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

Judgment reserved on: 08.04.2017

Judgment delivered on: 08.05.2017

% **W.P. (C) No.3057/2017 and C.M. No.13372/2017**

SAROJ

..... Petitioner

Through: Mr. Dinesh Agnani, Senior Advocate
along with Mr. Ajay Digpaul,
Mr. Neeraj, Mr. Sudhir Naagar,
Mr. Abhay Verma, Mr. Bhanu
Sanoriya, Mr. Varun Garg &
Mr. Rajesh Mishra, Advocates.

Versus

DELHI STATE ELECTION COMMISSION & ANR. Respondents

Through: Mr. Sumeet Pushkarna, Standing
Counsel and Mr. Siddhartha Nagpal,
Advocate for respondent No.1.
Mr. Ramesh Chander, Returning
Officer (Ward 3E), in person.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. The petitioner has preferred the present writ petition to assail the order dated 05.04.2017 passed by the Returning Officer/Scrutinising Officer (referred to as the RO/SO) for Ward No.0001E, 0002E, 0003E and 0004E of the East Delhi Municipal Corporation (EDMC). By the impugned order, the RO/SO has rejected the nomination paper filed by the petitioner offering her candidature as a candidate for election as a municipal councillor in Ward No.3E of the EDMC.

2. The petitioner states that she is a lady, social worker and a politician. Being desirous of contesting the upcoming municipal elections, the petitioner was set up as a candidate by the Bhartiya Janta Party from Ward No.3E, Trilokpuri (West) of EDMC, which is reserved for women only belonging to the scheduled caste. On 03.04.2017, the petitioner filed her nomination paper with the requisite documents. Her nomination paper was scrutinised by respondent no.2/RO/SO on 05.04.2017. On the same day, by the impugned order, her nomination has been rejected. The impugned order, insofar as it is relevant, reads as follows:

“The said nomination paper was scrutinised and placed for inspection to all other candidates of the same ward and election observer also.

Rule 22(2)(a) & (b) of Delhi Municipal Corporation (Election of Councillor) Rules 2012 provides that:

(2) The Scrutinising Officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination, and may either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination paper on any of the following grounds:-

(a) That on the date fixed for the scrutiny of nomination the candidate earlier is not qualified or is disqualified for being chosen as a councillor under the Act: or

(b) That there has been a failure to comply with any of the provisions of rules 18, 19 and 20.

Rules 19(3) of Delhi Municipal Corporation (Election of Councillor) Rules 2012 provide that-

“In a ward where any seat is reserved for woman, a candidate shall not be deemed to be qualified to be chosen to fill that seat

unless her nomination paper contains a declaration made by her that she is a women ”.

The seat of ward no.003E is reserved for SC (women) candidate by the State Election Commission, Delhi.

During the scrutiny, the following discrepancy was observed:-

1. The said nomination of Smt. Saroj was not contained with a declaration made by her that she is a women and she has also failed to tick the mark on male or female in the said nomination paper which is violation of Rules 19(3) of Delhi Municipal Corporation (Election of Councillor) Rules 2012. During the scrutiny the undersigned marked a round with red ink on the said discrepancy on the part of the said nomination paper.

Thus it is clearly established that Smt. Saroj has failed to comply the provision of the Rules 19(3) & 22(2) (a) & (b) of Delhi Municipal Corporation (Election of Councillor) Rules 2012.

Hence, in the above mentioned circumstances and provisions mentioned in the Delhi Municipal Corporation (Election of Councillor) Rules 2012, the said nomination paper bearing no.08 of Smt. Saroj for the ward no.03E of EDMC is hereby rejected”. (emphasis supplied)

3. The submission of learned senior counsel for the petitioner is that the impugned order suffers from complete non application of mind and is arbitrary. It has been passed in violation of the Delhi Municipal Corporation (Election of Councillor) Rules 2012 (the Rules). The petitioner submits that a perusal of the nomination paper - copy whereof has been placed on record, would show that the petitioner filed along with the nomination paper, her photographs which evidence the fact that she is a woman. Moreover, the petitioner had also declared the name of her ‘husband’ as Sher Singh. The

petitioner also seeks to place reliance on the affidavit filed by the petitioner in Form No.21 in compliance of Rule 18(2) of the Rules. In the said affidavit, the petitioner had inter alia, stated “***I, Saroj, wife of Sher Singh, aged about 32 years solemnly affirm/ state on oath as under:***” (emphasis supplied) . It is also pointed out that along with the nomination paper, the petitioner had submitted her voter ID card and her caste certificate, which also clearly evidence the fact that she is a woman belonging to SC category.

4. The submission of the petitioner is that Ward No.3E is reserved for SC candidates who are women, and thus no one who is not a woman/ female is eligible to contest from the said ward. It is pointed out by the petitioner that the only omission found in the nomination form is in respect of the declaration contained at Sl. no. (AA). In so far as it is relevant, the said declaration read as follows –

“I, the candidate, mentioned in Part-I/Part-II (strike out which is not applicable) assent to this nomination hereby declare

AA) That I am Male/ Female:”

5. While making the said declaration, on account of an inadvertent omission, the petitioner did not strike out the word, ‘Male’ and retain the word ‘Female’. The petitioner submits that, even if, on account of inadvertence the petitioner failed to strike out the word “Male”, the same cannot be fatal to the petitioner’s nomination inasmuch, as, the said error is not of a substantial character. There was sufficient evidence produced by the petitioner along with the nomination form for the RO/SO to conclusively

be satisfied with regard to the sex of the petitioner being female. The petitioner submits that under Rule 22(4) of the Rules, the Scrutinizing Officer “*shall not reject any nomination paper on the ground of any defect which is not of a substantial character*”. The petitioner also seeks to place reliance on Rule 19(5) of the Rules. The said rule reads:

“(5) On the presentation of a nomination paper, the Returning Officer shall, satisfy himself that the names and electoral roll numbers of the candidates and his proposer(s) as entered in the nomination paper are the same as those entered in the electoral roll;

Provided that the Returning Officer shall permit any clerical or technical error in the nomination paper in regard to the said names or numbers to be corrected in order to bring them into conformity with the corresponding entries in the electoral rolls, and where necessary, direct that any clerical or printing error in the said entries shall be overlooked”.

6. The submission of the petitioner is that the RO/SO should have permitted the said clerical or technical error in the nomination paper to be corrected, and should have permitted the petitioner to strike out “Male” - even if the said error in the nomination form was found at the time of scrutiny.

7. The petitioner submits that the impugned order has been passed without granting an opportunity to the petitioner to satisfy the RO/SO that there was no defect in the nomination paper of a substantial character. Thus, the impugned order has been passed in violation of the statutory rules and the principles of natural justice. Reference is made to Rule 22(5) of the Rules which, inter alia, provides that in case an objection is raised by the

SO, or by any other person, the candidate concerned may be given time to rebut it not later than the next day, but one following the date fixed for scrutiny; and the SO shall record his decision on the date to which the proceedings have been adjourned.

