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

% Judgment delivered on: 28.01.2020

+ W.P.(C) 1032/2020 & CM APPL. 3347-48/2020 & CM
APPL. 3346/2020

MR. KIRAN PAL SINGH TYAGI AND ORS. Petitioners

versus

STATE OF NCT OF DELHI AND ORS. Respondents

+ W.P.(C) 1060/2020 & CM APPL. 3498-99/2020

SUNIL KUMAR Petitioner

versus

CHIEF ELECTION OFFICER (GNCT OF DELHI)
AND ANR. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Viplav Sharma, Advocate (W.P.(C) 1032/2020)
Mr. Veerpal Singh, Advocate (W.P.(C) 1060/2020)

For the Respondents: Mr. Shadan Farasat, ASC with Mr. Bharat Gupta, Advocate
for R-1-GNCTD (W.P.(C) 1032/2020)
Mr. Jasmeet Singh, CGSC for R-2 (W.P.(C) 1032/2020)
Mr. Sidhant Kumar, Advocate for R-3 (W.P.(C)
1032/2020)
Mr. P.R. Chopra, Advocate for R-4 & 5 (W.P.(C)
1032/2020) and for R-1 & 2 (W.P.(C) 1060/2020)

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioners, in these petitions, *inter-alia* impugn the rejection, by the Returning Officer, of their nomination papers for the ensuing election to the legislative assembly of the National Capital Territory of Delhi.

2. The contention of the petitioners is that their nomination papers have been incorrectly rejected.

3. Mr. Sidhant Kumar, learned counsel appearing for the Election Commission of India raises a preliminary objection as to the maintainability of the present petitions.

4. Learned counsel contends that in terms of Article 229(b) of the Constitution of India and Sections 80 and 100 of the Representation of Peoples Act, 1951 (hereinafter referred to as the Act), subject petitions are barred. It is contended that a writ petition under Article 226 of the Constitution of India impugning the rejection of the nomination paper would not lie and the only remedy available for the alleged incorrect rejection of nomination papers would be by way of an election petition post declaration of the result of the election.

5. Reliance is placed on the judgment of the Constitution Bench of the Supreme Court in '*N.P. Ponnuswami Vs. Returning Officer & Ors.*' 1952 SCR 218, as also to the Constitution Bench judgment of

the Supreme Court in '*Mohinder Singh Gill Vs. Chief Commissioner*' AIR 1978 SC 851, and the judgment of a Coordinate Bench of this Court in *Sandeep Srivastava Vs. Election Commission of India & Anr.* dated 26.04.2019 in W.P. (C) No. 4416/2019 wherein the coordinate bench has relied on the judgment of the Division Bench of this Court dated 25.04.2011 in LPA No. 383/2011 titled '*Braj Kishore Bhagat Vs. Chief Election Commissioner*'.

6. Mr. Viplav Sharma, Learned counsel for the petitioner contends that the case is not covered by the said judgments, in as much as, the Constitution Bench of the Supreme Court in *N.P. Ponnuswami (supra)* has not noticed the provisions of Section 100 of the Act in its entirety and since the provisions of the Act have not been noticed, the judgment would not be an embargo on the right of the petitioners to challenge the rejection of their nomination papers under Article 226 of the Constitution of India.

7. It is further contended by learned counsel for the petitioners that the consequences of challenge post an election are far serious than entertaining a petition under Article 226 of the Constitution of India prior to the polling. It is contended by learned counsel for the petitioners that in case the petitions of the petitioners were allowed before voting is held and petitioners are permitted to participate, there would be no impediment in the conduct of the election as per the notified Schedule and on the other hand, in case the election is set aside on an election petition filed after the election is held, the

consequences would be far greater and lot of inconvenience would be caused not only to the candidates but also to the voters and it would also lead to a loss to the exchequer.

8. Further it is contended that the judgment in *N.P. Ponnuswami (Supra)*, has been passed on a concession given by the counsel that a challenge to rejection of nomination paper would lie post the election by an election petition. It is contended that reliance in the said judgment has been placed on the legal position as existing in England and post the enactment of the Constitution, the Rules and Laws of England would not be applicable and because the judgment in *N.P. Ponnuswami (Supra)* refers to the laws of England, same would not be binding and the petitions of the petitioners would be maintainable under Article 226 of the Constitution of India.

9. Learned counsel for the petitioner further submits that an election petition is not an efficacious remedy and disposal of an election petition may take considerable time and the returned candidate, in the meantime, would continue to hold the elected office till the election petition is allowed and election is declared void.

