

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2019

CORAM:

THE HON'BLE MR. JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.P.No.9972 of 2019

J. Shanmugapriyadharsini

... Petitioner

Vs.

1. Chief Electoral Officer &
Principal Secretary to Government,
Office of the Public (Elections) Department,
Fort St.George, Chennai - 9.
2. Retuning Officer,
Perambalur Parliament Constituency,
Tamilnadu.
3. The Chief Election Commissioner,
Election Commission of India,
Nirvachan Sadan, Ashoka Road,
New Delhi - 110 001.

... Respondents

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India, praying in the nature of Writ of Mandamus, to direct the respondents to accept the nomination submitted by the petitioner and to include the name of the petitioner in the list of Candidates for the Perambalur Parliament Constituency.

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For Petitioner : Mr.A.E.Lakshminarayanan
for M/s.S.Conscious Ilango

For Respondents : Mr.Niranjan Rajagopal

O R D E R

(Order of the Court was made by S.MANIKUMAR, J.)

Ms.J. Shanmugapriyadharsini, a practising advocate, and claiming to be a social worker, has submitted nomination papers as an independent candidate in Perambalur Constituency and was expecting her nomination to be approved. However, on 27.03.2019, during the scrutiny of the nomination papers, the officials stated that among the list of persons who have proposed the name of the petitioner, as a candidate for the election, particulars of Mr.Nallusamy and Mr.Sathiskumar with regard to the Part number and serial number in the voters list were not matching with the records maintained by the Returning Officer, Perambalur Constituency, respondent No.2.

2. According to the petitioner, by referring to the Electoral rolls and online electoral roll the Scrutiny Officer, did not approve the nomination paper. In fact, the particulars of the above-said two persons, including the particulars with regard to part number and serial number in the electoral rolls were filled in the nomination of the petitioner, as per their voters card and electoral rolls given to the booth agent.

3. It is further stated that even the printed electoral rolls and the online electoral rolls available with respondent No.2 did not divulge the same particulars and did not correlate with each other. On the above-said reasons, respondent No.2 rejected the nomination of the petitioner.

4. Though the petitioner sent an objection letter dated 27.03.2019 to the District Election Officer, Perambalur Constituency, explaining that the rejection of the nomination, was erroneous, the same is not considered. Hence, the instant Writ Petition is filed for a Mandamus directing the respondents to accept nomination submitted by the petitioner and to include the name of the petitioner, in the list of Candidates for the Perambalur Parliament Constituency.

5. On the above-said averments and relying on Section 33(4) of the Representation of the People Act, 1951, Mr.A.E.Lakshminarayanan, learned counsel for the petitioner submitted that the rejection of nomination papers, would not fall within the category of improper rejection and it would fall under the category of inaccurate description or clerical,

technical or printing error in the name of the candidates or its proposal or any other persons. Therefore, the Returning Officer ought not to have rejected nomination papers submitted by the Writ petitioner.

6. Referring to Section 36 of the Representation of the People Act, 1951, which deals with Scrutiny of nominations and in particular to sub-section 4 of Section 36 of the said Act, Mr.A.E.Lakshminarayanan, learned counsel for the petitioner submitted that the Returning Officer ought not to have rejected the nomination paper on the ground of any defect which is not of a substantial character.

7. Thus in the light of the above provisions, averments made and taking this Court through the variance in Electoral rolls, as furnished to the booth agents, learned counsel for the petitioner submitted that prima facie, rejection of the nomination papers submitted by the writ petitioner, is erroneous. The petitioner has been deprived of her right to contest in the general election in Perambalur Constituency, and for the afore-said reasons sought for issuance of a Mandamus.

8. Mr.Niranjan Rajagopal, learned counsel appearing for the Election Commission of India, submitted that in so far as parliament general elections is concerned, 1576 nomination papers were submitted in the State of Tamil Nadu, out of which, 937 are valid nominations. As of today, 92 nominations have been withdrawn. 845 candidates contest in 40 parliament constituencies, in Tamil Nadu.

9. Referring to Article 329 of the Constitution of India, Mr.Niranjan Rajagopal, learned counsel appearing for the Election Commission of India, made preliminary objections to the maintainability of the Writ Petition. He also placed reliance on the Constitutional Bench judgment of the Hon'ble Supreme Court in AIR (39) 1952 SCC 64 in the case of N.P.Ponnuswami and the Returning Officer, Namakkal Constituency, and others, and submitted that Writ Petition filed against rejection of nomination is not maintainable. For the above reasons, he prayed for dismissal of the writ petition.

10. Heard the learned counsel appearing on both sides and perused the materials available on record.

11. In N.P.Ponnuswami and the Returning Officer, Namakkal Constituency, and others reported in AIR (39) 1952 Supreme

Court 64, a Constitutional Bench of the Hon'ble Supreme Court considered as to whether the word "election" used in Article 329 (b) of the Constitution, embrace the whole procedure of election and confine to the final result thereof, and whether rejection or acceptance of the nomination paper is included in the term, "election". Several High Courts have held that they have no jurisdiction either under Article 226 of the Constitution of India or under the Representation of the People Act, 1951, as the case may be, to entertain petitions regarding improper rejection of nomination papers. Hon'ble Supreme Court, after considering the law, as existed prior to the enactments of the Representation of the People Act, constitutional provisions and a catena of decisions, held as follows:-

"4. The first argument which turns on the construction of Article 329(b) requires serious consideration, but I think the second argument can be disposed of briefly at the outset. It should be stated that what the appellant chooses to call anomaly can be more appropriately described as hardship or prejudice and what their nature will be has been stated in forceful language by Wallace, J. in *Sarvothama Rao v. Chairman, Municipal Council, Saidapet* [(1924) ILR 47 Mad 585 at 600] in these words:

"I am quite clear that any post-election remedy is wholly inadequate to afford the relief which the petitioner seeks, namely, that this election, now published, be stayed, until it can be held with himself as a candidate. It is no consolation to tell him that he can stand for some other election. It is no remedy to tell him that he must let the election go on and then have it set aside by petition and have a fresh election ordered. The fresh election may be under altogether different conditions and may bring forward an array of fresh candidates. The petitioner can only have his proper relief if the proposed election without him is stayed until his rejected nomination is restored, and hence an injunction staying this election was absolutely necessary, unless the relief asked for was to be denied him altogether in limine. In most cases of this kind no doubt there will be difficulty for the aggrieved party to get in his suit in time before the threatened wrong is committed; but when he has succeeded in so doing, the court cannot stultify itself by allowing the wrong which it is asked to prevent to be actually consummated while it is engaged in trying the suit."

