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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 3133/2017**

RAKESH ARYA Petitioner
Through: Mr.Ajay Saini, Adv.

versus

STATE ELECTION COMMISSION AND ANR Respondents
Through: Mr.Sanjeev Sabharwal, SC, SDMC
Mr.Sumeet Pushkarna, SC with Mr.Siddhartha
Nagpal, Adv. for R-1

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **12.04.2017**
CM 13662/2017

Allowed subject to all just exceptions.

Application is disposed of.

WP(C) 3133/2017

This petition has been filed with the following reliefs:-

“(a) set aside the order dated 06.04.2017 passed by the respondent no.2 i.e., Returning Officer, Ward 15-S, Janak Puri West, of South Delhi Municipal Corporation and direct the respondent no.2 to accept the nomination form of the petitioner, in the interest of justice, equity and good conscience.

(b) Give liberty to the proposer to sign the nomination papers at the requisite place, in the interest of justice, equity and good conscience.

(c) Grant permission to the petitioner to contest the election for Ward 15-S, Janak Puri West and instruct the concerned officer of respondent No.1 to do the needful for

accepting the candidature of the petitioner, in the interest of justice, equity and good conscience.

(d) Pass any other order or further which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case be also passed in favour of the petitioner, in the interest of justice, equity and good conscience."

Mr.Sumeet Pushkarna states that the present petition is not maintainable in view of the judgment of the Division Bench dated 11th April, 2017 in LPA no.250/2017 titled *Ravinder Negi vs. State Election Commission and Anr.* A copy of which is placed before me by Mr.Sumeet Pushkarna.

I note that the Division Bench in paragraphs 15, 16 and 17 has held 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 status 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 subject matter 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 of 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."

In view of the judgment of Division Bench in LPA no.250/2017, the present petition is dismissed.

V. KAMESWAR RAO, J

APRIL 12, 2017
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