



2025:DHC:10399



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 21st November, 2025
Pronounced on: 24th November, 2025

+ W.P.(C) 17367/2025 & CM APPL. 71521/2025

PRAMOD TANWAR

.....Petitioner

Through: Mr. Anurag Ahluwalia, Sr. Adv. with
Mr. Anirudh Bakhru, Mr. Umang
Tyagi, Mr. Zuber Ali, Mr. Atul
Tanwar, Mr. Siddharth Sharma and
Mr. Avi Yadav, Advs.
Mob: 6398102838
Email: adv.zuberali@gmail.com

versus

STATE ELECTION COMMISSION AND ANR.Respondents

Through: Mr. Amit Sharma, Mr. Dipesh Sinha,
Ms. Aparna Singh and Ms. Pallavi
Barwa, Advocates for R-1 & 2
Mob: 9818087744
Email: office@sharmachambers.com
Ms. Urvi Mohan, Panel Counsel
(Civil) for R-GNCTD
Mob: 7718992441
Email:
chambersurvimohan@gmail.com
Mr. Ripudaman Bhardwaj, CGSC
with Mr. Kushagra Kumar and Mr.
Amit Kumar Rana, Advs. for R-3/DP
Mob: 9818030700
Email: cgsc.ripudaman@gmail.com
Dr. Monika Arora, Mr. Neeraj, Mr.
Prateek Tanwar, Mr. Subhrodeep
Saha, Mr. Prabhat Kumar, Ms.
Anamika Thakur, Mr. Abhinav
Verma and Ms. Khanak Tanwar,



2025:DHC:10399



Advocates for complainant (Ms. Chandrakanta Shivani).

Mob: 8882173375

Email: officeadvmonika@gmail.com

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGEMENT

MINI PUSHKARNA, J.

1. The present writ petition has been filed challenging the rejection of the petitioner's nomination by the Returning Officer ("RO")/respondent no. 2, for the Municipal Corporation of Delhi ("MCD") Bye-Elections 2025 for the Naraina Ward, with prayer to direct the respondents to accept the nomination of the petitioner.
2. Learned Senior Counsel appearing for the petitioner submits that the nomination paper of the petitioner has wrongly been rejected, as all the requisite information was properly disclosed in the nomination paper. The petitioner duly disclosed his assets, and that of his family members. He submits that the petitioner had also duly disclosed cost of the agricultural land at the time of its purchase, owned by his wife. The mere fact that approximate current market value of the agricultural land was not mentioned in the nomination form, cannot be a case of a substantial defect, and that the petitioner ought to have been granted an opportunity to rectify the said defect and should have been allowed to fill the figure in the column against approximate current market value.
3. Likewise, it is submitted that non-disclosure of the mature value of the Life Insurance Corporation ("LIC") Policy in the name of the petitioner's daughter, cannot be a reason for rejection of the nomination



form. The petitioner had clearly given the LIC Policy Number. However, the petitioner was not aware of its mature value, as the mature value of a policy is not known, till the policy actually matures. For this purpose, learned counsel appearing for the petitioner relies upon a letter dated 10th November, 2025, issued by the LIC, wherein, it is stated that since the concerned Policy of the petitioner has not attained any paid-up value, its surrender value as on date is 'nil'.

4. On behalf of the petitioner, it is further submitted that the scrutiny of the nomination papers took place on 12th November, 2025. Two authorized representatives ("ARs") of the petitioner were present at the time of scrutiny at 01:20 PM, while the petitioner was also inside the premises where scrutiny was taking place at 02:00 PM. However, no clarification was sought from the petitioner or his ARs with regard to the discrepancies in the nomination form.

5. Learned Senior Counsel for the petitioner relies upon Rule 22 of the Delhi Municipal Corporation (Election of Councillors) Rules, 2012 ("Councillor Election Rules"), to submit that the Scrutinizing Officer ("SO") cannot reject any nomination paper on the ground of any defect, which is not of a substantial character. Further, the SO is also enjoined upon to allow time to a candidate to rebut any objection. Thus, it is submitted that the RO/SO ought to have given one day to the petitioner for removal of any defects and could not have rejected the petitioner's nomination form on the same day. It is further submitted that the time of scrutiny was from 11:00 AM to 03:00 PM. Therefore, the RO could not have rejected the petitioner's nomination paper at 02:00 PM, as disclosed in the affidavit filed on behalf of respondent no. 2/RO.



