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

+ W.P.(C) 3106/2017, CM No.13535/2017

JAMAL HAIDER

..... Petitioner

Through: Mr. Sushil Kr. Pandey, Adv.

versus

STATE ELECTION COMMISSION & ANR

..... Respondents

Through: Mr. Sumeet Pushkarna, Standing
Counsel with Mr. Siddhartha Nagpal,
Adv. with Mr. Biju Raj, Returning
Officer for R1.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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12.04.2017

W.P.(C) 3106/2017

The present petition has been filed by the petitioner with the following prayers:

“It is therefore most respectfully prayed that this Hon’ble Court may be pleased to:-

(a) *Issue a writ of mandamus and / or any other appropriate writ, order or direction in the nature of mandamus and quash and set aside the impugned order dated 05.04.2017 passed by the Respondent No.3, thereby rejecting the nomination paper of petitioner for contesting election for councillors of South Delhi Municipal Corporation, Ward No. 120-S (Abul Fazal Enclave); and*

(b) *Issue a writ of mandamus and / or any other*

appropriate writ, order or direction in the nature of mandamus thereby directing the Respondent no.2 to allow the petitioner to rectify his nomination papers for contesting election for Councilors of South Delhi Municipal Corporation, Ward No. 102-S (Abdul Fazal Enclave); and

- (c) *Pass such other further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.*

Mr. Sumeet Pushkarna, learned Standing Counsel appearing for the respondent would rely upon the judgment of the Division Bench of this Court in LPA 250/2017 dated 11th April, 2017 to contend that the writ petition is not maintainable. He has placed a copy of the judgement before this court. A perusal of the same would reveal that the Division Bench in Para 15 to 17 of the said judgment has stated as under:

"15. Learned counsel for the State Election Commission is also right in his submission that improper rejection of nomination as per Section 17(1) (c) of the DMC Act can be made subject matter of the Election Petition. In N P Ponnuswamy (supra), the Supreme Court had interpreted Article 329 (b) of the Constitution and on the ambit of the word "Election" held that the same has reference to the entire process which consists of several stages and embraces many steps. Referring to the provisions of the Representation of People's Act, 1951, it was observed that where a right and liability is created by the statute which gives special remedy for enforcing it, then the remedy given by that statute must be availed of. It was accordingly held as under:

"17. It may be pointed out that Article 329(b) must be read as complimentary to clause (a) of that article. Clause (a) bars the jurisdiction of the courts with regard to such law as may be made under Articles 327 and 328 relating to the

delimitation of constituencies or the allotment of seats to such constituencies. It was conceded before us that Article 329(b) ousts the jurisdiction of the courts with regard to matters arising between the commencement of the polling and the final selection. The question which has to be asked is what conceivable reason the legislature could have had to leave only matters connected with nominations subject to the jurisdiction of the High Court under Article 226 of the Constitution. If Part XV of the Constitution is a code by itself i.e., it creates rights and provides for their enforcement by a Special Tribunal to the exclusion of all courts including the High Court, there can be no reason for assuming that the Constitution left one small part of the election process to be made the subjectmatter of contest before the High Courts and thereby upset the time-schedule of the elections. The more reasonable view seems to be that Article 329 covers all "electoral matters".

18. The conclusions which I have arrived at may be summed up briefly as follows:

"(1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

(2) In conformity with this principle, the scheme 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."

Article 329(b) is pari materia to Article 243 ZG(b) of the Constitution. The decision in Ram Awadesh Singh (supra) arose out an Election Petition.

16. In case the appellant files an Election Petition and issues and contentions are raised regarding rejection of nomination, the same would be examined in accordance with law, without being bound by the aforesaid observations. We have recorded our prima facie findings only to satisfy ourselves that no injustice is being done, and whether the prayers made have any substance.

17. In view of the aforesaid discussion we do not find any merit in the appeal and the same dismissed. There would be no order as to costs."

Mr. Sushil Kr. Pandey, learned counsel for the petitioner would refer to Para 24 of the judgment of the Supreme court reported as ***AIR 2000 Supreme Court 2997 titled as Election Commission of India through Secretary, v. Ashok Kumar and Ors.*** to contend that if the act of the authority is mala fide, judicial review is permissible. From the perusal of the writ petition, it is noted that no allegations of mala fide as required in law have been made against respondent No.2 the Returning Officer. In view of the aforesaid position and the law laid down by the Division Bench of this Court, the present petition is not maintainable and the same is dismissed.

CM No.13535/2017

Dismissed as infructuous

V. KAMESWAR RAO, J

APRIL 12, 2017/jg