8. The submission of the petitioner is that no opportunity was given to the petitioner by the SO to point out to him that the mere failure to strike out the word “Male” from clause (AA) on the second page of the nomination paper was not a defect of a substantial character - in the light of the aforesaid documents and evidence filed by the petitioner along with the nomination form itself. The further submission of the petitioner is that on the following day, i.e. 06.04.2017, the petitioner gave a representation pointing out all the aforesaid aspects. However, the respondent no.2 has not taken any remedial and corrective steps. The petitioner has submitted that by the impugned decision, the valuable right of the petitioner to contest the upcoming municipal elections has sought to be taken away on account of a mindless and arbitrary exercise of his discretion by respondent no.2. The petitioner submits that the discretion has to be exercised by the RO/SO in a meaningful way, so as to advance the purpose for which it is vested i.e. to examine whether there was, or was not a defect of a substantial character in the nomination form.

9. The petition is contested by the respondents. By way of a preliminary objection, Mr. Pushkarna, who appears for both the respondents, has vehemently opposed the maintainability of the writ petition to assail the impugned order passed by the RO/SO rejecting the nomination of the petitioner. In this regard, he has placed reliance on Articles 329(b) and

243ZG of the Constitution of India. Article 329 provides that no election to either the 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. The said provision begins with a non-obstante clause “*Notwithstanding anything in this constitution*”. Mr. Pushkarna submits that the remedy under Article 226 of the Constitution of India has been held by the Supreme Court to be barred, and thus a writ petition would not be maintainable to challenge the election. He submits that the expression “election” has been widely interpreted to mean the entire process of election, which includes the process of nomination as well. He submits that Article 243 ZG is paramateria with Article 239. Article 243 ZG(b) insofar as it is relevant reads as follows:

*“243ZG. Bar to interference by courts in electoral matters –
Notwithstanding anything in this Constitution –*

(a)

(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State”.

10. Mr. Pushkarna points out that Section 15 of the Delhi Municipal Corporation Act, 1957 (DMC Act) is in accord with Article 243ZG(b) which, inter alia, provides:

“15. Election Petitions -

(1) No election of a councillor shall be called in question except by an election petition presented to the court of the

district judge of Delhi within fifteen days from the date of the publication of the result of the election under section 14.

(2) An election petition calling in question any such election may be presented under any of the grounds specified in section 17 by any candidate at such election, by any elector of the ward concerned or by any councillor”.

11. He submits that the ‘grounds specified’- for calling in question an election, are contained in section 17 of the DMC Act and one of the grounds is “*that any nomination paper has been improperly rejected*” (see section 17(1)(c) of the DMC Act).

12. In support of this submission, he has placed strong reliance on a Constitution Bench – (six judges) decision of the Supreme Court in ***N.P. Ponnuswami v. R.O. Nammakal Constituency, Namakkal, Salem District and four others***, AIR 1952 SC 64. He submits that though this decision considered the interplay between Article 329(b) and Article 226 of Constitution of India, the same would apply with equal force in the present situation in view of the paramateria provision contained in Article 243ZG(b) of the Constitution and Section 15 of the DMC Act.

13. Mr. Pushkarna submits that the Supreme Court in ***Jyoti Basu v. Debi Ghosal & Ors.***, (1982) 1 SCC 691 has held that the right to elect; to be elected, and; to dispute an election are neither fundamental rights nor common law rights, but are simply statutory rights and are, therefore, subject to statutory limitations. Thus, an election petition is neither based on common law nor in equity, but is a statutory proceeding to which only statutory rules apply. The Supreme Court opined that the said Act is a complete and self contained code and all rights claimed in relation to an

election or an election dispute must be found within the four corners of the said Act. He submits that though this decision concerns the provisions of the Representation of the People Act, the same ratio applies in respect of the present election as well inasmuch, as, the provisions of the DMC Act and the Rules together contain a complete and self contained code and the petitioner cannot travel beyond the same. Since there is a specific remedy provided in law to redress the petitioners grievance with regard to rejection of her nomination, and the remedy provides that the same can be invoked only by way of an election petition after the election is conducted, the present petition is not maintainable at this stage when the election has already been notified. In this regard, he has drawn the attention of the court to section 80 and 100 (1)(c) of the Representation of People Act.

14. Mr. Pushkarna submits that it is well settled law that once the election process has been notified, the same cannot and should not be intervened or stopped by the court. In this regard, he places reliance on the judgment of the Supreme Court in *Anugrah Narayan Singh & Anr. v. State of U.P. & Ors.*, (1996) 6 SCC 303 – a decision of three Hon’ble Judges. He submits that the Supreme Court in this case was dealing with elections to municipalities in the State of U.P. The elections, which were in the process of being held under the directions issued by the Allahabad High Court, were sought to be interdicted on the ground of defect in the electoral rolls and delimitation of constituencies, and also on the ground of arbitrary reservation of constituency for woman, SC, ST and backward classes. The Lucknow Bench of the Allahabad High Court dismissed the petition in view of the bar imposed by Article 243ZG of the constitution. In spite of that

being the position, another Division Bench of the same High Court stopped the election process which had already been notified.

15. The Supreme Court overturned the decision of the High Court and held that no election to a municipality can be questioned except by an election petition. It is well settled by now that if the election is imminent or well underway, the court should not interfere to stop the election process. If holding of elections is allowed to be stalled on the complaint of a few individuals, then grave injustice will be done to crores of other voters who have a right to elect their representatives to the local bodies. The court, on no account, should direct postponement of the elections.

16. Mr. Pushkarna has also placed reliance on ***Ram Phal Kundu v. Kamal Sharma***, (2004) 2 SCC 759, wherein the Supreme Court, in the context of an election governed by the Representation of the People Act, 1951 held that once the nomination paper of a candidate is rejected, the Act provides for only one remedy-that remedy being by an election petition to be presented after the election is over, and there is no remedy provided at any intermediate stage. The Supreme Court placed reliance on ***N.P. Ponnuswami*** (supra), ***Mohinder Singh Gill v. Chief Election Commissioner***, (1978) 1 SCC 405 and ***Election Commission of India v. Shivaji***, (1988) 1 SCC 277.