6. Learned Senior Counsel for the petitioner submits that opportunity to remove a defect in the nomination paper ought to be given to a candidate, as the intent of the scrutiny process is not to reject the nomination form and accordingly, reasonable opportunity ought to have been given to the petitioner as well, to remove the objection. Thus, there is arbitrariness in the decision of the RO in rejecting the petitioner's nomination form without granting any opportunity to remove the objection in the said form.

7. Learned Senior Counsel submits that publication of the list of validly nominated candidates on the date of scrutiny itself, i.e., 12th November, 2025, was not proper, as the same ought to have been published on 15th November, 2025, after the specified date of withdrawal of the nominations. Thus, haste was writ large in the entire process.

8. It is further submitted on behalf of the petitioner that the RO/SO ought to have recorded in writing a brief statement of her reasons for rejection of the nomination paper, which has not been done in the present case. Learned Senior Counsel for the petitioner relies upon Clause 6.10.2 of the "*Handbook for Returning Officer 2023*", and submits that good practices ought to have been followed in terms thereof.

9. Learned Senior Counsel for the petitioner also relies upon the affidavits of the ARs of the petitioner, as well as an affidavit filed by an AR of another candidate, to submit that the ARs of the petitioner were present during the time of scrutiny from 01:20 PM till 04:30 PM, along with the petitioner, at the premises where scrutiny was taking place.

10. Learned Senior Counsel also relies upon judgments in the case of ***Election Commission of India Through Secretary Versus Ashok Kumar***



*and Others*¹, *Dravida Munnetra Kazhagam (DMK) Versus Secretary, Governor's Secretariat and Others*², and *Saroj Versus Delhi State Commission & Anr.*³, to submit that the present writ petition would be maintainable and that the High Court can interfere under Article 226 of the Constitution of India in appropriate cases where nomination forms have been wrongly rejected. He submits that the petitioner has approached the Court immediately and is ready and willing to get his nomination paper scrutinized again. He submits that elections are scheduled to be held on 30th November, 2025 and if name of the petitioner is included in the list of validly nominated candidates, the election process would not be hampered in any manner.

11. *Per contra*, on behalf of the State Election Commission, i.e., respondent no. 1 and the RO, i.e., respondent no. 2, the present writ petition is vehemently opposed on the ground that the same is not maintainable. It is submitted that in cases of improper rejection or acceptance of nomination paper, the jurisdiction of this Court is wholly barred in terms of Article 243ZG(b) of the Constitution of India, which is *pari materia* with Article 329(b) of the Constitution of India. Learned counsel for the respondents further relies upon Sections 15 and 17 of the Delhi Municipal Corporation Act, 1957 ("DMC Act") to submit that the petitioner ought to file an election petition in terms thereof.

12. He further submits that while the jurisdiction of this Court under Article 226 is not completely barred even after commencement of the electoral process, the same has to be exercised with abundant caution. He

¹ (2000) 8 SCC 216

² (2020) 6 SCC 548.

³ 2017 SCC OnLine Del 8218.



submits that other candidates who have filed valid nominations have not been impleaded as party to the petition, and they also have a right to be heard on a challenge made by the petitioner to rejection of his nomination.

13. It is submitted that the petitioner had filed nomination paper on the last date for filing of nominations on 10th November, 2025 at approximately 02:53 PM, i.e., barely minutes before the counter closed at 03:00 PM. Consequently, the time available for meaningful preliminary scrutiny was extremely limited. It is submitted that at the stage of receipt of nomination paper, preliminary checking is confined only to verifying whether the mandatory columns have been filled, and not to examining the correctness or completeness of the contents therein.

14. He submits that in the nomination form of the petitioner, the financial details of the LIC policy, as mentioned by the petitioner, were missing, which ought to have been given by the petitioner. Further, in the column pertaining to details of immovable assets, the market value of the agricultural land, as mentioned in the nomination form, was shown as, 'Nil'. He submits that such non-disclosure was not a clerical or typographical error, but a substantial error.

