
(1999) 02 RAJ CK 0020
In the Rajasthan High Court
Case No : Civil Writ Petition No. 436 of 1999

Hanuman Singh

APPELLANT

Vs

The Election Commissioner of India and Others

RESPONDENT

Date of Decision : 08-02-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 329
Representation of the People Act, 1951 — Section 100, 52

Citation : AIR 2000 Raj 100 : (1999) 3 WLC 203

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Advocate : Paras Kuhad, for the Appellant; B.C. Chirania Ajay Tyagi and M. Rafiq, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

J.C. Verma, J.—One Shri Ram Dev (Ram Dev Singh) was nominated by the Bhartiya Janta Party (for short B.J.P.) as approved candidate for contesting the election of the Member to the Mundwa Assembly Constituency in the general elections to be held in November 1998 for the Rajasthan Legislative Assembly. Said Ramdev filed his nomination paper for contesting the election as B.J.P. Candidate, but unfortunately died on 12-11-1998. The election was to be held on 25-11-1998. The poll to this Mundwa Assembly Constituency stood adjourned by the Returning Officer. The factum of death was notified by the Returning Officer to the Election Commissioner as was mandatorily required u/s 52 of the Representation of the People Act (here-in-after called the Act). The Election Commission of India after receipt of the report from the Returning Officer, issued notice u/s 52(2) of the Act on 14-11-1998 to the B.J.P. and called upon the said B.J.P. to nominate another candidate for the said poll before Returning Officer within seven days from the date of issue of notice. The notice as issued by the Election Commission is attached as Annexure-2 to the writ petition. This notice was duly received by the President of the B.J.P. on 15-11-1998. It is stated in the writ petition that the petitioner Hanuman Singh was approved and nominated by

the BJP on 16-11-1998 to be the candidate on behalf of B.J.P. for the said constituency. The communication as required under the provisions of Clause 13(c), (d) and (e) of the Election Symbols (Reservation of Allotment) Order, 1968 has been attached as Annexure-3 to the writ petition which was submitted to the Returning Officer. Mundwa on 4-12-1998 at 11.45 a.m., attaching therein another communication stating that the present petitioner Hanuman Singh was chosen to be nominated by the BJP on 16-11-1998.

2. It is stated by the petitioner that he also appeared before the Returning Officer of Mundwa Assembly Constituency with his nomination paper along with the aforesaid authorisation on 18-11-1998 but the Returning Officer expressed his inability to accept the same on the ground that he had not received any information from the Election Commission of India in this regard. The said nomination paper is attached as Annexure-5. In the written statement filed by the respondent, the fact that the petitioner ever approached on 18-11-1998 for filing the nomination paper is vehemently denied. There is clear assertion that no nomination paper was filed within the period as specified in the notice issued by the Election Commission as required u/s 52 of the Act. It is further submitted that vide Annexure-6 dated 22-1-1999, the Returning Officer had seeking clarification about the fixation of the date of election and guidance from the Election Commission. The petitioner wants to submit that in response to the notice issued on 14-11-1998 (Annexure-2), the BJP had nominated its candidate and the petitioner submitted the requisite Forms A and B in accordance with the provisions of the Election Symbols (Reservation and allotment) Order, 1968. He is said to have appeared before the Returning Officer for submission of the nomination papers, but the Returning Officer declined to accept the same on the ground that he had not received any notice pursuant to Section 51(2) of the Act and thus, his name stands excluded from the list of the contesting candidates for no fault of his for the elections which are scheduled to take place on 22-2-1999.