17. Mr. Pushkarna also places reliance on a recent decision of a Division Bench of this court in ***Swaraj India v. State Election Commission & Anr.*** in LPA No.221/2017, pronounced on 03.04.2017, whereby the application moved by the appellant to seek interim restraint against the State Election

Commission of the NCT of Delhi, inter alia, from holding the MCD Election 2017 till further orders in the appeal, was rejected. The Division Bench referred to *Desiya Murpokku Dravida Kazhagam (2) & Anr. v. Election Commission of India*, (2011) 4 SCC 224. In the said decision, the Supreme Court held that an interim arrangement in respect of an election is not feasible and appropriate, since many others could join the band wagon once the Court intervenes in one petition. Mr. Pushkarna points out that the RO/SOs appointed by respondent No.1 for all the wards have rejected thousands of nominations, and if this court were to interfere in the present case, on similar grounds there would be a flood of other similar petitions seeking to assail the orders passed by the concerned RO/SOs rejecting the nomination of the candidates. Mr. Pushkarna further submits that in the present petition, the petitioner has not joined all the candidates which is a requirement under Section 15(3) of the DMC Act. The said provision reads “*A petitioner shall join as respondents to his petition all the candidates at the election*”.

18. On merits, Mr. Pushkarna has argued that in respect of nominations filed for seats reserved for women, it is mandatorily provided under Rule 19(3) that “*....a candidate shall not be deemed to be qualified to be chosen to fill that seat unless her nomination paper contain a declaration made by her that she is woman*”. Mr. Pushkarna submits that the RO/SOs cannot be seen to be acting in a partisan way by overlooking omissions in the nomination form filed by one candidate, and retaining an objection in respect of another nomination by another candidate. He submits that the RO/SOs go strictly by their handbook prepared by the Election Commission.

The said handbook, inter alia, provides in clause 5.15.1 as under:

“5.15.1 As each nomination paper is filed, you or the specified Assistant Returning Officer, as the case may be, is required by law to examine it then and there from the technical standpoint as required under section 33(4) of the Act of 1951. But you are not required to hold any formal scrutiny of any nomination papers at this stage. This preliminary examination is restricted to entries relating to the name and electoral roll numbers relating to the candidate and the proposer(s) as given in the nomination paper (s) and those as entered in the electoral rolls. The following aspects may be examined at this stage:-”.

19. On the other hand, learned senior counsel for the petitioner submits that the petitioner is not seeking a stay of the election process. The petitioner is also not seeking any interference with the election process. The petitioner is only aggrieved by a patently wrong rejection of the petitioner's nomination. He places strong reliance on the judgment of the Supreme Court in ***Election Commission of India v. Ashok Kumar & Ors.***, (2000) 8 SCC 216 – a decision of three learned Judges. In this decision, the Supreme Court considered all the relevant earlier decisions on the subject, including the six judge bench decision in ***N.P. Ponnuswami*** (supra). In ***Ashok Kumar*** (supra), the Supreme Court considered an issue of wide significance, namely, the jurisdiction of High Court to entertain petitions under Article 226 of the Constitution of India and to issue interim directions after commencement of the electoral process. The Supreme Court after taking note of, inter alia, Article 329 of the Constitution and the fact that the term “election” - as occurring in Article 329 includes the entire election process from the stage of issue of the notification under Section 14 of the Representation of the People Act, to the declaration of the result under

Section 66 of the Act, inter alia, observed:

“18. Is there any conflict between the jurisdiction conferred on the High Courts by Article 226 of the Constitution and the embargoes created by Article 329 and if so how would they coexist came up for the consideration of a Constitution Bench of this Court in N.P. Ponnuswami v. Returning Officer, Namakkal Constituency [AIR 1952 SC 64] . The law enunciated in Ponnuswami [AIR 1952 SC 64] was extensively dealt with, also amplified, by another Constitution Bench in Mohinder Singh Gill v. Chief Election Commr. [(1978) 1 SCC 405 : AIR 1978 SC 851] The plenary power of Article 329 has been stated by the Constitution Bench to be founded on two principles:

(1) the peremptory urgency of prompt engineering of the whole election process without intermediate interruptions by way of legal proceedings challenging the steps and stages in between the commencement and the conclusion;

(2) the provision of a special jurisdiction which can be invoked by an aggrieved party at the end of the election excludes other form, the right and remedy being creatures of statutes and controlled by the Constitution.

On these principles the conclusions arrived at in Ponnuswami case [AIR 1952 SC 64] were so stated in Mohinder Singh Gill case [(1978) 1 SCC 405 : AIR 1978 SC 851] : (SCC p. 426, para 26)

“(1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognised 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 it 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."

19. However, the Constitution Bench in Mohinder Singh Gill case [(1978) 1 SCC 405 : AIR 1978 SC 851] could not resist commenting on Ponnuswami case [AIR 1952 SC 64] by observing (vide para 25) that the non obstante clause in Article 329 pushes out Article 226 where the dispute takes the form of calling in question an election, except in special situations pointed out at, but left unexplored in Ponnuswami case [AIR 1952 SC 64].

20. Vide para 29 in Mohinder Singh Gill case [(1978) 1 SCC 405 : AIR 1978 SC 851] the Constitution Bench noticed two types of decisions and two types of challenges: the first relating to proceedings which interfere with the progress of the election and the second which accelerate the completion of the election and acts in furtherance of an election. A reading of Mohinder Singh Gill case [(1978) 1 SCC 405 : AIR 1978 SC 851] points out that there may be a few controversies which may not attract the wrath of Article 329(b). To wit:

(i) power vested in a functionary like the Election Commission is a trust and in view of the same having been vested in high functionary can be expected to be discharged reasonably, with objectivity and independence and in accordance with law. The possibility however cannot be ruled out where the repository of power may act in breach of law or arbitrarily or mala fide.

(ii) A dispute raised may not amount to calling in question an election if it subserves the progress of the election and

facilitates the completion of the election. The Election Commission may pass an order which far from accomplishing and completing the process of election may thwart the course of the election and such a step may be wholly unwarranted by the Constitution and wholly unsustainable under the law.

In Mohinder Singh Gill case [(1978) 1 SCC 405 : AIR 1978 SC 851] this Court gives an example (vide para 34). Say after the President notifies the nation on the holding of elections under Section 15 and the Commissioner publishes the calendar for the poll under Section 30 if the latter orders returning officers to accept only one nomination or only those which come from one party as distinguished from other parties or independents, which order would have the effect of preventing an election and not promoting it, the Court's intervention in such a case will facilitate the flow and not stop the election stream.