15. He further submits that a written communication was to be given to the RO informing the details of the ARs of the petitioner, which was never done in the present case. Further, there is no time provided to close the scrutiny process. If the petitioner or his ARs are not present at the time of scrutiny of his nomination paper, the RO is not supposed to wait endlessly and is authorized to take decision accordingly.

16. It is further submitted on behalf of the respondents that the scrutiny commenced exactly at 11:02 AM on 12th November, 2025. The same was



conducted in the presence of other candidates, their ARs, videography operators, the scrutiny staff, and under continuous CCTV coverage. Despite having full notice of the scrutiny schedule, the petitioner failed to appear at each of the several calls made during the scrutiny proceedings.

17. Thus, on account of incomplete information provided in the scrutiny form, the nomination of the petitioner was rejected. The petitioner arrived at the premises only after the scrutiny had completely concluded and the orders had already been passed, displayed and uploaded. The petitioner eventually entered the office of the RO after the scrutiny process had been concluded.

18. It is further submitted that the rejection order was duly displayed on the notice board at 03:00 PM, strictly in accordance with the prescribed procedure.

19. Learned counsel for Ms. Chandrakanta Shivani (“Objecting Candidate”), one of the contesting candidates in the said elections, who had raised objection to the nomination form of the petitioner, also put in appearance and made submissions, though she was not a party in the present proceedings. She relied upon Clause 6.3.2 of the “*Handbook for Returning Officer 2023*” to submit that if an objection is raised regarding nomination of a candidate and nobody is present to rebut it, the RO can reject the nomination papers if she finds that the objection raised has some substance.

20. She further submits that the Court ought not to interfere and pass interim directions once the election process has already commenced. She submits that the petitioner has raised all disputed questions of facts, which can only be adjudicated after culmination of the elections, after trial in an election petition. She submits that there were substantial defects in the nomination form and thus, the nomination form was rightly rejected by the



RO.

21. Learned counsel appearing for the Objecting Candidate further submits that a notice was given to all the candidates who had submitted nomination forms, to come for scrutiny of the nomination forms at 11:00 AM. However, the petitioner did not come for such scrutiny.

22. She further submits that there were substantive and material defects in the nomination form of the petitioner. As per Rule 22 of the Councillor Election Rules, the SO has the authority to decide objections against any nomination and will reject nomination, if a candidate fails to provide accurate details in the nomination affidavit. She further submits that the present writ petition is not maintainable, on account of statutory bar in that regard.

23. Having heard learned counsels for the parties before this Court and having perused the record, this Court, at the outset, notes that the present writ petition seeks a prayer for setting aside the rejection of the petitioner's nomination for the MCD Bye-Elections by the RO, and further seeks that his name be included in the list of validly nominated candidates for the ensuing elections to the post of Councillor of Naraina Ward.

24. It is to be noted that improper rejection of any nomination paper, as well as improper acceptance of any nomination paper, are specific grounds for filing of an election petition under Section 17 of the DMC Act. Further, Section 15 of the DMC Act provides for filing of election petitions in cases of any challenge pertaining to the election to the post of a Councillor. Sections 15 and 17 of the DMC Act, read as under:

"15. Election petitions.—(1) No election of a councillor shall be called in question except by an election petition presented to the



court of the district judge of Delhi within fifteen days from the date of the publication of the result of the election under section 14.

(2) An election petition calling in question any such election may be presented under any of the grounds specified in section 17 by any candidate at such election, by any elector of the ward concerned or by any councillor.

(3) A petitioner shall join as respondents to his petition all the candidates at the election.

(4) An election petition—

- (a) shall contain a concise statement of the material facts on which the petitioner relies;
- (b) shall, with sufficient particulars, set forth the ground or grounds on which the election is called in question; and
- (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908), for the verification of pleadings.

