

*** THE HON'BLE SRI JUSTICE B KRISHNA MOHAN**

+ WRIT PETITION No.10137 of 2024

% 29.04.2024

Between:

Hanumantha Rao Desaisetty,
S/o. Ganapathi Rao Desaisetty,
Age:66 years, Occ: Advocate,
R/o. Door No.23-2-29, Ramesh
Reddy Nagar, Nellore-524003,
SPSR Nellore District,
Andhra Pradesh.

...Petitioner

Versus

\$ The Election Commission of India, Rep. by its
Chief Election Officer, Nirvachan Sadan, Ashoka
Road, New Delhi-110001 and 6 others.

...Respondents

! Counsel for the petitioner : Aishwarya Nagula

^ Counsel for the respondents: 1. D.S.Siva Darshan for the
Respondent Nos.1, 2, 5 and 6.
2. GP for General Administration.
3. D. Srinivas, Senior Counsel

<Gist:

>Head Note:

? Cases referred:

1. (1952) 1 SCC 94
2. (1978)1 SCC 405
3. (2004) 2 SCC 759
4. (2023) 6 SCC 161
5. (2014) 14 SCC 189
6. W.P.No.31864 of 2023
7. W.P.No.7040 of 2009

* **THE HON'BLE SRI JUSTICE B KRISHNA MOHAN**

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Road, New Delhi-110001 and 6 others.

....Respondents

DATE OF ORDER PRONOUNCED 29.04.2024.

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE B KRISHNA MOHAN

- | | |
|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Order? | Yes/No |
| 2. Whether the copies of order may be marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Your Lordships wish to see the fair Copy of the Order? | Yes/No |

JUSTICE B KRISHNA MOHAN

APHC010203772024



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3233]

MONDAY ,THE TWENTY NINETH DAY OF APRIL
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE B KRISHNA MOHAN

WRIT PETITION NO: 10137/2024

Between:

Hanumantha Rao Desaisetty,

...PETITIONER

AND

The Election Commission Of India and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.AISHWARYA NAGULA

Counsel for the Respondent(S):

1.

2.GP FOR GENERAL ADMINISTRATION

The Court made the following Order:

Heard the learned Senior Counsel for the petitioner, the learned Senior Counsel for the respondent Nos.1 to 6 and the learned Senior Counsel for the respondent No.7.

2. This Writ Petition is filed questioning the action of the respondent No.6 in not rejecting the nomination of the 7th respondent to the 117-Nellore City Assembly Constituency in the ensuing 2024 Legislative Assembly Elections,

for not furnishing the details of his second wife Smt. Ponguru Indira and her properties in Form-26 filed along with his nomination on the ground of suppression and misrepresentation of the material facts, pursuant to the Objection Petition filed by the petitioner dated 26.04.2024 along with the supporting documents and overruling the objections raised by the petitioner *vide* order dated 26.04.2024 in Rc.A.54/2024/RO.

3. The learned Senior Counsel for the petitioner submits that the 7th respondent submitted Form-26 affidavit to be filed by the candidate along with the nomination paper before the Returning Officer for Election to Andhra Pradesh Legislative Assembly 2024 from 117-Nellore City Assembly Constituency. In the column of the “name of the spouse” he only mentioned the first wife’s name Smt. Ponguru Ramadevi with PAN.No.ACSP8838K, but he did not mention about his second wife and her assets in the list of particulars to be furnished in the said Form-26. In the lease deed dated 28.06.2008 it was clearly mentioned about the other wife of the 7th respondent as Ponguru Indira husband of Ponguru Narayana. The sale deed dated 30.10.2000 also stands in her name. The rectification deed dated 13.10.2022 also stands in her name. Thus some of the properties are also standing in her name who is said to be the second wife of the 7th respondent.

4. The Section 33-A of the Representation of the People Act, 1951 reads as under:-

33A. Right to information:- (1) A candidate shall, apart from any information which he is required to furnish, under this

Act or the rules made there under, in his nomination paper delivered under sub-section (1) of section 33, also furnish the information as to whether:-

(i) He is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;

(ii) He has been convicted of an offence [other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8] and sentenced to imprisonment for one year or more.

