

(1996) 10 AHC CK 0076

In the Allahabad High Court

Case No : Writ Petition No. 2995 (M/B) of 1996 (With connected W. P. No. 3015 (M/B) of 1996)

Om Prakash Srivastava @ Babloo Srivastava

APPELLANT

Vs

Election Commission & Others

RESPONDENT

Date of Decision : 08-10-1996

Acts Referred:

Constitution of India, 1950 — Article 226, 324(1), 329

Citation : (1996) 10 AHC CK 0076

Hon'ble Judges : S.H.A.Raza, J and Maithli Sharan, J

Final Decision : Dismissed

Judgement

S.H.A. Raza, J.—One would have thought that after the decision of a Constitutional Bench of Hon"ble Supreme Court in the case of N.P. Ponnuswami v. Returning Officer, Namakkal Constituency and others (Union of India and State of Madhya Bharat (intervenes reported in Supreme Court Reports Vol. III 1952 page 218, amplified in the case of Mohinder Singh Gill and another v. Chief Election Commissioner. New Delhi and others reported in AIR 1978 Vol. 65 SC 851: such writ petitions would not have been filed. In a developing society like India, law must keep pace with the changing social, economic and political scenario. Hon"ble Supreme Court during the last four decades made several strides in interpreting the law in various fields, but what remained unchanged, unaltered and unruffled, is the election law may be for the reason that the edifice of the democracy is based on election which can be assailed only in accordance with the Constitutional provisions.

2. With this prelude, before looking into the factual matrix of the case, we may point out that the fate of these writ petitions hinges upon the reply to two questions; firstly; whether the Election Commission of India, in exercise of its power conferred under Art. 324(1) of the Constitution of India, has the power to eliminate a candidate from contesting the election by rejecting his nomination even after the nomination was found to be valid after scrutiny, and symbol was

allotted to him, secondly; as to whether the provisions of" Article 329 of the Constitution of India puts a blanket ban or set up an embargo upon the right of the Courts to interfere into the matters pertaining to the conduct of elections when the wheel of the process of election has been set into motion after the issue of the notification.

3. Om Prakash Srivastava alias Babloo Srivastava, who at present is lodged within the four walls of Tihar Jail, being aggrieved against the decision of the Returning Officer rejecting his nomination paper, in pursuance of the directions of the election commission of India, has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India, praying that the decision of the Returning Officer, as well as the Election Commission of India, be quashed and the petitioner may be allowed to contest the election, and in that regard, if necessary, a date other than 9th October, 1996 be fixed for holding the election of the Central Legislative Assembly Constituency, Lucknow.

4. The petitioner Om Prakash Srivastava alias Babloo Srivastava, filed his nomination paper from 103Lucknow Centre Legislative Assembly Constituency, on 13.09.1996. The petitioner's nomination paper was accepted by the Returning Officer on the date of scrutiny i.e. 14.9.1996, and he was allotted an election symbol e.g. "Car". On the date of withdrawal, he did not withdraw his candidature, and his name was included in the list of contesting candidates by the Returning Officer.

5. Later on, the particulars of the proposal of candidature of Om Prakash Srivastava, were investigated by the SSP, Lucknow and it transpired that out of 10 proposals 6 proposals denied to have signed his nomination paper. The nomination paper of the petitioner was reexamined by the Returning Officer, and after the reexamination of the nomination paper of the petitioner, and after considering the report of the inquiry conducted by the CB, CID, the Returning Officer came to the conclusion, that the nomination paper of the said candidate (the petitioner) was not validly subscribed by the electors proposers as required under the law. The Returning Officer after a finding that the nomination paper of the said candidate was liable to be rejected, sent a report to the Election Commission of India.

6. The Election Commission of India, on the basis of the report of the Returning Officer, was satisfied that the name of Om Prakash Srivastava alias Babloo Srivastava, was wrongly included in the list of contesting candidates, and that this will vitiate the poll, if taken on the basis of such list. The Election Commission thereafter directing under the powers of superintendence, direction and control, inter alia, of the conduct of elections to Parliament and State Legislatures conferred on it, under Article 324 of the Constitution of India that from the list of 103Lucknow Central Assembly Constituency on 16th September, 1996 under section 38 of the Representation of the People Act, 1951, the name of Sri Om Prakash Srivastava alias Sri Babloo Srivastava be deleted and a fresh list of contesting candidates be prepared by the Returning Officer for

103Lucknow Central Assembly Constituency and published as required under the law.

