

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

WRIT PETITION NO.4827/2021

Parag S/o Madhukar Kamble

..Vs..

The Election Commission of India, New Delhi and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. Arun Agrawal, Advocate for the petitioner.
Mr. Neerja Choubey, Advocate for respondent No.1.
Ms K.S. Joshi, In-charge Government Pleader for respondent No.2.
Mr. Sunil V. Manohar, Senior Advocate with Mr. Ved R. Deshpande,
Advocate for respondent No.3.

CORAM :- SUNIL B. SHUKRE AND
ANIL L. PANSARE, JJ.

DATED :- 29.11.2021.

Heard.

2. This petition questions acceptance of nomination form by the Returning Officer of respondent No.3 for election to Akola, Buldhana and Washim, Maharashtra Legislative Council Constituencies, which acceptance according to the petitioner is illegal.

3. Shri Arun Agrawal, learned counsel for the petitioner, submits that since the acceptance of the nomination form was based upon suppression of material facts, it amounted to pushing into the election fray a candidate who was not qualified to contest the election and, therefore, ultimately it affected the choice of the voters to elect a candidate and as such, the objection of the petitioner requires consideration by invoking

extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

4. Reliance has been placed upon the view taken by the Full Bench of this Court in the case of *Karmaveer Tulshiram Autade and others V/s. The State Election Commission, Mumbai and others* decided on 13th January, 2021 in Writ Petition (Stamp) No.26/2021 together with other connected matters.

5. Shri Sunil Manohar, learned Senior Advocate who appears for respondent No.3 opposes the petition. He submits that this petition is not at all maintainable on the ground that the petitioner has no *locus standi in view of* the restricted entry at the time of scrutiny of nominations under Section 36 of the Representation of People Act, 1951 (for short “Act of 1951”) read with clause 6.3.1 of the Election Manual. He also submits that the case of *Karmaveer Tulshiram Autade (supra)* relied upon by the learned counsel for the petitioner does not support the case of the petitioner.

6. Learned Government Pleader and learned counsel for respondent No.1 support the argument of learned Senior Advocate.

7. Insofar as the *locus standi* of the petitioner is concerned, according to learned counsel for the petitioner, the petitioner being a voter has every right to bring to the notice of the Returning Officer the illegalities

committed by the candidates submitting nomination forms and, therefore, even though the petitioner was initially not permitted entry into the scrutiny room, later on, the petitioner was allowed to enter and raise the objection.

8. The argument of learned counsel for the petitioner coming in support of conduct of the petitioner, in our view, is against the express provisions of law. Section 36 of the Act of 1951 and clause 6.3.1 of the Election Manual are relevant in this regard.

9. Sub-section (1) of Section 36 of the Act of 1951 reads as under:-

*36. “36. Scrutiny of nomination.-
(1) On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents, one proposer⁹[***] of each candidate, and one other person duly authorised in writing by each candidate, but no other person, may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 33.”*

[The words “and one seconder” omitted Act 27 of 1956, S.19]

Similarly, clause 6.3.1. of the Election Manual also being relevant is reproduced as under:-

“6.3 Persons to be admitted
6.3.1 Returning Officer should take up the scrutiny of the nomination papers at the places fixed, on the day and at the hour

fixed for the purpose which would have already been intimated to the candidates. Only such persons as are entitled to be present under Section 36 of RP Act, 1951, viz., the candidates, their election agents, one proposer of each candidate and one other person duly authorized in writing by each candidate (such person can be advocate also, if the candidate so desires), and no other person shall be admitted at the scrutiny. In the case of candidates set up by registered un-recognized political parties and independent candidates also, only one of the proposers may be admitted at the scrutiny.”

10. A bare perusal of the above referred provisions of law should be enough for us to be convinced that no person other than those mentioned in Section 36(1) and clause 6.3.1 are permitted to be present inside the scrutiny room and witness the scrutiny of the nominations. The permitted persons are the candidates, their election agents, one proposer of each candidate and one other person duly authorized in writing by each candidate. There is an embargo specifically placed upon the attendance of any person other than these persons as prescribed in Section 36(1) as well as clause 6.3.1. The purpose of these provisions of law is to facilitate the process of scrutiny of nomination forms fairly and speedily, to avoid chaos and disorder and to enable the authorized persons to see that no favours are granted and no illegalities are committed by the Returning Officer while scrutinizing the nomination forms. If any person other than those mentioned in Section 36(1) of the Act of 1951 and clause 6.3.1 of Election Manual are permitted,

the legislature knew, there would be a possibility of chaos and confusion ruling the roost making it well nigh impossible for the Returning Officer to complete the process objectively and with reasonable dispatch.