(2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).

(3) The returning officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.

5. The candidate shall deliver an affidavit sworn by him in a prescribed form verifying the information furnished in sub-section (1) of the said Section.

6. The Section 80 of the Representation of the People Act, 1951 deals with the Election Petition which reads as under:-

80. Election petitions. No election shall be called in question except by an election petition presented in accordance with the provisions of this part.

7. The Section 100 of the Representation of the People Act, 1951 reads as under:-

100. Grounds for declaring election to be void.-[(1) Subject to the provisions of sub-section (2) if the High Court is of opinion-

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act[[or the Government of Union Territories Act, 1963 (20 of 1963)]; or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination 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 or any nomination,

(ii) or by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent), or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void,

(iv) or by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act.

8. The learned counsel for the petitioner further submits that though the petitioner and the other raised objections with respect to the nomination of the 7th respondent as stated above, the said objections were mentioned in the impugned proceedings of the 6th respondent dated 26.04.2024 but they were not considered except saying that the said objections are overruled against the 7th respondent in accordance with the guidelines issued under Section 36 of RPA, 1951 and Chapter 6 of ECI issued handbook for the Returning Officer, 2023. It was observed that for the purpose of scrutiny, the Form-26 Affidavit shall be fully filled, notarized and filed. All these conditions have been

satisfied in the case of the Affidavit filed by the 7th respondent and as such his nomination cannot be rejected on the ground that it contains false information allegedly.

9. It was also observed that all the columns of the affidavit were filled by the candidate/7th respondent and as such the objection that the candidate has suppressed certain facts with respect to the properties owned by him was not considered as an objection of sustainable character.

10. In view of the above said impugned proceedings of the 6th respondent dated 26.04.2024, the Writ Petitioner prayed for indulgence of this Court in this Writ Petition under Article 226 of the Constitution of India.

11. On the other hand, the learned Senior Counsel appearing for the respondent Nos.1 to 6 submits that there is a Constitutional Bar in these matters under Article 329(b) of the Constitution of India which reads as under:-

*329. Bar to interference by courts in electoral matter-
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.

12. According to it no Election shall be called in question under Article 226 of the Constitution of India except by filing an Election Petition before the appropriate authority as prescribed under law by the appropriate legislature. He also refers to the decisions of the Hon'ble Supreme Court of India as under:-

13. In ***N.P. Ponnuswami vs Returning Officer, Namakkal Constituency and others***¹, the then Constitutional Bench of the Hon'ble Supreme Court held at Para Nos.15, 37, 38, 39 and 40 as under:-

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 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

¹ (1952) 1 SCC 94

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.

37. And now a word as to why negative language was used in Article 329(b). It seems to me that there is an important difference between Article 71(1) and Article 329(b). Article 71(1) had to be in an affirmative form, because it confers special jurisdiction on the Supreme Court which that Court could not have exercised but for this article. Article 329(b), on the other hand, was primarily intended to exclude or oust the jurisdiction of all courts in regard to electoral matters and to lay down the only mode in which an election could be challenged. The negative form was therefore more appropriate, and, that being so, it is not surprising that it was decided to follow the pre-existing pattern in which also the negative language had been adopted.

38. Before concluding, I should refer to an argument which was strenuously pressed by the learned counsel for the appellant and which has been reproduced by one of the learned Judges of the High Court in these words:

"It was next contended that if nomination is part of election, a dispute as to the validity of nomination is a dispute relating to election and that can be called in question only in accordance with the provisions of Article 329(b) by the presentation of an election petition to the appropriate Tribunal and that the Returning Officer would have no jurisdiction to decide that matter, and it was further argued that Section 36 of Act 43 of 1951 would be ultra vires inasmuch as it confers on the Returning Officer a jurisdiction which Article 329(b) confers on a tribunal to be appointed in accordance with the article."