These observations however represent only one side of the picture and the same learned Judge presented the other side of the picture in a

subsequent case (Desi Chettiar v. Chinnasami Chettiar) [(1928) AIR Mad 1271 at 1272] in the following passage:

"The petitioner is not without his remedy. His remedy lies in an election petition which we understand he has already put in. It is argued for him that that remedy which merely allows him to have set aside an election once held is not as efficacious as the one which would enable him to stop the election altogether; and certain observations at p. 600 of Sarvothama Rao v. Chairman, Municipal Council, Saidapet [(1924) ILR 47 Mad 585 at 600] are quoted. In the first place, we do not see how the mere fact that the petitioner cannot get the election stopped and has his remedy only after it is over by an election petition, will in itself confer on him any right to obtain a writ. In the second place, these observations were directed to the consideration of the propriety of an injunction in a civil suit, a matter with which we are not here concerned. And finally it may be observed that these remarks were made some years ago when the practice of individuals coming forward to stop elections in order that their own individual interest may be safeguarded was not so common. It is clear that there is another side of the question to be considered, namely, the inconvenience to the public administration of having elections and the business of local Boards held up while individuals prosecute their individual grievances. We understand the election for the elective seats in this Union has been held up since 31st May because of this petition, the result being that the electors have been unable since then to have any representation on the Board, and the Board is functioning, if indeed it is functioning, with a mere nominated fraction of its total strength; and this state of affairs the petitioner proposes to have continued until his own personal grievance is satisfied."

These observations which were made in regard to elections to local Boards will apply with greater force to elections to legislatures, because it does not require much argument to show that in a country with a democratic Constitution in which the legislatures have to play a very important role, it will lead to serious consequences if the elections are unduly protracted or obstructed. To this aspect of the matter I shall have to advert later, but it is sufficient for the present purpose to state firstly that in England the hardship and inconvenience which

may be suffered by an individual candidate has not been regarded as of sufficient weight to induce Parliament to make provision for immediate relief and the aggrieved candidate has to wait until after the election to challenge the validity of the rejection of his nomination paper, and secondly, that the question of hardship or inconvenience is after all only a secondary question, because if the construction put by the High Court on Article 329(b) of the Constitution is found to be correct, the fact that such construction will lead to hardship and inconvenience becomes irrelevant.

5. Article 329 is the last article in Part XV of the Constitution, the heading of which is "Elections", and it runs as follows:

"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 to 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."

In construing this Article, reference was made by both parties in the course of their arguments to the other Articles in the same Part, namely, Articles 324, 325, 326, 327 and 328. Article 324 provides for the constitution and appointment of an Election Commissioner to superintend, direct and control elections to the legislatures; Article 325 prohibits discrimination against electors on the ground of religion, race, caste or sex; Article 326 provides for adult suffrage; Article 327 empowers Parliament to pass laws making provision with respect to all matters relating to, or in connection with, elections to the legislatures, subject to the provisions of the Constitution; and Article 328 is a complementary article giving power to the State Legislature to make provision with respect to all matters relating to, or in connection with, elections to the State Legislature. A notable difference in the language used in Articles 327 and 328 on the one hand, and Article 329 on the other, is that while the first two articles begin with the words "subject to the provisions of

this Constitution", the last article begins with the words "notwithstanding anything in this Constitution". It was conceded at the bar that the effect of this difference in language is that whereas any law made by Parliament under Article 327, or by the State Legislatures under Article 328, cannot exclude the jurisdiction of the High Court under Article 226 of the Constitution, that jurisdiction is excluded in regard to matters provided for in Article 329.

6. Now, the main controversy in this appeal centres round the meaning of the words "no election shall be called in question except by an election petition" in Article 329(b), and the point to be decided is whether questioning the action of the Returning Officer in rejecting a nomination paper can be said to be comprehended within the words, "no election shall be called in question". The appellant's case is that questioning something which has happened before a candidate is declared elected is not the same thing as questioning an election, and the arguments advanced on his behalf in support of this construction were these:

"(1) That the word 'election' as used in Article 329(b) means what it normally and etymologically means, namely, the result of polling or the final selection of a candidate;

(2) That the fact that an election petition can be filed only after polling is over or after a candidate is declared elected, and what is normally called in question by such petition is the final result, bears out the contention that the word "election" can have no other meaning in Article 329(b) than the result of polling or the final selection of a candidate;

(3) That the words "arising out of or in connection with" which are used in Article 324(1) and the words "with respect to all matters relating to, or in connection with" which are used in Articles 327 and 328, show that the framers of the Constitution knew that it was necessary to use different language when referring respectively to matters which happen prior to and after the result of polling, and if they had intended to include the rejection of a nomination paper within the ambit of the prohibition contained in Article 329(b) they would have used similar language in that article; and

(4) That the action of the Returning Officer in rejecting a nomination paper can be questioned before the High Court under Article 226 of the Constitution

for the following reason: Scrutiny of nomination papers and their rejection are provided for in Section 36 of the Representation of the People Act, 1951. Parliament has made this provision in exercise of the powers conferred on it by Article 327 of the Constitution which is "subject to the provisions of the Constitution". Therefore, the action of the Returning Officer is subject to the extraordinary jurisdiction of the High Court under Article 226."

7. These arguments appear at first sight to be quite impressive, but in my opinion there are weightier and basically more important arguments in support of the view taken by the High Court. As we have seen, the most important question for determination is the meaning to be given to the word "election" in Article 329(b). That word has by long usage in connection with the process of selection of proper representatives in democratic institutions, acquired both a wide and a narrow meaning. In the narrow sense, it is used to mean the final selection of a candidate which may embrace the result of the poll when there is polling or a particular candidate being returned unopposed when there is no poll. In the wide sense, the word is used to connote the entire process culminating in a candidate being declared elected. In *Srinivasalu v. Kuppuswami* [(1928) AIR Mad 253 at 255], the learned Judges of the Madras High Court after examining the question, expressed the opinion that the term "election" may be taken to embrace the whole procedure whereby an "elected member" is returned, whether or not it be found necessary to take a poll. With this view, my brother, Mahajan, J. expressed his agreement in *Sat Narain v. Hanuman Prasad* [(1945) AIR Lah. 85]; and I also find myself in agreement with it. It seems to me that the word "election" has been used in Part XV of the Constitution in the wide sense, that is to say, to connote the entire procedure to be gone through to return a candidate to the legislature. The use of the expression "conduct of elections" in Article 324 specifically points to the wide meaning, and that meaning can also be read consistently into the other provisions which occur in Part XV including Article 329(b). That the word "election" bears this wide meaning whenever we talk of elections in a democratic country, is borne out by the fact that in most of the books on the subject and in several cases dealing with the matter, one of the questions mooted is, when the election begins. The subject is dealt with quite concisely in Halsbury Laws of England in the following

passage [See page 237 of Halsbury's Laws of England, 2nd Edn. Vol. 12] under the heading Commencement of the Election”:

“Although the first formal step in every election is the issue of the writ, the election is considered for some purposes to begin at an earlier date. It is a question of fact in each case when an election begins in such a way as to make the parties concerned responsible for breaches of election law, the test being whether the contest is ‘reasonably imminent’. Neither the issue of the writ nor the publication of the notice of election can be looked to as fixing the date when an election begins from this point of view. Nor, again, does the nomination day afford any criterion. The election will usually begin at least earlier than the issue of the writ. The question when the election begins must be carefully distinguished from that as to when ‘the conduct and management of’ an election may be said to begin. Again, the question as to when a particular person commences to be a candidate is a question to be considered in each case.”

