

**THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

WRIT PETITION No.6698 OF 2019

ORDER: (per Hon'ble Sri Justice Raghvendra Singh Chauhan)

The petitioner, Mr. Kommula Srinivas, has challenged the legality of the order dated 26.03.2019, passed by the Returning Officer, the respondent No.3 whereby the learned Returning Officer has rejected his nomination papers in accordance with Section 36 of the Representation of the People Act, 1951 (for short, the Act).

Briefly, the facts of the case are that the petitioner, who was hopeful in standing as an independent candidate in the presently scheduled Lok Sabha Elections, had filed his nomination on 25.03.2019 for the Constituency of Lok Sabha-02, Peddapalle (SC) Parliamentary Constituency. His nomination papers were acknowledged by the Returning Officer. While scrutinizing the nomination papers of the petitioner, the Returning Officer made an endorsement pointing out the objections that, "*Form-26 over written at Sl.No.4 (1 to 6), 6(a) (ix) in part-A and Sl.No.11 (7d) in part-B*". Further it was specified that the latest documents should be filed by 25.03.2019 before 3:00 p.m. Despite the fact that on 26.03.2019, the petitioner went to the office of the Returning Officer for submission of his affidavit, the respondent No.3 refused to receive the same and rejected the nomination of the petitioner holding that "*1. Fresh Affidavit in Form-26 not submitted as per requirement and as per notice issued in this regard. 2. Declaration in Part-III (c) of nomination paper is not as per requirement*". Therefore,

the petitioner has challenged the legality of the order dated 26.03.2019, whereby his nomination papers have been rejected.

Mr. K. Sanjeev, the learned counsel for the petitioner, submits that the endorsement dated 26.03.2019 was in the English language. Since the petitioner is unaware of the language, he could not understand the contents of the endorsement made by the respondent No.3. Furthermore, nomination papers should not be rejected for minor technical or clerical reasons. In fact, the Returning Officer is expected to have a liberal view of the nomination papers. Therefore, the impugned order, rejecting the petitioner's nomination, is legally unsustainable.

On the other hand, Ms. Akhila Palem, the learned counsel representing Mr. Avinash Desai, the learned Standing Counsel for the respondent No.1, has relied on the case of **N.P.Ponnuswami Vs. Returning Officer, Namakkal Constituency, Namakkal, Salem Dist., and Four Others**¹ and the case of **Mohinder Singh Gill Vs. Chief Election Commr.**² in order to plead that since rejection of a nomination paper is one of the grounds given under Section 100 of the Act for challenging an election, this Court should not invoke its writ jurisdiction in order to interfere with the election process. According to the learned counsel, once the election calendar is published, the election process cannot be interfered by the High Court under its writ jurisdiction power.

¹ AIR 1952 SC 64

² (1978) 1 SCC 405

Secondly, even if the petitioner has valid grounds for challenging the rejection of his nomination papers, he is free to challenge the entire election result, in an election petition, on the ground that his nomination papers were illegally rejected. Therefore, the learned counsel has questioned the maintainability of the writ petition.

Heard the learned counsel for the parties, perused the impugned order, and considered the case laws cited at the Bar.

In the case of **N.P.Ponnuswami** (supra), the Hon'ble Supreme Court clearly stated that 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. Moreover, if the legislature, in its wisdom, has constituted a Special Tribunal to examine the election process and the election result, then it is only the Special Tribunal which would have jurisdiction for examining the same. Therefore, the Hon'ble Supreme Court was of the opinion that once election calendar has been announced, it is not for the High Court to interfere with the same under its writ jurisdiction.

A similar view has also been held by the Hon'ble Supreme Court in the case of **Mohinder Singh Gill** (supra). In the said case, the Hon'ble Supreme Court had also observed that *'the conspectus of provisions bearing on the subject of elections clearly expresses the rule that there is a remedy for every wrong done during the election in progress although it is postponed to the post election stage and*

procedure as predicated in Article 329(b) and the 1951 Act. The Election Tribunal has, under the various provisions of the Act, large enough powers to give relief to an injured candidates if he makes out a case and such processual amplitude of power extends to directions to the Election Commission or other appropriate agency to hold a poll, to bring up the ballots or do other thing necessary for fulfillment of the jurisdiction to undo illegality and injustice and do complete justice within the parameters set by the existing law.'

Undoubtedly, under Section 100 of the Act, one of the grounds for challenging the election results is that the nomination papers were unjustified and illegally rejected. Therefore, the petitioner would have a remedy to challenge the election on the said ground. As pointed out by the Hon'ble Supreme Court, only the process is postponed till the election. But, considering the fact that the free and fair election is the foundation of democracy, considering the fact that once an election has been initiated, people have the right to express their opinion with regard to the candidates who are filled by the political parties. Considering the fact that the election and polls involve investment of a large amount of money, this Court would not be justified in interfering with the election process, once it is set into motion.

For the reasons stated above, this Court is not inclined to invoke its writ jurisdiction, and to set aside the impugned order. However, the petitioner shall be free to challenge the election results by filing an election petition, and shall also be free to raise the contentions raised by him before this Court.

Accordingly, the writ petition stands disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

RAGHVENDRA SINGH CHAUHAN, J

T.AMARNATH GOUD, J

Date: 28.03.2019
TJMR