3. In the programme issued for election to the adjourned date to 22-2-1999, the petitioners name does not appear as a contesting candidate on behalf of BJP. It is stated that the provisions of Section 52 further mandates that the provisions of Section 30 to 37 are to be applied in relation to the said nomination as would apply to other nominations. It is the contention of the petitioner that the Election Commission was required to call upon the political party whose candidate had died to nominate other candidate within seven days of the issue of said notice and after the nomination made by the party, the Election Commission was required to issue a notification in the Official Gazette and to publish the last date for making the nominations, the date of scrutiny and withdrawal of the nominations. In the Instant case, no such notification is said to have been issued for making nominations, scrutiny and for withdrawal. The petitioner wants to submit that the procedure as envisaged under Sections 30 and 37 have not been complied with. Some affidavits have been filed to the effect that on 18-11-1998, the petitioner had visited the office of the Returning Officer for the purpose of filing nomination papers, but the same was not accepted by the Returning Officer

on the ground that no date of election has been notified as yet. Annexures 10 and 11 are the affidavits filed. These supporting affidavits have been filed by one Hem Singh Choudhary and Bhawar Lal Choudhary which are attached as Annexures 10 and 11. The scheduled Election programme has been attached as Annexure-12 wherein date of poll has been mentioned as 22-2-1999 and counting of votes has been mentioned as 24-2-1999 and the election is to be completed before the date 26-2-1999. Similar elections were to be held in the State of Delhi also where the dates for scrutiny of nominations and date of withdrawal have also been mentioned.

4. A prayer has been made by the petitioner for quashing Annexure-7 (press cutting) where it is reported that the petitioner cannot contest the election for not filing the nomination paper and to declare that the petitioner is a contesting candidate for the election to Mundwa Assembly Constituency and to direct the respondents to include the name of the petitioner in the list of contesting candidates treating the nomination papers to have been validly filed and further to direct the Election Commission of India to notify the date for filing of the nomination paper and scrutiny etc. as has been done in the case of Delhi election.

5. As regard to the prayer for quashing Annexure-7 (press cutting), at the time of arguments counsel for the petitioner has not pressed this prayer.

6. Reply has been filed on behalf of the respondents. The facts in regard to issuing of notification of holding of the elections have not been denied. It is stated that on the notice having been issued to the BJP (Annexure-2), the BJP had not chosen to nominate any of its candidate for the State Assembly within the stipulated period and, therefore, for the adjourned election, the Election Commission had issue another notification dated 27-11-1998 in partial modification of its notification dated 30-10-1998 issued u/s 30 of the State Act, extending the date before which the election for Mundwa Assembly Constituency was to be completed i.e. 26-2-1999. Another notification was issued on 29-1-1999 u/s 56 of the Act when the poll date was fixed as 22-2-1999. The copies of such notifications have been attached as Annexure R-1 and R-2.

7. It has also been vehemently pressed by Mr. M. Rafiq. Additional Advocate General on behalf of the respondents that the process of election cannot be questioned except by way of an election petition u/s 80 of the Act on the grounds enumerated in Section 100 and, therefore, this Court cannot invoke the powers under Article 226 of the Constitution of India to consider the correctness, legality or otherwise the election process as it would amount to calling a question a step taken in furtherance of the election which is completely barred by Article 329(b) of the Constitution of India. It is stated that it is not the fundamental right to contest an election but a statutory right.

8. It has been vehemently denied that any nomination was offered to be filed on 18-11-1998. It is also denied that the petitioner ever appeared before the Returning Officer on the said date along with the nomination paper and the

Forms A and B (Annexures-3 and 4 attached to the writ petition). The Returning Officer has also filed an affidavit to the effect that the petitioner had never approached him in this regard as stated in the petition. It is stated that the petitioner had appeared before the Returning Officer much after expiry of the said period of seven days, even though several other candidates have been enquiring from the Returning Officer about the new fixation of date of the poll. It is stated that it was for the first time on 4-12-1998 that the petitioner submitted the application stating therein that he had been declared as an authorised candidate of BJP.

