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

% **Date of Decision:** 15.05.2024

\+ W.P.(C) 7007/2024

SUBHASH GUPTA ..... Petitioner

Through: Appearance not given

versus

ELECTION COMMISSION OF INDIA & ANR. ..... Respondents

Through: Ms. Suruchi Suri, Standing Counsel for R-1.
Mr. Rajeev Sharma, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (Oral)

CM APPL.29178/2024 (Exemption)

Allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 7007/2024

1. The present petition has been filed by the petitioner seeking setting aside of order dated 07.05.2024 passed by the respondent no.2 whereby the respondent no.2 has rejected the nomination form submitted by the petitioner to contest the General Election to Lok Sabha from Chandni Chowk Constituency. It is further sought that a direction be passed to respondents to allow the petitioner to contest the Lok Sabha elections from the said constituency.

2. Learned counsel for the petitioner submits that returning officer/respondent no.2 wrongfully rejected the nomination form of the petitioner stating that the same is in 'Incorrect Format'. It is submitted that the said objection is completely wrong and illogical because the petitioner had filed its nomination form through online facility provided by Election Commission of India and the online forms are unchangeable and have a fixed format.

3. Learned counsel for the respondent no.2, who appears on advance notice, submits that the petitioner had not filed the affidavit in the correct format, which was to be filed along with nomination form, and was given an opportunity to file fresh affidavit latest by 11:00 am on 07.05.2024. It is submitted that despite opportunity given the same was not done, and consequently, the nomination form was rejected. Learned counsel for the respondent no.1, who appears on advance notice, as also learned counsel for the respondent no.2, further, submitted that the present petition is not maintainable, at this stage, in view of bar under Article 329(b) of the Constitution of India and the petitioner has the remedy of filing an election petition after the elections are over. In support of this contention, reliance has been placed on ***N.P. Ponnuswami v. Returning Officer, Namakkal Constituency***, (1952) 1 SCC 94.

4. I have heard learned counsel for the parties; there is merit in the submission of the respondents that the present petition is not maintainable.

5. A Constitution Bench of the Supreme Court in ***N.P. Ponnuswami*** (supra), has held that grievance of a candidate with regards to improper rejection of a nomination paper by the Returning Officer, whatsoever be the reason for rejection, can only be raised in election petition to be presented

after the election is over, and not at an intermediate stage including before the High Court under Article 226 of the Constitution of India. It was *inter alia* held as under:

> *"**14.** The next important question to be considered is what is meant by the words "no election shall be called in question". A reference to any treatise on elections in England will show that an election proceeding in that country is liable to be assailed on very limited grounds, one of them being the improper rejection of a nomination paper. The law with which we are concerned is not materially different, and we find that in Section 100 of the Representation of the People Act, 1951, one of the grounds for declaring an election to be void is the improper rejection of a nomination paper.*
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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 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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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.

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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".

25. The conclusions which I have arrived at may be summed up briefly as follows:

(1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognised to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

(2) In conformity with this principle, the scheme of the election law in this country as well as in England is that no significance should be attached to anything which does not affect the "election"; and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the "election" and enable the person affected to call it in question, they should be brought up before a Special Tribunal by means of an election petition and not be made the subject of a dispute before any court while the election is in progress."

6. Further, in ***Manda Jaganath v. K.S. Rathnam***, (2004) 7 SCC 492, it has been held as under:

"12. In our opinion, whether the Returning Officer is justified in rejecting this Form B submitted by the first respondent herein or not, is not a matter for the High Court to decide in the exercise of its writ jurisdiction. This issue should be agitated by an aggrieved party in an election petition only.

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

> *14. The word "election" has been judicially defined by various authorities of this Court to mean any and every act taken by the competent authority after the publication of the election notification.*
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> *15. In Ponnuswami [(1952) 1 SCC 94 : AIR 1952 SC 64] this Court held: (AIR p. 68, para 9)*
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> > *The law of elections in India does not contemplate that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution (the ordinary jurisdiction of the courts having been expressly excluded), and another after they have been completed by means of an election petition."*

8. The dicta laid down in the aforesaid judgments squarely applies to the present case. Accordingly, the present petition is not maintainable at this stage, and is consequently dismissed.

9. Needless to say, the petitioner is at liberty to avail the remedy under Section 100 of the Representation of the People Act, 1951 upon conclusion of elections. All contentions of parties are kept expressly open for consideration in appropriate proceedings.

SACHIN DATTA, J

MAY 15, 2024
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