7. That order of the Election Commission was passed on 01.01.1996. In pursuance of the said directions issued by the Election Commission of India under Article 324 of the Constitution of India, the Returning Officer, on 5.10.96, not only deleted the name of the petitioner from the list of the eligible candidates, to contest the Assembly Election for the Constituency hereinbefore mentioned, but he (the Returning Officer) changed the date of election from 3rd October, 1996 to 9th October, 1996, may be for the reason that fresh ballot papers had to be printed.

8. This writ petition has been filed by the petitioner on 4th October, 1996. A mention was made that as the matter is urgent, the Court should dispense with the rules regarding taking the petition on the next date. The prayer was granted. The petition could come up three minutes before 3.00 p.m. when the Bench consisting of one amongst us (Hon. S.H.A. Raza, J) and Hon"ble Shobha Dixit, J, was to split up at 3.00 p.m., to hear the other cases. On the request of the learned counsel for the petitioner the writ petition was ordered to come up today before this Court, a day before the polling day.

9. The election for the Central Legislative Assembly Constituency as well as the West Constituency of Lucknow which were to be held on 3.10.1996, due to some disturbances and riots, beside the aforesaid reason in the Constituency in question, could not be held on 3.10.1996 and were postponed for 9th October, 1996. In the troubled water of the Gomti, the petitioner wants to sail his boat, staking a claim before this court, to be allowed to contest the election either on 9th October, 1996 or on any other subsequent date, which this Court may fix. On 9.10.1996, if the petitioner will be allowed to contest, there would exist no possibility of the polling taking place on that date, because the ballot papers which had been printed, did not show the name of the petitioner, hence the Court will have to advance the date of the poll to any other date.

10. The next question which requires consideration before this Court is as to whether the Court can change the schedule of polling which power is vested on the Election Commission of India.

11. As far as the other writ petition bearing No. 3015 (MB) of 1996 is concerned which has been filed by Kunwar Raghuraj Pratap Singh alias Raja Bhaiya who is candidate from 114 Kunda Legislative Assembly Constituency, it covers a different province. The petitioner in the previous assembly election secured a victory by a margin of 67,000 votes. His grievance rests mainly on the question that the District Magistrate of district Pratapgarh, who has been arrayed as the respondent No.5 has hatched a conspiracy at the behest of Ms. Ratna Singh, a member of Parliament and Sri Pramod Tewari, a member of the 12th dissolved legislative assembly not to allow the polling agents of the petitioner to enter into the polling booths with a view to capture the booths, for bogus voting in favour

of a particular candidate of a political party, so the rival of the petitioner be elected and according to the petitioner respondent No. 5 will adopt unfair and corrupt practices not only during the time of the polling but even on the counting date.

12. The petitioner prays in this writ petition bearing number 3015 (MB) of 1996, that a writ in the nature of mandamus be issued to the Returning Officer, the District Election Officer/D.M. to allow the petitioner to contest the election by permitting his agents and supporters to discharge their duties as per rules under the Representation of the People Act, 1951, Conduct of Election Rules, Model Code of Conduct and any other instructions issued there in under, and the right of the petitioner to contest the election be not jeopardised and the Election be held in a fair and impartial manner.

13. It was submitted that the eligible voters have a right to exercise their franchise in a just and proper manner without undue influence or pressure and the right of the electors to elect their representatives be not circumvented due to the machination of respondent No. 5. The Court should not only rescue the right of the petitioner, but also protect the right of the voters so as to enable them to exercise their right of franchise freely.

14. Before dealing with the questions which are involved in the present writ petition it has to be traced out as to what right the petitioner possesses. It is well settled that the right to elect or to be elected is not a fundamental right of any person. The right has been derived from the statutes; meaning thereby, that it is a statutory right. The view which we have taken, has consistently been adopted by the Hon''ble Supreme Court which was elaborated in Gajanand Krishnaji Bapat v. Dattaji Raghobaji Meghe.(1995) 5 SCC 347 wherein it was observed as under:

?The right to elect and the right to be elected are statutory rights. These rights do not inhere in a citizen as such and in order exercise the right certain formalities as provided by the Act and the Rules made thereunder are required to be strictly complied with. The statutory requirements of election law are to be strictly observed because the election contest is not an action at law or a suit in enquiry but it is a purely statutory proceeding unknown to the common law. The Act is a complete code in itself for challenging an election and an election must be challenged only in the manner provided for by the Act.? (emphasis ours)

15. Mr. N.K. Seth and Mr. I.B. Singh, luminaries of the Bar, have made a thrust to assail the action or inaction of the Election Commission of India and its officers who are manning the elections in the aforesaid two constituencies on the following grounds:

(a) After the process of the scrutiny is over and a candidate is allotted an election symbol, and his name is included in the list of the contesting candidates, no authority much less the Election Commission of India or the Returning Officer, can delete the name of such a candidate from the list of the candidates or reject the nomination paper which was earlier found to be in order.