10. Since the question on the maintainability has been raised at the outset by learned counsel appearing for the Election Commission of India, the merits of the contentions of the petitioners with regard to the rejection of their nomination papers are not been considered in these petitions and these petitions are being disposed of solely on the

preliminary objection raised as to its maintainability.

11. Article 329 of the Constitution of India reads as under:

*“329. Bar to interference by courts in electoral matters:-
Notwithstanding anything in this Constitution*

- (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.*

12. Article 329 of the Constitution begins with a non obstante clause *“Notwithstanding anything contained in this Constitution....”*. Article 329 (2) stipulates that no election to either House of Parliament or to the House or either House of the Legislature of a State would be called in question except by way of an election petition presented to such authority and in such manner as may be provided for by or under any law made by the State Legislature.

13. The Law as contemplated under Article 329 of the Constitution of India is the Representation of Peoples Act 1951.

14. Section 80 of the Representation of Peoples Act 1951 provides

as under: -

“80. Election petitions.—No election shall be called in question except by an election petition presented in accordance with the provisions of this Part.”

15. In terms of Section 80 of the Act, no election can be called in question except by way of an election petition provided in accordance with provisions of Part-VI of the Act.

16. Section 2(1)(d) of the Act defines “*election*” to mean an election to fill a seat or seats in either House of Parliament or in the House or either House of the Legislature of a State.

17. Section 100 of the Representation of Peoples Act 1951 provides as under: -

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.*”

18. Section 100 of the Act provides for the grounds on which an election can be declared to be void. Sub-section (1) of section 100 of the Act makes the said provisions subject to the provisions of sub-section (2) of Section 100 of the Act.

19. One of the grounds enumerated in Section 100 (1) of the Act for declaring an election of the returned candidate as void is ground (c) i.e. *“that any nomination has been improperly rejected”*.

20. Ground (d) (iv) of Section 100(1) of the Act enlists *non-compliance with the provisions of the Constitution or the Act or of any Rules or Orders made under this Act, which has materially affected the result of the returned candidate* as one of the grounds for declaration of election of the returned candidate to be void.

21. In *N.P. Ponnuswami (Supra)*, the Constitution Bench of the Supreme Court was considering an appeal challenging an order of the High Court, whereby the Writ Petitions filed by the appellant under Article 226 of the Constitution of India, seeking quashing of order of the Returning officer rejecting the nomination paper and for a direction to the Returning Officer to include his name in the list of valid nomination, was dismissed by the High Court.

22. The High Court in the said case had dismissed the petition of the appellant therein, under Article 226 of the Constitution of India, on the ground that it had no jurisdiction to interfere with the order of the Returning Officer by reasons of provisions of Article 329 (b) of the Constitution of India.

23. The arguments raised by the appellant therein was that the conclusion arrived at by the High Court did not follow from the language of Article 329 (b) of the Constitution, whether that Article was read by itself or along with other Articles in Part-XV of the Constitution.

24. One of the other contentions raised by the appellant therein and as considered by the Supreme Court in *N.P. Ponnuswami (Supra)*, was also; that questioning something which had happened before a candidate is declared elected is not the same as questioning an election. It was also contended therein that the action of the Returning Officer in rejection of the nomination could be questioned under Article 226 of the Constitution of India.

25. The Supreme Court in *N.P. Ponnuswami (Supra)* with regard to the contention of the Counsel for the Appellant “(4) *That the action of the Returning Officer in rejecting a nomination paper can be questioned before the High Court under Article 226 of the Constitution for the following reason: Scrutiny of nomination papers and their rejection are provided for in Section 36 of the*

Representation of the People Act, 1951. Parliament has made this provision in exercise of the powers conferred on it by Article 327 of the Constitution which is “subject to the provisions of the Constitution”. Therefore, the action of the Returning Officer is subject to the extraordinary jurisdiction of the High Court under Article 226.” held as under (@pages 226 to 229 of the report 1952 SCR 218):-