21. A third category is not far to visualise. Under Section 81 of the Representation of the People Act, 1951 an election petition cannot be filed before the date of election, i.e., the date on which the returned candidate is declared elected. During the process of election something may have happened which would provide a good ground for the election being set aside. Purity of election process has to be preserved. One of the means for achieving this end is to deprive a returned candidate of the success secured by him by resorting to means and methods falling foul of the law of elections. But by the time the election petition may be filed and judicial assistance secured, material evidence may be lost. Before the result of the election is declared assistance of Court may be urgently and immediately needed to preserve the evidence without in any manner intermeddling with or thwarting the progress of election. So also there may be cases where the relief sought for may not interfere or intermeddle with the process of the election but the jurisdiction of the Court is sought to be invoked for correcting the process of election taking care of such aberrations as can be taken care of only at that moment failing which the flowing stream of election process may either stop or break its bounds and spill over. The relief sought

for is to let the election process proceed in conformity with law and the facts and circumstances be such that the wrong done shall not be undone after the result of the election has been announced subject to overriding consideration that the Court's intervention shall not interrupt, delay or postpone the ongoing election proceedings. The facts of the case at hand provide one such illustration with which we shall deal with a little later. We proceed to refer a few other decided cases of this Court cited at the Bar”. (emphasis supplied)

20. Reference was also made to ***Digvijay Mote v. Union of India***, (1993) 4 SCC 175, wherein it was held that the powers conferred on the Election Commission are not unbridled; judicial review will be permissible over the statutory body, i.e. the Election Commission exercising its functions affecting public law rights though the review will depend upon the facts and circumstances of each case. It was held that the power conferred on the Election Commission by Article 324 has to be exercised not mindlessly, nor malafide, nor arbitrarily, nor with partiality, but in keeping with the guidelines of the rule of law and not stultifying the presidential notification nor existing legislation. The Supreme Court in para 28 and 30 to 32 observed:

“28. Election disputes are not just private civil disputes between two parties. Though there is an individual or a few individuals arrayed as parties before the court but the stakes of the constituency as a whole are on trial. Whichever way the lis terminates it affects the fate of the constituency and the citizens generally. A conscientious approach with overriding consideration for welfare of the constituency and strengthening the democracy is called for. Neither turning a blind eye to the controversies which have arisen nor assuming a role of overenthusiastic activist would do. The two extremes have to be avoided in dealing with election disputes.

... ..

30. *To what extent Article 329(b) has an overriding effect on Article 226 of the Constitution? The two Constitution Benches have held that Representation of the People Act, 1951 provides for only one remedy; that remedy being by an election petition to be presented after the election is over and there is no remedy provided at any intermediate stage. The non obstante clause with which Article 329 opens, pushes out Article 226 where the dispute takes the form of calling in question an election (see para 25 of Mohinder Singh Gill case [(1978) 1 SCC 405 : AIR 1978 SC 851]). **The provisions of the Constitution and the Act read together do not totally exclude the right of a citizen to approach the court so as to have the wrong done remedied by invoking the judicial forum; nevertheless the lesson is that the election rights and remedies are statutory, ignore the trifles even if there are irregularities or illegalities, and knock the doors of the courts when the election proceedings in question are over. Two-pronged attack on anything done during the election proceedings is to be avoided — one during the course of the proceedings and the other at its termination, for such two-pronged attack, if allowed, would unduly protract or obstruct the functioning of democracy.***

31. *The founding fathers of the Constitution have consciously employed use of the words “no election shall be called in question” in the body of Section 329(b) and these words provide the determinative test for attracting applicability of Article 329(b). **If the petition presented to the Court “calls in question an election” the bar of Article 329(b) is attracted. Else it is not.***

32. *For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove:*

(1) If an election, (the term election being widely interpreted

so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

(2) Any decision sought and rendered will not amount to "calling in question an election" if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

(3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

(4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the court.

(5) The court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for

*achieving an ulterior or hidden end. Needless to say that in the very nature of the things **the court would act with reluctance and shall not act, except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material***". (emphasis supplied)

21. Learned senior counsel for the petitioner has submitted that all that the petitioner is seeking a course correction by inclusion of the petitioner's name in the list of successful candidates. The stage for publication of the list of successful candidates is not yet passed inasmuch, as, the said list would be published only later in the day today. The petitioner is not seeking either the stay of the election, or postponement of the elections. It is argued that if this court finds that the impugned order suffers from complete non-application of mind and it is arbitrary and contrary to the election rules, it would be desirable to correct the said error at this stage rather than relegate the petitioner to the post election stage by way of an election petition. Interference at this stage would aid the successful completion of the election process, rather than obstruct, postpone or defeat it.

22. The petitioner also places reliance on ***Deoraj v. State of Maharashtra & Ors.***, (2004) 4 SCC 697, wherein the Supreme Court held – in the context of a case involving an election dispute in respect of a cooperative society, that:

“12. Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of the main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner

though all the findings may be in his favour. In such cases the availability of a very strong prima facie case — of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of the case totally in favour of the applicant may persuade the court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the court may put the parties on such terms as may be prudent”.

23. It is, therefore, argued that the court is not powerless to grant interim relief in the nature of the final relief itself, in clear and deserving cases where its denial would tantamount to dismissal of the main petition itself and result in grave injustice. It is argued that if the RO/SO has failed to perform his duty in correctly scrutinising the nomination form and rejected the same ex-facie illegally and arbitrarily, the candidate should not be made to suffer.

24. The petitioner also submits that the RO/SO is under a bounden duty to pursue the nomination form after receiving it and point out the defects, if any, and allow the candidate to rectify the defects. Only when the defects are not removed, then alone the question of rejection of the nomination would arise. In this regard, he places reliance on **Nandiesha Reddy v. Kavitha Mahesh**, (2011) 7 SCC 721, wherein the Supreme Court observed:

“24. We are of the opinion that when a nomination paper is presented it is the bounden duty of the Returning Officer to receive the nomination, peruse it, point out the defects, if any, and allow the candidate to rectify the defects and when the defects are not removed then alone the question of rejection of nomination would arise. Any other view, in our opinion, will lead to grave consequences and the Returning Officers may start refusing to accept the nomination at the threshold which may ensure victory to a particular candidate at the election. This is fraught with danger, difficult to fathom”. (emphasis supplied)

25. In support of her plea that the conduct of the RO/SO was in violation of the principles of natural justice inasmuch, as, he did not follow the mandate of Rule 22(5) of the Rules, the petitioner places reliance on the decision of the Supreme Court in **Ramesh Rout vs Rabindra Nath Rout** (2012) 1 SCC 762. In this decision, the Supreme Court considered section 36(5) of the Representation of the People Act, which is paramateria with Rule 22(5) of the Rules and observed:

“78.....It was the Returning Officer who raised the issue of non-filing of original Forms A and B but he refused minimum opportunity to the election petitioner to rebut the same. In our view, the Returning Officer ought to have acted in terms of the proviso to Section 36(5) of the 1951 Act and afforded an opportunity to the election petitioner until next day to rebut the objection and show to the Returning Officer that the proposed candidate had filed Forms A and B duly signed in ink by the authorised person of BJD.” (emphasis supplied)

