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

Judgment Reserved: 19.04.2017
Judgment Pronounced: 21.04.2017

+ LPA 267/2017 & C.Ms.No.13912-14/2017

SANJU BALA

..... Appellant

Through: Mr. Manoj Ohri, Sr. Adv. with
Mr. Javed Alvi, Mr. Mritunjay Kumar Singh,
Mr. S. A. Rajput, Mr. M. K. Parvez, Mr. Jatin Gulia,
Adv.

Versus

STATE ELECTION COMMISSION & ANR

..... Respondents

Through: Mr. Sumeet Pushkarna, Adv. with
Mr. Siddhartha Nagpal, Mr. Sahil Ghai, Adv. for
R-1.

Mr. Y. R. Sharma, Adv. for R-2/ECI.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

: **ANU MALHOTRA, J.:**

1. Vide the present LPA No. 267/2017 under Section 10 of the Delhi High Court Act, 1966, the appellant assails the order dated 08.04.2017 of the learned Single Judge in W.P.(C) No. 3064/2017 whereby the appellant herein as petitioner thereof had challenged the order dated 05.04.2017 of the Returning Officer, Ward No. 24-S (Bapraula) (arrayed as the respondent No. 2 to the present appeal), whereby the nomination form of the petitioner

to contest the MCD Election, 2017 from Ward No.24-S, Bapraula has been rejected.

2. On the date when the appeal was first taken up for hearing itself, the attention of Mr.Manoj Ohri, the learned Senior Counsel appearing for the appellant was drawn to the decision of the Supreme Court in ***N.Ponnuswami vs. Returning Officer, Namakkal Constituency, Namakkal***, 1952 SCR 218.

3. The submissions made through the present appeal and in W.P.(C) No.3064/2017 were to the effect that the candidature of the appellant herein had been rejected erroneously on the ground that the proposer of the appellant herein Ms.Shashi Prabha shown as elector in Part 57, Serial No.30 of Assembly Constituency No.31 (Vikas Puri) was not an elector for Ward No.24-S (Bapraula) wherefrom the appellant herein had filed her nomination. It was submitted on behalf of the appellant that there was an error in enrolling the proposer Ms.Shashi Prabha as an elector of Part No.57, Serial No.30 of Assembly Constituency No.31 (Vikas Puri) and that in fact she should have been elector of Ward No.24-S, Bapraula. It was also submitted that the proposer's daughter Deepika shared the same residential address.

4. Reliance was placed on behalf of the appellant on Rule 19(5) of the ***Delhi Municipal Corporation Election of Councillors Rules, 2012*** [‘DMC (Election) Rules’ hereafter] which reads to the effect:

“19(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.”

5. Vide the impugned order dated 08.04.2017, it was observed to the effect that in terms of Rule 19(5) of the DMC Election Rules, the Returning Officer was only required to check whether the proposer was enrolled as an elector of the Constituency wherefrom the nomination has been filed. It was further observed thereby that:

“A denial of the aforesaid rule would show that the Returning Officer is obliged to satisfy himself that the names and electoral roll numbers of the candidate and his proposer – as entered in the nomination paper, are the same as those entered in the electoral roll. In case there is any clerical or technical error in this respect, he may correct the same in order to bring them into conformity with the corresponding entries in the electoral rolls, and where necessary, direct that any clerical/ printing error in the same shall be overlooked. The aforesaid obligation cast on the Returning Officer cannot be read as an obligation on the Returning Officer to change the constituency/ward where the proposer elector is enrolled.”