39. This argument displays great dialectical ingenuity, but it has no bearing on the result of this appeal and I think it can be very shortly answered. Under Section 36 of the Representation of the People Act, 1951, it is the duty of the Returning Officer to scrutinise the nomination papers to ensure that they comply with the requirements of the Act and decide all objections which may be made to any nomination. It is clear that unless this duty is discharged

properly, any number of candidates may stand for election without complying with the provisions of the Act and a great deal of confusion may ensue. In discharging the statutory duty imposed on him, the Returning Officer does not call in question any election. Scrutiny of nomination papers is only a stage, though an important stage, in the election process. It is one of the essential duties to be performed before the election can be completed, and anything done towards the completion of the election proceeding can by no stretch of reasoning be described as questioning the election. The fallacy of the argument lies in treating a single step taken in furtherance of an election as equivalent to election. The decision of this appeal however turns not on the construction of the single word "election", but on the construction of the compendious expression-"no election shall be called in question" in its context and setting, with due regard to the scheme of Part XV of the Constitution and the Representation of the People Act, 1951. Evidently, the argument has no bearing on this method of approach to the question posed in this appeal, which appears to me to be the only correct method.

40. 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.

14. **In Mohinder Singh Gill and another²**, the then Constitutional Bench of the Hon'ble Supreme Court held at Para Nos.29 to 34 as under:-

29. Thus, there are two types of decisions, two types of challenges. The first relates to proceedings which interfere with the progress of the election. The second accelerates the completion of the election and acts in furtherance of an election. So, the short question before us, in the light of the illumination derived from Ponnuswami, is as to whether the order for re-poll of the Chief Election Commissioner is "anything done towards the completion of the election proceeding" and whether the proceedings before the High Court facilitated the election process or halted its progress. The question immediately arises as to whether the relief

² (1978) 1 SCC 405

sought in the writ petition by the present appellant amounted to calling in question the election. This, in turn, revolves round the point as to whether the cancellation of the poll and the reordering of fresh poll is part of election' and challenging it is 'calling it in question'.

30. The plenary bar of Article 329 (b) rests on two principles: (1) The peremptory urgency of prompt engineering of the whole election process without intermediate interruptions by way of legal proceedings challenging the steps and stages in between the commencement and the conclusion. (2) The provision of a special jurisdiction which can be invoked by an aggrieved party at the end of the election excludes other form. The right and remedy being creatures of statutes and controlled by the Constitution. *Durga Shankar Mehta (supra)* has affirmed this position and supplemented it by holding that, once the Election Tribunal has decided, the prohibition is extinguished and the Supreme Court's over-all power to interfere under Article 136 springs into action. In *Hari Vishnu (supra)* this Court upheld the rule in *Ponnuswami* excluding any proceeding, including one under Article 226, during the on-going process of election, understood in the comprehensive sense of notification down to declaration. Beyond the declaration comes the election petition, but before decision of the Tribunal the ban of Article 329 (5) does not bind.

31. If 'election' bears the larger connotation, if 'calling in question' possesses a semantic sweep in plain English, if policy and principle are tools for interpretation of statutes, language permitting, the conclusion is irresistible, even though the argument contra may have emotional impact and ingenious appeal, that the catch-all jurisdiction under Article 226 cannot consider the correctness, legality or otherwise of the direction for cancellation integrated with re-poll. For, the prima facie purpose of such a re-poll was to restore a detailed poll process and to complete it through the salvatory effort of a re-poll. Whether, in fact or law, the order is validly made within his powers or violative of natural justice can be examined later by the appointed instrumentality, viz., the Election Tribunal. That aspect will be explained presently. We proceed on the footing that re-poll in one polling station or in many polling stations, for good reasons, is lawful. This shows that re-poll in many or all segments, all-pervasive or isolated, can be lawful. We are not considering whether the act was bad for other reasons. We are concerned only to say that if the

regular poll, for some reasons, has failed to reach the goal of choosing by plurality the returned candidate and to achieve this object a fresh poll (not a new election) is needed, it may still be a step in the election. The deliverance of Dunkirk is part of the strategy of counter-attack. Wise or valid, is another matter.

