

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.22501 of 2019

ORDER:

This Writ Petition is filed seeking writ of mandamus declaring the action of the 4th respondent in rejecting the nomination filed by the petitioner vide Letter No.C/1621/2019, dated 01.10.2019, as illegal and arbitrary and for consequential directions.

Heard learned counsel for the petitioner and Ms.Akhila, learned counsel appearing for Sri Avinash Desai, learned Standing Counsel for the 1st respondent.

Learned counsel for the petitioner submits that without giving an opportunity of hearing, his nomination was rejected, which is in violation of principles of natural justice. He submits that had the petitioner given an opportunity of hearing, he might have produced necessary documents.

On the other hand, learned Standing Counsel for the 1st respondent submits that against the impugned rejection order, petitioner has efficacious alternative remedy under Article 329(b) of the Constitution of India. In support of her contention, she relied on the judgment reported in **N.P.Ponnuswami v. Returning Officer, Namakkal Constituency, Namakkal, Union of India**¹.

In this case, it is to be seen that though it is alleged by the learned counsel for the petitioner, without affording an opportunity of hearing, his nomination was rejected, he has not

¹ 1952 SCR 218: AIR 252 SC 64

cited any rule or regulation stating that he is entitled to a notice before rejection of his nomination. In **N.P.Ponnuswami (supra)**, the Hon'ble Supreme Court held as follows:

“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.

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.”

In view of the law laid down by the Hon'ble Supreme Court, petitioner has efficacious alternate remedy by way election

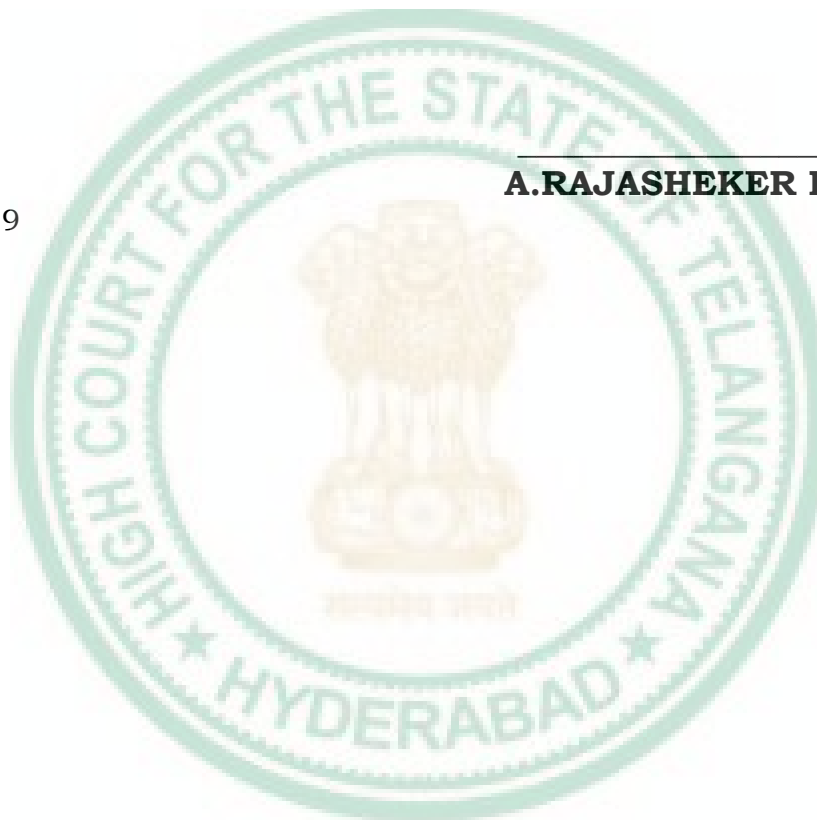
petition. Therefore, I do not see any reason to entertain the writ petition and the same is liable to be dismissed.

Accordingly, this Writ Petition is dismissed. However, if the petitioner is aggrieved by the impugned rejection of his nomination, it is open for him avail alternative remedy, by way of election petition, in accordance with law.

There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed.

16-10-2019
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A.RAJASHEKER REDDY, J



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