

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8141 of 2019

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Jawwad Alam Son of Shamsher Ali Resident of Village-Bhunamajgava,
Block-Jokihat, P/S-Jokihat, District-Araria.

... .. Petitioner/s

Versus

1. The Secretary, Election Commission of India, Nirwachan Sadan, Ashok Road, New Delhi.
2. The District Magistrate cum Returning Officer Araria.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Uday Prakash Shharma, Advocte
For the E.C.I.	:	Mr.Siddhartha Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 19-04-2019

The present writ petition has been filed for the following reliefs --

(i) For issuance of an appropriate writ/s, order/s, direction/s in the nature of mandamus commanding and directing the respondent no. 3 to grant the petitioner an opportunity to correct his form no. 26 (Nomination Paper) in which inadvertently the petitioner could not put signature in the relevant column for the petitioner filed his nomination on 04.04.2019 and it was rejected just next day on 05.04.2019 thus very inadequate time was given to the petitioner to rectify the column in which he was put his signature.

(ii) For issuance for any other writ/order/direction to grant relief which the Hon'ble Court may find it fit and proper in the facts and circumstances of the



case.

2. At the very outset, a preliminary objection has been raised by learned counsel for the respondent no. 1 with respect to non-maintainability of the writ petition in view of the specific bar contained in Article 329(b) of the Constitution of India. It is submitted that the present petition has been filed after notification of the election dated 28.03.2019 for Araria Parliamentary Constituency and the only remedy available with the petitioner would be by way of filing an election petition at the appropriate stage. It is further submitted that a petition of the present nature would have effect of stalling the election proceedings and hence cannot be entertained.

3. Learned counsel for the petitioner submits that owing to sheer inadvertence signature of the deponent was missed to be made in the verification portion of the nomination paper (Annexure-3) and as such the petitioner seeks liberty for filling up the Form No. 26 afresh in order to allow him to participate in the election.

4. Having heard the parties and on consideration of the rival submissions, this Court is of the view that once the election has been notified, the bar contained in Article 329(b) of the Constitution of India comes into operation, in view of which the petitioner would only have remedy by way of filing an election petition at the appropriate time for redressal of his grievances.



5. In this regard reference may be made to the case of *N.P. Ponnuswami vs. The Returning Officer, Namakkal Constituency, Namakkal, Salem District and Ors; A.I.R. (39) 1952 SC 64* wherein it has been observed as follows --

“9. The questions 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 Art 226 of the Constitution (the ordinary jurisdiction of the Courts having been expressly excluded), and an other 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 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 Art. 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.”

5. In the circumstances, the writ petition stands dismissed.

(Vikash Jain, J)

Chandran/-

AFR/NAFR	NAFR
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