6. The appellant has submitted that she had filed her duly filled in nomination form No.2 along with the prescribed affidavit in Form No.21 & 22 required by the respondent No.1, i.e., the State Election Commission of the NCT of Delhi on 03.04.2017 before the respondent No.2, i.e., the Returning Officer of Ward No.24-S, Bapraula. It was further submitted on behalf of the appellant herein that the respondent No.2 inspected the nomination form of the appellant and accepted the same after it was found to

be complete and in order and that the respondent No.2 approved the appellant as the candidate of the Bhartiya Janta Party (recognized National Political Party) for Ward No.24-S, Bapraula, Delhi and that at the time of the filing of the nomination form, the name of the appellant was proposed by one Ms.Shashi Prabha (Deputy Mayor, South Delhi Municipal Corporation and Councilor from Ward No.122, Hastal), resident of House No.108, Bapraula Village, Bapraula, Delhi.

7. The respondent No.2 in his office conducted the scrutiny of the nomination form on 05.04.2017 when the appellant and Ms.Shashi Prabha, the proposer were present and the respondent No.2 rejected the nomination form of the appellant on the ground that the proposer Ms.Shashi Prabha was not an elector from Ward No.24-S.

8. It is essential to observe that Rule 19 of the DMC Election Rules ordains *the necessity of the candidate presenting nomination papers being proposed by a proposer of the same Ward from which the candidate belongs to*. The Rule 19 of the Delhi Municipal Corporation (Election of Councillors) Rules, 2012 is as follows:

“19. Presentation of nomination paper and requirements for a valid nomination:- (1) On or before the date appointed under clause (a) of rule 14 each candidate shall, either in person or by his proposer, between the hours of eleven O’ clock in the forenoon and three O’clock in the afternoon, deliver to the Returning Officer at the place specified in this behalf in the notice issued under rule 16 a nomination paper completed in Form 2 and signed by the candidate and by an elector of the same ward as proposer.

Provided that a candidate not set up by a recognized National Political party, shall not be deemed to be duly nominated for

election from a ward unless the nomination paper is subscribed by ten proposers being electors of the same ward.

(2) In a ward where any seat is reserved, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration made by him specifying the particular Scheduled Caste of which he is a member.

(3) 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 woman.

(4) Where the candidate is a person who having held any office referred to in clause (k) of sub section (1) of section 9 has been dismissed and a period of four years has not elapsed since the dismissal, such person shall not be deemed to be duly nominated as a candidate unless his nomination paper is accompanied by a certificate issued by the Central/State Government, as the case may be, that the disqualification has been removed or by a certificate issued by the Commission to the effect that he has not been dismissed for corruption or disloyalty to the State.

(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) Where the candidate is an elector of a different ward, a copy of the electoral roll of that ward or of the relevant part thereof or a certified copy of the relevant entries in such roll shall, unless it has been filed alongwith the nomination paper, be produced before the Scrutinizing Officer at the time of scrutiny;
- (7) Nothing in this rule shall prevent any candidate from being nominated by more than one nomination paper;

Provided that not more than four nomination papers shall be presented by or on behalf of any candidate or accepted by the Returning Officer for election in the same ward.”

(Emphasis Supplied)

9. It was submitted on behalf of the appellant that this act of the rejection of the nomination form of the appellant by the respondent No.2, the Returning Officer, at the stage of accepting the nomination form was not only in total violation of Rule 19(5) of the DMC ELECTION Rules but also the guidelines laid down in the **Handbook for Returning Officer, 2014** (‘Handbook’ hereafter) issued by the Election Commission of India.

10. Reliance was placed on behalf of the appellant on the provisions of 5.15 of the said Handbook which deals with the preliminary examination of nomination papers which read as under:

“5.15 PRELIMINARY EXAMINATION OF NOMINATION PAPERS

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:-

- (i) If the candidate is an elector in your constituency, you should compare the entries in the nomination paper with the entries in the electoral roll relating to the serial number and name of the candidate and his proposer/s.**
- (ii) If he comes from another constituency you should compare the entries in the nomination paper with the entry relating to the candidate's name in the electoral roll of the constituency or the relevant part thereof or certified copy of such entry filed by him. The candidate is required by law to produce before you such electoral roll or the relevant part thereof or a certified copy of relevant entries thereof [Section 33 (5)]
- (iii) Make sure that the electoral roll with which you make such comparison is one currently in force for the constituency in either case.
- (iv) Check whether the affidavit in Form 26 (**Annexure – 11C & 12**) is duly filled up and attached along with the nomination paper. If not attached you should bring it to his notice this requirement through a notice by way of the check list.
- (v) Check whether all column of affidavit are filled up, as incomplete affidavits are liable to be rejected leading to rejection of nomination paper. In case any of the column is left blank by the candidate, the RO will note it in the revised checklist as amended in pursuance of the Hon'ble Supreme Court judgement and reflected in the ECI Instruction No. 576/3/2013-SDR dated 30.9.2013 and hand it over to the candidate against proper receipt."

(Emphasis by us)

11. It was submitted on behalf of the appellant that it is the assembly wise electoral roll prepared and maintained by the respondent No.1, the State Election Commission had been adopted for the MCD Election, 2017 after notification of the delimitation of the wards. It was thus submitted on behalf of the appellant that her proposer Ms.Shashi Prabha resides in the House No.108, Bapraula, Delhi along with her family members including a daughter Deepika. However, in the electoral rolls, the residents of the same property, i.e., House No.108, Bapraula Village, Bapraula, Delhi and family that is the proposer and her daughter Ms.Deepika, have been shown as electors in two different wards erroneously, in as much as Ms.Shashi Prabha (proposer of the appellant) had been shown as an elector in **Part No.57** of the electoral roll which comes under **Ward No.19-S, Ranhola** and at the same time her daughter Ms.Deepika (also resident of house No.108, **Village Bapraula**) is shown as elector in **Part No.56 of Ward No.24-S, Bapraula**. It was also submitted on behalf of the appellant that the site map of **ward No.24-S, Bapraula**, issued by the respondent No.1 also clearly included the House No.108, **Village Bapraula** and that the neighbouring houses of the proposer, Ms.Shashi Prabha are even shown as electors in Part No.56 of Ward No.24-S, Bapraula.

12. It was further submitted on behalf of the appellant that even the Voter Certificate issued by the respondent No.2 in favour of Ms.Shashi Prabha, the proposer of the appellant did not indicate of which ward she was an elector.

13. In relation to this aspect, it was submitted on behalf of the respondent that in the present case, the appellant had filed her nomination from **Ward**

No.24-S (Bapraula), but the proposer Ms.Shashi Prabha is not an elector of the **Ward No.24-S (Bapraula)** and that in the nomination paper submitted by the appellant, the proposer had mentioned that her name is entered at Serial No.30 in the **Part No.57** of the electoral roll for the **Ward No.24-S, Bapraula** MC ward comprised within **AC-31, Vikaspuri** Assembly Constituency and that the proposer had wrongly mentioned that her name is in the electoral roll of **Ward No.24-S, Bapraula**.

14. On behalf of the respondents, it was submitted that in terms of Rule 22 (2)(b) of DMC (Elction) Rules, 2012, the Scrutinizing Officer has to reject the nomination paper if there has been a failure to comply with the provisions of Rules 18, 19 & 20 of the said Rules and it was thus submitted on behalf of the respondents that since the appellant failed to comply with the provisions of Rule 19, therefore the respondent No.2 had no option, but to reject the nomination paper.

15. So far as the scope of the scrutiny by the Scrutinizing Officer is concerned, we may usefully advert to the provisions of Rule 22 of the DMC (Election) Rules, 2012 which reads as follows:

“22. Scrutiny of nomination. – (1) On the date fixed for the scrutiny of nominations under rule 14, the candidate and two other persons duly authorized in writing by him but no other person, may attend at such time and place as has been specified in the notice issued under rule 16 and before such Scrutinizing Officer as the Commission has appointed under rule 7 and the Scrutinizing Officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and the manner laid down in rule 19.