“These arguments appear at first sight to be quite impressive, but in my opinion there are weightier and basically more important arguments in support of the view taken by the High Court. As we have seen, the most important question for determination is the meaning to be given to the word “election” in Article 329(b). That word has by long usage in connection with the process of selection of proper representatives in democratic institutions, acquired both a wide and a narrow meaning. In the narrow sense, it is used to mean the final selection of a candidate which may embrace the result of the poll when there is polling or a particular candidate being returned unopposed when there is no poll. In the wide sense, the word is used to connote the entire process culminating in a candidate being declared elected. In Srinivasalu v. Kuppuswami [(1928) AIR Mad 253 at 255] , the learned Judges of the Madras High Court after examining the question, expressed the opinion that the term “election” may be taken to embrace the whole procedure whereby an “elected member” is returned, whether or not it be found necessary to take a poll. With this view, my brother, Mahajan, J. expressed his agreement in Sat Narain v. Hanuman Prasad [(1945) AIR Lah. 85] ; and I also find myself in agreement with it. It seems to me that the word “election” has been used in Part XV of the Constitution in the wide sense, that is to

say, to connote the entire procedure to be gone through to return a candidate to the legislature. The use of the expression “conduct of elections” in Article 324 specifically points to the wide meaning, and that meaning can also be read consistently into the other provisions which occur in Part XV including Article 329(b). That the word “election” bears this wide meaning whenever we talk of elections in a democratic country, is borne out by the fact that in most of the books on the subject and in several cases dealing with the matter, one of the questions mooted is, when the election begins. The subject is dealt with quite concisely in Halsbury Laws of England in the following passage [See page 237 of Halsbury's Laws of England, 2nd Edn. Vol. 12] under the heading Commencement of the Election”:

“Although the first formal step in every election is the issue of the writ, the election is considered for some purposes to begin at an earlier date. It is a question of fact in each case when an election begins in such a way as to make the parties concerned responsible for breaches of election law, the test being whether the contest is ‘reasonably imminent’. Neither the issue of the writ nor the publication of the notice of election can be looked to as fixing the date when an election begins from this point of view. Nor, again, does the nomination day afford any criterion. The election will usually begin at least earlier than the issue of the writ. The question when the election begins must be carefully distinguished from that as to when ‘the conduct and management of’ an election may be said to begin. Again, the question as to when a particular person commences to be a candidate is a question to be considered in each case.”

The discussion in this passage makes it clear that the word “election” can be and has been appropriately used with reference to the entire process which consists of several stages and embraces many steps, some of which may have an important bearing on the result of the process.

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.

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.”

(underlining supplied)

26. In *N.P. Ponnuswami (Supra)*, the Constitution Bench thereafter considered the provisions of the Act, *inter-alia*, Sections 80, 100, 105 and 170 and the provisions of Chapter-II of Part-IV dealing with forms of election petitions, their contents and relief which may be sought and held as under (@pages 230 to 231 of the report 1952 SCR 218): -

“The Representation of People Act, 1951, which was passed by Parliament under article 327 of the Constitution. makes detailed provisions in regard to all matters and all stages connected with elections to the various legislatures in this country. That Act is divided

into II parts, and it is interesting to see the wide variety of subjects they deal with. Part II deals with “the qualifications and disqualifications for membership”, Part III deals with the notification of General Elections, Part IV provides for the administrative machinery for the conduct of elections, and Part V makes provisions for the actual conduct of elections and deals with such matters as presentation of nomination papers, requirements of a valid nomination, scrutiny of nominations, etc., and procedure for polling and counting of votes. Part VI deals with disputes regarding elections and provides for the manner of presentation of election petitions, the constitution of election tribunals and the trial of election petitions. Part VII outlines the various corrupt and illegal practices which may affect the elections, and electoral offences. Obviously, the Act is a self contained enactment so far as elections are concerned, which means that whenever we have to ascertain the true position in regard to any matter connected with elections, we have only to look at the Act and the rules made thereunder. The provisions of the Act which are material to the present discussion are sections 80, 100, 105 and 170, and the provisions of Chapter II of Part IV dealing with the form of election petitions, their contents and the reliefs which may be sought in them. Section 80, which is drafted in almost the same language as article 329 (b), provides that “no election shall be called in question except by an election petition presented in accordance with the provisions of this Part”. Section 100, as we have already seen, provides for the grounds on which an election may be called in question, one of which is the improper rejection of a nomination paper. Section 105 says that “every order of the Tribunal made under this Act shall be final and conclusive”. Section 170 provides that “no civil court shall have jurisdiction to question the legality of any action taken or of any

decision given by the Returning Officer or by any other person appointed under this Act in connection with an election.” These are the main provisions regarding election matters being judicially dealt with, and it should be noted that there is no provision anywhere to the effect that anything connected with elections can be questioned at an intermediate stage.

It is now well-recognized that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of.

(underlining supplied)

27. In *N.P. Ponnuswami (Supra)*, the Supreme Court has specifically held that where a right or liability is created by a Statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. The invocation of the extraordinary jurisdiction under Article 226 of the Constitution of India, when the election process is ongoing, has specifically been held to be excluded.

