

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9127 of 2019

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Geeta Kumari (Female) aged about 51 years, W/o Shri Vijay Kumar,
Resident of Mano Malighat, P.S. Mithanpura, District-Muzaffarpur.

... .. Petitioner

Versus

1. The Election Commission of India through Chief Election Commission, New Delhi.
2. The State Election Commission, Patna.
3. The District Magistrate, Vaishali-cum-Returning Officer 21 Hajipur, Parliamentary Constituency, Hajipur.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Y.C. Verma, Sr. Advocate. Mr. Anuj Kumar Ms. Priyanka Singh, Advocates.
For the Resp. No. 1	:	Mr. Siddhartha Prasad Mr. Sunit Kumar Mr. Om Prakash Kumar, Advocates.
For the State	:	Mr. Gyan Prakash Ojha, GA-7 Mr. Ajit Kumar, AC to GA-7
For the Resp. No. 2	:	Mr. Amit Shrivastava Mr. Girish Pandey, Advocates.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 24-04-2019

Heard learned counsel for the petitioner and learned
counsel for the respondents.

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

“(A) A writ in the nature of Certiorari or any other appropriate writ/orders or direction for quashing the order dated 20.04.2019 passed by Returning Officer-cum-District Election Officer 21 Hajipur (Scheduled Caste) Parliamentary Segment rejecting the Nomination Paper of the petitioner on the ground that the Nomination filed by the petitioner for 21 Hajipur was not containing signature of proposers.



(B) A writ in the nature of Mandamus or any other appropriate writ/order(s) or direction commanding the respondents for the following -

(i) To treat the order contained in Annexure-1 to be nullity and non-est in the eye of law.

(ii) To accept the Nomination Paper filed by the petitioner to be valid and for the aforesaid Parliamentary Constituency.

(iii) To print the name of the petitioner in the Ballot Papers meant for 21 Hajipur (Scheduled Caste) Parliamentary Constituency.

(C) To any other relief(s) which the petitioner is found entitled to.”

3. Learned Senior Counsel Mr. Yogesh Chandra Verma appearing on behalf of the petitioner submits that through inadvertence and under confusion, 8 of the 10 of the proposers did not sign the nomination paper. The Returning Officer, on scrutinizing the nomination paper on 20.04.2019, rejected the nomination paper of the petitioner on the aforesaid ground and such proposers were not permitted by the Returning Officer to make their signatures. It is submitted that an opportunity ought to have been granted to remove the defect which was not of substantive nature and failure in that regard renders the action of the Returning Officer arbitrary and illegal. Reliance has been placed on paragraph-35 of the judgment of the Hon'ble Apex Court rendered in *Mohinder Singh Gill and another Vs. The Chief Election*



Commissioner, New Delhi and others, AIR 1978 Supreme Court 851, to submit that the jurisdiction of the Court under Article 226 of the Constitution of India is not completely ousted if the act challenged is either unrelated to or thwarts or taints the course of the election. Reference has also been invited to the order dated 16.03.2001 passed in C.W.J.C. No. 3121 of 2001 (Chaturanan Yadav Vs. The State of Bihar & Ors.) to persuade this Court to remand the matter to the Returning Officer in view of the following observations in the said order -

“2. It may be noted here that a large number of cases are coming to this Court in which similar grievances are made regarding rejection of nomination papers filed for the coming panchayat elections. It is stated on behalf of the respective petitioners that their nomination papers were rejected either on non-est grounds or on grounds which are quite trivial and insignificant and are to be disregarded in terms of Rules 43(2) of the Panchayat Election Rules, 1995.

3. Panchayat elections are going to be held in this State on April 11, 15, 19, 23 and 30, 2001. There is, therefore, no sufficient time to verify the reason(s) for the rejection of the nomination in each case. Even assuming that the reason being stated on behalf of the petitioner was truly the reason for the rejection of nomination papers and further even assuming that the Returning Officer was in error in rejecting the nomination for that reason. I am not inclined to make any positive order for restoration of nomination papers at this stage. This is because such an order will require preparation and



printing of ballot papers afresh and this court is not certain if that would be possible in the little time now left for holding elections.