9. Mr. Paras Kuhad has placed on record a letter dated 4-12-1998 issued by the Returning Officer to the Election Commission, New Delhi wherein he had almost repeated the similar contents as was mentioned in Annexure-6 dated 22-1-1999 with further addition that one nomination has been filed by one Hanuman Singh on behalf of BJP on 4-12-1998 at 4.00 p.m. before that date no such nomination was filed. In the aforesaid letter dated 4-12-1998, guidance was being sought by the Returning Officer from the Election Commission to the fact to guide him about the date of filing of nomination paper, scrutiny, dismissal and withdrawal in regard to Mundwa Assembly Constituency. It is the contention of Mr. Kuhad that this letter also shows that till 4-12-1998 there was no date fixed. In my opinion and the discussion in this order, this letter dated 4-12-1998 cannot be of any help to Mr. Kuhad. However, it is accepted fact that even Returning Officer was perhaps not knowing of any notice Annexure-2 or the notification issued vide Annexures R-1 and R-2 and may be for that reason he had been asking the Election Commission for the guidance. The legal position still remains the same whether non-nominating any candidate within seven days from the issuance of the notice Annexure-2 is fatal for the petitioner in the present case which is being answered in this petition.

10. Section 52 and certain Section 30 to 38 or relevant sections are reproduced as under:--

"52. Death of candidate of recognised Political party before poll -- (1) if a candidate set up by a recognised political party before poll.-

(a) -----

(b) whose nomination has been found valid on scrutiny u/s 36 and who has not withdrawn his candidature u/s 37, dies, and in either case a report of his death is received at any time before the publication of the list of contesting candidate u/s 38; or

(c) dies as a contesting candidate and a report of his death is received before the commencement of the poll, the returning officer shall, upon being satisfied about the fact of the death of the candidate, by order, announce an adjournment of the poll to a date to be notified later and report the fact to the Election Commission and to the appropriate authority.

(2) The Election Commission shall, on the receipt of a report from the returning officer under Sub-section (1), call upon the recognised political party, whose candidate has died, to nominate another candidate for the said poll within seven days of issue of such notice to such recognised political party and the provisions of Sections 30 to 37 shall, so far as may be, apply in relation to such nomination as they would apply to other nominations :

Provided that no person who has given a notice of withdrawal of his candidature under Sub-section (1) of S.37 before the adjournment of the poll shall be ineligible for being nominated as a candidate for the election after such adjournment."

"30. Appointment of dates for nominations, etc.-- As soon as the nomination calling upon a constituency to elect a member or members is issued, the Election Commission shall, by notification in the Official Gazette appoint-

(a) the last date for making nominations which shall be the seventh day after the date of publication of the first mentioned notification or, if that day is a public holiday, the next succeeding day which is not a public holiday.

(b) the date for the scrutiny of nominations, which shall be the day immediately following the last date for making nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(c) the last date for the withdrawal of candidates, which shall be the second day after the date for the scrutiny of nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(d) the date or dates on which a poll shall, if necessary, be taken, which or the first of which shall be a date not earlier than the Fourteenth day after the last date for the withdrawal of candidates; and,

(e) the date before which the election shall be completed."

"31. Public notice of election -- On the issue of a notification u/s 30, the returning officer shall give public notice of the intended election in such form and manner as may be prescribed inviting nominations of candidates for such election and specifying the place at which the nomination papers are to be delivered."

"33. Presentation of nomination paper and requirements for a valid nomination --

(1) On or before the date appointed under Clause (a) of Section 30 each candidate shall, either in person or by his proposer, between the hours of eleven O' clock in the forenoon and three O' clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued u/s 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer;".

