

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1460 of 2019

Satish Boudh S/o Shri R H Buodh Aged About 44 Years R/o Risali Sector, Civic Centre, Police Station Supela, Bhilai District Durg Chhattisgarh. District : Durg, Chhattisgarh
--- Petitioner

Versus

1. Election Commission of India through the Chief Election Commissioner, Nirvachan Sadan, Ashoka Road New Delhi., District : New Delhi, Delhi
2. The District Election Officer Durg, District Durg , District : Durg, Chhattisgarh
3. The Collector District Durg , District : Durg, Chhattisgarh
4. The Collector District Durg , District : Durg, Chhattisgarh
5. Rajkumar Gupta S/o Teerathlal Gupta, R/o Kanhaiyapuri, Kasarideeh, Durg , District : Durg, Chhattisgarh
6. Rajkumar Gupta S/o Teerathlal Gupta R/o Kanhaiyapuri, Kasarideeh, Durg , District : Durg, Chhattisgarh **--- Respondents**

For Petitioner : Mr. N. Naha Roy, Advocate
 For respondents 1 & 2 : Mr. Rajeev Shrivastava, Advocate
 For respondent No. 3 : Mr. Rajesh Singh, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

18.04.2019

Heard

1. In this writ petition filed under Article 226 of the Constitution of India, the petitioner has mainly prayed for the following relief :

“10.1 Issue an appropriate writ in the nature of mandamus and quash the nomination form filed by the private respondent herein to contest the General Elections, 2019 in view of the willful false information furnished therein with respect to pending criminal case against him, bringing a disqualification to him to contest the election in light of the same as also making him liable for appropriate action as described under section 125-A of the Representation of People Act, 1951.”

2. Learned counsel for the petitioner submits that though respondent No.4 was facing a criminal trial, for which, the charges were framed yet in the application he has suppressed those facts and stated that no criminal case is pending. It is contended that because of such suppression of facts the nomination form has wrongly been accepted by the election Commission, as such, a direction be issued from this Court to quash the nomination, which has been filed by respondent No.4 as prima facie it would reveal that criminal case is pending against him.

3. Learned counsel for the petitioner placed reliance in a case law reported in **(2015) 3 SCC 467 & (2014) 14 SCC 189** and would submit that when the rules are silent, the High Court in exercise of powers conferred under Article 226 of the Constitution of India can issue direction.
4. Mr. Rajeev Shrivastava, Advocate, appearing for Election Commission was directed in the first half of day to take instructions from the Election Commission and later the case was taken up in the second half after the tea break. He contends that scrutiny of nomination paper was done on 05.04.2019 and thereafter on the basis of documents available, the nomination was accepted. Subsequently the petitioner had filed objection on 10.4.2019 and thereafter the said objection was also decided.
5. Section 80 of the Representation of people Act, 1951 mandates that no election shall be called in question except by an election petition presented in accordance with the provisions of this part.
6. Challenge to the election is further provided under section 100 of the R. P. Act, 1951 wherein certain

grounds/limits are given on which the election can be challenged. The Act of 1951, nowhere gives a passage which calls upon the High Court to interfere in such cases.

7. Further sub-clause (b) of Article 329 of the Constitution created a bar to interference by the Courts to the effect that no election to either house of Parliament or House or either House of the Legislature of a State shall be called in question except by an election petition. Article 329 is relevant here, which reads as under :

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 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.

8. Undoubtedly the issue raised by the petitioner about the pendency of criminal case of respondent no.4 is of utmost importance. However, in absence of any law governing the field, once the election process has commenced by application of provisions of Representation of People Act, 1951 it cannot be stopped. Further the election is scheduled to be held on 23.04.2019. The averments as have been relied upon by the petitioner would also be subject to proof which cannot be decided by this Court in a petition under Article 226. Consequently, I am not inclined to exercise the power under Article 226 to stall the process of election or reject the nomination which has been accepted by the Election Commission at this point of time. Accordingly, the petition is dismissed.

Sd/-
GOUTAM BHADURI
JUDGE