

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

WRIT PETITION No.6696 OF 2019

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

The petitioner, Mr. Veerabrahma Ravi, has challenged the rejection of his nomination papers for contesting the Parliamentary election as an independent candidate for Secunderabad Parliamentary Constituency.

Briefly, the facts of the case are that the Election Commission of India has notified schedule of elections to the House of People i.e., Lok Sabha in the State of Telangana as 18.03.2019 to 25.03.2019 (by 3:00 pm) for filing of the nomination papers; 26.03.2019 for the scrutiny of the nomination papers; 28.03.2019 for withdrawal of the nomination papers; and 11.04.2019 as the date of the elections.

Since the petitioner wanted to stand for the Lok Sabha Election, he had submitted his nomination papers as an independent candidate on 25.03.2019. The Returning Officer, the respondent No.5, had taken the oath by the petitioner on 25.03.2019 after the preliminary scrutiny of the nomination form. He had also received an amount of Rs.25,000/- towards nomination fee and had also supplied the election material to the petitioner. While scrutinizing the nomination papers of the petitioner, the Returning Officer made an endorsement pointing out the following objections:-

- i) In part A, Sl. 4, col. No.(3 to 6) not filled*
- ii) Pg. No.5, 7(A)- Col.5 to 8 – not filled*
- iii) Pg. No.6, Col. 5 to 8 not filled*

- iv) Pg. No. 7, in Col. 5 to 8 not filled.*
- v) Pg. No.8, in Col. 5 to 8 – not filled.*
- vi) Pg. No.9, Col. 5 to 8 – not filled.*
- vii) Pg. No. 10, 11, 12, 13 Col. 5 to 8 not filled.*

Further it was specified that “1) *photos stamp size & passport should be submitted by 5.00 p.m. on 25.03.2019* & 2) *Latest Bank Account details should be submitted by 5.00 p.m. on 25.03.2019*”.

However, on 26.03.2019, when the petitioner went to the office of the Returning Officer for submission of his revised affidavit, the respondent No.5 refused to receive the same and rejected the nomination of the petitioner holding that “*The proposer electoral roll number at Sl.No.5 is not matching. Although the petitioner was present at the time of his scrutiny of the nomination papers, he could not identify correct roll of proposer. Even the revised affidavit was not filed by the petitioner.*” Therefore, the petitioner has challenged the legality of the order dated 26.03.2019, whereby his nomination papers have been rejected.

Mr. D. Laxmi Narayana, the learned counsel for the petitioner, has vehemently pleaded that the part number and serial number of each proposer is obtained by downloading from the internet. Out of ten proposers, the details of nine proposers have tallied and only the details of a single proposer namely at serial No.5 did not tally. He further submits that the internet does not mention any part number. In fact, the part number for serial No.5 proposer is obtained from Electoral Photo Identity Card (for short, EPIC). Moreover, as the petitioner is not aware about the EPIC card details, a large ambiguity is created in filing of the nomination form. Therefore, it is not intentional mis-match of the numbers,

but only due to certain lacunae that exist in filling up of the nomination form.

Secondly, the Returning Officer is not justified in rejecting the nomination form only on the hyper technical reasons. Therefore, according to the learned counsel, the rejection of his nomination form should be interfered with.

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.

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.

¹ AIR 1952 SC 64

² (1978) 1 SCC 405

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