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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 97/2025, CM APPL. 7708/2025 & CM APPL. 7709/2025

VISHVANATH AGARWAL

.....Appellant

Through: Ms. Kiran Bala Agarwal, Mr. Ubhai Bharti Gupta and Ms. Tapsi Shashi Kala, Advocates alongwith Appellant in person.

versus

ELECTION COMMISSION OF INDIA AND ORSRespondents

Through: Mr. Ankit Agarwal, Standing Counsel with Ms. Viyushti Rawat and Mr. Ashish Shukla, Advocates for ECI/ R-1.
Mr. Rajeev Sharma, Advocate for R-3 (through VC).

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

% **10.02.2025**

1. This intra-court appeal challenges the order dated 23.01.2025 passed by the learned Single Judge, whereby the Writ Petition bearing W.P.(C) no.765/2025 filed by the appellant has been dismissed.
2. The writ petition was filed by the appellant with the following prayers:

“a. Allow the present Letters Patent Appeal and set aside the impugned final order/ judgment dated 23.01.2025 passed by the Hon'ble Single Judge in WP(C) No. 765/2025; and

b. Pass such other order and further orders as the Hon'ble court may deem fit and proper in the facts and circumstances of



the case.”

3. Learned Single Judge has taken a view that the writ petition was not maintainable in view of the provisions contained in Article 329(b) of the Constitution of India and also as per the law laid down by the Hon'ble Supreme Court in a series of judgment including ***N.P. Ponnuswami vs. Returning Officer, Namakkal Constituency and Others, (1952) 1 SCC 94*** and ***Mohinder Singh Gill & Anr. vs. Chief Election Commissioner, New Delhi & Ors., (1978) 1 SCC 405.***

4. The appellant who appears in person, has attempted to submit that the remedy of election petition would not be available for him for the reason that for filing of an election petition, in terms of Section 81 of the Representation of People Act, 1951 (hereinafter referred to as “*the Act*”), the person approaching the Court has to be either a “*candidate*” or an “*elector*” and the appellant cannot be said to be a candidate nor is he an elector and, therefore, election petition at the behest of the appellant would not be maintainable.

5. The aforesaid submission made by the appellant is highly misconceived for the reason that the word candidate occurring in Section 81 of the Representation of People Act, 1951 would not mean only the persons whose nomination papers have been accepted.

6. In this regard, we may refer to a judgment of Hon'ble Supreme Court in the case of ***Nandiesha Reddy vs. Kavitha Mahesh, (2011) 7 SCC 721,*** wherein, interpreting Section 81 of the Act, it has been opined by the Hon'ble Supreme Court that the candidate would not only be such a person whose nomination form has been accepted for scrutiny or whose name appears in the list of validly nominated candidates, i.e., to say candidates



whose nominations have been found valid. The Hon'ble Supreme Court has further held that in case a person's nomination is declined to be accepted by the Returning Officer, such a person would also qualify to be a candidate within the meaning of the said prayer occurring in Section 81 of the Act. The relevant observations made by the Hon'ble Supreme Court can be found in para 23 of the report. The same has been extracted hereunder:

“23. From a plain reading of the aforesaid provision it is evident that an election petition calling in question any election can be presented by any candidate at such election. The candidate, in our opinion, would not be only such person whose nomination form has been accepted for scrutiny or whose name appears in the list of validly nominated candidates, that is to say, candidates whose nominations have been found valid. Here, in the present case, the election petitioner's plea is that the Returning Officer declined to accept the nomination paper.”

7. Additionally, we may also state that the resolution of the dispute being raised by the appellant would necessarily involve adjudication of the questions of facts which, in a proceeding under Article 226 of the Constitution, would not be permissible.

8. For the aforesaid reasons, we are in complete agreement with the judgment impugned in this intra-court appeal as passed by the learned Single Judge.

9. The Letters Patent Appeal is hereby dismissed.

10. Pending applications also stand disposed of.

DEVENDRA KUMAR UPADHYAYA, CJ



FEBRUARY 10, 2025

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TUSHAR RAO GEDELA, J