26. The petitioner submits that the RO/SO was obliged to bring to the notice of the petitioner the inadvertent failure of the petitioner to strike out the word “Male” from clause (aa) of the nomination form, and to grant an

opportunity to remove the said defect. It is argued that the failure of the RO/SO to perform his obligation cannot be to the prejudice of the petitioner, particularly when the said omission is, even otherwise, of no consequence as the requisite information was very much available on the record before the RO/SO. In this regard, she places reliance on ***Resurgence India v. Election Commission of India & Anr.***, (2014) 14 SCC 189. In this decision, in para 23 and 29.4, the Supreme Court observed:

“23. For that purpose, the Returning Officer can very well compel a candidate to furnish information relevant on the date of scrutiny. We were apprised that the Election Commission already has a standard draft format for reminding the candidates to file an affidavit as stipulated. We are of the opinion that along with the above, another clause may be inserted for reminding the candidates to fill the blanks with the relevant information thereby conveying the message that no affidavit with blank particulars will be entertained. We reiterate that it is the duty of the Returning Officer to check whatever the information required is fully furnished at the time of filing of affidavit with the nomination paper since such information is very vital for giving effect to the “right to know” of the citizens. If a candidate fails to fill the blanks even after the reminder by the Returning Officer, the nomination paper is fit to be rejected. We do comprehend that the power of the Returning Officer to reject the nomination paper must be exercised very sparingly but the bar should not be laid so high that the justice itself is prejudiced. (emphasis supplied)

29.4. It is the duty of the Returning Officer to check whether the information required is fully furnished at the time of filing of affidavit with the nomination paper since such information is very vital for giving effect to the “right to know” of the citizens. If a candidate fails to fill the blanks even after the reminder by the Returning Officer, the nomination paper is fit to be

rejected. We do comprehend that the power of the Returning Officer to reject the nomination paper must be exercised very sparingly but the bar should not be laid so high that the justice itself is prejudiced”. (emphasis supplied)

27. The petitioner also places reliance on **Kaka Joginder Singh v. K.R. Narayanan, Vice President of India**, 1993 Supp (d) SCC 607, wherein the Supreme Court relied upon **Karnail Singh v. Election Tribunal, Hissar**, (1954-55) 10 ELR 189 to say that rejection of nomination is not permissible only for a technical defect which is not of a substantial character. In that case, the nomination paper did not record a part of the name of the candidate as found in the electoral roll, but there was no difficulty in identifying the candidate. The Election Tribunal held the rejection of the nomination paper on that ground to be improper. That decision was affirmed by the Supreme Court by observing:

“19. The only defect pointed out was that the name of the sub-division was not stated therein, but on the evidence it was quite clear that there was no difficulty in identifying the candidate and the candidate himself pointed out to the Returning Officer the entry of his name in the electoral roll. The defect, in these circumstances, was a technical one and the Tribunal was perfectly right in holding that the defect was not of a substantial character and that the nomination paper should not have been rejected....” (emphasis supplied)

28. The Supreme Court also took note of **Ram Awadesh Singh v. Sumitra Devi**, (1972) 3 SCC 131. In the said decision, it was, inter alia, observed that the RO/SO while scrutinising the nomination papers can permit the correction of any mistake therein, which indicates that every mistake in filling the nomination paper is not to be treated as substantial in nature. In para 21 of **Kaka Joginder Singh** (supra), the Supreme Court observed:

“21. The nature of mistake or defect in the nomination papers of the respondent, viewed from a different angle, also leads to the same conclusion. The object of the particulars required to be filled in the nomination paper, in accordance with sub-sections (1) and (2) of Section 5-B of the Act read with Rule 4 and Form 3 of the Rules, is to correctly and unambiguously identify the candidate, and to indicate that the conditions of eligibility for being a candidate at the election are satisfied. The Returning Officer is also required to permit correction of any discrepancies, to remove any ambiguity or misdescription. It is, therefore, clear that unless the defect in the nomination paper or the deficiency therein is of a substantial character, Section 5-E(5) enjoins the Returning Officer not to reject the nomination paper. It is, therefore, obvious that if there be any mistake or defect in the nomination paper which is a mere misdescription of the candidate, but the misdescription is such that it does not mislead anyone, and the identity of the candidate is not in doubt to enable the Returning Officer to perform his duty of scrutinising the nomination paper to find out whether the candidate has been validly nominated, then the mistake, if any, is not of a substantial character”.
(emphasis supplied)

29. The petitioner also places reliance on *Shambhu Prasad Sharma v. Charandas Mahant & Ors.*, (2012) 11 SCC 390. In this case, the allegation was that nomination papers filed by some of the candidates were incomplete for want of the proper affidavit required to be filed in terms of the orders passed by the Supreme Court in *Union of India v. Assn. for Democratic Reforms*, (2002) 5 SCC 294 and the instructions issued by the Election Commission requiring the candidates to file such affidavit along with their nomination papers. In para 15 of this decision, the Supreme Court observed that the objection raised by the appellant in respect of the impugned nomination forms was “*in the nature of an objection to form rather than substance of the affidavit, ...*”. The Supreme Court observed that the form

of the nomination paper is not considered sacrosanct. What is to be seen is whether there is substantial compliance with the requirement as to form. Every departure from the prescribed format cannot, therefore, be made a ground for rejection of the nomination paper.

30. The petitioner points out that Rule 19 of the Rules is identical with Section 33 of the Representation of the People Act. The petitioner further submits that there is nothing contained in Rule 19 to imply that apart from the clerical or technical error pertaining to the names and electoral roll numbers of the candidate and his proposer(s)-as entered in the nomination paper and as found in the electoral roll, other obvious and inconsequential errors cannot be permitted to be corrected by the RO/SO. It is submitted that there is no bar to the RO/SO pointing out other such like errors, so that the same could be corrected within the time available before the close of the nomination.

31. Having heard learned counsels and considered their respective submissions, I allowed the petition on 08.04.2017. Now, I proceed to record my reasons.

32. The preliminary objection raised by Mr. Pushkarna to the maintainability of the present writ petition in the light of the judgment of the Constitution Bench (six judges) of the Supreme Court in *N.P. Ponnuswami* (supra) is not sustainable in the factual context of the present case, and in the light of the subsequent judgment of the Supreme Court in *Ashok Kumar* (supra). I find force in the submission of the petitioner that the petitioner-by assailing the impugned order dated 05.04.2017, whereby the petitioner's nomination has been rejected by the RO/SO; and by seeking a mandamus

directing the respondent/ RO/SO to accept her nomination form and to allow her contest elections from Ward 3E of EDMC, is not seeking to interdict, stall or delay the election process which is underway. In *Ashok Kumar* (supra), the Supreme Court clarified the earlier constitution bench decisions- including the one in *N.P. Ponnuswami* (supra) by holding that if an election (which includes all steps and entire proceeding of commencement from date of notification of election till date of declaration of result) is called in question, and such questioning may have the effect of interrupting, obstruction or protracting the election process in any manner, the invoking of judicial remedy has to be postponed till after the completion of the proceedings in election.