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17. Grounds for declaring elections to be void.—(1) Subject to the provisions of sub-section (2) if the court of the district judge is of opinion—

- (a) that on the date of his election a returned candidate was not qualified or was disqualified, to be chosen as a councilor under this Act, or
- (b) that any corrupt practice has been committed by a returned candidate or his agent or by any other person with the consent of a returned candidate or his agent, or
- (c) that any nomination paper has been improperly rejected, or**
- (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) by any corrupt practice committed in the interests of the returned candidate by a person other than that candidate or his agent or a person acting with the consent of such candidate or agent, or
 - (iii) by the improper acceptance or refusal of any vote or reception of any vote which is void, or
 - (iv) by the non-compliance with the provisions of this Act or of any rules or orders made thereunder,

the court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the court, a returned candidate has been guilty by an agent of any corrupt practice, but the court is satisfied—

- (a) that no such corrupt practice was committed at the election by the candidate, and every such corrupt practice was committed



*contrary to the orders, and without the consent of the candidate;
(b) that the candidate took all reasonable means for preventing the commission of corrupt practices at the election: and
(c) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents;
then, the court may decide that the election of the returned candidate is not void.”*

(Emphasis Supplied)

25. Reading of the aforesaid Sections clearly brings forth that no election of a Councillor shall be called into question except by way of an election petition. The grounds for declaring elections as void are also provided in the statutory scheme, which specifically includes improper rejection of a nomination paper as one of the grounds. These provisions are in consonance with the decision of the Constitution Bench of the Supreme Court in the case of *N.P. Ponnuswami Versus The Returning Officer, Namakkal Constituency and Others*⁴, wherein, it was held as under:

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15. 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

⁴ (1952) 1 SCC 94.



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.

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17. The Representation of the People Act, 1951, which was passed by Parliament under Article 327 of the Constitution, makes detailed provisions in regard to all matters and all stages connected with elections to the various legislatures in this country. That Act is divided into 11 parts, and it is interesting to see the wide variety of subjects they deal with. Part II deals with “the qualifications and disqualifications for membership”, Part III deals with the notification of General Elections, Part IV provides for the administrative machinery for the conduct of elections, and Part V makes provisions for the actual conduct of elections and deals with such matters as presentation of nomination papers, requirements of a valid nomination, scrutiny of nominations, etc., and procedure for polling and counting of votes. Part VI deals with disputes regarding elections and provides for the manner of presentation of election petitions, the constitution of Election Tribunals and the trial of election petitions. Part VII outlines the various corrupt and illegal practices which may affect the elections, and electoral offences. Obviously, the 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 any matter connected with elections, we have only to look at the Act and the Rules made thereunder.

18. The provisions of the Act which are material to the present discussion are Sections 80, 100, 105 and 170, and the provisions of Chapter II of Part IV dealing with the form of election petitions, their contents and the reliefs which may be sought in them. Section 80, which is drafted in almost the same language as Article 329(b), provides that “no election shall be called in question except by an election petition presented in accordance with the provisions of this Part”. Section 100, as we have already seen, provides for the grounds on which an election may be called in question, one of



which is the improper rejection of a nomination paper. Section 105 says that “every order of the Tribunal made under this Act shall be final and conclusive”. Section 170 provides that:

“170. Jurisdiction of civil courts barred.—No civil court shall have jurisdiction to question the legality of any action taken or of any decision given by the Returning Officer or by any other person appointed under this Act in connection with an election.”

These are the main provisions regarding election matters being judicially dealt with, and it should be noted that there is no provision anywhere to the effect that anything connected with elections can be questioned at an intermediate stage.

19. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in *Wolverhampton New Waterworks Co. v. Hawkesford* [*Wolverhampton New Waterworks Co. v. Hawkesford*, (1859) 6 CB NS 336 at p. 356 : 141 ER 486] in the following passage : [CB (NS) p. 356 : ER p. 495]

“... There are three classes of cases in which a liability may be established founded upon statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law : there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, and the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy : there, the party can only proceed by action at common law. But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. ... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.”

The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspapers Ltd.* [*Neville v. London Express Newspapers Ltd.*, 1919 AC 368 (HL)] and has been reaffirmed by the Privy Council in *Attorney General of Trinidad v. Gordon Grant & Co. Ltd.* [*Attorney General of Trinidad v. Gordon Grant & Co. Ltd.*, 1935 AC 532 (PC)] and *Secy. of State v. Mask & Co.* [*Secy. of State v. Mask & Co.*, (1939-40) 67 IA 222 : (1940) 44 CWN 709 : 1940 SCC OnLine PC 10] ; and it has also been held to be equally applicable to enforcement of rights