(2) The Scrutinizing 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 rule 18,19 and 20*
- (c) that the signatures of the candidate or the proposer(s) on the nomination paper is/are not genuine.*

(3) Nothing contained in clause (b) or clause (c) of sub-rule (2) shall be deemed to authorize the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

(4) The Scrutinizing Officer shall not reject any nomination paper on the ground of any defect, which is not of a substantial character.

(5) The Scrutinizing Officer shall hold the scrutiny on the date appointed on 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 sub-section (1) of section 9 of the Act and he seek 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.

(6) The Scrutinizing Officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection;

(7) For the purpose of this rule, a certified copy of any entry in the electoral roll for the time being in force of a ward shall be conclusive evidence of the fact that the person

referred to it in that entry is an elector for that ward unless it is proved that he is subject to a disqualification mentioned in section 16 of the Representation of the People Act, 1950.

(8) *Immediately after all the nomination papers have been scrutinized and decision accepting or rejecting the same have been recorded, the Scrutinizing Officer shall prepare in Form 4 a list of validity nomination candidates, that is to say, candidates whose nomination have been found valid and forward the same alongwith all the nomination papers to the Returning Officer who shall countersign the list and affix it to his notice board."*

(Emphasis by us)

16. The respondents also produced the original proposal form submitted by the proposer in Part 1 which brings forth the declaration of the proposer as follows:

"FORM-2

[See Rule 17]

NOMINATION PAPER

Election to the South Delhi Municipal Corporation

(Strike off Part-I or Part-II below whichever is not applicable)

PART-I

(To be used by Candidate set up by *Recognized Political Party)

I nominate as a candidate for election to the **SOUTH** Delhi Municipal Corporation from the 024-S(MC Ward No. and Name) **BAPRAULA (WOMEN)**

Candidate's Name

SANJU BALA

Father's / Mother's / Husband's Name

SH. SATISH KUMAR

His/Her Postal Address

**H. No. 207/218 NANGLI
VIHAR EXTENSION,
BAPROLA, DELHI – 110043.**

His/Her name is entered at **Sl. No. 1161 in Part No. 72** of the electoral roll for the **024S BAPROLA MC Ward** comprised within **AC-31 VIKAS PURI** Assembly Constituency.

My Name is **SHASHI PRABHA** and it is entered at **Sl. No. 30 in Part No. 57** of the electoral roll for the **024-S BAPRAULA MC Ward** comprised within **AC-31 VIKAS PURI** Assembly Constituency.

Sd/-

Dated 03-04-2017

(Signature of the proposer) ”

17. It was further submitted on behalf of the respondent no. 2 that the appellant had filed her nomination paper at 6.00 p.m. on 03.04.2017 as per Nomination Paper Serial No.11 and her proposer was Ms.Shashi Prabha, Deputy Mayor, South Delhi Municipal Corporation and Councillor from Ward No.122 who was well aware of the electoral rolls as well as the Rules and procedures to be followed while contesting an election of MCD Ward. It was further submitted that the Polling Station List-SDMC, 2017 of the State Election Commission was also available online on the website and displayed at the office of the Returning Officer at Mission Swaraj/Samajik Suvidha Sangam, Vikas Bhawan-2, Civil Lines, Delhi-110054 with effect from 24.03.2017 which would thus be fully within the knowledge of the appellant.

18. It was also submitted on behalf of the respondent that the State Election Commission (i.e. respondent no. 1) had also created the link on

their website, i.e., <http://www.delhi.gov.in/wps/wcm/connect/DoIT/DSEC/Delhi-state-election-commission/home> showing the Polling Station List-SDMC (2017) of the wards of the three Municipal Corporations before the start of filing of Nominations.

19. Significantly, it was further submitted by the respondents that the appellant had in the present nomination matter obtained a certified copy of the extract of the Electoral Roll of the proposer bearing No.1570 dated 30.03.2017 from the ERO, AC-31, Vikas Puri and submitted the nomination on 03.04.2017 and that the petitioner/the appellant herein had enough time to identify the correct ward for which the proposer was the elector/voter.