28. Further the arguments that the Representation of People Act was enacted subject to the provisions of the Constitution and it could not bar the jurisdiction of the High Court under Article 226 of the Constitution of India was also negated by the Supreme Court by holding as under (*@page 232 to 234 of the report 1952 SCR 218*): -

“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 article 226 of the Constitution. This argument however is completely shut out by reading the Act along with article 329 (b). It will be noticed that the language used in that article and in section 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 progress.

It may be stated that section 107(1) of the Representation of People Act, 1949 (12 & 13 Geo. 6, c. 68) in England is drafted almost in the same language as article 329(b). That section runs thus :-

“No parliamentary election and no return to Parliament shall be questioned except by a petition complaining of an undue election or undue return (hereinafter referred to as a parliamentary election petition) presented in accordance with this Part of this Act.”

It appears that similar language was used in the earlier statutes, and it is noteworthy that it has never been held in England that the improper rejection of a nomination paper can be the subject of a writ of certiorari or mandamus. On the other hand, it was conceded at the bar that the question of improper rejection of a nomination paper has always been brought up in that country before the appropriate tribunal by means of an election petition after the conclusion of the election. It is true that there is no direct decision holding that the words used in the relevant provisions exclude the jurisdiction of the High Court to issue appropriate prerogative writs at an intermediate stage of the

election, but the total absence of any such decision can be accounted for only on the view that the provisions in question have been generally understood to have that effect. Our attention was drawn to rule 13 of the rules appended to the Ballot Act of 1872 and a similar rule in the Parliamentary Elections Rules of 1949, providing that the decision of the Returning Officer disallowing an objection to a nomination paper shall be final, but allowing the same shall be subject to reversal on a petition questioning the election or return. These rules however do not affect the main argument. I think it can be legitimately stated that if words similar to those used in article 329 (b) have been consistently treated in England as words apt to exclude the jurisdiction of the courts including the High Court, the same consequence must follow from the words used in article 329 (b) of the Constitution. The words “notwithstanding anything in this Constitution” give to that article the same wide and binding effect as a statute passed by a sovereign legislature like the English Parliament.

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”.

(underlining supplied)

29. One of the cardinal questions considered by the Constitution Bench of the Supreme Court in *Mohinder Singh Gill versus Chief Election Commissioner (Supra)* was “Is Art. 329 (b) a blanket ban on all manner of questions which may have impact on the ultimate result of the election, arising between two temporal termini viz., the notification by and the declaration of the result by the returning officer? Is Art. 226 also covered by this embargo and, if so, is S. 100 broad enough to accommodate every kind of objection, constitutional, legal or factual, which may have the result of invalidation of an petition as the returned candidate and direct the organisation of any steps necessary to give full relief?”

30. The Constitution Bench in *Mohinder Singh Gill versus Chief Election Commissioner (Supra)* once again considered the bar imposed by Article 329 (b) of the Constitution and Section 100 of the Act and held the same to be a barrier created by Article 329(b) as under:-

“20. Right at the forefront stands in the way of the appellant’s progress the broad-spectrum ban of Art. 329 (b) which, it is claimed for the respondents, is

imperative and goal-oriented. Is this Great Wall of China set up as a preliminary bar, so impregnable that it cannot be bypassed even by Art. 226? That, in a sense, is the key question that governs the fate of this appeal. Shri P.P. Rao for the appellant contended that, however wide Art. 329 (b) may be, it does not debar proceedings challenging, not the steps promoting, election but dismantling it, taken by the Commission without the backing of legality. He also urged that his client, who had been nearly successful in the poll and had been deprived of it by an illegal cancellation by the Commission, would be left in the cold without any remedy since the challenge to cancellation of the completed poll in the entire constituency was not covered by S. 100 of the Act. Many subsidiary pleas also were put inter-related submissions bearing on Art. 329 (b) and S. 100 and search for a solution. The problem may seem prickly but an imaginative application of principles and liberal interpretation of the Constitution and the Act will avoid anomalies and assure justice. If we may anticipate our view which will presently be explained, Sec. 100 (1) (d) (iv) of the Act will take care of the situation present here, being broad enough, as a residual provision, 'non-compliance', every excess, transgression, breach or omission. And the span of the ban under Art. 329 (b) is measured by the sweep of S. 100 of the Act."

