

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-8511-2021 (O&M)
Date of decision : 30.04.2021

Harjinder Singh

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

**CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MR. JUSTICE VIVEK PURI**

Present: Mr. Lupil Gupta, Advocate for the petitioner(s).

Mr. Suveer Sheokand, Addl.A.G., Punjab.

Mr. H.S. Brar, Advocate for respondent No.7.

JITENDRA CHAUHAN J. (ORAL)

The matter has been taken up through video-conferencing in the light of the pandemic COVID-19 situation and as per instructions.

This writ petition under Articles 226/227 of the Constitution of India has been filed, *inter alia*, seeking a direction to respondent Nos.1 to 6, to conduct a fair and impartial enquiry against respondent No.7 according to the provisions of Section 11(r) and 12 of the Punjab State Election Commission Act, 1994 (for short, 'the Act'), the latter having encroached upon the government land for which he is already facing eviction proceedings under the relevant provisions of law; with a further direction to

the respondents to take a final decision on representations dated 22.04.2021 (Annexures P-7 to P-9), within a stipulated period. It is also prayed that during the pendency of the enquiry, oath of office of Municipal Council, Ward No.6, Kotkapura, may not be administered to respondent No.7.

Learned counsel for the petitioner states that respondent No.7 is in unauthorized possession of the government land and has already been facing proceedings under the relevant provisions of law. However, while filing the nomination papers for contesting election of Municipal Council, Kotkapura, this fact has been concealed by respondent No.7, which were wrongly accepted by respondent No.5. Thus, despite being ineligible, he contested and won the election. Feeling aggrieved, the petitioner moved representations dated 22.04.2021, to respondent Nos.2, 4 and 5 (Annexures P-7 to P-9, respectively), however, no decision has been taken thereupon, so far. Contends that the act and conduct of the petitioner calls for his disqualification as provided in Section 11 of the Act.

Controverting the arguments advanced on behalf of the petitioner, learned State counsel, at the outset, states that the petitioner has alternate efficacious remedy under Article 243-ZG(b) of the Constitution of India read with Section 74 of the Punjab State Election Commission Act, 1994 (for short, 'the Act'). Without availing the same, he has approached this Court, therefore, the present writ petition is not maintainable. Further states that even the statutory period of 45 days has expired on 05.04.2021, and the petitioner has approached this Court belatedly. The oath of the

office has already been administered to respondent No.7.

Heard.

The prayer of the petitioner, if accepted, would have the effect of calling the election into question which is barred specifically by virtue of Article 243ZG of the Constitution of India. It reads thus:-

“243ZG. 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 243-ZA shall not be called in question in any court;

(b) no election to any municipality shall be called in question except by any election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.”

At this stage, it is relevant to quote Section 89(1)(c) of the Act which is adumbrated below:-

“Section 89. Grounds for declaring election to be void.-

(1) Subject to the provisions of sub-section (2), if the Election Tribunal is of the opinion, –

(a) XXX

(b) XXX

(c) XXX

(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 of any nomination; or*

(ii) *XXX*

(iii) *XXX*

(iv) *xxx*

the Election Tribunal shall declare the election of the returned candidate to be void. ”

Section 74 of the Act is an off-shoot of Article 243ZG of our Constitution, which reads thus:-

“74. Election petitions.-- *No election shall be called in question except by an election petition presented in accordance with the provisions of this Chapter.”*

Hon'ble the Supreme Court in ***N.P. Ponnuswami Vs. Returning Officer, 1952 AIR (SC) 64***, has specifically observed that rejection or acceptance of nomination cannot be questioned by filing a petition under Articles 226/227 of the Constitution of India because such cases fall under the class of cases which have the effect of vitiating the 'election' and enable the person affected to call it in question, which ought not to be made subject of dispute before any Court while the election is in progress. Any such dispute should be raised by way of filing an election petition. The relevant portion of the judgment is enumerated below:-

“7. 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 [(1946) 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.

XXX

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.

XXX

27. We are informed that besides the Madras High Court, seven other State High Courts have held that they have no jurisdiction under Article 226 of the Constitution to entertain petitions regarding improper rejection of nomination papers. This view is in my opinion correct and must be affirmed. The appeal must therefore fail and is dismissed. In view of the nature and importance of the points raised in this appeal, there should be no order as to costs.”

Thus, a writ petition challenging the acceptance of nomination, is in effect, a petition challenging the election because 'challenge to an election' implies challenge to an intermediary stage of an election such as

rejection/acceptance of nomination, for which the appropriate remedy is to file an election petition. Relying upon the N.P. Punnuswami's case (supra), Hon'ble Delhi High Court in ***Ravinder Negi Vs. State Election Commission and Another, 2017 SCC OnLine Del 7812***, has held to the following effect:-

“15. Learned counsel for the State Election Commission is also right in his submission that improper rejection of nomination as per Section 17(1)(c) of the DMC Act can be made subject matter of the Election Petition. In N P Ponnuswamy (supra), the Supreme Court had interpreted Article 329(b) of the Constitution and on the ambit of the word “Election” held that the same has reference to the entire process which consists of several stages and embraces many steps. Referring to the provisions of the Representation of People's Act, 1951, it was observed that where a right and liability is created by the statute which gives special remedy for enforcing it, then the remedy given by that statute must be availed of. It was accordingly held as under:

“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."

Thus, the question which arises for determination of this Court is whether an election which has been set in motion or stands completed can be called in question by invoking writ jurisdiction. It is no more *res integra* that the word "election" has to be construed as the whole procedure whereby "an elected member" is returned. The word "election" embraces all the steps that have an important bearing on the result of the election process and it consists of several stages including the filing of nomination papers, scrutiny thereof etc. At this stage, reference can be made to the provisions of Article 243-O(b) of the Constitution of India, which casts a bar for entertaining a writ petition under Article 226 of the Constitution challenging an 'election'. It may be mentioned here that Article 329(b) of the Constitution is *pari materia* with Article 243-O(b) dealing with the Panchayats and Article 243-

ZG(b) dealing with the Municipalities. Thus, the petitioner, if aggrieved by the 'election' of respondent No.7, ought to have invoked the jurisdiction of the Election Tribunal, seeking declaration of the election of respondent No.7 as void.

In view of the above, the instant petition is held to be not maintainable.

Since, the present petition is not maintainable, we are not inclined to comment to the averments raised by learned counsel for the petitioner on merits.

The instant petition is, thus, dismissed.

(JITENDRA CHAUHAN)
JUDGE

(VIVEK PURI)
JUDGE

30.04.2021
atulsethi

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No