

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Sr. No.106

CWP-11665-2019
Date of decision : 3.5.2019

Mahender

..... Petitioner

VERSUS

Election Commission of India and others

..... Respondents

**CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present: Petitioner in person.

SUDHIR MITTAL, J.

The petitioner is aggrieved because his nomination as a candidate from Hisar Lok Sabha Constituency has been rejected.

2. General Elections for 17th Lok Sabha scheduled for the year 2019 were notified on 16.4.2019 and last date for filing of nomination was 23.4.2019 before 3.00 p.m. The petitioner submitted his nomination paper on 23.4.2019 at 2.12 p.m. as a candidate of Bhartiya Kisan Party. He alleges that the Chief Electoral Officer directed him to furnish a verified copy of the electoral roll of Badhra Constituency (the Constituency from which the petitioner is a registered voter) to be submitted on 24.4.2019 at the time of scrutiny. On 24.4.2019 at 12.43 p.m., the petitioner submitted a verified copy of the electoral roll, a true copy of which has been annexed as Annexure P3, but while scrutinizing his nomination paper, the same was rejected on the ground that the affidavit did not bear the remark “oath taken before me” of the Notary

Public, who had attested the nomination form. The petitioner allegedly offered to get the defect removed immediately, but the offer was rejected. Since this objection was not raised earlier and he was only told to submit a verified copy of his electoral roll, the petitioner could not get the defect removed earlier in point of time. Nomination forms of candidates of Indian National Congress and Bhartiya Janata Party contesting from Rohtak Lok Sabha Constituency also suffered from same infirmity as the nomination form of the petitioner, but the said nominations have been accepted. Copies of nomination forms of these candidates have been annexed as Annexures P5 and P6. The petitioner submitted a representation dated 25.4.2019 (Annexure P7) by Email, but no action has been taken thereupon till date. Accordingly, it is alleged that the Election Commission of India has acted in an arbitrary and discriminatory manner in rejecting the nomination form of the petitioner. Reliance has been placed upon a judgment of the Supreme Court in **‘Pashupati Nath Singh vs. Harihar Prasad Singh, 1968 AIR (SC) 1064.’**

3. Mr. Namit Kumar, Advocate, Standing Counsel for the Election Commission of India is present in Court. He submits that an advance copy of the petition has been received by him and that the last date for scrutiny of nomination forms i.e. 24.4.2019 has long gone past. At this stage, no relief can be granted to the petitioner. That apart, Article 329 (b) of the Constitution of India bars interference in the election process, at this stage. Also, wrongful rejection of a nomination paper is a valid ground for challenging an election by way of election petition and thus, the petitioner has remedy of filing an election petition after the

election process is over. Thus, the writ petition is liable to be dismissed.

He places reliance upon **‘N.P. Ponnuswami Vs. The Returning Officer, Namakhal Constituency, Namakkal, Sale Distt. and others, 1952 AIR (SC) 64’** and **‘Manda Jaganath Vs. K.S. Rathnam and others, 2004 AIR (SC) 3600.’**

4. Article 329 of the Constitution of India is reproduced below for ready reference:-

‘329. Bar to interference by Courts in electoral matters:-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328, shall not be called in question in any court;

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.’

5. Section 100 of the Representation of the People Act, 1950 (hereinafter referred to as ‘the Act’) containing the grounds for declaring an election to be void is also reproduced below:-

‘100. Grounds for declaring election to be void.—[(1) Subject to the provisions of sub-section (2) if [the High Court] is of opinion—

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act [or the Government of Union Territories Act, 1963 (20 of 1963)]; or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

- (i) by the improper acceptance or any nomination, or
- (ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or
- (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or
- (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, [the High Court] shall declare the election of the returned candidate to be void.]

(2) If in the opinion of [the High Court], a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but [the High Court] is satisfied-

- (a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and [without the consent], of the candidate or his election agent;
- (b) Omitted
- (c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and
- (d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, then [the High Court] may decide that the election of the returned candidate is not void.'

6. Article 329(b) of the Constitution lays down that an election to either House of Parliament or either House of State Legislature shall not be called in question except by way of an election petition. The grounds of an election petition are mentioned in Section 100 of the Act and Clause (c) of Sub-Section 1 thereof enumerates improper rejection of a nomination. Thus, it becomes apparent that a candidate aggrieved by the rejection of his nomination for a particular election can challenge the

same by filing an election petition, in accordance with law. Further, the word ‘election’ used in Article 329(b) of the Constitution has been interpreted in **N.P. Ponnuswami**’ s case (supra) to mean the entire process of election consisting of several stages and not the declaration of the final result alone. The inter play of Article 329(b) and Article 226 of the Constitution has also been examined and it has been held that Part XV of the Constitution as well as the Act lay down a policy of calling into question any matter having the effect of vitiating an election only by way of an election petition and therefore, the parallel remedy provided under Article 226 of the Constitution should not be invoked. Paragraphs 15 and 16 of the said judgment can be referred to with advantage and are reproduced below:-

‘15. 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".

‘16. 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 of the election law in this country as well as in England in 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.’

7. A Larger Bench of this Court comprising of five Hon’ble Judges in **‘Prithvi Raj Vs. State Election Commission, Punjab and others, 2007 AIR (Punjab) 178’** examined the question whether Article 243 ZG (b) ousted the jurisdiction of the High Court under Article 226 of the Constitution and held as follows:-

‘33. An appraisal of the provisions of Article 226 of the Constitution, and the judgments of the Hon'ble Supreme Court, as noticed herein above, in our considered opinion, clearly postulate that once the electoral process commences, with the issuance of a notification, under the Municipal Act, any grievance, touching upon an "election" would be justifiable, only by way of an election petition. Interference by Courts in election matters, after the commencement of the election process, would not be permissible, except to the limited extent noticed herein above.’

8. The view taken in **N.P. Ponnuswami'** s case (supra) has been followed by the Supreme Court in **'West Bengal State Election Commission and others Vs. Communist Party of India (Marxist) and others, 2018 AIR (SC), 3964.'**

9. Thus, the law is well settled that once the election process has commenced the High Court should restrain itself from exercising its jurisdiction under Article 226 of the Constitution and should permit an aggrieved candidate to get his grievance redressed through an election petition only. Judgment in **Pashupati Nath Singh's case** (supra) relied upon by the petitioner is distinguishable because the said judgment has been passed after the election was challenged through an election petition.

10. In this view of the matter, we refrain from exercising our jurisdiction under Article 226 of the Constitution and relegate the petitioner to remedy of election petition after completion of the election process.

11. The writ petition is accordingly, disposed of.

(DAYA CHAUDHARY)
JUDGE

(SUDHIR MITTAL)
JUDGE

3.5.2019

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No