

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-2780-2021 (O&M).
Date of Decision:-11.02.2021.

Sahibee Anand

..... Petitioner

Versus

State of Punjab and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. Chetan Mittal, Senior Advocate, assisted by
Mr. Mayank Aggarwal, Advocate, for the petitioner.

Mr. S.P.S. Tinna, Additional A.G., Punjab.

SANJAY KUMAR, J. (Oral)

CM-1970-CWP-2021

This application is ordered and Annexures P-7 to P-11 are taken on record.

CWP-2780-2021 (O&M).

The petitioner submitted his nomination to contest the election to the post of Councillor of the Municipal Corporation, SAS Nagar, Mohali, from Ward No.12. His nomination was rejected by order dated 04.02.2021 passed by the Returning Officer, on the ground that it had not been signed by the proposer and was therefore incomplete.

The present writ petition was filed on 05.02.2021 assailing the aforestated order and seeking a direction to the Election Authorities to consider the petitioner's nomination after allowing him to rectify the defect therein. The case was taken up on 05.02.2021 itself and this Court took note of the fact that the nominations had not been finalized as on that date, inasmuch as the last date for withdrawal of candidature was fixed as 05.02.2021, in terms of the Election Notification dated 30.01.2021. It was in that situation that this Court passed an interim order.

This order was to the effect that the Election Authorities should receive and act upon the nomination filed by the petitioner, subject to the proposer affixing his signature therein before 05.00 p.m. on that date. This Court however made it clear that receipt of the petitioner's nomination would be subject to further orders in this writ petition. It appears that the Returning Officer allowed the petitioner's proposer to affix his signature in the nomination form but issued the list of validly nominated candidates with a note appended thereto to the effect that the petitioner would be included in the list subject to the decision of this Court in the present writ petition.

It is an admitted fact that the petitioner submitted his nomination, comprising 39 pages, wherein Form No.20 under Rule 36 of the Punjab Municipal Election Rules, 1994 (for short' the Rules of 1994'), was submitted without the signature of the proposer, Darshan Singh. Significantly, the name of the proposer was mentioned therein but the signature of the proposer was not affixed at the appropriate place. Only the petitioner, being the candidate, affixed his signature in the form.

Mr. Chetan Mittal, learned senior counsel appearing for the petitioner, would contend that this defect was not of a substantial character and ought to have been allowed to be rectified as the proposer was present at the time of scrutiny of the nomination. He would state that the proposer submitted self-attested copies of his Aadhar Card and Election Card and the Returning Officer himself permitted the proposer to affix the word 'Proposer' therein. Learned senior counsel would therefore contend that the lapse on the part of the proposer was not serious enough to warrant rejection of the petitioner's nomination and his exclusion from the election altogether. Learned senior counsel would place reliance on case law to support his contention.

Per contra, Mr. S.P.S. Tinna, learned Additional Advocate General, Punjab, would point out that Section 38 (1) of the Punjab State Election Act, 1994 (for short 'the Act of 1994'), required each candidate, either in person or by his proposer, to deliver to the Returning Officer the nomination paper, completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer, and contend that the lapse on the part of the proposer in the petitioner's case is fatal to the very validity of his nomination paper. He would further point out that Section 41 (4) of the Act of 1994 required the Returning Officer to reject the nomination paper in the event a defect therein was found to be of a substantial character. He would also place reliance on case law.

It may be noted that Article 243-ZG of the Constitution postulates a bar to interference by Courts in electoral matters relating to

Municipal Elections. Scope of interference by this Court in exercise of power under Article 226 of the Constitution in such electoral matters during the election process is very limited. As long back as in the year 1952, the Supreme Court settled this proposition of law in *N.P. Ponnuswamy Vs. Returning Officer, Namakkal Constituency, Namakkal, Salem District, and others* (AIR 1952 SC 64). Though that case arose under the Representation of the People Act, 1951, the observations therein are of general character inasmuch as the Supreme Court considered the question as to whether the law of elections in this country contemplated that there should be two attacks on matters connected with the election proceedings, one, while they are going on by invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution, and another, after they have been completed, by means of an election petition. This question was considered in the context of the rejection of a nomination paper by the Election Authorities. The Supreme Court observed that 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 and 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 would be no meaning in enacting a provision like Article 329 (b) and in setting up a special Tribunal to try election petitions.

Be it noted that Article 243 ZG postulates a similar bar in relation to Municipal Elections as is contemplated under Article 329 (b) with regard to elections to the Parliament and State Legislatures.

