

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6735 OF 2024

Charanjeet Singh Chanderpal .. Petitioner
Vs.
Vikas Maruti Pansare and Ors. .. Respondents

Mr. Charanjeet Singh Chanderpal, Petitioner-in-person.
Ms. Naira Jeejeebhoy with Mr. Arun Panicker, Mr. Vinay Nair, Ms. Rashmi More and Ms. Zico Fernandes, Advocates for Respondent Nos.1 to 3.
Mr. Ashutosh Mishra, Advocate for Respondent No.5-UIO.
Mr. P.P. Kakade, Government Pleader, with Smt. T.N. Bhatia, Assistant Government Pleader, for the Respondent-State of Maharashtra.

**CORAM : A.S. CHANDURKAR &
JITENDRA JAIN, JJ**

DATE : 7TH MAY, 2024.

PC. :

1. The challenge raised in this writ petition is to the order dated 4th May 2024 passed by the Election Returning Officer, 30 Mumbai South - Central Lok Sabha constituency. By that order, the nomination form presented by the petitioner for contesting the parliamentary elections from the said constituency came to be rejected on the ground that the nomination form was incomplete.

2. The petitioner-in-person submits that on 3rd May 2024 he had presented his nomination form duly signed. As per the election programme, the scrutiny of the nomination forms was on 4th May 2024.

There were certain blanks in the petitioner's nomination form. According to the petitioner he was verbally informed that time would be granted to rectify the defects. However, by the impugned order dated 4th May 2024, his nomination form was rejected by stating that it was incomplete. It is thus submitted that the petitioner ought to be now granted an opportunity to correct / fill-in necessary details in the nomination form, which could be done within a short period of time. The same would thus enable the petitioner to participate in the ensuing elections. It is urged that many other nomination forms were also rejected on similar grounds. Since the petitioner desired to contest the general election, it is prayed that an opportunity be granted to remove the defects in the nomination form in the interest of justice.

3. Ms. Naira Jeejeebhoy, learned counsel appearing for respondent nos.1 to 3 has raised a preliminary objection to the maintainability of the writ petition by submitting that in view of the law laid down by the Supreme Court in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Ors.*, AIR 1952 SC 64, it would not be permissible to entertain the writ petition since the election process had commenced. Reference is made to the provisions of Article 329(b) of the Constitution of India and it is submitted that after the results are declared, the petitioner can avail the statutory remedy. Reliance is also sought to be placed on the

judgment of the Full Bench in Civil Writ Petition (Stamp) No.26 of 2021 (*Karmaveer Tulshiram Autade and Ors. Vs. The State Election Commission, Mumbai and Ors.*) with connected Writ Petitions, dated 13th January 2021. It is thus submitted that the writ petition does not deserve to be entertained.

. Mr. PP. Kakade, learned Government Pleader for respondent no.4 adopted the arguments made on behalf of respondent nos.1 to 3.

4. We have heard the petitioner-in-person as well as the learned counsel appearing for the respondents. Since a preliminary objection to the maintainability of the writ petition has been raised, it would be necessary to consider the same at the outset. The order under challenge dated 4th May 2024 has been passed by the Election Returning Officer rejecting the nomination form of the petitioner. It is not in dispute that the election process for the parliamentary election has commenced with the issuance of notification by the Election Commission of India on 26th April 2024. For the present constituency, the nomination forms were to be filled by 3rd May 2024 and scrutiny thereof was to be undertaken on 4th May 2024. The elections, if required, are scheduled on 20th May 2024. In this regard, reference can be made to the provisions of Article 329(b) of the Constitution of India, which bars the interference by Courts in electoral matters. An election to the House of Parliament can be called in question

only by way of an election petition presented to such authority and in such manner as may be provided for by any law made by the appropriate Legislature. It is well settled that the expression “election” encompasses the entire process that commences from issuance of a notification in that regard till the declaration of the results of such election. In the leading decision of the Supreme Court in *N.P. Ponnuswami (supra)*, it has been held in paragraph 12 as under :

“12. 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.”

5. In *Manda Jaganath Vs. K.S. Rathnam and Ors., (2004) 7 SCC 492*, it has been held in paragraphs 12 to 15 as under :

“12. In our opinion, whether the Returning Officer is justified in rejecting this Form B submitted by the first

respondent herein or not is not a matter for the High Court to decide in the exercise of its writ jurisdiction. This issue should be agitated by an aggrieved party in an election petition only.

13. It is to be seen that under Article 329(b) of the Constitution of India, there is a specific prohibition against any challenge to an election either to the Houses of Parliament or to the Houses of Legislature of the State except by an election petition presented to such authority and in such manner as may be provided for in a law made by the appropriate legislature. Parliament has by enacting the Representation of the People Act, 1951 provided for such a forum for questioning such elections hence, under Article 329(b), no forum other than such forum constituted under the RP Act can entertain a complaint against any election.

14. The word “election” has been judicially defined by various authorities of this Court to mean any and every act taken by the competent authority after the publication of the election notification.

15. In *Ponnuswami*, this Court held :

The law of elections 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 (the ordinary jurisdiction of the courts having been

expressly excluded) and another after they have been completed by means of an election petition.”

6. Perusal of the impugned order dated 4th May 2024 indicates that after the petitioner submitted his nomination form, he was informed at 12:35 p.m. on 3rd May 2024 of the defects/deficiencies therein. It was stated therein that the deficiencies indicated be removed by 11 a.m. on 4th May 2024. The scrutiny of nominations commenced at 11 a.m. on 4th May 2024. It was found that the deficiencies were not removed. After referring to nine deficiencies/blanks in the nomination form, the Election Returning Officer has referred to the provisions of Sections 33 and 36 of the Act of 1951. He has thereafter recorded finding that the defects which were not removed were of a substantial character and hence he proceeded to reject the nomination paper.

. It is to be noted that under Section 100 (1) (c) of the Act of 1951 improper rejection of any nomination is a ground for declaring a election to be void.

7. In view of the settled legal position, it is clear that any challenge to any decision taken during the intermediate process during the course of elections cannot be entertained under Article 226 of the Constitution of India and that the remedy provided under the Representation of the People Act, 1951 (for short “Act of 1951”) has to be availed after the conclusion of the elections. The impugned order dated 4th May 2024

rejects the nomination form of the petitioner by recording a finding that it was incomplete and that the defects were of a substantial character. A remedy in that regard has been provided under Section 100(1) (c) of the Act of 1951 and that remedy can be invoked by filing an election petition. In that view of the matter, since the election process has commenced with the issuance of the Notification on 26th April 2024, the provisions of Article 329(b) of the Constitution of India are clearly attracted. Permitting the petitioner to now remove the deficiencies in the nomination form after its rejection would amount to interfering in the election process. We are therefore not inclined to entertain this writ petition in the midst of the election process. With liberty to the petitioner to avail the remedy under Section 100 of the Act of 1951 at the conclusion of elections the writ petition is not entertained. It is accordingly disposed of. All contentions of parties are kept expressly open.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]