

*** HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN**
AND
HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

+ WRIT PETITION No.4953 OF 2019

% Dated: 09.03.2019

Syed Kareem

... Petitioner

VERSUS

\$ The Chief Election Commissioner of India and others.

... Respondents

! Counsel for the petitioner : Sri Samala Ravendar

^ Counsel for the respondent No.1 : Sri Avinash Desai,
Standing counsel for Election Commission of
India

Counsel for the respondent No.3: Sri J.Ramachandra Rao,
Additional Advocate General

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? Cases referred

1. (2005) 12 SCC 121
2. (2011) 7 SCC 721
3. AIR 1952 SC 64
4. (1978) 1 SCC 405
5. (1988) 1 SCC 277

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ORDER (per the Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)

We have heard the learned counsel for the petitioner, the learned standing counsel for the Election Commission of India and the learned Additional Advocate General for the third respondent.

2. This writ petition is instituted challenging the decision dated 06.03.2019 issued by the Returning Officer, Medak – Nizamabad – Adilabad – Karimnagar Graduates' Council Constituency rejecting the nomination of the petitioner.

3. As per notified schedule, last date for making nominations was 05.03.2019, scrutiny of nominations was to be on 06.03.2019 and last date for withdrawal of candidatures was on 08.03.2019. The impugned decision is issued on 06.03.2019 following the notified schedule.

4. Going by the writ affidavit and material papers on record, it is the admitted fact that the petitioner had left unfilled certain columns in the affidavit in Form 26 in terms of Rule 4A of the Conduct of Elections Rules, 1961; hereinafter referred to as 'Rules'.

5. It is submitted on behalf of the petitioner that the entry that was omitted, is of such nature, which could have been permitted to be rectified and an opportunity to that effect was eligible to be granted by the Returning Officer before rejection of

nomination. It is argued that in terms of the applicable procedural rules, the defects of minor nature can be permitted to be corrected and an opportunity to carry out such corrections ought to be extended to the candidate, particularly because subsection (4) of Section 36 of the Representation of People Act, 1951; hereinafter referred to as 'RP Act', provides that the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

6. The learned counsel for the petitioner relied on the Judgments of the Hon'ble Supreme Court of India in **Ram Bhual v. Ambika Singh**¹ and **Nandiesha Reddy v. Kavitha Mahesh**² to buttress his argument that the question of rejecting the nomination would arise only after the opportunity of rectification is extended to the candidate concerned. The learned counsel submits that a representation has been filed before the competent authority and that deserves to be considered by the Returning Officer.

7. The learned standing counsel for the Election Commission of India points out that **N.P.Ponnuswami v. Returning Officer, Namakkal Constituency, Namakkal**³, **Mohinder Singh Gill v. Chief Election Commissioner**⁴ and **Election Commission of India v. Shivaji**⁵ are the authority for the position that, within the format of the exclusionary clause contained in Article 329 of the Constitution of India, even the High Courts would loath

¹ (2005) 12 SCC 121

² (2011) 7 SCC 721

³ AIR 1952 SC 64

⁴ (1978) 1 SCC 405

⁵ (1988) 1 SCC 277

interfere with the election process in any manner that would impair the schedule of any election, already fixed. He also points out that the issue that is now sought to be raised is relatable to improper rejection of nomination; which could be urged as a ground for declaring election to be void, in terms of Section 100(1)(c); and therefore, the issue that is now raised fall for consideration and determination only in an election petition in terms of Section 81 of the RP Act, after the election process is completed.

8. Examining the judicial precedents cited on behalf of the petitioner, we see that all of them were rendered in matters, which went up for adjudication after the completion of elections, and they were the decisions of the election petitions. The restriction created by Article 329 of the Constitution has to be understood and applied in such manner that would ensure that the interference of Courts do not, in any manner, to obliterate the process of election, which is commenced by issuance of notification for election. This is among the *ratio decidendi* of the precedents laid down by the Apex Court through **N.P.Ponnuswami** (supra) and **Shivaji** (supra).

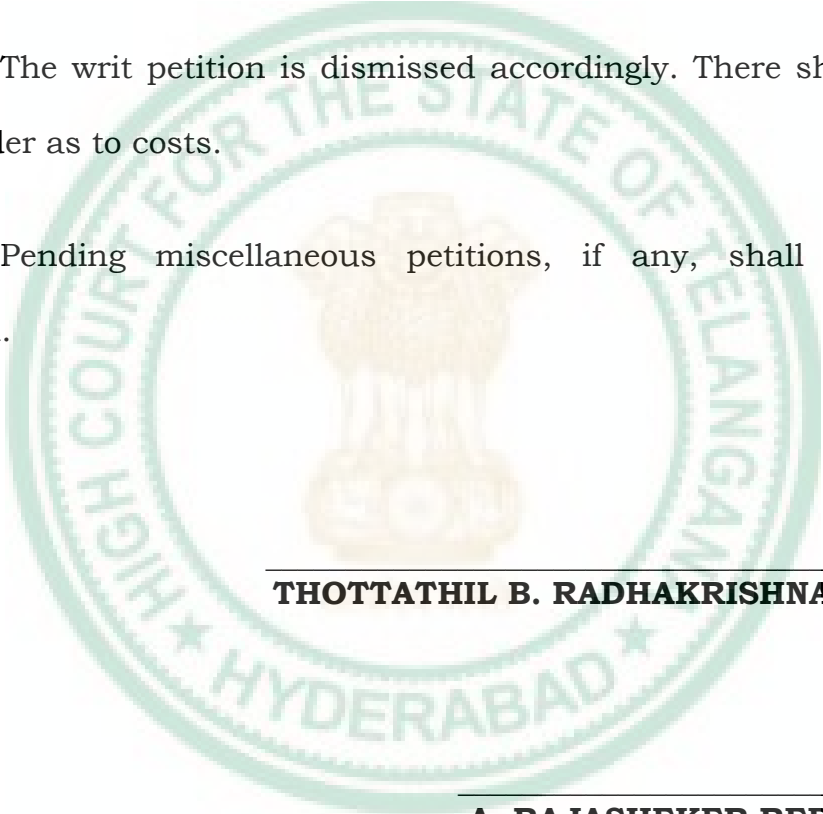
9. With the aforesaid, we may also notice that upon the last date of withdrawal of nomination having come to its end, the question of the Returning Officer, thereafter, dealing with any nomination paper does not arise. The publication of the list of candidates is only the publication of result of the activity that had happened from the submissions of the nominations until the last point of time for withdrawal of nominations. In this view

also, larger public interest dissuades us from interfering with the matter at the instance of the writ petitioner.

10. For the aforesaid reasons, while this writ petition fails because no relief can be extended on the issue, under Article 226 of the Constitution of India, we clarify that whatever stated herein will not stand in the way of the petitioner seeking appropriate reliefs and remedies in accordance law, after the result of the election is declared.

11. The writ petition is dismissed accordingly. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.



THOTTATHIL B. RADHAKRISHNAN, CJ

A. RAJASHEKER REDDY, J

09.03.2019.

Note: LR copy be marked.
(By order)
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