(see *Hurdutrai Jagadish Prasad v. Official Assignee of Calcutta* [*Hurdutrai Jagadish Prasad v. Official Assignee of Calcutta*, (1948) 52 CWN 343 at p. 349 : 1948 SCC OnLine Cal 19]). **That being so, I think it will be a fair inference from the provisions of the Representation of the People Act to state that the Act provides for only one remedy, that remedy being by an election petition to be presented after the election is over, and there is no remedy provided at any intermediate stage.**

20. It was argued that since the Representation of the People Act was enacted subject to the provisions of the Constitution, it cannot bar the jurisdiction of the High Court to issue writs under Article 226 of the Constitution. This argument however is completely shut out by reading the Act along with Article 329(b). It will be noticed that the language used in that article and in Section 80 of the Act is almost identical, with this difference only that the article is preceded by the words “notwithstanding anything in this Constitution”. I think that those words are quite apt to exclude the jurisdiction of the High Court to deal with any matter which may arise while the elections are in progress.

21. It may be stated that Section 107(1) of the Representation of the People Act, 1949 (12 & 13 Geo. 6, c. 68) in England is drafted almost in the same language as Article 329(b). That section runs thus:

“No parliamentary election and no return to Parliament shall be questioned except by a petition complaining of an undue election or undue return (hereinafter referred to as a parliamentary election petition) presented in accordance with this Part of this Act.”

22. It appears that similar language was used in the earlier statutes, and it is noteworthy that it has never been held in England that the improper rejection of a nomination paper can be the subject of a writ of certiorari or mandamus. On the other hand, it was conceded at the Bar that the question of improper rejection of a nomination paper has always been brought up in that country before the appropriate tribunal by means of an election petition after the conclusion of the election. It is true that there is no direct decision holding that the words used in the relevant provisions exclude the jurisdiction of the High Court to issue appropriate prerogative writs at an intermediate stage of the election, but the total absence of any such decision can be accounted for only on the view that the provisions in question have been generally understood to have that effect.

23. Our attention was drawn to Rule 13 of the Rules appended to the Ballot Act of 1872 and a similar rule in the Parliamentary Elections Rules of 1949, providing that the decision of the Returning Officer



disallowing an objection to a nomination paper shall be final, but allowing the same shall be subject to reversal on a petition questioning the election or return. These Rules however do not affect the main argument. I think it can be legitimately stated that if words similar to those used in Article 329(b) have been consistently treated in England as words apt to exclude the jurisdiction of the courts including the High Court, the same consequence must follow from the words used in Article 329(b) of the Constitution. The words “notwithstanding anything in this Constitution” give to that article the same wide and binding effect as a statute passed by a sovereign legislature like the English Parliament.

24. It may be pointed out that Article 329(b) must be read as complementary 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”.

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(Emphasis Supplied)

26. The aforesaid judgment laid down that Article 329(b) of the Constitution ousts the jurisdiction of the Courts with regard to matters arising between the commencement of the polling and the final selection of a candidate. It was held that the law of elections in the country do not contemplate 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, and such an approach is against the constitutional scheme. The Supreme Court held in categorical terms that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of.

27. In this regard, reference may also be made to Article 243ZG(b) of the Constitution of India dealing with elections to municipalities, which is *pari materia* with Article 329(b) of the Constitution, which bars interference by Courts in electoral matters pertaining to elections to the Parliament and State Legislatures, except by an election petition. Article 243ZG and Article 329 of the Constitution read as follows:

***“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 243ZA shall not be called in question in any court;

(b) no election to any Municipality shall be called in question except by an 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.]

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***329. 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 327 or article 328, shall not be called in question in any court;

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such



authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.”

(Emphasis Supplied)

28. Thus, the principles as laid regarding Article 329(b) of the Constitution shall also apply to Article 243ZG of the Constitution, which deals with elections to municipalities, being *pari materia* provisions.

