

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C)4416/2019 & CM Nos.19671-19674/2019**

Date of Decision: 26th April, 2019.

IN THE MATTER OF:

SANDEEP SRIVASTAVA

.....Petitioner

Through : Mr. Anirudh Deshmukh, Advocate

versus

ELECTION COMMISSION OF INDIA & ANR.

.....Respondents

Through : Mr. Sidhant Kumar, Adv. for
Respondent Nos. 1 and 2

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. This petition has been filed under Article 226 of the Constitution of India seeking the following prayers:

- i) issue a writ of certiorari or a writ in the nature of mandamus or any other writ, direction or order under Article 226 of the Constitution of India, quashing the impugned order dated 24.04.2019 of the respondent no.1 as being arbitrary and capricious and violative of the provisions of Section 36 of the Representation of People Act;
- ii) Consequent to prayer (i), restore the nomination papers of the petitioner and direct the respondent no.2 to accept the declaration of the petitioner;
- iii) any other orders that this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

2. The Election Commission of India, vide notification dated 16.03.2019 issued under sub section (2) of Section 14 of the Representative of People Act, 1951 announced “Lok Sabha General Elections, 2019” to elect members of the House of People. In terms of the above notification, the relevant election schedule published for NCT of Delhi is reproduced as follows:-

Schedule reference		Parliamentary Constituencies			
Schedule no.	6	Sl.	PC No.	PC Name	Type
No. of PCs going to poll	7	1	1	Chandni Chowk	GEN
Issue of notification	16-04-2019	2	2	North East Delhi	GEN
Last date for filing nomination	23-04-2019	3	3	East Delhi	GEN
Scrutiny of nomination	24-04-2019	4	4	New Delhi	GEN
Last due date for withdrawal of candidature	26-04-2019	5	5	North West Delhi	SC
Date of Poll	12-05-2019	6	6	West Delhi	GEN
Counting of votes	23-05-2019	7	7	South Delhi	GEN
Date before which election shall be completed	27-05-2019				

3. The petitioner filed his nomination paper for contesting the General Election to the House of the People (Lok Sabha), 2019 from the New Delhi Parliamentary Constituency-04, Delhi.

4. Learned counsel for the petitioner submits that the petitioner downloaded the form available on the website of the Chief Electoral Officer of Delhi to fill-in his nomination. Consequently, the petitioner filled up the nomination form and submitted the same in the office of respondent no.2 on 22.04.2019.

5. Preliminary examination of the nomination form of the petitioner was conducted by respondent no.2 and several defects were notified. The respondent no.2 notified the defects vide notice dated 22.04.2019, however, it failed to notify that Form A-2 of the petitioner was an old form and not a revised one.

6. Learned counsel for the petitioner further submits that on 24.04.2019, respondent no.2 apprised the petitioner that his nomination was rejected but the order of rejection was not provided to him in writing which is in clear violation of Section 36 of the Representation of People Act, 1951. However, while arguing, he produced an order No.RO/NDPC/GE-2019/04 dated 24.04.2019, rejecting his nomination. The order mentions that the “Form 2A is not complete and part III Col (a) and Serial 2 to 9 of the same part, has not been provided.” It was further mentioned therein that since nomination Form 2A submitted by the petitioner was incomplete, his nomination was rejected.

7. Mr. Sidhant Kumar, learned counsel appearing on behalf of the respondents, on advance notice, has relied on Article 329 (b) of the Constitution of India, Sections 80, 81 and 100 (1) (c) of the Representation of People Act, 1951, to urge that the only remedy available with the petitioner is to file an Election Petition. For the sake of felicity, Article 329 of the Constitution of India, Sections 80, 81 and 100 (1) (c) of the Representation of People Act, 1951 are reproduced herein below:-

“Article 329 in The Constitution Of India 1949 :

329. Notwithstanding anything in this Constitution

XXX

XXX

XXX

(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. (emphasis supplied)

Representation of the People Act, 1951

80. Election petitions.—No election shall be called in question except by an election petition presented in accordance with the provisions of this Part. 2 [80A. High Court to try election petitions.—(1) The Court having jurisdiction to try an election petition shall be the High Court. (2) Such jurisdiction shall be exercised ordinarily by a single Judge of the High Court and the Chief Justice shall, from time to time, assign one or more Judges for that purpose: Provided that where the High Court consists only of one Judge, he shall try all election petitions presented to that Court. (3) The High Court in its discretion may, in the interests of justice or convenience, try an election petition, wholly or partly, at a place other than the place of seat of the High Court.]