The discussion in this passage makes it clear that the word “election” can be and has been appropriately used with reference to the entire process which consists of several stages and embraces many steps, some of which may have an important bearing on the result of the process.

8. The next important question to be considered is what is meant by the words “no election shall be called in question”. A reference to any treatise on elections in England will show that an election proceeding in that country is liable to be assailed on very limited grounds, one of them being the improper rejection of a nomination paper. The law with which we are concerned is not materially different, and we find that in Section 100 of the Representation of the People Act, 1951, one of the grounds for declaring an election to be void is the improper rejection of a nomination paper.

9. The question 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 Article 226 of the Constitution (the ordinary jurisdiction of the courts having been expressly excluded), and another 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 the 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 Article 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.

10. I think that a brief examination of the scheme of Part XV of the Constitution and the Representation of the People Act, 1951, will show that the construction I have suggested is the correct one. Broadly speaking, before an election machinery can be brought into operation, there are three requisites which require to be attended to, namely, (1) there should be a set of laws and rules making provisions with respect to all matters relating to, or in connection with, elections, and it should be decided as to how these laws and rules are to be made; (2) there should be an executive charged with the duty of securing the due conduct of elections; and (3) there should be a judicial tribunal to deal with disputes arising out of or in connection with elections. Articles 327 and 328 deal with the first of these requisites, Article 324 with the second and Article 329 with the third requisite. The other two articles

in Part XV, viz, Articles 325 and 326 deal with two matters of principle to which the Constitution-framers have attached much importance. They are: (1) prohibition against discrimination in the preparation of, or eligibility for inclusion in, the electoral rolls, on grounds of religion, race, caste, sex or any of them; and (2) adult suffrage. Part XV of the Constitution is really a code in itself providing the entire ground-work for enacting appropriate laws and setting up suitable machinery for the conduct of elections.

11. The Representation of the People Act, 1951, which was passed by Parliament under Article 327 of the Constitution, makes detailed provisions in regard to all matters and all stages connected with elections to the various legislatures in this country. That Act is divided into 11 parts, and it is interesting to see the wide variety of subjects they deal with. Part II deals with "the qualifications and disqualifications for membership", Part III deals with the notification of General Elections, Part IV provides for the administrative machinery for the conduct of elections, and Part V makes provisions for the actual conduct of elections and deals with such matters as presentation of nomination papers, requirements of a valid nomination, scrutiny of nominations, etc., and procedure for polling and counting of votes. Part VI deals with disputes regarding elections and provides for the manner of presentation of election petitions, the constitution of election tribunals and the trial of election petitions. Part VII outlines the various corrupt and illegal practices which may affect the elections, and electoral offences. Obviously, the Act is a self-contained enactment so far as elections are concerned, which means that whenever we have to ascertain the true position in regard to any matter connected with elections, we have only to look at the Act and the rules made thereunder. The provisions of the Act which are material to the present discussion are Sections 80, 100, 105 and 170, and the provisions of Chapter II of Part IV dealing with the form of election petitions, their contents and the reliefs which may be sought in them. Section 80, which is drafted in almost the same language as Article 329(b), provides that "no election shall be called in question except by an election petition presented in accordance with the provisions of this Part". Section 100, as we have already seen, provides for the grounds on which an election may be called in question, one of which is

the improper rejection of a nomination paper. Section 105 says that "every order of the Tribunal made under this Act shall be final and conclusive". Section 170 provides that "no civil court shall have jurisdiction to question the legality of any action taken or of any decision given by the Returning Officer or by any other person appointed under this Act in connection with an election". These are the main provisions regarding election matters being judicially dealt with, and it should be noted that there is no provision anywhere to the effect that anything connected with elections can be questioned at an intermediate stage.

12. It is now well-recognized that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in *Wolverhampton New Water Works Co. v. Hawkesford* [6 CB (NS) 336, 356] in the following passage:

"There are three classes of cases in which a liability may be established founded upon statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law; there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy: there, the party can only proceed by action at common law. But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to."

13. The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspaper Limited* [L.R. 1919 AC 368] and has been reaffirmed by the Privy Council in *Attorney General of Trinidad and Tobago v. Gordon Grant & Co.* [1935 AC 532] and *Secretary of State v. Mask & Co* [44 CWN 709] ; and it has also been held to be equally applicable to enforcement of rights:

see *Hurdutrai v. Official Assignee of Calcutta* [52 CWN 343, 349] . That being so, I think it will be a fair inference from the provisions of the Representation of the People Act to state that the Act provides for only one remedy, that remedy being by an election petition to be presented after the election is over, and there is no remedy provided at any intermediate stage.

14. It was argued that since the Representation of the People Act was enacted subject to the provisions of the Constitution, it cannot bar the jurisdiction of the High Court to issue writs under Article 226 of the Constitution. This argument however is completely shut out by reading the Act along with Article 329(b). It will be noticed that the language used in that article and in Section 80 of the Act is almost identical, with this difference only that the article is preceded by the words "notwithstanding anything in this Constitution". I think that those words are quite apt to exclude the jurisdiction of the High Court to deal with any matter which may arise while the elections are in progress.

15. It may be stated that Section 107(1) of the Representation of People Act, 1949 (12 & 13 Geo. 6, c. 68) in England is drafted almost in the same language as Article 329(b). That section runs thus:

"No parliamentary election and no return to Parliament shall be questioned except by a petition complaining of an undue election or undue return (hereinafter referred to as a "parliamentary election petition") presented in accordance with this Part of this Act."

16. It appears that similar language was used in the earlier statutes, and it is noteworthy that it has never been held in England that the improper rejection of a nomination paper can be the subject of a writ of certiorari or mandamus. On the other hand, it was conceded at the bar that the question of improper rejection of a nomination paper has always been brought up in that country before the appropriate tribunal by means of an election petition after the conclusion of the election. It is true that there is no direct decision holding that the words used in the relevant provisions exclude the jurisdiction of the High Court to issue appropriate prerogative writs at an intermediate stage of the election, but the total absence of any such decision can be accounted for only on the view that the provisions in question have been generally understood to have that effect. Our attention was drawn to Rule 13 of the rules appended

to the Ballot Act of 1872 and a similar rule in the Parliamentary Elections Rules of 1949, providing that the decision of the Returning Officer disallowing an objection to a nomination paper shall be final, but allowing the same shall be subject to reversal on a petition questioning the election or return. These rules however do not affect the main argument. I think it can be legitimately stated that if words similar to those used in Article 329(b) have been consistently treated in England as words apt to exclude the jurisdiction of the courts including the High Court, the same consequence must follow from the words used in Article 329(b) of the Constitution. The words "notwithstanding anything in this Constitution" give to that article the same wide and binding effect as a statute passed by a sovereign legislature like the English Parliament.