11. The question which is being raised by the counsel for the petitioner is that it was not mandatory for the petitioner to have filed his nomination paper within

seven days before the Returning Officer after receipt of the notice Annexure - 2 issued u/s 52 of the Act. According to him it is sufficient compliance of the provisions of the Act if the concerned political party takes up a decision to nominate any candidate on his behalf which action had been taken by the BJP by nominating the petitioner by approving his candidature. It is the contention of the petitioner that as a matter of fact the nomination before the Returning Officer could be filed only after a notification is issued u/s 30, mention of which is also provided under 52 of the Act and thus it was not necessary for the petitioner, even though according to the pleadings he asserts that he had tried to file his nomination paper on 18-11-1998 within seven days of the notice Annex-2, According to him, the Election Commission should have invited nominations as per the provisions of Section 30 along with fixing of the date of scrutiny and withdrawal, (sic) my opinion, the contention is not acceptable. Section 52 has been Incorporated by way of amendment in special situation where a candidate of recognised political party dies during the period mentioned u/s 52. Instead of countermanding the election which was an earlier provision before amendment, now Section 52 only provides adjournment of the holding of elections with a view to enable the political party to nominate its candidate to the particular constituency. Notice are issued to such political party with mandatory direction to nominate its candidate within seven days of the notice, if and when any such candidate is nominated within stipulated period, only then provisions from Sections 30 to 37 shall be applicable so far as may be. The words "so far as may be" are important and the procedure is to start after the nomination has been received i.e. the remaining procedure in regard to scrutiny and withdrawal are to be complied with. If the contention of the petitioner is accepted that even if on receipt of the notice u/s 52 of the Act, no nomination is filed and none is nominated by the political party before the Returning Office and still such political party is authorised to file the nomination as per the provisions of Section 30, in that situation, the entire exercise u/s 52 and such provisions brought in by way of amendment shall be rendered as nugatory. The notification or notice u/s 52(2) is in place of Section 30 notification for holding of the election -- meaning thereby, by issuing notice of 7 days" time limit for nominating the candidate stands already fixed. The political party may nominate or may not nominate. The duty of the Election Commission is only to the extent to issue a notice to such political party whose candidate has died. The Election Commission is not concerned of the inner proceedings of the political party. It is to take notice of any such development of nominating the candidate if such nomination is filed within stipulated period before the competent authority after receipt of such notice and thus the provisions of Section 30(a) do not become applicable in the cases where such notification is issued u/s 52(2). The last date for nominating on behalf of the political party in the circumstances arising u/s 52 is the date as provided u/s 52 and not u/s 30. The other provisions of Section 30 and (c) other provisions right upto Section 37 "so far as may be" shall be made applicable. Thus, the contention of the counsel for the petitioner to say that Election Commission was to notify the date u/s 30 for inviting the nomination to the

adjourned date as well is not acceptable.

12. It is submitted that the petitioner did try to file the nomination paper as nominated by his party on 18-11-1998 and some evidence has been produced on record by way of affidavits which fact is denied in the written statement. In such circumstances, which is a disputed question of fact and even otherwise, can this Court exercise its jurisdiction under Article 226 of the Constitution of India in view of specific bar as per provisions of Article 329(b) of the Constitution of India. The counsel for the respondents mainly relies on the case N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, ; Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, and Gajanan Krishnaji Bapat and another Vs. Dattaji Raghobaji Meghe and others, on the proposition that there is no fundamental right Involved in favour of the petitioner and the High Court in such circumstances should not Interfere at this stage.

13. In the ease of N. P. Ponnuswami (supra) it was observed by the Hon''ble Supreme Court that the word "election" has been used in Part XV of the Constitution of India in the wide sense, that is to say, to connote the entire procedure to be gone through to return a candidate to the legislature and it has wide meaning and may be taken to embrace the whole procedure which consists of several stages and embraces many steps, whereby an "elected member" is returned, and rejection or acceptance of the nomination paper is included in the term "election" and such rejection or acceptance cannot be called in question under Article 226 of the Constitution of India. It was observed as under :

"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. In A.V. Srinivasalu Reddy and Another Vs. S. Kuppuswami Goundar, , 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 Prashad AIR 1946 Lah 85; and I also find myself in agreement with it. 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. 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."

"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."

"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 Section 100, 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."

"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 an other 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, 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."

"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 "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.

It is now well-recognized 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."