33. However, if a petitioner approaches the court in writ jurisdiction to seek a direction which would, in fact, subserve the progress of the election and facilitate the completion of the election, the same cannot be described as questioning the election. Thus, it requires examination whether reliefs sought by the petitioner in the facts of the present case, if granted, would have the effect of interrupting, obstructing or protracting the election process in any manner, or whether the grant or relief to the petitioner, if justified, would subserve the progress of the election and facilitate the completion of the election. The Supreme Court also held that the actions taken and the orders issued by the Election Commission are open to judicial review on well settled parameters of judicial review; on grounds of malafide or arbitrary exercise of power, or; where the statutory body is shown to have acted in breach of law. It would also require consideration whether any of the aforesaid grounds for judicial review is made out in the facts of the

present case.

34. The petitioner, as noticed herein above, is not seeking – either by way of interim relief, or a final relief, the stay or cancellation of the election process. The only relief sought by the petitioner is to seek the quashing of the impugned order dated 05.04.2017 passed by the RO/SO rejecting her nomination, and for a direction that her name be included amongst the eligible candidates so as to allow her contest the election at Ward 3E of EDMC.

35. In my view, in the facts of the present case, it cannot be said that the petitioner is calling in question the election-which includes all its processes. The case of the petitioner is that the rejection of her nomination is completely arbitrary, mindless, in violation of the principles of natural justice - which are incorporated in the election rules, and contrary to the election rules, and the determination of the issue does not require a trial i.e. no disputed questions of fact arise which would need to be proved by leading any evidence. Since the petitioner has approached the court with promptitude, i.e. before the list of successful candidates is published, she can assail the order of the RO/SO rejecting his/her nomination, and for a direction that his/her name be included in the list of eligible candidates. The time period available for taking such an action is very limited i.e. between the time when the nomination is rejected and the time when the list of successful candidates gets frozen and is about to be published. Such an action, in my view, would be an action which accelerates the completion of the election and would be an act in furtherance of an election. A patent or an obvious mistake by the RO/SO in rejecting a good nomination paper of a

candidate would lead to an inherently defective election process, which would neither accelerate the completion of the election, nor be in furtherance of an election.

36. The submission of Mr. Pushkarna that if reliefs were granted to the petitioner in the present case, the same would open the floodgates, as scores of other prospective candidates whose nominations have been rejected would then approach the court by way of a writ petition, has no merit. This is for the reason that the election schedule stands notified and as per the said schedule the last date for withdrawal of nominations is notified as 08.04.2017. Thus, only those prospective candidates who approach the court in time, and whose petitions the Court is able to finally dispose of after hearing the counsels on the basis of admitted and undisputed facts i.e. which do not require a trial, may be entertained. Obviously, a candidate whose nomination is rejected and who allows the list of eligible candidates to be finalised, cannot then approach the writ court to seek the inclusion of his name amongst the eligible candidates by assailing the order rejecting his nomination. Such a candidate would necessarily have to await the outcome of the election result and he may, if he so chooses, raise a challenge to the election by way of an election petition.

37. In the present case, qua the constituency in respect whereof the petitioner filed her nomination, the petitioner is the only aggrieved party and no other petition has been preferred by any other prospective candidate whose nomination may have been rejected. Thus, the aforesaid issue raised by Mr. Pushkarna has no merit and the same is rejected.

38. The facts in the present case are not in dispute. The entire case is based on documents. There is no trial necessary to be held to decide the only issue arising vis a vis the rejection of the petitioner's nomination. Thus, there is no impediment in the way of this Court to examine whether the impugned action of the RO/ SO is arbitrary, mala fide, or patently illegal.

39. In *Harikrishna Lal Vs. Babu Lal Marandi* (2003) 8 SCC 613, a case dealing with the provisions of the Representation of People Act, 1951, the Supreme Court, inter alia, observed;

“10. A bare reading of the provisions shows that so far as sub-section (4) of Section 33 is concerned, the effect of non-compliance may be merely an irregularity which would not necessarily entail the rejection of the nomination paper. Acceptance or rejection of the nomination paper by the Returning Officer shall depend on his forming an opinion as to whether the defect is of a non-substantial character or of a substantial character. A statutory duty is cast on the Returning Officer to scrutinize the nomination papers on the appointed date without adjourning the proceedings. If the Returning Officer finds any irregularity or defect in the nomination paper, he may hold an enquiry suo motu affording the candidate, whose nomination is under scrutiny, an opportunity to satisfy the Returning Officer that no such defect or irregularity exists. An objection may be raised by any other person and in that case also the candidate concerned may be allowed time to rebut the objection. Within the meaning of the proviso to sub-section (5) of Section 36 the Returning Officer has to record his decision by way of acceptance or rejection of the nomination paper. If the nomination paper is rejected, a brief statement of his reasons for such rejection has to be recorded in writing.”

40. Thus, the RO/ SO is bound to examine whether the defect, if any, in

the nomination paper is of a non-substantial or substantial character. Even if an irregularity is found in the nomination form of a candidate, an opportunity must be afforded to him/ her to satisfy that the irregularity/ defect is not of a substantial character before rejecting the nomination form. The RO/ SO is obliged to hold an inquiry to satisfy himself in this regard. The scope of the inquiry to be undertaken by the RO/ SO is, necessarily, narrow, since the time available is rather limited within which he must conclude whether the defect is of a non-substantial, or substantial character. But it is abundantly clear that an “enquiry” must be undertaken by him, and he cannot without application of mind reject the nomination merely because he finds a defect or irregularity in the nomination form. Obviously, the enquiry would involve at least the perusal of the nomination form and all the documents filed along with it. If the doubt arising on account of the defect or irregularity in the nomination form can be satisfactorily addressed by a perusal of the other parts of the nomination form or the documents/ affidavits filed along with the nomination form, the defect or irregularity would, normally, be considered as one of a non-substantial character.

41. I may also refer to the judgment of Bombay High Court in ***Shamrao R. Khangal Vs. The District Deputy Registrar, Co-operative Societies, Nashik & Ors.*** 2015 SCC OnLine Bom 412. The Court dealt with two writ petitions by this common order in respect of rejection of nomination forms to an election of a co-operative society. The Court held that the rejection of the nomination forms was on the basis of defects which were not of substantial character. The Court quashed and set aside the orders passed by the RO rejecting the nomination forms and allowed the petitioner to contest

the election.