20. It has further been submitted by the respondents that every candidate and the proposer can also access the Electoral Roll available on the website of the Chief Electoral Officer, Delhi (<http://ceodelhi.nic.in>) to ascertain in which part of the concerned Assembly constituency, he/she is a voter/elector. It was thus submitted on behalf of the respondents that in the present case, the proposer Ms.Shashi Prabha did not reveal her correct ward number for which she is a voter/elector and made a wrong declaration as proposer for Ward No.24-S (Bapraula) although she is a voter/elector of Part No.57 of the Electoral Roll and thus, the Returning Officer had no option but to reject the nomination paper after scrutiny due to clear violation of Rule 19 of the DMC (Election) Rules, 2012.

21. It was also submitted on behalf of the respondents that it was for the appellant to first approach the Election Commission of India/Chief Election Officer, Delhi who had notified the electoral roll for correction of proposer's name as featured in Part 57 to Part 56 in the Electoral Roll as there is no Part 57 in the Ward 24-S (Bapraula). The submission is that the Scrutinizing

Officer conducting the Scrutiny under Rule 22 of the DMC (Election) Rules has no authority to make any variation or correction in the election rules. The further submission is that the election is to be held on 23.04.2017 and ought not to be interdicted by this Court.

22. Mr.Sumeet Pushkarna, learned counsel for the respondent No.1 has painstakingly pointed out that as per the electoral rolls, out of five members of Smt.Shashi Prabha (proposer's family) four are shown in Ward No.195 and only one family member Deepika as shown in Ward No.24-S. Learned counsel would contend that neither the proposer nor any other member (who would be the voters) have made any objection to the electoral roll. It is, therefore, not open to the appellant to challenge the same.

23. Apart from the above aspects on the merits / of the case of the appellant, it was submitted on behalf of the respondents that the jurisdiction of this Court is wholly barred in terms of **Article 243ZG (b)** of the Constitution of India which is in *pari materia* with Article 329(b) of the Constitution of India in view of the non-obstante clause in both of them. Article 243ZG and Article 329 of the Constitution of India read as follows:

“243ZG. Bar to interference by courts in electoral matters.-

Notwithstanding anything in this Constitution,—

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243ZA shall not be called in question in any court;

(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.

***329. Bar to interference by courts in electoral matters. –
Notwithstanding anything in this Constitution***

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328, shall not be called in question in any court;

(b) no election to either 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.”

(Emphasis Supplied)

24. It was further submitted on behalf of the State Election Commission, the respondent no. 1 that though there was no improper rejection of the nomination in the instant case, even if there was improper rejection due to any clerical or computer error of the wards in relation to the proposer of the appellant, the improper rejection of the nomination as per Section 17(1)(c) of the DMC Act, 1957 can be made the subject matter of an election petition.

25. We note that neither of the parties has been able to place any jurisprudence relating to a construction of Section 243ZG of the Constitution of India before us. However, the spirit, purport, intendment and scope of Article 329 of the Constitution of India have been the subject of consideration in several authoritative pronouncements of the Supreme Court of India.

26. As noted above, the provisions of Article 243ZG of the Constitution are *pari materia* to Article 329 and as such the construction of expression appearing in Article 329 in judicial pronouncements not only guides but binds our consideration of Article 243ZG of the Constitution of India. We note hereafter these pronouncements of the Supreme Court which are relevant to the submissions made before us hereafter.

27. Reliance was placed on behalf of the respondents on the Six Judges Bench verdict of the Supreme Court in ***N.P. Ponnuswami vs. Returning Officer, Namakkal Constituency, Namakkal and Ors.*** 1952 SCR 218 whereby, the Supreme Court upheld the view of the Madras High Court dismissing a petition praying for a writ of certiorari when nomination papers of the appellant therein had been rejected and observed further to the effect that the grounds on which they were rejected were not required to be set out as they were not the material to the point raised in the appeal before the Apex Court which observing to the effect that the High Court had no jurisdiction to interfere with the order of the Returning Officer under Article 226 in view of the provisions of Article 329 (b) of the Constitution of India.