32. On the assumption, but leaving the question of the validity of the direction for re-poll open for determination by the Election Tribunal, we hold that a writ petition challenging the cancellation coupled with re-poll amounts to calling in question a step in 'election' and is therefore barred by Article 329 (b). If no re-poll had been directed the legal perspective would have been very different. The mere cancellation would have then thwarted the course of the election and different considerations would have come into play. We need not chase a hypothetical case.

33. Our conclusion is not a matter of textual interpretation only but a substantial assurance of justice by reading Section 100 of the Act as covering the whole basket of grievances of the candidates. Sri P. P Rao contended that the Court should not deny relief to a party in the area of elections which are the life-breaths of the democracy and people's power. We agree.

34. This dilemma does not arise in the wider view we take of Section 100(1) (d) (iv) of the Act. Sri Rao's attack on the order impugned is in substance based on alleged non-compliance with a pro- vision of the Constitution viz., Article 324 but is neatly covered by the widely- worded, residual catch-all clause of Section 100. Knowing the supreme significance of speedy elections in our system the framers of the Constitu- tion have, by implication postponed all election disputes to election petitions and tribunals. In harmony with this scheme Section 100 of the Act has been designedly drafted to embrace all conceivable infirmities which may be urged. To make the project fool-proof Section 100(1) (d) (iv) has been added to absolve everything left over. The Court has in earlier rulings pointed out that Section 100 is exhaustive of all grievances regarding an election. But what is banned is not anything whatsoever done or directed by the Commissioner but everything he does or directs in furtherance of the election, not contrarywise.

15. In **Ram Phal Kundu vs Kamal Sharma**³, the then three Judges of the Hon'ble Supreme Court held at Para No.24 as under:-

24. It may be noticed that the petition by Kamal Sharma was filed on 6-2-2000 and the same was allowed by the Election Commission the very next day ie. on 7-2-2000 by which a direction was issued to the Returning Officer to hold a fresh scrutiny. There is nothing on record to indicate nor it appears probable that before passing the order, the Election Commission issued any notice to Bachan Singh. Apparently, the order was passed behind his back. The order of the Election Commission to the effect that the Returning Officer shall take further consequential steps as may become necessary, by treating all earlier proceedings in relation to the said candidates, as void ab initio and redraw the list of validly nominated candidates, could not have been passed without giving an opportunity of hearing to Bachan Singh. That apart, it has been held by a catena of decisions of this Court that once the nomination paper of a candidate is rejected, 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. (See N.P. Ponnus Returning Officer, Mohinder Singh Gill v. Election Chief Commissioner and Election Commission of India v. Shivaji.

a. Therefore, the order passed by the Election Commission a on 7-2-2000 was not only illegal but was also without jurisdiction and the respondent Kamal Sharma can get no advantage from the same. The inference drawn and the findings recorded by the High Court on the basis of the order of the Election Commission, therefore, cannot be sustained.

16. Following the above said decisions, the Hon'ble Division Bench of the Telangana High Court passed an order in W.P.No.31864 of 2023 dated 18.11.2023 holding at Para Nos.3, 11, 16, 17 and 18 as under:-

3. The petitioner is a resident of Rajendranagar Constituency. The petitioner filed nomination paper on 09.11.2023 as a candidate for the Legislative Assembly of Rajendranagar Constituency from Alliance of Democratic

³ (2004) 2 SCC 759

Reforms Party for the ensuing Assembly Elections. The aforesaid nomination paper was scrutinised on 13.11.2023 and was rejected on the ground that the names of the proposers entered in the nomination paper filed by the petitioner do not tally with the names entered in electoral roll. The petitioner thereupon has filed this writ petition questioning the validity of order dated 13.11.2023 passed by the Returning Officer primarily on the ground that same is violative of section 33(4) of the Representation of People Act, 1951 (hereinafter referred to as 'the Act').

