

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10625 of 2019

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Niraj Kumar, male, aged about 48 years, Son of Sri Basmit Singh, resident of Village- Chechaul, P.S.- Naubatpur, District- Patna.

... .. Petitioner

Versus

1. The Chief Election Commissioner Bihar, Mangles Road, Patna.
2. The District Magistrate-cum-Election Officer, Patna.
3. The Additional Collector-cum-Returning Officer, 31 Patliputra Lok Sabha Constituency No. 31, Patna.

... .. Respondents

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Appearance :

For the Petitioner : Mr. Sarvan Kumar, Advocate.
For the Election Commission of India: Mr. Siddhartha Prasad
Mr. Om Prakash Kumar
Mr. Sunil Kumar, Advocates.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 09-05-2019

The present writ petition has been filed for the following reliefs as formulated by the petitioner-

- “(i) For issuance of an appropriate writ(s) in the nature of mandamus directing the respondents to waive the objection as pointed out by the Respondent No. 3 as being formal in nature and having no consequence on the process of the election which is going to be held on 19th May, 2019.*
- (ii) And/or for any other relief or reliefs to which the petitioner is found entitled to in the facts and circumstances of the case.”*

2. Learned counsel for the petitioner submits that the petitioner was a candidate for the Parliamentary Election for



31-Patliputra Constituency and for which he filed a nomination paper on 26.04.2019 which was well within the last date namely 29.04.2019. On scrutiny held on 30.04.2019, however, it was found that a portion of column no. 2 of the affidavit in Form-26 relating to the income of the spouse of the petitioner remained unfilled. Attempts to persuade the Returning Officer that the omission was formal in nature do not appear to have succeeded as the petitioner was informed by the Returning Officer that notice of rejection of nomination paper would be published on the notice board of his office. It is submitted that the nature of the omission was formal in nature and ought to have been treated as such by the Returning Officer and the nomination of the petitioner ought to have been treated as valid.

3. Mr. Siddhartha Prasad, learned counsel for the Election Commission of India appears and opposes the writ petition, *inter alia*, submitting that neither the check list nor a photo copy of the affidavit in Form-26 submitted by the petitioner have been enclosed in the writ petition. As such, the exact nature of the objection cannot be ascertained at this stage. In any event, it is submitted that in view of the specific bar contained in Article 329(b) of the Constitution, the petitioner is not entitled to any indulgence at this belated stage when the process of election is already underway and at an advanced stage, which is evident from the following facts-

(i) Symbols have already been allotted to all the



candidates.

(ii) Ballot papers have already been printed.

(iii) Postal ballots are in the process of distribution with respect to personnel on election duty.

(iv) Ballot papers have been uploaded on Electronically Transmitted Postal Ballot System (ETPBS).

(v)) Polling is scheduled on 19th of May, 2019 which is less than two weeks away.

4. Having heard the parties and on consideration of the materials on record, this Court is not inclined to interfere in the matter. The objection raised by the petitioner with regard to non-grant of opportunity for making corrections in the nomination paper are matters of fact which will have to be established and *prima facie* it does not seem probable that the petitioner would have been denied such opportunity if notice for the very purpose had been communicated to him.

5. Moreover, 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.

6. 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.”

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

(Vikash Jain, J)

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