It may also be noted that, in **Manda Jaganath Vs. K.S. Rathnam and others (2004 (7) SCC 492)**, the Supreme Court added a caveat to the aforestated proposition to the extent that the Court would be empowered to pass orders which would be in furtherance of the election and would facilitate the flow and not stop the stream of the election. If, by an erroneous order, conduct of the election is not hindered, then the Courts under Article 226 of the Constitution, *per* the Supreme Court, should not interfere with the order of the Returning Officer, as the remedy therefor lies by way of election petition only.

In **Election Commission of India, through Secretary Vs. Ashok Kumar and others (2000 (8) SCC 216)**, the Supreme Court considered the issue as to whether the High Court could entertain writ petitions and pass interim orders after commencement of the electoral process. The conclusions set out, after consideration of all relevant aspects, were to the effect that if an election is to be called in question and the same may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, invocation of the judicial remedy has to be postponed till after the completion of the election proceedings. However, any decision sought and rendered, that would not amount to calling in question an election and it actually subserves the progress of the election and facilitates its completion or is in furtherance of the election proceedings, cannot be described as questioning the election. Judicial intervention was held to be available if assistance of the Court is sought to correct or smoothen the progress of the election proceedings and to remove

the obstacles therein or to preserve a vital piece of evidence, without interrupting, obstructing or delaying the progress of the election.

Again, in **Nandiesha Reddy Vs. Kavitha Mahesh, (2011 (7) SCC 721)**, the Supreme Court observed that when a nomination paper is presented, it is the bounden duty of the Returning Officer to receive the nomination, peruse it, point out the defects, if any, and allow the candidate to rectify the defects and when the defects are not removed, then alone the question of rejection of the nomination would arise.

Be it noted that the interim order dated 05.02.2021 was passed by this Court in the present case on the strength of the aforestated two decisions.

However, the *proviso* to Section 38 (4) of the Act of 1994 is of great relevance and it reads as under:-

“(4) On the presentation of nomination paper, the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidates and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls:

Provided that no misnomer or inaccurate description or clerical or technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical or technical printing error in regard to the

electoral rolls numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood; and the Returning Officer shall permit any such misnomer or inaccurate description or clerical or technical or printing error to be corrected and where necessary direct that any such misnomer, inaccurate description, clerical or technical or printing error in the electoral roll or in the nomination paper shall be overlooked.”

In the light of the above provision, the opportunity to correct the nomination paper has to be afforded by the Returning Officer only in the context of the aforesaid errors, in terms of the law laid down in **Nandiesha Reddy**, referred to *supra*. In the case on hand, the irrefutable fact remains that the proposer did not affix his signature in the nomination form at all and the same cannot be treated as a mere clerical error. This nomination form is relatable to Rule 36 of the Rules of 1994 and is as per Form No.20 appended thereto.

Mr. S.P.S. Tinna, learned Additional Advocate General, Punjab, would point out that the Supreme Court, in **Ram Dayal Vs. Brij Raj Singh and others** (1969 (2) SCC 218), categorically held that the

requirement under Section 33 of the Representation of the People Act, 1951, that the nomination should be signed by the candidate and by the proposer is mandatory. Similar would be the situation with a nomination form filed under Section 38 of the Act of 1994.

Further, a Division Bench of this Court had occasion to consider the scope of Sections 35 to 38 of the Act of 1994 in **Mukhtiar Singh Vs. State of Punjab and others** (CWP-10452-2008 decided on **09.09.2008**). That was a case where the candidate himself had not scribed his signature in the nomination paper. In that context, the Division Bench held that Section 38 (1) of the Act of 1994 revealed that a candidate must file his nomination paper completed in the prescribed form and if the candidate did not present the nomination paper complete in all respects, including his signature, then such a nomination paper cannot be deemed to be presented complete in all respects and would be liable to be rejected. The same principle would be applicable to the signature of the proposer, as pointed out by the Supreme Court in the decision referred to *supra*.

As it is only clerical and other errors covered by the *proviso* to Section 38 (4) of the Act of 1994 that can be permitted to be rectified, the missing signature of the proposer cannot be affixed at a later point of time and the petitioner's nomination was liable to be rejected owing to a defect of a substantial character. In that view of the matter, we find no illegality in the rejection of the petitioner's nomination.

The writ petition is accordingly dismissed. The interim order dated 05.02.2021 is vacated.

Pending miscellaneous applications shall also stand dismissed.

No order as to costs.

(SANJAY KUMAR)
JUDGE

(ARCHANA PURI)
JUDGE

February 11, 2021.
sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.