11. The law laid down in N.P. Ponnuswami (supra) was referred to in a subsequent decision in Ram Phal Kundu (supra) and in paragraph 24, it was held as under:

24. It may be noticed that the petition by Kamal Sharma was filed on 6-2-2000 and the same was allowed by the Election Commission the very next day i.e. on 7-2-2000 by which a direction was issued to the Returning Officer to hold a fresh scrutiny. There is no direction was issued to indicate nor it appears probable that before passing the order the Election Commission issued any notice to Bachan Singh. Apparently, the order was passed behind his back. The order of the Election Commission to the effect that the Returning Officer shall take further consequential steps as may become necessary, by treating all earlier proceedings in relation to the said candidates, as void ab initio and proceedings in relation to nominated candidates, could not have been passed without giving an opportunity of hearing to Bachan Singh. That apart, it has been held by a catena of decisions of this Court that once the nomination paper of a candidate is rejected, the Act provides for some 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. (See N.P. Ponnuswami v. Returning Officer [MANU/SC/0049/1952: (1952) 1 SCC 94: AIR 1952 SC 64], Mohinder Singh Gill v. Election Chief Commissioner [MANU/SC/0209/1977: (1978) 1 SCC 405: AIR 1978 SC 851 and Election Commission of India v. Shivaji (MANU/SC/0379/1987 : (1988) 1 SCC 277 : AIR 1988 SC 61]). Therefore, the order passed by the Election Commission on 07.02.2000 was not only illegal but was also without Jurisdiction and the respondent Kamal Sharma can get no advantage from the same. The inference drawn and the findings recorded by the High Court on the basis of the order of the Election Commission, therefore, cannot be sustained.

(emphasis supplied)

Thus, it is evident that in the aforesaid decision, it has been held that once the nomination paper of a candidate is rejected, the Act only provides for one remedy, that is the remedy by way of an election petition to be presented after the election is over and there is no remedy provided at any intermediate stage. Therefore, no case for interference is made out.

16. Therefore, the action taken by the Returning Officer in rejecting the nomination of the petitioner is in consonance with the law and does not call for interference of this Court at this point of time.

17. It is clarified that the findings recorded in this order are only for the purposes of deciding the controversy involved in the instant writ petition and the petitioner shall be at liberty to take recourse to the remedy of election petition provided to him in law.

18. With the aforesaid observations, the writ petition is dismissed.

17. He further submits that the scope of scrutiny of nomination papers is summary in nature and the objections raised by the petitioner falls in the realm of taking evidence and the Returning Officer cannot go into those objections and the decision of the Returning Officer accepting the nomination of the 7th respondent cannot be gone into in this Writ Petition under Article 226 of the Constitution of India as it is specifically barred under Article 329(b) of the Constitution of India and in view of the above said Constitutional Judgments of the Hon'ble Supreme Court of India. The only remedy available for the petitioner is to approach the Election Tribunal by way of an Election Petition at an appropriate stage under Sections 80 and 100 of the Representation of the People Act, 1951.

18. He also refers to the order passed by the then Division Bench of the erstwhile High Court of Andhra Pradesh in W.P.No.7040 of 2009 dated 02.04.2009 wherein the Judgments of the Hon'ble Supreme Court of India viz., **N.P.Ponnuswami's case**, **Mohinder Singh Gill's case** and **Ram Phal Kundu's case** were followed and it was held at Para Nos.23 and 24, as under:-

23. In the light of the deeply entrenched aforesaid legal position, we are of the view that notwithstanding the validity or otherwise of the rejection of the nomination, any ground of attack against the same would be better suited for an election petition under Section 100(1)(c) of the Act of 1951 and would not be sufficient ground to warrant exercise of our extraordinary jurisdiction under Article 226 of the Constitution, overlooking the clear bar mandated by Article 329(b) of the Constitution. Mere rejection of the nomination of a candidate does not have the effect of interfering in the free flow of the scheduled election or hindering its progress, which according to the Supreme Court, should be the paramount consideration while testing the waters to see whether writ jurisdiction can be exercised. On the other hand, interference in the matter at this stage would invariably have the effect of interrupting the election process, requiring the election machinery to review the entire eligibility process. The case on hand does not present itself as an exceptional case warranting deviation from the established principle that this Court would not interfere in matters of the present nature in view of the constitutional bar under Article 329(b) of the Constitution.