"30. The plenary bar of Art. 329 (b) rests on two principles: (1) The peremptory urgency of prompt engineering of the whole election process without intermediate interruptions by way of legal proceedings challenging the steps and stages in between the commencement and the conclusion, (2) The provision of a special jurisdiction which can be invoked by an

aggrieved party at the end of the election excludes other form, the right and remedy being creatures of statutes and controlled by the Constitution. Durga Shanker Mehta (1955(1) SCR 267: (AIR 1954 SC 520) has affirmed this position and supplemented it by holding that, once the Election Tribunal has decided, the prohibition is extinguished and the Supreme Court's over all power to interfere under Art. 136 springs into action. In Hari Vishnu (1955-1 SCR 1104): (AIR 1955 SC 233) this Court upheld the rule in Ponnuswami (AIR 1952 SC 64) excluding any proceedings, including one under Art. 226, during the on-going process of election, understood in the comprehensive sense of notification down to declaration. Beyond the declaration comes the election petition, but beyond the decision of the Tribunal the ban of Art. 329 (b) does not bind."

(underlining supplied)

31. The Supreme Court in *Election Commission of India through Secretary Vs. Ashok Kumar & Ors.* (2000) 8 SCC 216, relying on the Judgments of the Constitution Bench of the Supreme Court in *N.P. Ponnuswami (supra)* and *Mohinder Singh Gill (Supra)* held as under:

"30. To what extent Article 329(b) has an overriding effect on Article 226 of the Constitution? The two Constitution Benches have held that Representation of the People Act, 1951 provides for only one remedy; that remedy being by an election petition to be presented after the election is over and there is no remedy provided at any intermediate stage. The non obstante clause with which Article 329 opens, pushes out Article 226 where the dispute takes the form of calling in question an election (see para 25 of Mohinder Singh Gill case [(1978) 1 SCC 405 : AIR 1978 SC 851]). The

provisions of the Constitution and the Act read together do not totally exclude the right of a citizen to approach the court so as to have the wrong done remedied by invoking the judicial forum; nevertheless the lesson is that the election rights and remedies are statutory, ignore the trifles even if there are irregularities or illegalities, and knock the doors of the courts when the election proceedings in question are over. Two-pronged attack on anything done during the election proceedings is to be avoided — one during the course of the proceedings and the other at its termination, for such two-pronged attack, if allowed, would unduly protract or obstruct the functioning of democracy.”

(underlining supplied)

32. The law is clearly settled by the Constitution Bench of the Supreme Court of India in *N.P. Ponnuswami (supra)* and *Mohinder Singh Gill (Supra)* that there cannot be a two-pronged attack to an election; one during the proceedings of the election process and secondly; post declaration of the result of the election. The invocation of the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India, when the election process is ongoing, is prohibited.

33. The submission of learned counsel for the petitioners that the Constitution Bench of the Supreme Court in *N.P. Ponnuswami (supra)* has not noticed the provisions of Section 100 of the Act in its entirety is contrary to record, as evidenced from the relevant portions of the Judgment extracted hereinabove and is also a complete incorrect reading of the Judgment by learned counsel for the

petitioners.

34. Further submission of the learned counsel for the petitioner that the decision in *N.P. Ponnuswami (supra)* is not applicable as said judgment has been passed on a concession given by the counsel that a challenge to rejection of nomination paper would lie post the election by an election petition and said concession has been given based on the legal position as existing in England is also contrary to record and is also a complete incorrect reading of the Judgment. The reference to the English law has been made only to show as to how the law in England, which is similar to the law in India, has developed and interpreted.

35. Further, it may be seen that after noticing the submissions of the counsel in the said case, the Supreme Court has very elaborately considered Article 329 of the Constitution and Section 100 of the Act and thereafter interpreted the same. Said submissions of learned counsel for the petitioner are completely without any merit.

36. In view of the above, it is held that the petitions filed by the petitioners are not maintainable at this stage and there is merit in the preliminary objection raised by the respondent – Election Commission of India that the petitioners cannot challenge the rejection of their nomination papers or any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act by way of a petition under Article 226 of the Constitution of

India.

37. In view of the above finding, the petitions are held to be not maintainable in view of the bar under Article 329 (b) of the Constitution of India and Section 100 of the Act and are accordingly dismissed.

38. As noticed above, this Court has neither considered nor commented upon the merits of the allegations of the petitioners with regard to the rejection of their nomination papers or the alleged non compliance with the provisions of the rules or orders made under the Act.

39. Order *dasti* under signatures of the Court Master.

JANUARY 28, 2020
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SANJEEV SACHDEVA, J