29. To similar effect is the judgment of a Constitution Bench of the Supreme Court in the case of *Mohinder Singh Gill and Another Versus The Chief Election Commissioner, New Delhi and Others*⁵, wherein, the Supreme Court ruled out the maintainability of a writ petition by a High Court and held that the High Court cannot embark upon an inquiry on any part of the merits of the dispute relating to elections, which is to be decided appropriately by the Election Court, after recording any evidence that may be led at the time. Thus, it was held as follows:

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126. The above being the legal position, Article 329(b) rules out the maintainability of the writ application. Article 329(b) provides that “notwithstanding anything in this Constitution ... no election to either House of Parliament . . . shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate legislature”. It is undisputed that an election can be challenged only under the provisions of the Act. Indeed Section 80 of the Act provides that “no election shall be called in question except by an Election petition presented in accordance with the provisions of” Part VI of the Act. We find that all the substantial reliefs which the appellants seek in the writ application, including the declaration of the election to be void and the declaration of Appellant 1 to be duly elected, can be claimed in the election petition. It will be within the power of the High Court, as the election Court, to give all appropriate reliefs to do complete justice between the parties. In doing so it will be open to the High Court to pass any ancillary or consequential order to enable it to grant the necessary relief provided under the Act. The

⁵ (1978) 1 SCC 405.



writ application is therefore barred under Article 329(b) of the Constitution and the High Court rightly dismissed it on that ground.

127. In view of our conclusion that the High Court had no jurisdiction to entertain the writ application under Article 226 of the Constitution, it will not be correct for us, in an appeal against the order of the High Court in that proceeding, to enter into any other controversy, on the merits, either on law or on facts, and to pronounce finally on the same. The pre-eminent position conferred by the Constitution on this Court under Article 141 of the Constitution does not envisage that this Court should lay down the law, in an appeal like this, on any matter which is required to be decided by the Election Court on a full trial of the election petition, without the benefit of the opinion of the Punjab and Haryana High Court which has the exclusive jurisdiction under Section 80-A of the Act to try the election petition. Moreover, a statutory right to appeal to this Court has been provided under Section 116-A, on any question, whether of law or fact, from every order made by the High Court in the dispute.

128. So, in view of the scheme of Part VI of the Act, the Delhi High Court could not have embarked upon an enquiry on any part of the merits of the dispute. Thus it could not have examined the question whether the impugned order was made by the Election Commission in breach of a rule of natural justice. That is a matter relating to the merits of the controversy and it is appropriately for the Election Court to try and decide it after recording any evidence that may be led at the trial. It may be that if we pronounce on the question of the applicability of the rule of natural justice, the High Court will be relieved of its duty to that extent. But it has to be remembered that even for the purpose of deciding that question, the parties may choose to produce evidence, oral or documentary, in the trial court. We therefore refrain from expressing any opinion in this appeal on the question of the violation of any rule of natural justice by the Election Commission in passing the impugned order.

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(Emphasis Supplied)

30. It is settled proposition of law that election would include in its ambit all stages of the election process, starting from the issuance of notification giving schedule of election till its culmination by the declaration of result. Courts have held time and again that no election to any legislature/municipality shall be called in question, except by way of an



election petition. The bar created under Articles 329 and 243ZG of the Constitution is attracted with respect to all matters relating to or in connection with the process of the elections of legislatures/municipalities. Thus, considering the meaning given to the word ‘election’, Supreme Court in the case of *N.P. Ponnuswami Versus The Returning Officer, Namakkal Constituency and Others*⁶, held as follows:

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9. Now, the main controversy in this appeal centres round the meaning of the words “no election shall be called in question except by an election petition” in Article 329(b), and the point to be decided is whether questioning the action of the Returning Officer in rejecting a nomination paper can be said to be comprehended within the words, “no election shall be called in question”. The appellant’s case is that questioning something which has happened before a candidate is declared elected is not the same thing as questioning an election, and the arguments advanced on his behalf in support of this construction were these:

(1) That the word “election” as used in Article 329(b) means what it normally and etymologically means, namely, the result of polling or the final selection of a candidate;

(2) That the fact that an election petition can be filed only after polling is over or after a candidate is declared elected, and what is normally called in question by such petition is the final result, bears out the contention that the word “election” can have no other meaning in Article 329(b) than the result of polling or the final selection of a candidate;

(3) That the words “arising out of or in connection with” which are used in Article 324(1) and the words “with respect to all matters relating to, or in connection with” which are used in Articles 327 and 328, show that the Framers of the Constitution knew that it was necessary to use different language when referring respectively to matters which happen prior to and after the result of polling, and if they had intended to include the rejection of a nomination paper within the ambit of the prohibition contained in Article 329(b) they would have used similar language in that article; and

(4) That the action of the Returning Officer in rejecting a nomination paper can be questioned before the High Court under

⁶ (1952) 1 SCC 94.