4. Having regard to the overall facts and circumstances and further with a view to ensure that the elections are held on schedule dates this court is not inclined to interfere in matters of rejection of nomination papers but would direct that in all such cases the aggrieved person may place his grievances before the concerned District Electoral Officer. If the District Electoral Officer is satisfied that the nomination of the aggrieved person was rejected unjustifiably and further in case he is positive and quite certain that the ballot papers, after the inclusion of the person aggrieved, among the contesting candidates, can be arranged before the date of the election, he may direct the Returning Officer to restore the nomination paper.

5. Otherwise the aggrieved person will be left to raise his objection(s), if he is so advised, after the elections are over by filing an election petition as provided under Section 140 of the Bihar Panchayat Raj Act, 1993.”

4. It is further submitted that according to the programme for holding election, the date of allotment of symbol was fixed on 23.04.2019 and as such it is unlikely that any steps would have been taken in a day's time for printing of ballot papers.

5. Learned counsel Mr. Siddhartha Prasad appearing on behalf of the Election Commission of India and the District Magistrate, Vaishali-cum-Returning Officer 21 Hajipur,



Parliamentary Constituency Hajipur (respondent nos. 1 and 3) opposes the writ petition, submitting that Article 329(b) of the Constitution of India is a bar in matters involving rejection of nomination papers, as evident from the judgment of the Hon'ble Apex Court in *N.P. Ponnuswami Vs. The Returning Officer, Namakkal Constituency, Namakkal, Salem District and Ors; A.I.R. (39) 1952 SC 64* which was also rendered in the context of rejection of nomination paper, observing 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."

6. Mr. Siddhartha Prasad further submits that it is not in dispute that the nomination paper of the petitioner was not properly filled as it did not contain the signatures of 8 proposers by reason of which the same was rejected by the Returning Officer, whose action can therefore not be termed as arbitrary or illegal. It is further submitted that the order of this Court relied upon by the petitioner in Chaturanan Yadav's case (supra) was rendered in the context of Panchayat Election and there too, this Court had not interfered by granting any positive order for restoration of the nomination paper. It is pointed out that in that case, more than three weeks remained for the Panchayat Election whereas in the



present case, polling is to be held on 6th of May, 2019, thereby less than two weeks now remain. It is further submitted that symbols have already been allotted to all the eligible candidates and consideration for grant of symbol to the petitioner would delay and stall the entire election process as the symbols already allotted to the independent candidates would have to be withdrawn and re-allotted as envisaged in the Symbol Orders, 1968. It is therefore submitted that the petitioner is not entitled to any relief at this stage. Moreover, a statement is made at the Bar on instruction that the ballot papers have already been sent this morning for printing.

7. Having heard the parties and on consideration of the materials on record, this Court finds itself unable to accede to the prayer of the petitioner. It is admitted by the petitioner that his nomination paper was not properly filled up as it did not contain the signatures of 8 proposers. According to the Returning Officer's hand book, nomination papers must be rejected, *inter alia*, if they have not been signed by the candidate and/or by the required number of his proposer(s) (Annexure-2). Moreover, column 1(b) of the check list of the documents (Annexure-1) discloses that there are blank columns in part 'क' 6 च, 6ड. but as a copy of the nomination paper has not been enclosed with the writ petition, the nature of such defects are not ascertainable. Ordinarily, a writ petition cannot be maintained once the election process has commenced, by reason of the bar contained in Article 329(b) of the



Constitution of India. Any challenge much be raised by filing an election petition at the appropriate stage. It is rightly pointed out by the respondents that this Court did not pass any positive order in Chaturanandan Yadav's case (supra) even in the context of Panchayat Election, rather left it to the aggrieved person to place his grievances before the concerned District Electoral Officer, indicating that the bottom line was to ensure arrangement of the ballot papers before the date of the election. In the present case however, it has been stated by the respondents that the ballot papers have already been sent for printing and any indulgence or interference at this stage is bound to cause delay in the process of election, and would not be in furtherance of the election process. On the other hand, the petitioner would have adequate remedy at the appropriate stage by preferring an election petition, if so advised.

8. The writ petition accordingly stands dismissed.

Ibrar/Chandran

(Vikash Jain, J)

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