"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. 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 excluded the Jurisdiction of the High Court to deal with any matter which may arise while the elections are in progress."

"It may be pointed out that Article 329 must be read as complimentary 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 right 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".

14. In the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, wherein the decision of the Election Commission for ordering the repoll was challenged before the High Court while discussing the bar created under Article 329(b) of the Constitution of India. The Supreme Court observed as under :

"Right at the forefront stands in the way of the appellant's progress the broad-

spectrum ban of Article 329(b) which, it is claimed for the respondents, is imperative and goal-oriented. Is this Great Wall of China, set up as a preliminary bar, so impregnable that it cannot be by-passed even by Article 226? That, in a sense, is the key question that governs the fate of this appeal. Shri P.P. Rao for the appellant contended that, however, vide Article 329(b) may be, it does not debar proceedings challenging, not the steps promoting, election but dismantling it, taken up by the Commission without the backing of legality. He also urged that his client, who had been nearly successful in the poll and had been deprived of it by an illegal cancellation by the Commission, would be left in the cold without any remedy since the challenge to cancellation of the completed poll in the entire constituency was not covered by Section 100 of the Act. Many subsidiary pleas also were put forward but we will focus on the two Inter-related submissions bearing on Article 329 and Section 100 and search for a solution. The problem may seem prickly but an imaginative application of principles and liberal interpretation of the Constitution and the Act will avoid anomalies and assure justice. If we may anticipate our view which will presently be explained, Section 100(1)(d)(iv) of the Act will take care of the situation present here, being broad enough, as a residual provision, to accommodate, in the expression "non-compliance", every excess, transgression, breach or omission. And the span of the ban under Article 329 is measured by the sweep of Section 100 of the Act."

"We have to proceed heuristically now. Article 329 reads :

Notwithstanding anything in this Constitution.

(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.

Let us break-down the prohibitory provision into its components. The sole remedy for an aggrieved party, if he wants to challenge any election, is an election petition. And this exclusion of all other remedies includes constitutional remedies like Article 226 because of the non-obstante clause. If what is impugned is an election the ban operates provided the proceeding "calls it in question" or puts it in issue; not otherwise. What is the high policy animating this inhibition? Is there any interpretative alternative which will obviate irreparable injury and permit legal contests in between ? How does Section 100(1)(d)(iv) of the Act integrate into the scheme? Let us read Section 100 here :

Subject to the provisions of Sub-section (2) if (the High Court) is of

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

"Thus far everything is clear. No litigative enterprise in the High Court or other Court should be allowed to hold up the on-going electoral process because the

Parliamentary representative for the constituency should be chosen promptly. Article 329, therefore, covers "electoral matters". One interesting argument, urged without success in Ponnuswami elicited a reasoning from the Court which has some bearing on the question in the present appeal. That argument was that if nomination was part of election a dispute as to the validity of the nomination was a dispute relating to election and could be called in question, only after the whole election was over, before the election tribunal. This meant that the Returning Officer could have no jurisdiction to decide the validity of a nomination, although Section 36 of the Act conferred on him that jurisdiction."

"What emerges from this perspicacious reasoning, if we may say so with great respect, is that any decision sought and rendered will not amount to "calling in question" an election if it subserves the progress of the election and facilitates the completion of the election. We should not slump over the quite essential observation "Anything done towards the completion of the election proceeding can by no stretch of reasoning be described as questioning the election". Likewise it is fallacious to treat a single step taken in furtherance of an election as equivalent to election."

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

"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."

"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. For example, after the President notifies the nation on the holding of elections u/s 15 and the Commissioner publishes the calendar for the poll u/s 30, if the latter orders Returning Officers to

accept only one nomination or only those which come from one party as distinguished from other parties or independents, is that order immune from immediate attack. We think not. Be-cause the Commissioner is preventing an election, not promoting it and the Court's review of that order will facilitate the flow, not stop the stream. Election, wide or narrow be its connotation, means choice from a possible plurality, monolithic politics not being our genius or reality, and if that concept is crippled by the Commissioner's act, he holds no election at all."