Article 226 of the Constitution for the following reason : Scrutiny of nomination papers and their rejection are provided for in Section 36 of the Representation of the People Act, 1951. Parliament has made this provision in exercise of the powers conferred on it by Article 327 of the Constitution which is “subject to the provisions of the Constitution”. Therefore, the action of the Returning Officer is subject to the extraordinary jurisdiction of the High Court under Article 226.

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.

10. 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.

11. In Srinivasalu v. Kuppuswami [Srinivasalu v. Kuppuswami, AIR 1928 Mad 253 at p. 255 : 1927 SCC OnLine Mad 160] , 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 Parshad [Sat Narain v. Hanuman Parshad, AIR 1946 Lah 85 : 1944 SCC OnLine Lah 93] ; and I also find myself in agreement with it.

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.



13. The subject is dealt with quite concisely in Halsbury's Laws of England in the following passage [See p. 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 xxx xxx"

(Emphasis Supplied)

31. Likewise, holding that there cannot be a two-pronged attack to an election; one during the proceedings of the election process and secondly, post declaration of the result of the election, a Single Bench of this Court in the judgment passed in the case of *Kiran Pal Tyagi and Others Versus State (NCT of Delhi) and Others*⁷, by relying upon the judgment of Supreme Court in the case of *Election Commission of India Through Secretary Versus Ashok Kumar and Others*⁸, held as follows:

"xxx xxx xxx"

31. The Supreme Court in *Election Commission of India through*

⁷ 2020 SCC OnLine Del 421.

⁸ (2000) 8 SCC 216.



Secretary Vs. Ashok Kumar & Ors. (2000) 8 SCC 216, relying on the Judgments of the Constitution Bench of the Supreme Court in N.P. Ponnuswami (supra) and Mohinder Singh Gill (Supra) held as under:

“30. To what extent Article 329(b) has an overriding effect on Article 226 of the Constitution? The two Constitution Benches have held that Representation of the People Act, 1951 provides for only one remedy; that remedy being by an election petition to be presented after the election is over and there is no remedy provided at any intermediate stage. The non obstante clause with which Article 329 opens, pushes out Article 226 where the dispute takes the form of calling in question an election (see para 25 of Mohinder Singh Gill case [(1978) 1 SCC 405 : AIR 1978 SC 851]). The provisions of the Constitution and the Act read together do not totally exclude the right of a citizen to approach the court so as to have the wrong done remedied by invoking the judicial forum; nevertheless the lesson is that the election rights and remedies are statutory, ignore the trifles even if there are irregularities or illegalities, and knock the doors of the courts when the election proceedings in question are over. Two-pronged attack on anything done during the election proceedings is to be avoided — one during the course of the proceedings and the other at its termination, for such two-pronged attack, if allowed, would unduly protract or obstruct the functioning of democracy.”

(underlining supplied)

32. The law is clearly settled by the Constitution Bench of the Supreme Court of India in N.P. Ponnuswami (supra) and Mohinder Singh Gill (Supra) that there cannot be a two-pronged attack to an election; one during the proceedings of the election process and secondly; post declaration of the result of the election. The invocation of the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India, when the election process is ongoing, is prohibited.

xxx xxx xxx”

(Emphasis Supplied)

32. Upholding the aforesaid judgment in the case of **Kiran Pal Singh Tyagi (supra)**, a Division Bench of this Court in the case of **Kiran Pal Singh Tyagi and Others Versus State of NCT of Delhi and Others**⁹, has held as follows:

⁹ 2020 SCC OnLine Del 1774.



“xxx xxx xxx

5.