17. It may be pointed out that Article 329(b) must be read as complimentary to clause (a) of that article. Clause (a) bars the jurisdiction of the courts with regard to such law as may be made under Articles 327 and 328 relating to the delimitation of constituencies or the allotment of seats to such constituencies. It was conceded before us that Article 329(b) ousts the jurisdiction of the courts with regard to matters arising between the commencement of the polling and the final selection. The question which has to be asked is what conceivable reason the legislature could have had to leave only matters connected with nominations subject to the jurisdiction of the High Court under Article 226 of the Constitution. If Part XV of the Constitution is a code by itself i.e., it creates rights and provides for their enforcement by a Special Tribunal to the exclusion of all courts including the High Court, there can be no reason for assuming that the Constitution left one small part of the election process to be made the subject-matter of contest before the High Courts and thereby upset the time-schedule of the elections. The more reasonable view seems to be that Article 329 covers all "electoral matters".

18. The conclusions which I have arrived at may be summed up briefly as follows:

"(1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be

concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

(2) In conformity with this principle, the scheme the election law in this country as well as in England is that no significance should be attached to anything which does not affect the 'election'; and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the 'election' and enable the person affected to call it in question, they should be brought up before a Special Tribunal by means of an election petition and not be made the subject of a dispute before any court while the election is in progress.

19. It will be useful at this stage to refer to the decision of the Privy Council in *Theberge v. Laudy* [(1876) 2 AC 102]. The petitioner in that case having been declared duly elected a member to represent an electoral district in the legislative Assembly of the Province of Quebec, his election was after wards, on petition, declared null and void by judgment of the Superior Court, under the Quebec Controverted Elections Act, 1875, and himself declared guilty of corrupt practices both personally and by his agents. Thereupon, he applied for special leave to appeal to Her Majesty-in-Council, but it was refused on the ground that the fair construction of the Act of 1875 and the Act of 1872 which preceded it providing among other things that the judgment of the Superior Court "shall not be susceptible of appeal" was that it was the intention of the legislature to create a tribunal for the purpose of trying election petitions in a manner which should make its decision final for all purposes, and should not annex to it the incident of its judgment being reviewed by the Crown under its prerogative. In delivering the judgment of the Privy Council, Lord Cairns observed as follows:

"These two Acts of Parliament, the Acts of 1872 and 1875, are Acts peculiar in their character. They are not Acts constituting or providing for the decision of mere ordinary civil rights; they are Acts creating an entirely new, and up to that time unknown, jurisdiction in a particular Court ... for the purpose

of taking out, with its own consent, of the legislative Assembly, and vesting in that Court, that very peculiar jurisdiction which, up to that time, had existed in the legislative Assembly of deciding election petitions, and determining the status of those who claimed to be members of the legislative Assembly. A jurisdiction of that kind is extremely special, and one of the obvious incidents or consequences of such a jurisdiction must be that the jurisdiction, by whomsoever it is to be exercised, should be exercised in such a way that should as soon as possible become conclusive; and enable the constitution of the legislative Assembly to be distinctly and speedily known."

After dealing with certain other matters, the Lord Chancellor proceeded to make the following further observations:

"Now, the subject-matter, as has been said, of the legislation is extremely peculiar. It concerns the rights and privileges of the electors and of the legislative Assembly to which they elect members. Those rights and privileges have always in every colony, following the example of the mother country, been jealously maintained and guarded by the legislative Assembly. Above all, they have been looked upon as rights and privileges which pertain to the legislative Assembly, in complete independence of the Crown, so far as they properly exist. And it would be a result somewhat surprising, and hardly in consonance with the general scheme of the legislation, if, with regard to rights and privileges of this kind, it were to be found that in the last resort the determination of them no longer belonged to the legislative Assembly, no longer belonged to the Superior Court which the legislative Assembly had put in its place, but belonged to the Crown-in-Council, with the advice of the advisers of the Crown-at-home, to be determined without reference either to the judgment of the legislative Assembly, or of that Court which the legislative Assembly had substituted in its place."

The points which emerge from this decision may be stated as follows:

"(1) The right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it.

(2) Strictly speaking, it is the sole right of the legislature to examine and determine all matters relating to the election of its own members, and if

the legislature takes it out of its own hands and vests in a Special Tribunal an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which creates it."

20. It should be mentioned here that the question as to what the powers of the High Court under Articles 226 and 227 and of this Court under Article 136 of the Constitution may be, is one that will have to be decided on a proper occasion.

21. It is necessary to refer at this stage to an argument advanced before us on behalf of the appellant which was based on the language of Article 71(1) of the Constitution. That provision runs thus:

"All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final."

The argument was as follows: There is a marked contrast between the language used in Article 71(1) and that of Article 329(b). The difference in the phraseology employed in the two provisions suggests that they could not have been intended to have the same meaning and scope as regards matters to be brought up before the tribunals they respectively deal with. If the framers of the Constitution, who apparently knew how to express themselves, intended to include within the ambit of Article 329(b) all possible disputes connected with elections to legislatures, including disputes as to nominations, they would have used similar words as are to be found in Article 71(1). It is true that it is not necessary to use identical language in every provision, but one can conceive of various alternative ways of expression which would convey more clearly and properly what Article 329(b) is said to convey.

22. It seems to me that once it is admitted that the same idea can be expressed in different ways and the same phraseology need not be employed in every provision, the argument loses much of its force. But, however that may be, I think there is a good explanation as to why Article 329(b) was drafted as it stands.

23. A reference to the election rules made under the Government of India Acts of 1919 and 1935 will show that the provisions in them on the subject were almost in the same language as Article 329(b). The corresponding rule made under the Government of India

Act, 1919, was Rule 31 of the electoral rules, and it runs as follows:

"No election shall be called in question, except by an election petition presented in accordance with the provisions of this Part."

It should be noted that this rule occurs in Part VII, the heading of which is "The final decision of doubts and disputes as to the validity of an election". These words throw some light on the function which the election tribunal was to perform, and they are the very words which the learned counsel for the appellant argued, ought to have been used to make the meaning clear.

24. The same scheme was followed in the election rules framed under the Government of India Act, 1935, which are contained in "The Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order, 1936", dated the 3rd July, 1936. In that Order, the rule corresponding to Rule 31 under the earlier Act, runs thus:

"No election shall be called in question except by an election petition presented in accordance with the provisions of this Part of the Order."

This rule is to be found in Part III of the Order, the heading of which is "Decision of doubts and disputes as to validity of an election and disqualification for corrupt practices."

25. The rules to which I have referred were apparently framed on the pattern of the corresponding provisions of the British Acts of 1868 and 1872, and they must have been intended to cover the same ground as the provisions in England have been understood to cover in that country for so many years. If the language used in Article 329(b) is considered against this historical background, it should not be difficult to see why the framers of the Constitution framed that provision in its present form and chose the language which had been consistently used in certain earlier legislative provisions and which had stood the test of time.

26. And now a word as to why negative language was used in Article 329(b). It seems to me that there is an important difference between Article 71(1) and Article 329(b). Article 71(1) had to be in an affirmative form, because it confers special jurisdiction on the Supreme Court which that Court could not have exercised but for this article. Article 329(b), on the other hand, was primarily intended to

exclude or oust the jurisdiction of all courts in regard to electoral matters and to lay down the only mode in which an election could be challenged. The negative form was therefore more appropriate, and, that being so, it is not surprising that it was decided to follow the pre-existing pattern in which also the negative language had been adopted.