81. Presentation of petitions.—(1) An election petition calling in question any election may be presented on one or more of the grounds specified in 3 [sub-section (1)] of section 100 and section 101 to the 4 [High Court] by any candidate at such election or any elector 5 [within forty-five days from, but not earlier than the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates].

100. Grounds for declaring election to be void.—

(1) Subject to the provisions of sub-section (2) if 2[the High Court] is of opinion—

(a) xxxx

(b) xxxx

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

8. The election process has already commenced. There is no scope of interference in the same, as remedy against the ‘rejection of nomination’, is clearly provided in the Representation of People Act, 1951, by way of an election petition. Reliance is placed on the decision of the Supreme

Court in *N.P. Punnuswamy vs. Returning Officer*, reported as 1952 SCR 218, wherein it was held as under:

“8. The next important question to be considered is what is meant by the words —no election shall be called in question. A reference to any treatise on elections in England will show that an election proceeding in that country is liable to be assailed on very limited grounds, one of them being the improper rejection of a nomination paper. The law with which we are concerned is not materially different, and we find that in Section 100 of the Representation of the People Act, 1951, one of the grounds for declaring an election to be void is the improper rejection of a nomination paper.

9. The question now arises, whether the law of elections in this country contemplates that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution (the ordinary jurisdiction of the courts having been expressly excluded), and another after they have been completed by means of an election petition. In my opinion, to affirm such a position would be contrary to the scheme of Part XV of the Constitution and the Representation of the People Act, which, as I shall point out later, seems to be that any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at an intermediate stage before any court. It seems to me that under the election law, the only significance which the rejection of a nomination paper has consists in the fact that it can be used as a ground to call the election in question. Article 329(b) was apparently enacted to prescribe the manner in which and the stage at which this ground, and other grounds which may be raised under the law to call the election in question could be urged. I think it follows by necessary implication from the language of this provision that those grounds cannot be urged in any other manner, at any other stage and before any other court. If the grounds on which an election can be called in question could be raised at an earlier stage and errors, if any, are rectified, there will be no meaning in enacting a provision like

Article 329(b) and in setting up a special tribunal. Any other meaning ascribed to the words used in the Article would lead to anomalies, which the Constitution could not have contemplated, one of them being that conflicting views may be expressed by the High Court at the pre-polling stage and by the election tribunal, which is to be an independent body, at the stage when the matter is brought up before it.”

“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.”

9. Similarly, in the case of **Election Commission of India through Secretary v Ashok Kumar & Ors (2000) 8 SCC 216**, it was held :

“For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove: -

1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

2) Any decision sought and rendered will not amount to calling in question an election if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the

progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the Court.

5) The Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the courts indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the Court would act with reluctance and shall not act except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material.”

10. Reliance is also placed upon the decision of a Division Bench of this Court in **LPA 383/2011** titled as “**Braj Kishore Bhagat vs. Chief Election Commissioner**” wherein it was held that :-

“However, we are also inclined to deal with the merits of the case as we find a frivolous petition was filed and Courts time is wasted. This Court was moved under Article 226 of the Constitution of India challenging the rejection of the nomination of the petitioner by the returning officer for election to the New Delhi parliamentary constituency. It is well-settled in law that rejection of a nomination paper cannot be gone into in a writ petition. In the case of N.P. Ponnuswami v. The Returning Officer, Namakkal Constituency, Namakkal, Salem Dist and others, AIR 1952 SC 64, it has been held thus.

13. It was argued that since the Representation of the People Act was enacted subject to the provisions of the Constitution, it cannot bar the jurisdiction of the High Court to issue writs under Art. 226 of the Constitution. This argument however is completely shut out by reading the Act along with Art. 329(b). It will be noticed that the language used in that article and in S. 80 of the Act is almost identical, with this difference only that the article is preceded by the words notwithstanding anything in this Constitution. I think that

those words are quite apt to exclude the jurisdiction of the High Court to deal with any matter which may arise while the elections are in the progress.”

11. The dicta in the aforementioned decisions unequivocally declares that an “Election” means, all steps and entire proceedings from the date of election till declaration of results. Thus, the only way to challenge the election is by way of an Election Petition. The courts have time and again cautioned that there cannot be two-pronged attack on the matters connected with elections, i.e., one during the course of elections by invoking extraordinary jurisdiction of the High Courts under Article 226 of the Constitution of India and secondly, after the elections have been completed, by way of filing an Election Petition.

12. There is no merit in this petition and the same is accordingly dismissed along with pending applications.

(MANOJ KUMAR OHRI)
JUDGE

APRIL 26, 2019

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