

11th March,
2021
(AK)
U/L

W.P.A. 7291 of 2021

(Via Video Conference)

Ujjwal Kumar
Vs.
Chief Election Commissioner & Ors.

Mr. Kapil Sibal
Mr. Debanjan Mandal
Mr. Kunal Vajani
Mr. Sanjay Basu
Mr. Jishnu Chowdhury
Mr. Sandip Dasgupta
Mr. Saurav Bhagat
Mr. Ayan De
Mr. Deepan Sarkar
Mr. Amit Nag

...For the Petitioner.

The grievance of the petitioner, who applied as a candidate in the elections going to be held for the Assembly Constituencies, is against the rejection of his candidature. It appears from Annexure-P4 at page-48 that the current status of the petitioner was shown as '*Rejected*'.

Learned senior counsel appearing for the petitioner argues that the grounds assigned even in the check list of documents in connection with filing of nomination were bad in law, in so far as Part-A7 (last column, 8(ii) (B) (ii) were recorded to have been left vacant.

Learned senior counsel, by relying on the relevant form, indicates that the said columns, allegedly not filled up by the petitioner, were not applicable at all. The said

columns pertain to the third dependant of the electoral candidate, if any.

It is evident from the proforma of such form that unless dependent nos.1 and 2 were mentioned, and the candidate had a third dependent, the question of filling up such column would not arise.

In the present case, since the petitioner disclosed in his application that he has got no dependant at all, the question of naming the third dependant did not arise at all.

By placing reliance on Section 36(5) of the Representation of Peoples Act, 1951, learned senior counsel argues that the Returning Officer shall not reject a nomination paper on the ground of any defect which is not of a substantial character.

Let alone being of a substantial character, it is contended that the non-mention of the third dependent was redundant and does not compromise of a defect in its true sense at all.

That apart, an opportunity of hearing to the petitioner ought to have been given, at least of one day after the date of scrutiny, within the contemplation of Section 36(5) of the 1951 Act, which was not given in the present case.

It is further submitted that no reason has been furnished in the document uploaded on the official

website rejecting the candidature of the petitioner, which is also contrary to law.

It is argued that the other defect pointed out by the concerned Officer while scrutinizing the nomination form was that the relevant column regarding a declaration as to the address of the petitioner's Government accommodation and as to whether any dues were payable in respect thereof, was not filled up.

However, since the petitioner does not have a Government accommodation and the said clause is not applicable at all to the petitioner, non-fulfillment of such condition is hyper-technical in nature and cannot be treated as a substantial defect.

It is also submitted that a corrected form was handed over to the concerned Officer by the petitioner on the very next day, which has not been considered by the respondent authorities.

Despite service of copies of the writ petition as well as in respect of the matter being taken out of turn on mentioning by the petitioner, none appears for the respondents.

As such, there is no other option before this court to dispose of the matter ex-parte, in view of the extreme urgency involved inasmuch as tomorrow is the last date fixed for withdrawal of candidature.

It appears from the relevant documents cited by learned senior counsel for the petitioner, that the defects

pointed out by the authorities were not of a substantial nature at all.

That apart, the right of hearing conferred on the petitioner by virtue of Section 36(5) of the 1951 Act was not given to the petitioner in the present case.

Moreover, the “*defects*” pointed out by the concerned Returning Officer were not defects in the true sense of the term in so far as the columns which were not filled up by the petitioner were not applicable to the petitioner at all in view of the petitioner having disclosed that the petitioner does not have any Government accommodation and the name of the third dependent being merely academic in view of there being no first and second defendant of the petitioner.

Hence, the impugned rejection of candidature of the petitioner, as uploaded on the official website of the Government, annexed at page-48 (Annexure-P4) of the writ petition, being contrary to law, is set aside.

The respondents are directed to permit the petitioner to participate in the oncoming elections by treating the application of nomination for candidature and connected affidavit filed by the petitioner as valid and in accordance with law.

The respondents shall act on the communication of the learned advocates for the petitioner and/or server copy of this order, without insisting upon prior production of a certified copy.

W.P.A. 7291 of 2021 is disposed of with the above directions.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)