24. The writ petition fails on the ground of maintainability and is accordingly dismissed at the stage of admission. In the circumstances of the case, there shall be no order as to costs.

19. In reply, the learned Senior Counsel for the petitioner refers to the decision of the Hon'ble Supreme Court of India in the case of **Anoop**

Baranwal vs. Union of India (Election Commission Appointments)⁴, in

which it was held at Para Nos.211 and 212 as under:-

211. Article 329(b) declares as follows:

329. (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."

212. Regarding the impact of Article 329(b), a Bench of three learned Judges after an exhaustive review of the earlier case law has set down the following summary of conclusions in *Election Commission of India v. Ashok Kumar* 62: (SCC pp. 232-33, paras 31-33)

"31. The Founding Fathers of the Constitution have consciously employed use of the words "no election shall be called in question" in the body of Article 329(b) and these words provide the determinative test for attracting applicability of Article 329(b). If the petition presented to the Court "calls in question an election" the bar of Article 329(b) is attracted Else it is not.

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:

(1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of Interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

(2) Any decision sought and rendered will not amount to "calling in question an election" if it subserves the progress

⁴ (2023) 6 SCC 161

of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

(3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

(4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the court.

(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.

20. As a rejoinder the learned counsel appearing for the Election Commission submits that the said judgment was held in the matter of appointments of Election Commission and it does not dilute the earlier judgments of the Hon'ble Supreme Court of India. For the facts of this case, the observations made in the said judgment cannot be extended and applied

as it was only observed that “any decision sought and render will not amount to “calling in question an Election”, if it subserves the progress of the Election and facilitates the completion of the Election, anything done towards completing or in furtherance of the Election proceedings cannot be described as questioning the Election”. But, the case of the petitioner herein is that the acceptance of the nomination of the 7th respondent by the Returning Officer is improper and as such it squarely falls within the scope of the Election Petition.

21. The learned Senior Counsel appearing for the 7th respondent while adopting the submissions made by the learned counsel appearing for the respondent Nos.1 to 6, he further adds the decision of the Hon'ble Supreme Court of India in the case of Resurgence India vs. Election Commission of India and another⁵ wherein it was held at Para Nos. 8, 24, 29 as under:-

8. On 9-2-2007, the petitioner Organization made a representation to the Election Commission of India regarding large number of non-disclosures in the affidavits filed by the contestants in the State of Punjab and poor level of scrutiny by the Returning Officers. Vide Letter dated 20-2-2007, the Election Commission of India expressed its inability in rejecting the nomination, papers of the candidates solely due to furnishing of false/incomplete information in the affidavits in view of the judgment in People's Union for Civil Liberties.

24. We also clarify the extent that in our coherent opinion the above power of rejection by the Returning Officer is not barred by para 73 of People's Union for Civil Liberties which reads as under: (SCC p. 451)

"73. While no exception can be taken to the insistence of affidavit with regard to the matters specified in Assn. for Democratic Reforms case, the direction to reject the nomination paper for furnishing wrong information or

⁵ (2014) 14 SCC 189

concealing material information and providing for a summary enquiry at the time of scrutiny of the nominations, cannot be justified. In the case of assets and liabilities, it would be very difficult for the Returning Officer to consider the truth or otherwise of the details furnished with reference to the 'documentary proof'. Very often, in such matters the documentary proof may not be clinching and the candidate concerned may be handicapped to rebut the allegation then and there. If sufficient time is provided, he may be able to produce proof to contradict the objector's version. It is true that the aforesaid directions issued by the Election Commission are not under challenge but at the same time prima facie it appears that the Election Commission is required to revise its instructions in the light of directions issued in Assn. for Democratic Reforms case and as provided under the Representation of the People Act and its third Amendment."

