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

Date of Decision: 28.08.2018

+ **W.P.(C) 9023/2018**

AMIT SAHNI

..... Petitioner

Through: Petitioner-in-person.

versus

ELECTION COMMISSION OF INDIA & ANR Respondents

Through: Mr. P.R. Chopra, Adv. for R-1/ECI.
Mr. Sanjeev Narula, CGSC with
Mr. Rajat Gava, Adv. for R-2/UOI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

RAJENDER MENON, CHIEF JUSTICE (ORAL):

CM APPL. 34707/2018 (*exemption*)

Allowed, subject to just exceptions.

The application stands disposed of.

W.P.(C) 9023/2018

1. Petitioner, who appears in person and claims to be a practising Advocate has filed this writ petition in public interest and the prayer made by the petitioner in the writ petition reads as under:

“i) Issue a writ in the nature of Mandamus/or any other appropriate writ/order/direction, thereby issue directions to the respondents to take appropriate action to make requisite amendments in Rule 39(2)(b), Rule 70, Rule 73(2)(e) of the Conduct of Elections Rule, 1961 or any other similar rule,

which stipulates that the article/instrument given by the Respondent No.1 is to be used for the purpose of marking ballot. And/or

ii) Pass any other appropriate order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. Challenge to the aforesaid Rules, namely, Rule 39(2)(b) and Rule 70 of the Conduct of Election Rules, 1961 is primarily made on the ground that they are vulnerable and can be misused by any candidate contesting an election or his agents or representatives and in support thereof certain incident that took place in the Haryana Elections held in 2016 has been demonstrated to say that the use of the pen as provided by the Election Commission can be misused and therefore the Rule needs amendment.

3. Having heard the petitioner who appears in person and the learned counsel for the Election Commission, we find that the only ground seeking amendment to the aforesaid Rule is the possibility of misuse and as there are instances of misuse of the aforesaid provision, therefore, it should be amended.

4. Incorporating or legislating a statutory provision, particularly, with regard to conduct of an election is a matter based on consideration of various technical, factual and administrative aspects which include suggestions from various stakeholders, deliberations and thereafter its incorporation by legislation. A provision for providing an instrument or article for marking the ballot paper has been undertaken as a measure to prevent illegality or irregularity in the conduct of election and merely because one or two isolated instances on misuse has come to the notice that cannot be a ground

for us to interfere in the matter and issue a mandamus. It is for the Election Commission to take note of all these factors and proceed, if required, to amend the Rules. A mandamus in this regard in a Public Interest Litigation exercising the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India in our considered view is not called for.

Accordingly, we dismiss this writ petition.

CHIEF JUSTICE

V. KAMESWAR RAO, J

AUGUST 28, 2018

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