27. Before concluding, I should refer to an argument which was strenuously pressed by the learned counsel for the appellant and which has been reproduced by one of the learned Judges of the High Court in these words:

"It was next contended that if nomination is part election, a dispute as to the validity of nomination is a dispute relating to election and that can be called in question only in accordance with the provisions of Article 329(b) by the presentation of an election petition to the appropriate Tribunal and that the Returning Officer would have no jurisdiction to decide that matter, and it was further argued that Section 36 of Act 43 of 1951 would be ultra vires inasmuch as it confers on the Returning Officer a jurisdiction which, Article 329(b) confers on a Tribunal to be appointed in accordance with the article."

This argument displays great dialectical ingenuity, but it has no bearing on the result of this appeal and I think it can be very shortly answered. Under Section 36 of the Representation of the People Act, 1951, it is the duty of the Returning Officer to scrutinize the nomination papers to ensure that they comply with the requirements of the Act and decide all objections which may be made to any nomination. It is clear that unless this duty is discharged properly, any number of candidates may stand for election without complying with the provisions of the Act and a great deal of confusion may ensue. In discharging the statutory duty imposed on him, the Returning Officer does not call in question any election. Scrutiny of nomination papers is only a stage, though an important stage, in the election process. It is one of the essential duties to be performed before the election can be completed, and anything done towards the completion of the election proceeding can by no stretch of reasoning be described as questioning the election. The fallacy of the argument lies in treating a single step taken in furtherance of an election as equivalent to election. The decision of this appeal however turns not on the construction of the single word "election", but on the

construction of the compendious expression – “no election shall be called in question” in its context and setting, with due regard to the scheme of Part XV of the Constitution and the Representation of the People Act, 1951. Evidently, the argument has no bearing on this method of approach to the question posed in this appeal, which appears to me to be the only correct method.

28. We are informed that besides the Madras High Court, seven other State High Courts have held that they have no jurisdiction under Article 226 of the Constitution to entertain petitions regarding improper rejection of nomination papers. This view is in my opinion correct and must be affirmed. The appeal must therefore fail and is dismissed. In view of the nature and importance of the points raised in this appeal, there should be no order to costs."

12. In Manda Jaganath Vs. K.S.Rathnam and Others reported in (2004) 7 SCC 492, the first respondent filed his nomination to contest elections to the Parliament from 28 Nagarkurnool (SC) Constituency. On 2.4.2004 when the said nomination papers were taken up for scrutiny, the Returning Officer found that Form B submitted by the first respondent was blank in columns 2 to 7 and scratch line indicating scoring off the requirement of the said columns was noticed. Following the guidelines found in Handbook of Returning Officers issued by the Election Commission of India, the said Returning Officer rejected Form B filed by the first respondent herein and while accepting the nomination of the first respondent as an independent candidate he did not allot him the symbol reserved for the candidates of Telangana Rashtra Samithi.

13. In the above reported case, aggrieved by the order of the Returning Officer the first respondent and the Telangana Rashtra Samithi represented by its President filed a writ petition under Article 226 of the Constitution of India before the High Court of Judicature; Andhra Pradesh, Hyderabad praying inter alia for issuance of a writ, order or direction in the nature of mandamus declaring the action of the Returning Officer treating the first respondent as an independent candidate and not as a candidate set up by the Telangana Rashtra Samithi vide his order dated 2.4.2004 as illegal and further prayed for a direction to the said Returning Officer to treat the first respondent as a candidate set up by the said Telangana Rashtra Samithi political party and allot the symbol of 'car' to him. When the said writ petition came up for preliminary hearing the

High Court, while issuing notice of admission and hearing learned counsel appearing for the parties at the interlocutory stage, came to the conclusion that the reason given by the Returning Officer for refusing to recognise the first respondent as an official candidate of Telangana Rashtra Samithi and consequential refusal to allot the official symbol of that party, was not acceptable even at that interlocutory stage because the errors pointed out by the Returning Officer were due to inadvertence and there was no other candidate set up by the said Telangana Rashtra Samithi in the said Constituency for which the first respondent had filed his nomination. It also took notice of an affidavit filed by the President of the Telangana Rashtra Samithi stating inter alia that the party had authorised him to issue B Form to the candidate set up by that party in the ensuing Assembly and Parliamentary elections and exercising said authority he had issued Form B to the first respondent herein. Based on the above material the High Court came to the conclusion that the irregularity, if any, found in Form B was so technical and trivial that the same did not justify the decision of the Returning Officer to treat the first respondent as an independent candidate and not as a candidate set up by the Telangana Rashtra Samithi, hence, issued the impugned directions setting aside the decision of the Returning Officer. It also came to the conclusion that the issue relating to allotment of symbol by the Returning Officer at the time of scrutiny of nomination papers is not one of the grounds on which an election petition could be filed under the provisions of the Representation of the People Act, 1951 (R.P. Act, 1951). Before the Hon'ble Supreme Court, appellant contended that:-

(i) the High Court was not justified in entertaining a writ petition after issuance of election notification because of the specific bar found in Article 329(b) of the Constitution of India read with the other provisions of the Representation of the People Act, 1951.

(ii) the order of the High Court directing the Returning Officer to treat Respondent 1 as candidate of the Telangana Rashtra Samithi and to allot the official symbol of the political party to him was not justifiable.

(iii) In view of glaring defects and omissions found in Form B filed by the first respondent which are in contravention of the Representation of the People Act, the Rules and Orders made thereunder, it was only the Returning Officer who was competent to adjudicate on such issues and the High Court could not have in a petition filed under Article 226 decided that issue.

Allowing the appeal, the Hon'ble Supreme Court held thus:-

12. In our opinion, whether the Returning Officer is justified in rejecting this Form B submitted by the first respondent herein or not, is not a matter for the High Court to decide in the exercise of its writ jurisdiction. This issue should be agitated by an aggrieved party in an election petition only.

13. It is to be seen that under Article 329(b) of the Constitution of India there is a specific prohibition against any challenge to an election either to the Houses of Parliament or to the Houses of Legislature of the State except by an election petition presented to such authority and in such manner as may be provided for in a law made by the appropriate legislature. The parliament has by enacting the Representation of People Act, 1951 provided for such a forum for questioning such elections hence, under Article 329(b) no forum other than such forum constituted under the R.P. Act can entertain a complaint against any election.

14. The word 'election' has been judicially defined by various authorities of this Court to mean any and every act taken by the competent authority after the publication of the election notification.

17. In the very same paragraph this Court, however, demarcated an area which is available for interference by the High Court and the same is explained as follows:

"But what is banned is not anything whatsoever done or directed by the Commissioner but everything he does or directs in furtherance of the election, not contrarywise. For example, after the President notifies the nation on the holding of elections under Section 15 and the Commissioner publishes the calendar for the poll under Section 30, if the latter orders returning officers to accept only one nomination or only those which come from one party as distinguished from other parties or independents, is that order immune from immediate attack. We think not. Because the Commissioner is preventing an election, not promoting it and the Court's review of that order will facilitate the flow, not stop the stream. Election, wide or narrow be its connotation, means choice from a possible plurality, monolithic

politics not being our genius or reality, and if that concept is crippled by the Commissioner's act, he holds no election at all."