The aforesaid paragraph, no doubt, stresses on the importance of filing of affidavit, however, opines that the direction to reject the nomination paper for furnishing wrong information or concealing material information and providing for a summary inquiry at the time of scrutiny of the nominations cannot be justified since in such matters the documentary proof may not be clinching and the candidate concerned may be handicapped to rebut the allegation then and there. This Court was of the opinion that if sufficient time is provided, the candidate may be in a position to produce proof to contradict the objector's version. The object behind penning down the aforesaid reasoning is to accommodate genuine situation where the candidate is trapped by false allegations and is unable to rebut the allegation within a short time.

29. What emerges from the above discussion can be summarised in the form of the following directions:

29.1. *The voter has the elementary right to know full particulars of a candidate who is to represent him in Parliament/Assemblies and such right to get information is universally recognised. Thus, it is held that right to know about the candidate is a natural right flowing from the concept of democracy and is an integral part of Article 19(1)(a) of the Constitution.*

29.2. *The ultimate purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right of the citizens under Article 19(1)(a) of the Constitution of India. The citizens are supposed to have the necessary*

information at the time of filing of nomination paper and for that purpose, the Returning Officer can very well compel a candidate to furnish the relevant information.

29.3. Filing of affidavit with blank particulars will render the affidavit nugatory.

29.4. It is the duty of the Returning Officer to check whether the information required is fully furnished at the time of filing of affidavit with the nomination paper since such information is very vital for giving effect to the "right to know" of the citizens. If a candidate fails to fill the blanks even after the reminder by the Returning Officer, the nomination paper is fit to be rejected. We do comprehend that the power of the Returning Officer to reject the nomination paper must be exercised very sparingly but the bar should not be haid so high that the justice itself is prejudiced.

29.5. We clarify to the extent that para 73 of People's Union for Civil Liberties case will not come in the way of the Returning Officer to reject the nomination paper when the affidavit is filed with blank particulars.

29.6. The candidate must take the minimum effort to explicitly remark as "NIL" or "Not Applicable" or "Not known" in the columns and not to leave the particulars blank.

29.7. Filing of affidavit with blanks will be directly hit by Section 125-A(1) of the RP Act. However, as the nomination paper itself is rejected by the Returning Officer, we find no reason why the candidate must be again penalised for the same act by prosecuting him/her.

22. It is not the case of the petitioner that the 7th respondent submitted nomination papers along with the affidavit with blank particulars rendering the affidavit nugatory. Since, the 7th respondent duly filled Form-26 with required particulars and information, the same was accepted by the 6th respondent. The Returning Officer has no power to review or re-consider his own decision as per the Election Notification and the time for withdrawal of nomination is already over and the symbols are also allotted to the contestants.

23. In view of the above said facts and circumstances, the rival submissions made by the respective counsels and upon consideration of the above said decisions of the Constitutional Courts it is to be seen that according to the petitioner this is a case of questioning the acceptance of the nomination papers filed by the respondent No.7 improperly by the respondent No.6 without considering the objections of the petitioner. As seen above, the settled legal position and in view of the specific bar under Article 329(b) of the Constitution of India and enabling provisions under Sections 80 and 100 of the Representation of the People Act, 1951, the petitioner is directed to approach the Election Tribunal through an Election Petition, if so aggrieved at appropriate stage in accordance with law as no indulgence can be shown at this stage with respect to the acceptance of the nomination of the respondent No.7 by the respondent No.6 in this Writ Petition.

24. Accordingly, this Writ Petition is dismissed. No costs.

As a sequel, Miscellaneous Petitions pending, if any, shall stand closed.

JUSTICE B KRISHNA MOHAN

29.04.2024

PNS

