

(2019) 04 UK CK 0022

In the Uttarakhand High Court

Case No : Writ Petition No. 857 (MS) Of 2019

Manish Verma

APPELLANT

Vs

Election Commission Of India And Others

RESPONDENT

Date of Decision : 02-04-2019

Acts Referred:

Representation Of The People Act, 1951 — Section 80, 100(1)(d)(i)
Representation Of The People Act, 1950 — Section 16, 30, 33, 34, 36, 80, 80A, 100
Government Of Union Territories Act, 1963 — Section 4, 14
Constitution Of India, 1950 — Article 19(1)(a), 84, 102, 173, 191, 226

Citation : (2019) 04 UK CK 0022

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : D. Barthwal, Shobhit Saharia, Paresh Tripathi, Yogesh Pandey, Gajendra Tripathi, Rakesh Thapliyal, Sanjay Bhatt

Final Decision : Dismissed

Judgement

Alok Singh, J

1. By means of this writ petition, petitioner is seeking a writ of Certiorari quashing the nomination of respondent no. 4 as a candidate for 05 Haridwar Loksabha Constituency, District Haridwar in view of violation of Section 100(1)(d) (i) of the Representation of the People Act, 1951 and further to declare his candidature as void ab initio.

2. Brief facts, inter alia, of the present case that after notification for Loksabha's Election, petitioner has filed his nomination from 05 Haridwar Parliamentary Constituency as an independent candidate. Respondent no. 4 also filed his nomination from the same constituency. Petitioner raised objections in the nomination paper of respondent no. 4 that respondent no. 4 has not provided the details of assets and liabilities of his daughter Ms. Shreyashi Nishank; he has not given details of his liability as regards to the Chief Minister's residence and as to how much amount has been paid; he has left unfilled / concealed information as

regards to Form A and Form B; he has submitted provisional no dues with regard to residence at Delhi; the details and amount of case in the bank account of Vidushi Nishank has not been shown. Respondent no. 4 replied to the petitioner's objection to his nomination. Respondent no. 3 considering the objections raised by the petitioner and reply filed thereto by respondent no. 4, has rejected the objections of the petitioner and accepted the nomination of respondent no. 4. Feeling aggrieved, petitioner has approached this Court.

3. Mr. Shobhit Saharia, Advocate for respondent no. Mr. Paresh Tripathi, learned Chief Standing Counsel for the State of Uttarakhand and Mr. Rakesh Thapliyal with Mr. Sanjay Bhatt, Advocate for respondent no. 5 raised preliminary objection regarding maintainability of the present writ petition.

4. Mr. Dharmendra Barthwal, Advocate for the petitioner submits that after the rejection order passed by the Returning Officer the only remedy left with the petitioner is to approach the High Court, as at this stage, no election petition is maintainable. In support of his contention, he has placed reliance on the judgment passed by Delhi High Court in Election Petition No. 1 of 2017 (Meenakshi Chandela Vs. State Election Commissioner) dated 30.03.2017 wherein petitioner has challenged the acceptance of nomination of Mr. Manjinder Singh Sirsa by the Returning Officer and learned Delhi High Court was pleased to dismiss the Election Petition as not maintainable, meaning thereby, petitioner can approach the High Court by way of filing Writ Petition under Article 226 of the Constitution. He has further placed reliance on the judgment passed by Hon'ble Supreme Court in Resurgence India Vs. Election Commission of India and another reported in 2014 (14) SCC 189 wherein the Hon'ble Supreme Court has held that the voter has the elementary right to know full particulars of a candidate who is to represent him in the Parliament/Assemblies and such right to get information is universally recognized. 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. Mr. D. Barthwal, Advocate for the petitioner has further placed reliance on paragraphs 23 and 24 of the judgment passed in Resurgence India (supra). Paragraphs 23 and 24 read as under:

"23. For that purpose, the Returning Officer can very well compel a candidate to furnish information relevant on the date of scrutiny. We were apprised that the Election Commission already has a standard draft format for reminding the candidates to file an affidavit as stipulated. We are of the opinion that along with the above, another clause may be inserted for reminding the candidates to fill the blanks with the relevant information thereby conveying the message that no affidavit with blank particulars will be entertained. We reiterate that it is the duty of the Returning Officer to check whatever 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 Returning Officer to reject the nomination paper must be exercised very sparingly but the bar should not be laid so high that the justice itself is prejudiced.

24. We also clarify to 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 (PUCL) (*supra*) which reads as under:

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

24. 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."