28. The meaning given to the word 'election' in Article 329 (b) was also laid down in ***N.P. Ponnuswami (supra)*** to the effect that it is a word, which by long usage in connection with the selection of proper representatives in democratic institutions, has acquired both a wide and narrow meaning and that the word '*election*' has been used in Part-XV of the Constitution in the wide sense, it connotes the entire procedure to be gone through to return a candidate of the legislature.

29. The observations of the Apex Court in paras 8 & 9 of this verdict are to the following effect:

“8. The next important question to be considered is what is meant by the words "no election shall be called in question". A reference to any treatise on elections in England will show that an election proceeding in that country is liable to be assailed on very limited grounds, one of them being the improper rejection of a nomination paper. The law with which we are concerned is not materially different, and we find that in section 100 of the Representation of the People Act, 1951, one of the grounds for declaring an election to be void is the improper rejection of a nomination paper.

9. The question now arises whether the law of elections in this country contemplates that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under article 226 of the Constitution (the ordinary jurisdiction of the courts having been expressly excluded), and another after they have been completed by means of an election petition. In my opinion, to affirm such a position would be contrary to the scheme of Part XV of the Constitution and the Representation of the People Act, which, as I shall point out later, seems to be that any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at an intermediate stage before any court. It seems to me that under the election law, the only significance which the rejection of a nomination paper has consists in the fact that it can be used as a ground to call the election in question. Article 329(b) was apparently enacted to prescribe the manner in which and the stage at which this ground, and other grounds which may be raised under the law to call the election in question could be urged. I think it follows by necessary implication from the language of this provision that those grounds cannot be urged in any other manner, at any other stage and before any other court. If the grounds on which an election can be called in question could be raised at an earlier stage and errors, if any, are rectified, there will be no meaning in enacting a provision like article 329 (b) and in setting up a special tribunal. Any other meaning ascribed to the words used

in the article would lead to anomalies, which the Constitution could not have contemplated, one of them being that conflicting views may be expressed by the High Court at the pre-polling stage and by the election tribunal, which is to be an independent body, at the stage when the matter is brought up before it.”

30. Vide paragraphs 12 and 14 of the said verdict, it was also observed that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of and that thus as a remedy was available in terms of the Representation of the People Act, 1951 by institution of an election petition coupled with the non-obstante clause in Article 329(b) of the Constitution of India that "notwithstanding anything in this Constitution", the same suffices to exclude the jurisdiction of the High Court to deal with any matter which may arise while the elections are in progress.

31. It was observed vide paragraphs 17 and 18 of the said verdict to the following effect:

*“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". 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."

(Emphasis by us)

32. This aspect was also considered in LPA No.250/2017 vide verdict dated 11.04.2017 of this Court in the case of **Ravinder Negi vs. State Election Commission and Anr.** where the nomination papers of the

appellant therein (Ravinder Negi) were rejected by the Scrutinizing Officer vide order dated 05.04.2017 for want of signature of the candidate, which LPA No.250/2017 was also dismissed whilst placing reliance on the verdict of the Supreme Court in *N.P. Ponnuswami (supra)*, and noting the *pari materia* provisions of the Representation of the People Act, 1951 and the non-obstante clause under Article 329(b) of the Constitution of India.

33. Significantly, the Special Leave to Appeal (C) No.11741/2017 filed by Ravinder Negi, the appellant in LPA No.250/2017 against the verdict dated 11.04.2017 of this Court was dismissed as withdrawn before the Apex court on 13.04.2017.