18. Of course, what is stated by this Court herein above is not exhaustive of a Returning Officer's possible erroneous actions which are amenable to correction in the writ jurisdiction of the courts. But the fact remains such errors should have the effect of interfering in the free flow of the scheduled election or hinder the progress of the election which is the paramount consideration. If by an erroneous order conduct of the election is not hindered then the courts under Article 226 of the Constitution should not interfere with the orders of the Returning Officers remedy for which lies in an election petition only.

21. Learned senior counsel for the respondent candidate contended that case of the first respondent before the High Court came within the exceptions noted by this Court in M.S. Gill's case (supra) which permits filing of a writ petition under Article 226 of the Constitution in certain exceptional cases. He contended that the facts in this case also show that but for the intervention of the High Court the progress in the election would have been stalled. With due respect to learned counsel we do not agree with this argument because by not allotting a symbol claimed by the first respondent the Returning Officer has not stalled or stopped the progress of the election. Said respondent has been treated as an independent candidate and he is permitted to contest with a symbol assigned to him as an independent candidate, and consequently there is no question of stalling the election. His grievance as to such non-allotment of the symbol will have to be agitated in an election petition (if need be) as held in S.T.Muthuswami.

22. Learned counsel then contended that non-allotment of a symbol which the first respondent was legally entitled to would not be a ground of challenge available to him in the election petition under section 100 of the Representation of the People Act, 1951 therefore the High Court is justified in entertaining the petition. We do not think this argument of learned counsel is correct because as has been held by this Court in M.S. Gill's case (supra) sub-clause 4 of section 100(1)(d) of the Representation of the People Act, 1951 is widely worded residual clause which this Court in the said

judgment of M.S. Gill case termed as "catch all clause". It is further stated in the said judgment that the said section has been added to absolve everything left over and the same is exhaustive of all grievances regarding an election, hence, in our opinion this argument of learned counsel for the first respondent should also fail.

23. The next argument of learned counsel for the respondent is that as per the provisions of section 36 of the R.P. Act, Rule 4 of the Conduct of Elections Rules, 1961 and Clause 30 of the Election Symbols (Reservation and Allotment) Order, 1968, the omissions found by the Returning Officer in Form B filed by the respondent herein are all curable irregularities and are not defects of substantial nature, calling for rejection of the nomination paper. We think these arguments based on the provisions of the statutes, Rules and Orders are all arguments which can be addressed in a properly constituted election petition, if need be, and cannot be a ground for setting aside the order of the Returning Officer which is prima facie just and proper in our opinion."

14. In N.Dharmalingam Vs. the Returning Officer, Kallakurichi and another reported in 2011 2 LW 919, rejection of nomination was challenged. After considering the statutory bar under Article 329(b) of the Constitution of India and Section 100 of the Representation of the People Act, 1951, a Hon'ble Division Bench, dismissed the Writ Petition. Relevant paragraph Nos.3 to 10 are extracted hereunder:-

"3. The petitioner's case is that after the nomination paper was filed by him, the 1st respondent issued a communication to the petitioner to appear before the 1st respondent on 30th March, 2011. While submitting the nomination paper, the petitioner enclosed the list of proposers, namely, 10 of them along with their voter list of 80 Kallakurichi SC Assembly constituency containing their names and photographs pertaining to the voter list of the year 2008. On a scrutiny of the papers, the Returning Officer found that the list of proposers, i.e., namely 10 of them of whom the voter list had been filed, pertaining to the year 2008, did not find place in the voter list of 2011 kept by the 1st respondent. Consequently, the nomination was rejected, as on scrutiny the details of proposers like Part Number and Continuation Number when compared to 2011 voter list did not tally.

4. Learned counsel for the petitioner submitted that the impugned order rejecting the nomination of the petitioner is illegal and wholly without jurisdiction. According to the learned counsel, the voter list for the year 2008 alone was available to the public and the voter list of the year 2011 had not been circulated to anyone. As a result, the rejection is highly arbitrary.

5. The question that arises for consideration is whether this Court has jurisdiction under Article 226 of the Constitution to entertain the writ petition and decide the legality of the impugned order.

6. Before proceeding further, we would like to refer to Article 329 of the Constitution of India, which reads as under :- "29. 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 to 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.

7. Clause (b) of Article 329 is very clear on this point. It is manifest that no election to either House of Parliament or to the House or either House of the Legislature of State shall be called in question except by an election petition presented before the authority empowered under the law.

8. Section 100 of the Representation of People Act, 1950, lays down the ground for declaring the election to be void. One of the grounds for declaring election to be void is the rejection of the nomination improperly.

9. In our opinion, the instant case is squarely covered by the Constitution Bench judgment of the Supreme Court in the case of N.P.Ponnuswami Vs Returning Officer, Namakkal Constituency, Namakkal

(AIR 1952 SC 64).

10. After giving our anxious consideration, we are of the definite opinion that the question regarding the improper rejection of nomination cannot be gone into by this Court in exercise of writ jurisdiction under Article 226 of the Constitution. Hence, no relief can be granted and, accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petitions are also dismissed. However, there shall be no order as to costs."

15. In S.Kumar v. Election Commission of India [W.P.No.17900 of 2016, dated 11.05.2016] a Hon'ble Division Bench of this Court, dealt with a case of rejection of nomination, on the grounds that two proposers of the petitioner's nomination papers, retracted by stating that they not signed the nomination papers. There were other reasons, as well. After considering the judgments in N.P.Ponnuswami's case and Mohinder Singh Gill v. The Chief Commissioner of Elections reported in AIR 1978 SC 851, a Hon'ble Division Bench of this Court, at Paragraphs 6 to 8, held as follows:

"6. It is well-settled law that once election process is set in motion, till the declaration of election results, it cannot be stopped as per the judgment of the Apex Court in Mohinder Singh Gill and Another V. The Chief Election Commissioner, New Delhi and others, reported in AIR 1978 SC 851. It is relevant to extract paragraphs 121 and 122 of the said judgment as hereunder :

"121. As already pointed out, it is well-settled that election covers the entire process from the issue of the notification under Section 14 to the declaration of the result under Section 66 of the Act. When a Poll that has already taken place has been cancelled and a fresh poll has been ordered, the order therefor, with the amended date is passed as an integral part of the electoral process. We are not concerned with the question whether the impugned order is right or wrong or invalid on any account. Even if it is a wrong order it does not cease to be an order passed by a competent authority charged with the conduct of elections with the aim and object of completing the elections. Although that is not always decisive, the impugned order itself shows that it has been passed in the exercise of power under Article 324 (1) and Section 153 of the Act. That is also the

correct position. Such an order, relating, as it does, to election within the width of the expression as interpreted by this Court, cannot be questioned except by an election petition under the Act.