11. Such restriction upon entry inside the scrutiny room only means that it were only the authorized persons who would be entitled to raise the objections at the time of scrutiny by the Returning Officer and no one else. In the present case, the petitioner admittedly not falling in any of the aforestated categories of persons who were authorized to witness the process of scrutiny of nominations, on the sheer strength of his heckling with the authorities managed to get entry inside the scrutiny room and raise objection. In other words, the petitioner forced his entry in the scrutiny room though he was not permitted to attend the scrutiny in view of the provisions of Section 36(1) of the Act of 1951 and clause 6.3.1 the Election Manual, and thus was a trespasser there. The starting point of the petitioner in the whole process of taking an exception to acceptance of nomination form of respondent No.3 was thus founded upon violation of law. The petitioner had been conferred with no right to raise any objection by entering scrutiny room, and yet he, “after lot of persuasion and heckling” (para 9 of the petition), barged his way inside the scrutiny room. If the law has given no right to a person like the petitioner, not covered by Section 36(1) of the Act of 1951 and clause 6.3.1 of Election Manual, to attend the scrutiny of

nomination forms, there would be no question of letting such person inside the scrutiny room and then allowing him to raise an objection at that time and place. If such unauthorized persons or the trespassers are allowed in, sanctity and purity of election process may possibly be endangered. In this view of the matter, we are of the opinion that the petitioner, as rightly submitted by learned Senior Advocate, has no *locus standi* to raise objection to acceptance of nomination form at this stage and file this petition for vindication of the same. On this ground alone, the petition is liable to be dismissed summarily.

12. As regards the reliance placed upon the judgment of the Full Bench in the case of Karmaveer Tulshiram Autade and others (supra) by the learned Senior Advocate, we find ourselves in agreement with him and see no merit in the submission of learned counsel for the petitioner. The careful perusal of the entire judgment rendered by the Full Bench, particularly the observations made in paragraphs 53 and 54 and the conclusions reached in paragraph 68, leave no manner of doubt that the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India is not available to any petitioner to question the legality or otherwise of the order of rejection of the nomination form and even the order of acceptance of the nomination form on whatsoever ground as these orders would not, in the opinion of the Full Bench, amount to constituting any

step to sub-serve the progress of election and / or to facilitate it's completion in the sense enunciated in the case of Mohinder Singh Gill & Anr. V/s. The Chief Election Commissioner, New Delhi & Ors., reported in (1978) 1 SCC 405 and explained in Election Commission of India through Secretary V/s. Ashok Kumar & Ors, reported in (2000) 8 SCC 216.

13. We are, therefore, of the view that the said Full Bench case of this Court does not support the contention raised by the petitioner that Article 226 of the Constitution of India jurisdiction is available to the petitioner to question the legality and correctness of order of acceptance of the nomination form of respondent No.3, which the petitioner states to be illegal.

14. Of course, learned counsel for the petitioner argues that the Full Bench decision needs to be looked at from converse angle. He submits that if objection to acceptance of nomination form is examined by invoking writ jurisdiction under Article 226 and is upheld, it would result in a step taken to sub-serve the progress of election as voters would be in a better position to exercise their franchise by choosing the right candidate. The argument is fallacious and deserves it's outright rejection. In the full Bench decision of Karmaveer Tulshiram Autade (supra), it has been held by following N.P. Ponnuswami V/s. The Returning Officer, Namakhal Constituency,

Namakkal, Salem Dist. & Ors., AIR 1952 SC 64, Mohinder Singh Gill (supra) and Ashok Kumar (supra) that a petition under Article 226 laying a challenge to an electoral process or any step connected therewith before the result of the elections, covered by Part XV of the Constitution, is declared, is not maintainable in view of the provisions made in Article 329(b) of the Constitution. It may be mentioned here that under Article 329(b) no election to either House of Parliament or to the House of either House of the Legislature of a State can be called in question except by an election petition presented to appropriate authority. Acceptance of nomination form, rightly or wrongly, is a step connected with the election and is a part of election process. “Election” in this context means the entire process culminating in a candidate being declared elected and is not confined to the final result (See Election Commission, India V/s. Saka Venkata Subba Rao, AIR 1953 SC 210 and Mohinder Singh Gill (supra)). It would then follow that the issue of bar of jurisdiction of the High Court under Article 226 to question the election would be determined not by the result of the petition and its impact on the voter’s franchise to elect a better candidate but by the meaning of the term “election” employed in Article 329(b) of the Constitution which is held to signify the entire process culminating in a candidate being declared elected. So, in our considered view, the argument of converse angle theory agitates against the concept of ‘election’ as embedded in Article 329(b) and is, therefore, rejected.

15. In view of the above, petition stands summarily **dismissed**. No costs.

JUDGE

JUDGE

Tambaskar.