34. On behalf of the appellant it was submitted that the Returning Officer had not scrutinized the nomination papers properly and that the provisions of **Handbook of Returning Officer, 2012** had not been complied with and that if there was any improper rejection of the nomination papers, the election would have to be set aside under Section 100 of the Representation of People Act, 1951. Reliance in relation thereto was placed on behalf of the appellant on the verdict of the Apex Court in *Hira Singh Pal vs. Madan Lal* (1968) 2 SCR 778. Reliance was also placed on behalf of the appellant on the verdict of the learned Single Bench of this Court in W.P.(C) No.3057/2017 titled *Saroj vs. Delhi State Election Commission & Anr* dated 08.04.2017 of this Court where the Returning Officer was directed to include the name of a candidate in the list enabling her to contest the elections.

35. Furthermore, reliance was placed on behalf of the appellant on the verdict of the Supreme Court in *Election Commission of India vs. Ashok Kumar and Ors.* (2000) 8 SCC 216 to observe that the provisions of the

Constitution and the Representation of the People Act, 1951 when 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 and that the question as to what extent Article 329(b) has an overriding effect on Article 226 of the Constitution of India was considered and determined by the Supreme Court vide paragraph 12, 14, 17, 30, 31 and 32 as under:

“12. The issue arising for decision in these appeals is the jurisdiction of the High Court to entertain petitions under Article 226 of the Constitution of India and to issue interim directions after commencement of the electoral process.

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14. The term “election” as occurring in Article 329 has been held to mean and include the entire process from the issue of the notification under Section 14 of the Representation of the People Act, 1951 to the declaration of the result under Section 66 of the Act.

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17. That the power of judicial review is a basic structure of Constitution – is a concept which is no longer in issue.

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 Gills case, supra). 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 courts 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.”

36. It was thus submitted on behalf of the appellant that the case of the appellant fell within the parameters of the conclusions re-stated by the Supreme Court after the consideration of the verdicts in *N.P. Ponnuswami (supra)* and *Mohinder Singh Gill and Anr. vs. The Chief Election*

Commissioner, New Delhi and Ors. (1987) 1 SCC 405, to contend that, in terms of the ratio laid down in Para 32(3) verdict in **Election Commission of India vs. Ashok Kumar** that in the instant case, there had been arbitrary exercise of power made by the State Election Commission and the Returning Officer, i.e., the respondent Nos.1 and 2 had thus acted in breach of law and that thus the order dated 05.04.2017 of the respondents of the rejection of the nomination of the appellant was open to judicial review.

37. Reliance was also placed on behalf of the appellant on the verdict of the Supreme Court in **Kabul Singh vs. Kundan Singh** (1969) 2 SCC 452 to similar effect.

38. On behalf of the respondent, reliance was *inter alia* placed on the verdicts of the learned Single Bench of this Court dated 12.04.2017 in W.P.(C) No.3133/2017 titled **Rakesh Arya vs. State Election Commission and Anr.**; W.P.(C) No.3106/2017 titled **Jamal Haider vs. State Election Commission & Anr.** and in W.P.(C) No.3128/2017 titled **Neetu vs. Delhi State Election Commission & Anr.** made, in view of the verdict dated 11.04.2017 of the Division Bench of this Court in LPA No.250/2017 **Ravinder Negi vs. State Election Commission and Anr.** These writ petitions challenging the orders of the Returning Officer in not accepting the nomination forms for the forthcoming elections to be held on 23.04.2017, were held to be not maintainable and were dismissed, there also being no mala fides alleged in the petitions.

39. Reliance was also placed on behalf of the respondent on the verdict of the Supreme Court in **Ram Phal Kund vs. Kamal Sharma** (2004) 2 SCC 759 wherein it was observed in para 24 to the effect:

“24. It may be noticed that the petition by Kamal Sharma was filed on 6.2.2000 and the same was allowed by the Election Commission very next day i.e. on 7.2.2000 by which a direction was issued to the Returning Officer to hold a fresh scrutiny. There is nothing on record to indicate nor it appears probable that before passing the order, the Election Commission issued any notice to Bachan Singh. Apparently the order was passed behind his back. The order of the Election Commission to the effect that the Returning Officer shall take further consequential steps as may become necessary, by treating all earlier proceedings in relation to said candidates, as ab initio void and redraw the list of validly nominated candidates could not have been passed without giving an opportunity of hearing to Bachan Singh. 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). Therefore, the order passed by the Election Commission on 7.2.2000 was not only illegal but was also without jurisdiction and the respondent Kamal Sharma can get no advantage from the same. The inference drawn and the findings recorded by the High Court on the basis of the order of the Election Commission, therefore, cannot be sustained.”