(xiv) In view of the aforesaid decision of the Hon’ble Supreme Court and looking to the facts of the case, the nomination paper of the appellants have been rejected by the respondent No.5 on 22nd January, 2020. If we interfere at this stage, it will tantamount to interference with the progress of the election. Hence, the present appeal of the appellants is not tenable at law as Election Petition is the appropriate remedy available to the appellants.

xxx xxx xxx”

(Emphasis Supplied)

33. Similarly, dismissing a writ petition which challenged the rejection of nomination form of a candidate, as not maintainable, this Court in the case of *Vishvanath Agarwal Versus Election Commission of India and Others*¹⁰, held as follows:

“xxx xxx xxx

8. Two Co-ordinate Benches of this Court in *Vijay Pal Singh (supra)* and in *Kiran Pal Singh Tyagi and Others v. State (NCT of Delhi) and Others*, 2020 SCC OnLine Del 421, have dismissed the writ petitions under Article 226 of the Constitution relegating the parties to the remedy of filing Election Petition, if so advised. In *Vijay Pal Singh (supra)*, following the dicta of the Supreme Court, it was observed that “election” means all steps and entire proceedings from the date of election till declaration of the results and the only way to challenge any step is by way of an Election Petition. Courts have time and again cautioned that there cannot be two-pronged attack on matters connected with elections, i.e. one during the course of elections by invoking extraordinary jurisdiction of the High Courts under Article 226 of the Constitution and second after elections have concluded, by way of filing an Election Petition. Therefore, the remedy of the Petitioner in the present case lies in filing an Election Petition and this writ petition cannot be entertained.

xxx xxx xxx”

(Emphasis Supplied)

34. As regards the judgment in the case of *Saroj Versus Delhi State*

¹⁰ 2025 SCC OnLine Del 349.



Commission & Anr.¹¹, relied upon by the petitioner, the same is clearly distinguishable, and is not applicable to the facts and circumstances of the present case. In the said case, the Court had interfered after noting that there were no disputed questions of fact and no issue before the Court required any trial. In the said case, the nomination of the petitioner therein had been rejected on the ground that the petitioner had failed to tick the mark on male or female in the said nomination paper. The Court held that the fact of petitioner being a female was writ large from the nomination form, as her photographs evidenced the same. Moreover, the petitioner therein had also declared the name of her husband and in the affidavit, had also stated, “*I, Saroj, wife of Sher Singh.....*”. Further, the petitioner had also submitted her Voter ID, which clearly evidenced the fact that the petitioner therein was a woman. Thus, holding that no disputed questions of facts were involved which required trial, and that the defect in the nomination was not of a substantial character, the Court interfered in the said case.

35. However, in the present case, the defects as raised by the RO, are regarding false declaration of LIC premium and market value of agricultural land by the petitioner in the nomination form. Further, various disputed questions of facts have been raised in the present case, with regard to the presence of the petitioner or his ARs during the time of scrutiny. Thus, reliance by the petitioner on the decision in the case of ***Saroj (supra)***, is not tenable.

36. Likewise, the case of ***Election Commission of India through Secretary Versus Ashok Kumar and Others***¹², as relied upon by the

¹¹ 2017 SCC OnLine Del 8218.

¹² (2000) 8 SCC 216.



petitioner, also does not assist the case of the petitioner in any manner. In the said case, with regard to interference by the Court, in Para 32(5), the Supreme Court specifically held as follows:

“xxx xxx xxx

32. For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove:

xxx xxx xxx

(5) The court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the court would act with reluctance and shall not act, except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material.

xxx xxx xxx”

(Emphasis Supplied)

37. Thus, the Supreme Court in the aforesaid case has laid down that the Court must be very circumspect and cautious, and shall not act except on a clear and strong case for its intervention having been made out. However, no such circumstances have been shown to exist in the present case.

38. Similarly, reliance by the petitioner on the judgment of ***Dravida Munnetra Kazhagam (DMK) Versus Secretary, Governor's Secretariat and Others***¹³, is also misplaced. The said judgment pertained to issues arising out of delimitation process of constituencies undertaken by the State

¹³ (2020) 6 SCC 548.



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Government. Thus, the ground and circumstance to warrant interference by the Court in the said case was in furtherance of the constitutional mandate in respect of expeditious completion of prerequisites of a fair election, which is not the case in the present writ petition.

39. Accordingly, the present writ petition is dismissed as not maintainable. However, liberty is granted to the petitioner to take recourse to appropriate remedies, in accordance with law.

40. It is clarified that this Court has not considered or expressed any opinion on the merits of the petitioner's case.

41. Pending application also stands disposed of.

**MINI PUSHKARNA
(JUDGE)**

NOVEMBER 24, 2025/sk/au/kr