

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4305 of 2023

Samrendra Bahadur Singh Son of Balindra Singh Resident of Village
Senduar, P.O.- Rampur Bindalal, P.S. Ekma, District- Saran at Chapra.

... .. Petitioner/s

Versus

1. The Election Commission of India through Chief Election Commissioner, Nirvachan Sadan, Ashoka Road, New Delhi 110001.
2. The Under Secretary, The Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi 110001.
3. Chief Electoral Officer, Bihar, Sardar Patel Marg, Patna.
4. The Divisional Commissioner, Saran Division-cum-Returning Officer, Saran Graduate Constituency Election, 2023, District Saran at Chapra.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh, Sr. Advocate
Mr. Ravi Ranjan, Advocate

For the Respondent/s : Mr. Siddhartha Prasad, Advocate
Mr. Sumit Kumar, Advocate
Mr. Suman Kumar Jha, AC to AAG-3

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 24-03-2023 Heard learned Senior counsel for the petitioner, Mr. Bindhyachal Singh and learned counsel for the Election Commission of India, Mr. Siddhartha Prasad and learned counsel for the State.

The learned Senior counsel for the petitioner submits that the tenure of the M.L.C of Saran Graduate Constituency is expiring on 08.05.2023, hence, the Election Commission of India published the schedule for holding election for the post falling vacant of M.L.C from Saran Graduate Constituency and other similar constituency on 27.02.2023 (*Annexure-1*), it is next submitted that from perusal of *Annexure-1*, it would manifest that the date of



election has been fixed as 31.03.2023. It is further submitted that in view of the schedule published vide *Annexure-1*, the Returning Officer (Respondent No. 4) notified the schedule on 06.03.2023, which commenced with filing of nomination and the last date for filing nomination was 13.03.2023.

The learned Senior counsel for the petitioner next submits that the petitioner being a contractual teacher posted at Upgraded Middle School, Sendaur intended to contest the election, thus he filed his resignation on 06.03.2023 (*Annexure-2*) addressed to the Headmaster of the school, through the Secretary Employment Unit, Ekma, Saran. A similar letter was also submitted before the District Programme Officer, Saran at Chhapra. It is next submitted that thereafter the petitioner on 10.03.2023 submitted his nomination for the post of M.L.C from 03-Saran Graduate Constituency in one set, his nomination paper was marked at Serial No. 5, accordingly, his nomination was found in order, thereafter, a notice was issued accepting nomination form and intimation regarding date of scrutiny on 14.03.2023, was communicated.

The learned Senior counsel for the petitioner



submits that petitioner is aggrieved by the fact that his nomination stands rejected and the reason for rejection of his nomination has not been communicated, which grieves the petitioner.

The issue which arises for consideration in the present case is whether the High Court while exercising its jurisdiction under Article 226 of the Constitution of India can interfere at an intermediary stage when the election process has commenced, further whether the High Court can direct the respondent to consider the candidature of the petitioner for contesting the election on the post of M.L.C by setting aside the order by which his nomination has been rejected.

Mr. Siddhartha Prasad, the learned counsel appearing for the Election Commission of India, at the outset, raises the issue of maintainability of the writ petition and submits that Article 329(b) of the Constitution of India came up for interpretation before the Constitution Bench of the Hon'ble Supreme Court in the case of *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency, A.I.R. 1952 SC 64*.

The learned counsel appearing for the Election



Commission of India submits that the appellant in the said case was one of the persons who had filed nomination paper to Madras Legislative Assembly from Namakkal constituency of Selam District. The Returning Officer rejected his nomination paper. The appellant moved the High Court for quashing the order of Returning Officer and for issue of a writ of mandamus for including his name in the list of valid nomination. The High Court dismissed the writ petition.

It is next submitted that on appeal, the Hon'ble Supreme Court interpreted the word 'election' appearing in Part XV of the Constitution of India and held- "the word 'election' has been issued in Part XV of the Constitution in the right sense, that is to say, to connote the entire procedure to be gone through to return the candidate to the legislature. The views of expression 'conduct of election' in Article 324 of the Constitution of India specifically points to the wide meaning and that meaning can also be read consistently into other provisions which occur in Part XV of the Constitution including Article 329(b). The term 'election' may be taken to embrace the whole procedure whereby an elected member is



returned.”

It is further submitted that the Hon'ble Supreme Court then considered the question whether the High Court can interfere with the ongoing process of election and answered the same in negative and observed- that law of election in India does not contemplate 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 and another after they have been completed by means of an election petition. 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. 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 ground which may be raised under the law to call the election in question could be urged.



It follows by necessary implication from the language of this provision that those ground 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 error if any are rectified, there will be no meaning in enacting a provision like Article 329(b) of the Constitution of India and setting up a Special Tribunal. Any other meaning ascribed to the words used in the Article would lead to anomalies, which the constitution would not have contemplated, one of them being that conflicting views may be expressed by the High Court at the pre-poll stage and by the election tribunal which is to be an independent body at the stage when the matter is brought up before it.

The learned counsel appearing for the Election Commission of India next submits that the Hon'ble Supreme Court further held that the Representation of People 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 matters connected with election, we have only to look at the Act and the Rules made thereunder.



Section 80 of the Representation of People Act which is drafted in almost the same language as Article 329(b) of the Constitution of India, provides that no election shall be called in question except by way of an election petition, further Section 80 of the Representation of People Act along with Section 100, 105 and 170 of the Representation of People Act are the main provisions regarding election matters being judicially dealt with and there is no provision anywhere to the effect that anything connected with the elections can be questioned at an intermediary stage.

The learned counsel appearing for the Election Commission of India next submits that the Constitution Bench of the Hon'ble Supreme Court in the case of ***Mohinder Singh Gill Vs. Chief Election Commissioner*** **1978 1 SCC 405** also considered the scope of Article 329(b) of the Constitution of India and laid down the following proposition- "having regard to the important functions with the legislature have to perform in democratic countries, the election should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of election should be postponed till after the



election are over so that election proceedings may not be unduly retarded or protracted and election dispute should be called in question before a Special Tribunal”.

In view of the submissions made by the learned counsel appearing for the Election Commission of India, the writ application is dismissed.

However, the dismissal of the writ application shall in no way affect the right of the petitioner to file appropriate petition before an appropriate forum seeking invalidation of the result of the election on the ground of wrongful rejection of nomination as being claimed by him in the present writ application.

Accordingly, the present writ application stands dismissed.

(Satyavrat Verma, J)

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