny of nominations failing which, the nomination paper shall be rejected. It is averred that the petitioner was told to come on 5<sup>th</sup> April, 2017 on 11.00 am as there was a holiday on account of 'Ram Navmi' on 4<sup>th</sup> April, 2017.
3. It is the case of the petitioner and also contended by Mr.R.K.Bali, learned counsel for the petitioner that the petitioner went to the office of the

respondent i.e. Returning Officer/Scrutiny officer at 11.00 am on 5<sup>th</sup> April, 2017. The petitioner was told that the scrutiny of his constituency would commence at 2.00 pm. The petitioner informed the respondent that he has to submit the amended affidavit. On that, he was asked to come with the amended affidavit at 2.00 pm itself. Accordingly, the petitioner reached the office of the respondent at 2.00 pm and submitted his amended affidavit, which was duly received by the respondent but he was handed over an order dated 5<sup>th</sup> April, 2017 vide which his nomination paper was rejected on the ground, the affidavit should have been submitted before the start of the scrutiny.

4. That apart, Mr.R.K.Bali would submit that with the intervention of this Court, the name of the petitioner can be included as the petitioner cannot be made to suffer for the wrong committed by the respondents. He also states that this petition should have been listed on 7<sup>th</sup> April, 2017 when connected writ petitions were listed. He would also rely upon an order dated 8<sup>th</sup> April, 2017 W.P.(C) 3057/2017 wherein this Court has interfered in similar circumstances and directed that the name of the petitioner in that case be included in the list of successful candidates.

5. On the other hand, Mr.Sanjay Dewan states that the petitioner is not entitled to the reliefs inasmuch as the petitioner has submitted the amended affidavit after the scrutiny had started. He also states that the list of successful candidates has since been published.

6. That apart, he also states that on 8<sup>th</sup> April, 2017 there were five identical writ petitions listed, out of which 4 were dismissed.

7. Having heard the learned counsel for the parties, I note, in the impugned order, the Returning Officer has given the following findings:-

*“The contention of the candidate has been considered and found that there is no merit in the contention made by the candidate because it is clearly mentioned in the checklist that afresh affidavit must be submitted before the commencement of scrutiny of nomination paper and that checklist has been signed by the candidate himself which proves that the candidate was well aware of the fact about the time limit for submission of affidavit but he deliberately failed to do so. Further the other contention that the candidate is present since 11.00 AM cannot be proved because when the scrutiny of ward 12E was commenced, most of the candidate along with their representative were present in the chamber of the undersigned where scrutiny was going on and this candidate namely Surjeet Singh entered in this room after commencement of scrutiny and scrutinization of some nomination papers. Apart from that, many affidavit have been received today from the various candidates of various ward before the commencement of scrutiny, then how is it possible that this candidate namely Surjeet Singh has not been able to submit fresh affidavit well in time.*

*Since there were some columns blank in the affidavit (Form 22) while delivering the nomination paper before the ARO and duly filled fresh affidavit (Form 22) has not been submitted before the commencement of scrutiny in respect of Ward No.12E, therefore as per para 4(III) of the direction dated 06.04.2017 issued by State Election Commissioner, the nomination paper of Sh. Surjeet Singh, a independent candidate is hereby rejected.”*

8. That apart, I note that the writ petition does not contain any averment including the name of the officer who has asked him to come at 2 PM. That apart, the petitioner does not controvert the findings of the Returning Officer in the impugned order. The stand of the petitioner is at variance with the stand of the Returning Officer. These are disputed questions of fact, which surely cannot be gone into in a petition under Article 226 of the Constitution of India.

9. In so far as the reliance placed by Mr.R.K.Bali on the order dated 8<sup>th</sup> April, 2017 is concerned, the said order was passed by the coordinate Bench of this Court, noting that the list of successful candidates is required to be published on that date i.e. 8<sup>th</sup> April, 2017.

10. As informed by Mr.Sanjay Dewan, the list of successful candidates has been published. The plea that the matter should have been listed on 7<sup>th</sup> April by the Registry is concerned, the submission of the learned counsel for the respondent that one petition filed by Mr.R.K.Bali was also listed on 7<sup>th</sup> April, 2017 and he could have got this petition also listed is appealing. Further the same cannot be a ground for this Court to grant similar relief as was given in W.P.(C) 3057/2017. I do not see any merit in the petition and the same is dismissed.

**V. KAMESWAR RAO, J**

**APRIL 10, 2017**  
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