"A poll is part -- a vital part -- of the election but with the end of the poll the whole election is not over. Ballots have to be assembled, scrutinised, counted, recount claims considered and result declared. The declaration determines the election. The conduct of the election thus ripens into the elector's choice only when processed, screened and sanctified, every escalatory step upto the formalized finish being unified in purpose, forward in movement, fair and free in its temper. Article 329 halts judicial intervention during this period, provided the act possesses the pre-requisites of "election" in its semantic sweep. That is to say, immunity is conferred only if the act impeached is done for the apparent object of furthering a free and fair election and the protective armour drops down if the act challenged is either unrelated to or thwarts or taints the course of the election."

The following was held in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, :

"(1) (a) Article 329(b) is a blanket ban litigative challenges to electoral steps taken by the Election Commission and its officers for carrying forward the process of election to its culmination in the formal declaration of the result.

(b) Election, in this context, has a very wide connotation commencing from the Presidential notification calling upon the electorate to elect and culminating in the final declaration of the returned candidate.

(2) (a)

(b) Two limitations at least are laid on its plenary character in the exercise thereof. Firstly, when Parliament or any State Legislature has made valid law relating to or in connection with elections, the Commission, shall act in conformity with, not in violation of, such provisions but where such law is silent Article 324 is a reservoir of power to act for the avowed purpose of, not divorced from, pushing forward a free and fair election with expedition. Secondly, the Commission shall be responsible to the rule of law, act bona fide and be amenable to the norms of natural justice in so far as conformance to such canons can reasonably and realistically be required of it as fair play-in-action in a most important area of the constitutional order, viz. elections. Fairness does import an obligation to see that no wrong-doer candidate benefits by his own wrong. To put the matter beyond doubt, natural justice enlivens and applies to the specific case of order for total re-poll, although not in full panoply but in flexible practicability.

Whether it has been complied with is left open for the Tribunals adjudication".

"(3) The conspectus of provisions bearing on the subject of elections clearly expresses the rule that there is a remedy for every wrong done during the election in progress although it is postponed to the post-election stage and procedure as predicated in Article 329 and the 1951 Act. The Election Tribunal has, under the various provisions of the Act, large enough powers to give relief to an injured candidate if he makes out a case and such processual amplitude of power extends to directions to the Election Commission or other appropriate agency, to hold a poll, to bring up the ballots or do other thing necessary for fulfilment of the jurisdiction to undo illegality and injustice and do complete justice within the parameters set by the existing law."

15. Similarly, in the case of C. Narayanaswamy Vs. C.K. Jaffer Sharief and Others, ; Gajanan Krishnaji Bapat and another Vs. Dattaji Raghobaji Meghe and others, it was held by the Hon"ble Supreme Court that the right to elect or to be elected or to challenge the election are neither the fundamental rights or common rights but statutory rights and as such the law enacted by the Parliament governs such dispute and controversies. The Act itself is a complete Code for challenging the election and election must be challenged only in the manner provided by the Act.

16. After going through the law laid down by the Hon"ble Supreme Court, I am of the opinion that the fact of rejection or acceptance of nomination paper, which includes the fact of omission to file the nomination paper within stipulated date shall be an election dispute which is to be proved by way of leading evidence and squarely falls under the provisions of Section 100 of the Act. The petitioner could only approach by way of challenging the election on the ground as provided in Section 100 which includes the improper rejection of the nomination paper and non-compliance of the provisions of the Constitution or of the Act or the Rules or the Orders made thereunder and thus at this stage the powers under Article 226 of the Constitution of India cannot be invoked in view of the clear ban as provided under Article 329 of the Constitution of India.

17. For the reasons mentioned above, I do not find any merit in the writ petition and the same is dismissed at admission stage with no order as to costs.