

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

CWP-29586-2019

Date of decision : 05.11.2019

Ramphal

...Petitioner

V/s

Election Commission of India & ors.

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present: Mr. Raghav Sharma, Advocate for the petitioner.

Mr. Namit Kumar, Advocate for respondents no. 1, 3 & 4.

Mr. S.S. Pannu, DAG Haryana.

RAJAN GUPTA J.

Petitioner has preferred this petition seeking a writ in the nature of certiorari for quashing impugned notice dated 04.10.2019 (Annexure P-3) and subsequent rejection of the nomination form. Learned counsel for the petitioner has pointed out that respondents violated Clause 4.5.2 of 'Handbook for Returning Officer' wherein it is provided that in case nomination paper of any candidate is rejected for any reason by the Returning Officer, certified copies of the order must be given to the candidate immediately containing the reasons for such rejection. According to him, this stipulation was violated. He has also pointed out violation of Clause 4.5.3. According to him, without knowing the reasons for rejection, he could not apply to the Returning Officer to rebut the objections. Besides, Returning Officer has the power to allow adjournment as per provisions of Section 36(5) of the Representation of Peoples Act, 1951 till the next date.

However, Returning Officer did not follow these provisions. Vide order

dated October 30, 2019, Mr Namit Kumar, Advocate representing respondents no. 1, 3 & 4 was asked to produce the record. Returning Officer was also asked to remain present. The case was thereafter adjourned as the Returning Officer prayed that he may be allowed to file an affidavit. Same has now been filed. Certain lapses have been admitted therein. However, learned counsel for respondents no. 1, 3 & 4 points out that in view of bar contained in Article 329 (b) of the Constitution of India appropriate remedy available to the petitioner to raise factual issues would be by way of an election petition.

Faced with this situation, Mr. Raghav Sharma, learned counsel representing the petitioner submits that he may be allowed to withdraw this petition with liberty to avail the remedy of an election petition.

Dismissed as withdrawn with aforesaid liberty, if permissible in law.

(RAJAN GUPTA)
JUDGE

November 05, 2019
Ajay

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No