122. What do the appellants seek in the writ application ? One of their prayers is for declaration of the result on the basis of the Poll which has been cancelled. This is nothing short of seeking to establish the validity of a very important stage in the election process, namely, the poll which has taken place, and which was countermanded by the impugned order. If the appellants succeed, the result may, if possible, be declared on the basis of that poll, or some other suitable orders may be passed. If they fail, a fresh poll will take place and the election will be declared on the basis of the fresh poll. This is, in effect, a vital issue which relates to questioning of the election since the election will be complete only after the fresh poll on the basis of which the declaration of the result will be made. In other words, there are no two elections as there is only one continuing process of election. If, therefore, during the process of election, at an intermediate or final stage, the entire poll has been wrongly cancelled and a fresh poll has been wrongly ordered, that is a matter which may be agitated after declaration of the result on the basis of the fresh poll, by questioning the election in the appropriate forum by means of an election petition in accordance with law. The appellants, then, will not be without a remedy to question every step in the electoral process and every order that has been passed in the process of the election including the countermanding of the earlier poll. In other words, when the appellants question the election after declaration of the result on the basis of the fresh poll, the election court will be able to entertain their objection with regard to the order of the Election Commission countermanding the earlier poll, and the whole matter will be at large. If, for example, the election court comes to the conclusion that the earlier poll has been wrongly cancelled, or the impugned order of the Election Commission is otherwise invalid, it will be entitled to set aside the election on the basis of the fresh Poll and will have power to breathe life into the countermanded poll and to make appropriate directions and orders in accordance with law. There is, therefore, no foundation for a grievance that the appellants will be without any remedy if their writ

application is dismissed. It has in fact been fairly conceded by counsel for the other side that the election court will be able to grant all appropriate reliefs and that the dismissal of the writ petition will not prejudice the appellants."

7. From the above, it is clear that whatever be the reason, even if an illegal order has been passed by the Election Commission, that should be a ground to be taken in the Election Petition. If the petitioner is able to prove the alleged illegality, the election itself would be declared as null and void.

8. In view of the above well-settled position of law, this writ petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed."

16. In *Kameshwaran v. The State*, Represented by the Chief Electoral Officer, Chennai and others [W.P.No.7642 of 2017, 27.03.2017], the challenge was to the rejection of the petitioner therein, was on the grounds that though the petitioner therein complied with the defects pointed out, still the returning officer, rejected the nomination. After considering the submissions of the learned counsel, assailing the correctness of the rejection of nomination, defence adduced by the learned counsel for the Election Commission of India and the decision of this Court, the Hon'ble Division Bench dismissed as follows:

"4. It is the case of the petitioner that he has filed nomination application on 17.3.2017 for contesting in coming assembly by-election in R.K. Nagar Constituency. Subsequent to the filing of nomination application, the petitioner was instructed to comply with three requirements, which were duly complied with by the petitioner. However, on 24.3.2017, the impugned order came to be passed by the second respondent rejecting the nomination application of the petitioner. Challenging the same, the petitioner has filed the writ petition.

5. The learned counsel for the petitioner submitted that initially on scrutiny of the nomination application, the respondents informed the petitioner to comply with three requirements. The petitioner duly complied with the requirements and re-submitted the application on 20.03.2017 and the same was duly received and acknowledged by the respondents on the said date itself. On 24.3.2017 when the petitioner appeared before the respondents after receiving phone

call, they informed that his application was rejected as the second page of Form 26 was missing. The learned counsel would submit that immediately, the petitioner approached the first respondent and asked one hour time to rectify the said defect. Despite his request to rectify the defect, the impugned order came to be passed, which is against the principles enshrined under Article 14 of the Constitution of India and also violative of Sections 33(4) and 33(6) of the Representation of People Act, 1950.

6. The learned counsel for the respondents submits that the writ petition is not maintainable and the remedy open to the petitioner is to file election petition. He further submits that as per Article 329 (b) of the Constitution of India, no election either to the Parliament or to the Legislature of a State shall be called in question except by an election petition. In support of his contention, the learned counsel for the respondents relies upon the judgment of the Apex Court in N.P.Ponnuswami v. The Returning Officer, Namakkal Constituency, Namakkal, Salem District and others, AIR (39) 1952 Supreme Court 64.

7. For an election to R.K. Nagar Constituency, the petitioner and others have filed nominations. On 24.3.2017, the Returning Officer took up for scrutiny the nomination paper of the petitioner and others. At that time, he found that the second page of Form 26 was not annexed, which resulted in rejecting the nomination application of the petitioner.

8. The operative portion of the impugned order of the Returning Officer reads as under:-

Your nomination application No.8 was scrutinized. On scrutiny the following decision was ordered

1) In your application, Form 26 declaration deed Page-2 has not been found in the enclosure.

9. Before proceeding further, it is relevant to refer to Article 329(b) of the Constitution of India and Section 80 of the Representation of People Act, 1950, which read as under:-

Article 329 - Bar to interference by courts in electoral matters - Notwithstanding anything in this Constitution - (b) no election to either House of Parliament or to 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.

Section 80 Election petitions No election shall be called in question except by an election petition presented in accordance with the provisions of this Part.

10. A bare reading of Clause (b) of Article 329 of the Constitution of India shows that it starts with a non-obstante clause which provides that notwithstanding anything contained in the Constitution, no election to either House of Parliament or to either House of the Legislature of State shall be called in question except by an election petition. Similarly, Section 80 of the said Act states that no election shall be called in question except by an election petition presented in accordance with the provisions of the Act.

11. In Ponnuswami case cited supra, the word election is used to embrace the whole procedure of election and is not confined to final result thereof and held that rejection or acceptance of nomination paper is included in the term election. After a detailed analysis of all the relevant provisions of the Constitution and the Representation of the People Act, the Apex Court held that an election can be questioned only in the manner provided by Article 329 (b) and not otherwise, notwithstanding the provisions of Article 326. The Apex Court also held that the nomination is a part of an election. In paragraph 16, it has been held thus:-

(1) Having regard to the important functions which the Legislatures have to perform in democratic countries it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time schedule, and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over so that the election proceedings may not be unduly retarded or protracted.

(2) In conformity with this principle, the scheme of the election law in this country as well as in England is that no significance should be attached to anything which does not affect the 'election'; and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the 'election' and enable the person affected to call in question they should be brought up before a Special Tribunal by means of an election petition and not be made the

subject of a dispute before any Court while the election is in progress.

12. That apart, in Mohinder Singh Gill And Another V. The Chief Election Commissioner, New Delhi And Others (1978) 1 SCC 405, a Constitution Bench of the Supreme Court reiterated that Article 329(b) of the Constitution of India is a blanket ban on litigative challenges to electoral steps taken by the Election Commission and its Officers carrying forward the process of election to its culmination in the formal declaration of the result. The Supreme Court observed that under Article 329(b) of the Constitution of India, the sole remedy for an aggrieved party is an Election Petition and the exclusion of all other remedies includes constitutional remedies like jurisdiction under Article 226 because of the non obstante clause.

13. In the case on hand, the plea made before us is that even though the petitioner requested for one hour's time to rectify the defects pointed out by the Returning Officer, no opportunity was granted to him and the second respondent hurriedly rejected the nomination application.

