

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

+ **W.P. (C) 4417/2019, CM No. 19675/2019 & 19676/2019**

Date of Decision: 26<sup>th</sup> April, 2019.

**IN THE MATTER OF:**

**SUSHIL VADHERA**

.....Petitioner

Through : Mr. Ramesh Kumar, Advocate

Versus

**ELECTION COMMISSION OF INDIA & ANR.**

.....Respondents

Through : Mr. Rajeev Sharma and  
Mr. Abhishek Bhardwaj, Advs. 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:

A) Pass an appropriate orders(s) issuing the writ thereby the order dated 24.04.2019 of the respondent no.2 of rejecting the nomination paper of the petitioner from New Delhi Parliamentary Constituency be set aside and the petitioner be allowed to contest the General Election (Lok Sabha), 2019 from New Delhi, Parliamentary Constituency as a candidate of Bahujan Samaj Party and accepting the nomination paper.

B. Any other relief which this Hon'ble Court deems fit and proper, in the facts and circumstances of the present case, may also be granted in favour of petitioner.

2. The Election Commission of India, vide notification dated 16.03.2019 issued under sub section (2) of Section 14 of the Representation 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 New Delhi, as a candidate of the Bahujan Samaj Party.

4. Learned counsel for the petitioner submits that the petitioner filed his nomination on 22.04.2019. The respondent no.2 checked the nomination form of the petitioner and a check list of documents dated 22.04.2019 in connection with the filing of the nomination was handed over to him, thereby raising objection that columns in the Affidavit had been left blank and he was asked to submit a revised Affidavit. On 22.04.2019, the petitioner submitted the revised affidavit after removing

the objection raised by the respondent no.2 along with his photographs. The respondent No.2, vide order dated 24.04.2019 rejected his nomination paper on the ground that column no.8 (ii) was left blank and the revised affidavit was submitted without his photographs.

5. In support of his averments, the learned counsel for the petitioner has relied upon a Notification dated 30.09.2013 issued by the Respondent no.1 to all the Electoral Officer of all the States and Union Territories in terms of the judgment passed by the Hon'ble Supreme Court in '*Resurgence India vs. Election Commission of India & Ors*' (2014)14 SCC 189, regarding filing of incomplete affidavit of candidates. The Supreme Court in the aforesaid case has categorically stated the duties of a Returning Officer with respect to the scrutiny of nomination papers.

6. Learned counsel for the petitioner states that he did not leave any column blank in his affidavit and also provided the photograph at the time of submitting the revised affidavit. He further submits that the petitioner had duly prepared a revised/complete affidavit well within the stipulated time as prescribed by respondent no.2, however, respondent no.2 arbitrarily rejected his nomination.

7. Mr. Rajeev Sharma, learned counsel appearing on behalf of the respondents, on advance notice, has relied upon 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 the 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 & 100(1)(c) of Representation of People Act, 1951 are reproduced herein below: -

***“Article 329 in The Constitution of India 1949:***

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 ‘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. In fact, the decision in *Resurgence India* (supra) also reiterates the above principles.

12. The dicta in the aforementioned decisions unequivocally declare 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.

13. 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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