

**HON'BLE THE ACTING CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
HON'BLE SRI JUSTICE A. RAJASHEKER REDDY**

WRIT PETITION No.6868 of 2019

ORDER: *(per the Hon'ble the Acting Chief Justice Raghvendra Singh Chauhan)*

Dr. Mohamed Abdul Samad Osmani, the petitioner, is aggrieved by the rejection of his nomination papers by the respondent No.1, Returning Officer for Chevella Parliamentary Constituency.

Briefly, the facts of the case are that the parliamentary elections were declared on 10.03.2019; the last date for filing the nomination papers was 25.03.2019; the papers were to be scrutinized by 25.03.2019 itself; the last date for withdrawal of the candidature was 28.03.2019; the date of polling for the State of Telangana is scheduled to be held on 11.04.2019, and the results shall be declared on 23.04.2019.

Since the petitioner was eager to contest the election as a candidate of All India Muslim Majlis Party from Chevella Parliamentary Constituency, he submitted his nomination papers. However, certain objections were raised with regard to the contents of the nomination papers. On 26.03.2019, he complied with those objections. Subsequently, he was shocked to learn that his nomination papers have been rejected. When he made certain

enquiries, to his dismay, he discovered that his nomination papers had been tampered with. For, whiteners have been applied in column Nos.2 to 6 of Serial No.1 of the particulars of the proposers and the signatures. Hence, the petitioner has filed the present Writ Petition for declaring the action of the respondents in rejecting his nomination papers as arbitrary and illegal.

Ms. Akhila, the learned counsel representing Mr. Avinash Desai, the learned Standing Counsel for the respondents, Election Commission of India, has raised an objection as to the maintainability of the Writ Petition by relying on the case of **N.P. Ponnuswami v. Returning Officer, Namakkal Constituency and others**¹, and on the case of **Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others**². The learned counsel submits that once the election calendar has been notified, this Court is denuded of its power to exercise extraordinary writ jurisdiction. For, according to the said decisions, the election process should be permitted to go on undisturbed. Moreover, it is only after the election results have been declared, that the petitioner can avail the alternative remedy of submitting an election petition in order to redress his grievances. However, during the pendency of the election

¹ AIR 1952 SC 64

² (1978) 1 Supreme Court Cases 405

process, according to the learned counsel, this Court should not invoke its writ jurisdiction. Thus, according to her, the Writ Petition is not maintainable.

On the other hand, the learned counsel for the petitioner submits that since the nomination papers have been tampered with by unknown persons, the petitioner is being denied the right to contest the election. Therefore, he is entitled to challenge the rejection of his nomination papers even during the pendency of the election process. Hence, according to the learned counsel, the writ petition is not only maintainable, but also, deserves to be allowed by this Court.

Heard the learned counsel for the parties.

In the case of **Mohinder Singh Gill** (supra), the Hon'ble Supreme Court has summarized the principles, which are applicable to a writ petition filed challenging the rejection of nomination papers, or challenging the election process. The relevant observation is as under:

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 candidate 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 think necessary for fulfillment of the jurisdiction to undo illegality and injustice and do complete justice within the parameters set by the existing law.

Thus, during the election process, this Court is required not to invoke its writ jurisdiction. Hence, any such interference may protract the election process, thereby, affecting free and fair election. Therefore, the contention raised by the learned counsel that the petitioner is being denied the right to voice his grievance by not invoking the writ jurisdiction is clearly untenable. It is not that the petitioner is remediless. It is merely that his access to a remedy is delayed till the election results are duly announced.

For the reasons stated above, this Court declines to invoke its writ jurisdiction.

Hence, this writ petition is hereby dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, ACJ

Date: 09.04.2019

A. RAJASHEKER REDDY, J

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