14. In the light of the law enunciated in the decisions referred supra, without going into the merits and demerits of the rejection of the nomination, we hold that any ground of attack against the same should be by way of filing an election petition and does not warrant exercise of our extraordinary jurisdiction under Article 226 of the Constitution, overlooking the clear bar mandated by Article 329(b) of the Constitution of India and Section 80 of the Representation of People Act, 1950.

15. For the foregoing reasons, the writ petition is dismissed giving liberty to the petitioner to file election petition, if so advised. No costs. Consequently, W.M.P.No.8350 of 2017 is closed."

17. Reverting to the case on hand, the petitioner has contended that rejection of her nomination, was technical and would not fall under the substantial category, Scrutiny Officer has recorded that among the list of persons who have proposed the name of the petitioner, as a candidate for the election, the particulars of the persons Nallusamy and Sathiskumar with regard to the Part number and serial number in the voters list, were not matching with the records available with respondent No.2.

According to him, Scrutiny Officer has stated that by referring to the Electoral rolls and online electoral roll. Whereas, the petitioner has contended that part number and serial number in the electoral rolls were filled in the nomination of the petitioner, as per the voters card and electoral rolls given to the booth agent.

18. At this juncture, having gone through the orders of this Court and the decisions of the Hon'ble Supreme Court, we may only observe that it is the duty of the petitioner to obtain the correct particulars of part number and serial number from the electoral rolls and online electoral roll instead of getting details from the booth agents. Electoral rolls available with the Election Commission of India, and online electoral roll, are authenticated, and therefore, the said particulars of part number and serial number ought to have been filled, in the nomination papers, submitted by the candidates. Apparently, there appears to be mismatching of the particulars of the persons, who have proposed the name of the petitioner, as a candidate for Perambalur Constituency, and therefore, the Scrutiny Officer has rejected the nomination papers, submitted by the petitioner.

19. Let us consider the provisions relied on by the learned counsel appearing for the petitioner. Section 34 (b) of the Representation of the People Act, 1951 reads thus:-

34 (b) in the case of an election from an Assembly or Council constituency, a sum of five thousand rupees or where the candidate is a member of a Scheduled Caste or Scheduled Tribe, a sum of two thousand and five hundred rupees :

Provided that where a candidate has been nominated by more than one nomination paper for election in the same constituency, not more than one deposit shall be required of him under this sub-section."

20. Section 36(4) of the said Act states that the returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. What is substantial or not, is for the returning officer has to decide. Section 80 of the said Act states that no election shall be called in question, except by an election petition presented in accordance with the provisions of this Part.

21. Though Mr.A.E.Lakshminarayanan, learned counsel appearing for the petitioner submitted that at this juncture, he cannot challenge the election on the ground of rejection of her nomination, and it can be done only after the declaration of the election, and therefore, sought for a direction to direct the respondents, to accept the nomination submitted by the petitioner, and to include the name of the petitioner in the list of Candidates for the Perambalur Parliament Constituency, we are not inclined to issue any such direction for the reasons that, as per Section 100(c) of the said Act, the petitioner is not remedy less, and she can always challenge the election.

22. Section 100 (1) of the said Act, deals with grounds for declaring election to be void and the same reads as follows:-

"Subject to the provisions of sub-section (2), if [the High Court] is of opinion that any nomination has been improperly rejected".

23. Apart from the above, Article 141 of the Constitution of India reads thus:-

"141. The law declared by the Supreme Court shall be binding on all courts within the territory of India."

24. Decision of the Constitutional Bench of the Hon'ble Supreme Court, in N.P.Ponnuswami and the Returning Officer, Namakkal Constituency, and others, reported in AIR (39) 1952 SCC 64 and Manda Jaganath Vs. K.S.Rathnam and Others reported in (2004) 7 SCC 492, and other, extracted supra, would be applicable to the facts of the case on hand. Following the decisions, we are not inclined to entertain the Writ Petition and the Writ Petition is not maintainable. Accordingly, this Writ Petition is dismissed. There shall be no order as to costs.

WEB COPY
Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Chief Electoral Officer &
Principal Secretary to Government,
Office of the Public (Elections) Department,
Fort St.George, Chennai - 9.

2. The Returning Officer,
Perambalur Parliament Constituency,
Tamilnadu.

3. The Chief Election Commissioner,
Election Commission of India,
Nirvachan Sadan, Ashoka Road,
New Delhi - 110 001.

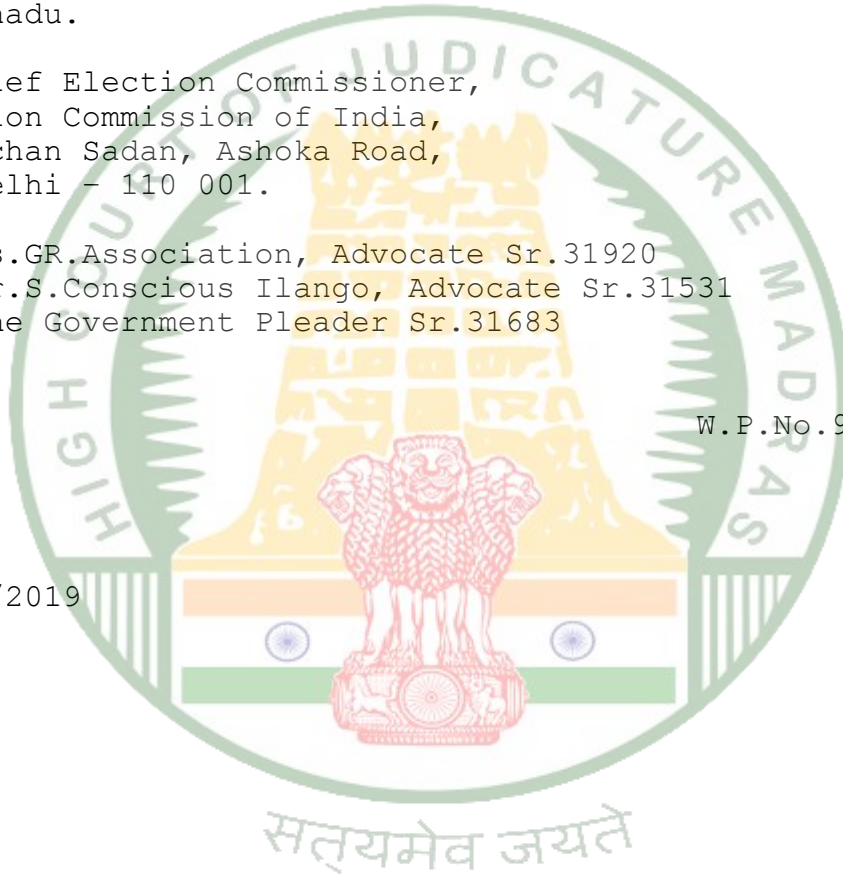
+1cc to Ms.GR.Association, Advocate Sr.31920

+1cc to Mr.S.Conscious Ilango, Advocate Sr.31531

+1cc to the Government Pleader Sr.31683

W.P.No.9972 of 2019

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srg 04/06/2019



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