5. I do not find any force in the submissions of Mr. D. Barthwal, Advocate for the petitioner. In the case of Resurgence India (*supra*), Hon'ble Supreme Court observed that under Article 19 (1) (a) of the Constitution, the voter has right to know about contesting candidate. The guidelines and requirements for nominations are issued by Election Commission of India and the nominations and requirements filled by the contesting candidates are examined by the Returning Officer. A voter can assess all the information about a candidate on the website. If any elector is aggrieved, he can also approach the Court at the appropriate stage. If the contesting candidate(s) has any objection, he can file the same, which shall be decided by the Returning Officer, which is done in the present

case. If anybody is aggrieved by any election proceedings the only remedy available is Election Petition. In the case of Meenakshi Chandela (*supra*), the Delhi High Court dismissed the election petition as non maintainable but it is has not observed that writ petition under Article 226 of the Constitution is maintainable.

6. Right to elect and right to be elected are statutory rights, therefore, law governing the field is the Representation of the People Act, 1950. Sections 36, 80, 80A and 100 of the Act reads as under:

"36. Scrutiny of nominations (1) On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents, one proposer [***] of each candidate, and one other person duly authorised in writing by each candidate but no other person, may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 33.

(2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, [reject] any nomination on any of the following grounds :--

(a) that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely:--

Articles 84, 102, 173 and 191, [***].

[Part II of this Act and sections 4 and 14 of the Government of Union Territories Act, 1963 (20 of 1963)] [***]; or

(b) that there has been a failure to comply with any of the provisions of section 33 or section 34; or

(c) that the signature of the candidate or the proposer on the nomination paper is not genuine.

(3) Nothing contained in [clause (b) or clause (c)] of sub-section (2) shall be deemed to authorise the [rejection] of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has "been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

(4) The returning officer shall not reject any nomination paper on the ground of any [***] defect which is not of a substantial character.

(5) The returning officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 30 and shall not allow any adjournment of the

proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control:

Provided that in case [an objection is raised by the returning officer or is made by any other person] the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the returning officer shall record his decision on the date to which the proceedings have been adjourned.

(6) The returning officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.

(7) For the purposes of this section, a certified copy of an entry in the electoral roll for the time being in force of a constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to a disqualification mentioned in section 16 of the Representation of the People Act, 1950 (43 of 1950).

(8) Immediately after all the nomination papers have been scrutinized and decisions accepting or rejecting the same have been recorded, the returning officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it to his notice board.

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

80A High Court to try election petitions: (1) The Court having jurisdiction to try an election petition shall be the High Court.

(2) Such jurisdiction shall be exercised ordinarily by a single Judge of the High Court and the Chief Justice, shall, from time to time, assign one or more Judges for that purpose:

Provided that where the High Court consists only of one Judge, he shall try all election petitions presented to that Court.

(3) The High Court in its discretion may, in the interests of justice or convenience, try an election petition, wholly or partly, at a place other than the place of seat of the High Court.

.....

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 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, or

(ii) 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, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, [the High Court] shall declare the election of the returned candidate to be void.

2. If in the opinion of [the High Court], a returned candidate has been guilty by an agent other than his election agent, of any corrupt practice [***] but [the High Court] is satisfied-

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and [without the consent], of the candidate or his election agent;

(b) omitted.

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt

[***] practices at the election; and

(d) that in all other respects the election was free from any corrupt [***] practice on the part of the candidate or any of his agents, then [the High Court] may decide that the election of the returned candidate is not void."

7. From the above discussion, it safely be said that power to scrutinize the nominations is vested with Returning Officer. If Returning Officer may deem fit, he can order for inquiry. The Returning Officer has power either to accept or reject the nomination paper. Elections are governed by the Statute. The only remedy available under the Statue is Election Petition. If the person is aggrieved, he can file election petition within forty five days from the date of election of the returned candidate on one or more grounds specified in sub-section (1) of Section 100 of the Act. If petitioner is aggrieved, petitioner can approach this

Court by way of Election Petition under Section 100 of the Act at the appropriate stage. Even otherwise, petitioner is seeking a writ of Certiorari for quashing of nomination in view of violation of Section 100 (1) (d) (i) of the Representation of the People Act, 1951.

8. Section 100(1)(d)(i) deals with ground for declaring the election to be void due to improper acceptance of any nomination. In the present case, elections are yet to be held. The High Court has power to examine the ground(s) for declaring the election as void, under Section 80 of the Representation of the People Act, 1951 and not in a Writ under Article 226 of the Constitution of India.

9. In view of the above, present petition is dismissed, as not maintainable with no costs.