42. It is abundantly clear from the nomination paper of the petitioner, as well as from the documents filed by her along with her nomination paper – which she was obliged to file, that she is a woman. Firstly, the nomination paper contains her photographs; secondly she describes herself as Saroj with her husband's name as Sher Singh. Even in clause (c) on the second page of the nomination form, she states *“That my name and my husband's name have been correctly spelt out above in English”*. The affidavit of the petitioner in Form 21 filed under Rule 18(2) of the Rules also describes her as *“Saroj, wife of Sher Singh, aged about 32 years”*. She similarly describes herself as *“Saroj, wife of Sher Singh”* in the affidavit in the Form 22. She provides her educational qualification as *“7th Pass, Government Girls Sr. Secondary School, Dev Nagar, year 1993”*. As noticed above, the petitioner states that she also provided with her nomination form copies of her voter ID card and her caste certificate which also evidence the fact that she is a woman belonging to the SC category. There is no denial of these facts.

43. In the face of all the aforesaid evidence and materials before the RO, could it be said that there could have been any reasonable doubt about the sex of the petitioner - on account of the fact she had not struck off the non applicable word i.e. 'Male' while filling the nomination form? The answer to the above query is an obvious and emphatic 'No'. In the face of her other declarations and the documents filed by her along with her nomination including her two affidavits, no person with ordinary, average and reasonable intelligence can claim that there was any doubt about the fact that

the petitioner is a female. The impugned order passed by the RO/SO is per se illegal, and a mindless and arbitrary exercise of his jurisdiction by the RO/SO.

44. The RO, while scrutinising a nomination form, is expected to examine the same along with the affidavits and documents filed by the prospective candidates, in an intelligent manner. The RO is expected to have, and to display reasonable measure of common sense and reasonableness. The scrutiny of the nomination form to be undertaken by the RO is not a hyper-technical exercise. The RO is not expected to be on the lookout for some minor, inconsequential and insignificant lapse on the part of the prospective candidate in filling the nomination form, so as to provide a ground for rejection of the nomination. In fact, a perusal of Rule 22 (4) of the Rules shows that the RO/SO is obliged not to reject any nomination form on the ground of any defect which is not of a substantial character. The rule is worded in the negative form, which clearly brings out the legislative intent that minor defects in the matter of filling of the nomination form, which are not of a substantial character, shall not be a reason to reject the nomination form. The reason for prescribing such an approach by the RO in the matter of examination of the nomination form is not difficult to understand. In a democratic setup, the citizens are encouraged to participate in the election process. It is also a fact that quite often prospective candidates are not highly educated or trained to fill up the forms. In the present case, nomination pertains to a reserved seat, which is not only reserved for women candidates, but women candidates who belong to the scheduled castes. Judicial notice can be taken of the fact that a women, and that too within the

scheduled castes, are amongst the most backward and disadvantaged class. It is precisely for this reason that reservation is provided in respect of certain constituencies in any election.

45. Mr. Pushkarna has sought to justify the action taken by the RO/SO on the basis of the guidelines issued to the RO in the RO handbook, which, inter alia, provides that when a nomination paper is filed, the RO or the specified Assistant RO “*is required by law to examine it **then and there from the technical standpoint**.....*” vide clause 5.15.1 of the RO handbook. It is clear from the above that this scrutiny is the preliminary examination of the nomination papers by the RO/ Assistant RO at the time of the receipt of the nomination papers. This does not refer to the scrutiny of the nomination paper undertaken at the stage of scrutiny. In fact, this guideline places a duty on the RO/ Assistant RO while receiving the nomination form to examine it there and then for “technical” lapses which would include lapses which arise due to non filling up of the form completely. The nature of preliminary examination/scrutiny prescribed in the said guideline itself suggests that the said preliminary examination is not the same thing as the scrutiny of nomination papers which is required to be undertaken under Rule 22(2) of the Rules. This only refers to the preliminary examination undertaken in pursuance of Rule 19(5) of the Rules.

46. Mr. Pushkarna has himself disclosed that RO/SO are experienced civil servants. It is not expected of them to undertake-in the name of scrutiny of the nomination papers, such a perfunctory exercise without due application of mind. Their decision, one way or another, can make a huge difference

not only to the fate of the candidates/prospective candidates, but also to the electorate. It appears to this Court-and this submission was also advanced by Mr. Pushkarna, that the RO/SO go by a strict and hyper technical application of rules, and even the slightest defect in the nomination paper is considered as a ground for rejection thereof. It appears that no examination is undertaken by the RO/SO, as a matter of course, to address the issue whether the defect in any nomination form is of a substantial character or not. From the submission of Mr. Pushkarna, it appears that such a hyper technical and over cautious approach is adopted only to ward off allegations of discrimination by any prospective candidate. Such an approach of the RO/ SO is completely misdirected and it is bound to lead to failure in the performance of his statutory obligation by the RO/ SO.

47. *A stitch in time saves nine.* This phrase should be kept in mind by the RO/SO while scrutinizing the nomination forms which, unfortunately, has not been done in the facts of the present case.

48. The RO/SO appears to have fallen into the aforesaid patent error also on account of the reason that he does not appear to have granted even a summary/minimum opportunity to the petitioner to satisfy him that the defect in her nomination paper was not of a substantial character. Had the RO/SO pointed out the said defect to the petitioner, the petitioner could have explained that the said defect was not of a substantial character, since the fact that she is the female was writ large from the nomination form. The impugned order, therefore, is also bad on account of the violation of principles of natural justice, which, is incorporated in Rule 22(5) of the Rules. Rule 22(1) provides that on the date fixed for scrutiny of

nomination, the candidate and two other persons duly authorized in writing by him may attend at the time and place specified for the said purpose. Thus, the scrutiny is required to be undertaken in the presence of the candidate and his duly authorized representatives. Rule 22(5) reads as follows:

“(5) The Scrutinizing Officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of rule 14 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot, open violence or by causes beyond his control: Provided that in case an objection is raised by the Scrutinizing Officer or is made by any other person the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny; and the Scrutinizing Officer shall record his decision on the date to which the proceedings have been adjourned.

Provided further that if the Scrutinizing Officer/Returning Officer, observes himself or an objection has been raised at the time of scrutiny of nominations that a particular candidate is disqualified to be chosen under clause (f), (h), (i), (j), (k) or subsection (1) of section 9 of the Act and he seeks clarification or any information in this behalf from the Commissioner of Municipal Corporation concerned, the Commissioner shall supply the requisite information/clarification to the Returning Officer within such time as given by the Returning Officer.” (emphasis supplied)

Pertinently, the RO/SO completely ignored this procedure and did not grant any time or opportunity to the petitioner to establish and satisfy the RO/SO that the defect in her nomination was of a substantial character. The action of the RO/SO is also hit by the law laid down in ***Ramesh Raut*** (supra).

