
(2018) 08 DEL CK 0400

In the Delhi High Court

Case No : Civil Writ Petition No. 9023 Of 2018

Amit Sahni

APPELLANT

Vs

Election Commission Of India & Anr

RESPONDENT

Date of Decision : 28-08-2018

Acts Referred:

Conduct of Elections Rule, 1961 — Section 39(2)(b), 70, 73(2)(e)

Citation : (2018) 08 DEL CK 0400

Hon'ble Judges : RAJENDRA MENON, CJ;V. KAMESWAR RAO, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

RAJENDER MENON, CHIEF JUSTICE (ORAL):

CM APPL. 34707/2018 (exemption)

Allowed, subject to just exceptions.

The application stands disposed of.

W.P.(C) 9023/2018

1. Petitioner, who appears in person and claims to be a practising Advocate has filed this writ petition in public interest and the prayer made by the petitioner in the writ petition reads as under:

â??i) Issue a writ in the nature of Mandamus/or any other appropriate writ/order/direction, thereby issue directions to the respondents to take

appropriate action to make requisite amendments in Rule 39(2)(b), Rule 70, Rule 73(2)(e) of the Conduct of Elections Rule, 1961 or any other similar

rule, which stipulates that the article/instrument given by the Respondent No.1 is to be used for the purpose of marking ballot. And/or

ii) Pass any other appropriate order or direction as this Honâ??ble Court may deem fit and proper in the facts and circumstances of the case.â??

2. Challenge to the aforesaid Rules, namely, Rule 39(2)(b) and Rule 70 of the Conduct of Election Rules, 1961 is primarily made on the ground that

they are vulnerable and can be misused by any candidate contesting an election or his agents or representatives and in support thereof certain incident

that took place in the Haryana Elections held in 2016 has been demonstrated to say that the use of the pen as provided by the Election Commission

can be misused and therefore the Rule needs amendment.

3. Having heard the petitioner who appears in person and the learned counsel for the Election Commission, we find that the only ground seeking

amendment to the aforesaid Rule is the possibility of misuse and as there are instances of misuse of the aforesaid provision, therefore, it should be

amended.

4. Incorporating or legislating a statutory provision, particularly, with regard to conduct of an election is a matter based on consideration of various

technical, factual and administrative aspects which include suggestions from various stakeholders, deliberations and thereafter its incorporation by

legislation. A provision for providing an instrument or article for marking the ballot paper has been undertaken as a measure to prevent illegality or

irregularity in the conduct of election and merely because one or two isolated instances on misuse has come to the notice that cannot be a ground for

us to interfere in the matter and issue a mandamus. It is for the Election Commission to take note of all these factors and proceed, if required, to

amend the Rules. A mandamus in this regard in a Public Interest Litigation exercising the extraordinary jurisdiction of this Court under Article 226 of

the Constitution of India in our considered view is not called for.

Accordingly, we dismiss this writ petition.