40. It has been categorically held by a catena of judgments 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.***

41. The verdict of the Apex Court in ***Mohinder Singh Gill and Anr.*** (*supra*), paragraph 128 thereof also lays down to the effect:

“128. So, in view of the scheme, of Part VI of the Act, the Delhi High Court could not have embarked upon an enquiry on

any part of the merits of the dispute. Thus it could not have examined the question whether the impugned order was made by the Election Commission in breach of a rule of natural justice. That is a matter relating to the merits of the controversy and it is appropriately for the election court to try and decide it after recording any evidence that may be led at the trial. It may be that if we pronounce on the question of the applicability of the rule of natural justice, the High Court will be relieved of its duty to that extent. But it has to be remembered that even for the purpose of deciding that question, the parties may choose to produce evidence, oral or documentary, in the, trial court. We therefore refrain from expressing any opinion in this appeal on the question of the violation of any rule of natural justice by the Election Commission in passing the impugned order.”

42. The verdict of the Supreme Court in ***Manda Jaganath vs. K.S. Rathnam and Others*** (2004) 7 SCC 492 also lays down that contention in relation to even curable irregularities in a nomination paper can be addressed in a properly constituted election petition and cannot be a ground for setting aside the order of the Returning Officer.

43. On a consideration of the materials available on record and the catena of verdicts relied upon by both the sides, it is apparent that 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 where such questions 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 the proceedings in the elections.

44. The ratio of the verdict of the Supreme Court in ***Election Commission of India vs. Ashok Kumar and Ors.*** (*supra*) laid down on a consideration of the verdicts in *See N.P. Ponnuswami v. Returning Officer AIR 1952 SC 64 and*

Mohinder Singh Gill v. Chief Election Commission AIR 1978 SC 851 mandates that the Courts must be circumspect and must act with caution while entertaining any election dispute even if not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings.

45. A reading of the above enunciation of law by the Supreme Court would show that in ***Ashok Kumar***, it has been unequivocally declared that an election (which means all steps and entire proceedings from the date of election till declaration of result) can be called in question only after completion of the election [para 32(i)] unless the action taken or orders are challenged on a case of malafide or arbitrary exercise of power by the authorities conducting the election. Before us the appellant in LPA 267/2017 does not urge any malafide or arbitrariness on the part of the respondents in rejecting the nomination. During the course of submissions, Mr. Manoj Ohri, learned Senior Counsel appearing for the Appellant further tried to submit that the action of the respondents was arbitrary and illegal. Given the fact that the impugned orders have been passed on the representation by the appellant herself and actually is based on the electoral roll, there is no substance in these submissions. Clearly the prohibition under Article 243ZG (b) of the Constitution and the binding position in law delineated in ***Mohinder Singh Gill; N.P. Ponnuswami and Ashok Kumar (supra)*** would bar the appellant from invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The impugned judgment dismissing the writ petition, therefore, cannot be faulted.

46. We, therefore, find no merit in this appeal which is hereby dismissed.

47. We may clarify that so far as the challenge on the factual assertions or the scrutiny, etc. are concerned, we have not expressed any opinion on the

merits of the rival contentions. The same are merely noted herein and are left open for consideration before the competent forum, in case the appellant invokes any other remedy or makes any further challenge.

ACTING CHIEF JUSTICE

ANU MALHOTRA, J

APRIL 21, 2017
pmc