49. It is very interesting to note that the RO/SO addresses the petitioner in the impugned order as “Smt.”. Thus, there was no doubt in the mind of the RO/SO with regard to the sex of petitioner. Pertinently, in the impugned order the RO/ SO does not even return a finding that the defect in her nomination is of a substantial character. A perusal of the impugned order shows that the RO/ SO has heavily relied on the non-compliance of Rule 19(3) of the Rules, which provides that *“In a ward where any seat is reserved for woman, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless her nomination paper contains a declaration made by her that she is a women”*. Because the petitioner is claimed to have not made a declaration that she is a female, she has been disqualified. What the RO/ SO has failed to appreciate is that the “substantial character” test – in respect of a defect in the nomination form is applicable to all aspects and parts of the nomination form. Thus, the said test was also attracted to the defect in making the declaration by the petitioner in terms of Rule 19(3) of the Rules. He rejected her nomination on account of a hyper technical approach and on insubstantial grounds.

50. The RO/SO is obliged under Rule 19(5) to permit the candidates to remove the defects in their nomination paper, which are not of substantial character. The defects which may be permitted to be corrected in the nomination form by the prospective candidate are of the kinds stated in Rule 19(5), taken note of hereinabove. At the same time, after the close of the date and time for submission of nomination papers, there is no question of a prospective candidate being permitted to remove any defect of a substantial character in the nomination paper.

51. The other minor submission of Mr. Pushkarna that under Section 15(3) of the DMC Act, the petitioner should join as respondents in the petitions of all the candidates, has also no merit. Section 15(3) - which talks of an election petition, operates post election. It is in respect of an election petition filed after the conduct of the elections and declaration of results. However, in the present case, the petition has been preferred at a very early stage when the petitioner's nomination has been rejected. Thus, as on date, it is not even clear as to who all would be the candidates at the election. Moreover, the grievance of the petitioner is not qua any other candidate. It is only the decision of the respondents with which the petitioner is aggrieved. The RO has been impleaded as respondent no.2 in the petition, whose decision is assailed. There is no need for the petitioner to implead any other party respondents.

52. As noticed above, the writ petition was allowed on 08.04.2017. Since the time was short, the detailed judgment containing the submissions and my reasons for my decision could not be pronounced. During the course of preparation of this opinion, the respondents moved CM No. 15130/2017. By this application, the respondent seeks the recall of the order/modification of the order dated 08.04.2017 in the light of the judgment of Division Bench in LPA No. 250/2017 dated 11.04.2017 in ***Ravinder Negi Vs. State Election Commission and Another***. At the outset, I may observe that I had dismissed the writ petition preferred by the appellant Ravinder Negi on the same day i.e. 08.04.2017 in the facts of that case. The Division Bench has dismissed the said appeal. The Division Bench has taken note of ***N.P. Ponnuswami*** (supra) . Since the defect in the nomination form of the petitioner/appellant

in that case Ravinder Negi appeared to be of a substantial character, and the dispute raised by him was not capable of being determined except upon a trial, I had dismissed the writ petition. Pertinently, the issue with regard to applicability of *Ashok Kumar* (supra) did not arise in the facts of that case, and the said decision has not been considered by the Division Bench in *Ravinder Negi* (supra).

53. At the hearing of the application, Mr. Pushkarna has also brought to the attention of the Court another judgment of Division Bench of this Court in *Sanju Bala Vs. State Election Commission & Anr.* LPA 267/2017 pronounced on 21.04.2017. Pertinently, the writ petition of Sanju Bala had also been dismissed by me on 08.04.2017. The facts of that case were that the proposer of the prospective candidate shown as elector in Part 57 Serial No. 30 of Assembly Constituency No. 31 (Vikas Puri) was not an elector for Ward No. 24S (Bapraula) wherefrom the appellant Sanju Bala had filed her nomination. Reliance had been placed by the petitioner/appellant on Rule 19(5) of the Rules and I had held that the obligation cast on the RO by Rule 19(5) cannot be read as an obligation to change the constituency / ward where the proposer / elector is enrolled. Before the Division Bench, respondents herein placed reliance on *N.P. Ponnuswami* (supra) and *Mohinder Singh Gill* (supra). On the other hand, the appellant placed reliance on *Ashok Kumar* (supra). The respondent also placed reliance on *Ramphal Kundu Vs. Kamal Sharma*, (2004) 2 SCC 759. In *Ramphal Kundu* (supra), it was the Election Commission which had passed a direction to the Returning Officer to hold fresh scrutiny. In that context, the Supreme Court observed, inter alia;

“.....That apart, it has been held by a catena of decisions of this Court that once the nomination paper of a candidate is rejected, the Act provides for only one remedy, that remedy being by an election petition to be presented after the election is over, and there is no remedy provided at any intermediate stage. (See N.P. Punnuswami v. Returning Officer AIR 1952 SC 64, Mohinder Singh Gill v. Chief Election Commission AIR 1978 SC 851, Election Commission v. Shivaji AIR 1988 SC 61)”

54. Pertinently, **Ramphal Kundu** (supra) – which is a three Judge Bench decision does not appear to have noticed the earlier three Judge Bench decision in **Ashok Kumar** (supra). The reason for the same is not difficult to fathom. This is for the reason that in **Ramphal Kundu** (supra), the Supreme Court was examining the aspect of legality of the conduct of the Election Commission in issuing a direction to the Returning Officer to re-conduct scrutiny, whereas, in **Ashok Kumar** (supra), the Supreme Court examined the scope of the jurisdiction of the High Court under Article 226 of the Constitution of India to entertain a petition under Article 226 of the Constitution of India after the notification of the election process.

55. The issue which arose before the Division Bench in **Sanju Bala** (supra) was not the one under consideration in the present petition. Firstly, the Division Bench was not examining the issue whether the entertainment of the writ petition at this stage was an act of interdiction or interference with the election process, or it was a step in furtherance of the election process. Moreover, a perusal of Para 45 of the judgment in **Sanju Bala** (supra) would show that the Division Bench consciously observed, “*before us the appellant in LPA 267/2017 does not urge any mala fide or arbitrariness on the part of the respondents in rejecting the nomination.*”

This observation was made by the Division Bench, being conscious of the grounds on which a writ court may entertain a writ petition after the notification of the election process, as laid down in *Ashok Kumar* (supra).

56. The alternative relief sought in the application C.M. No. 15130/2017 is that the relief so granted will not come in the way of any eventual remedy that any aggrieved party may have before the election tribunal. In respect of the said prayer, I am not inclined to make any observation. This is for the reason that I have exhaustively considered the issue which has arisen in the present petition, which does not involve any disputed questions of fact. All that I would observe is that it is left to the Election Tribunal, if any dispute is raised in respect of the petitioner's nomination, to assess the impact of this decision on the election petition, if and when an election petition is moved before the Election Tribunal.

57. The above are my reasons for allowing the writ petition.

VIPIN SANGHI, J

MAY 08, 2017