(b) According to clause 5 of Section 36 of the Representation of People Act, 1951, any objection to the validity or invalidity of the nomination paper can only be taken at the time of scrutiny but after its validity has been adjudged, the nomination paper cannot be rejected. It is assumed that if it can be rejected, then it cannot be done without an opportunity being given to the candidate to show cause against the same.

(c) The power of judicial review in such matters cannot be frustrated, simply for the reason that the highest authority, responsible for controlling and supervising and directing the election, has passed an order, but if that authority has exceeded its jurisdiction or its action suffers from colourable exercise of power, or discriminatory or arbitrary, then the Court would not throw out the petition only because of the provisions contained in Article 324 and 323 of the Constitution of India.

(d) The right powers of the Election Commission relating to direction and control, must be traceable to some of the existing law and cannot violate the provision of any law like Representation of People Act, or the Rules framed thereunder.

(e) The superintendence control of the elections vests a power to the Election Commission to hold an election in a fair and just manner and if the Election Commission fails to fulfil its obligation under Article 324 of the Constitution of India, a direction may be issued by this Court in exercise of its powers conferred under Article 226 of the Constitution of India.

16. More than four decades have passed but the golden words of Hon'ble Fazl Ali, J. still echoes in the Court's Room. In spite of the sweep of Hon'ble Supreme Court in every branch of law, N.P. Ponnuswami (supra) still read and followed. The following observations of Hon'ble Fazl Ali, J. on behalf his esteemed colleagues of the Constitutional Bench, will guide us to decide the controversy involved in both of the writ petitions.

The scheme of Part XV of the Constitution and the Representation of the People Act, 1951, 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. 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. It follows by necessary implication from the language of this provision that those grounds cannot be urged in 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 prepoiling stage and by the election tribunal which is to be an independent body, at the stage when the matter is brought up before it. Therefore, questioning the rejection of a nomination paper is ?questioning the election? within the meaning of Article 329(b) of the Constitution and section 80 of the Representation of the People Act 1951.?

17. Before dealing with the provisions of Article 329 of the Constitution of India, it will be appropriate and proper to glance over the powers of the Election Commission of India, contained in Article 324(1), which reads as under:

?324. Superintendence, direction and control of elections to be vested in an Election Commission. (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and VicePresident held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).?

18. The opening words, ?superintendence, direction and control of preparation of electoral rolls conferred and conduct of election (emphasis ours) including the powers as well as duties hence, apart from the powers conferred by Representation of the People Act 1951 and the rules made thereunder, the Election Commission has ample power to pass any order for the proper conduct of the election. In short, Article 324(1) vest with the Election Commission vast functions including the power and duties essentially administrative and marginally judicative and legislative. The words" superintendence, direction and control empowers the Election Commission to act in contingency not provided for bylaw and to pass necessary orders for the conduct of the Election including to deduct a nomination paper. This constitutional power vested "to Election Commission, is independent to other rights or authority, duties and obligations given to the Election Commission under any other law.

19. The view which we have taken, is fortified by the judgment of Hon''ble Supreme Court in Mohinder Singh Gill and another v. The Chief Election Commissioner. New Delhi and others (supra), wherein N.P. Ponnuswami (supra) was further amplified by Hon''ble Supreme Court. Hon''ble V.R. Krishna Iyer, J. in his usual prosaic style speaking on behalf of his esteemed,colleagues at the Bench, Hon''ble M.H. Beg, Hon''ble P.N. Bhagwati, Hon''ble P.K. Goswami and Hon''ble, P.N. Shinghal, JJ. laid down the following principles in paragraph 91 of the report :

?1 (a) Article 329 (b) is a blanket ban on 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, (emphasis ours)

(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) The Constitution contemplates a free and fair election and vests comprehensive responsibilities of superintendence, direction and control of the conduct of elections in the Election Commission, This responsibility may cover powers, duties and functions of many sorts, administrative or other, depending on the circumstances.

(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 Art. 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 fairplayaction in a most important area of the constitutional order, viz. elections. Fairness does import an obligation to see that no wrongdoer 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 repoll, although not in full panoply but in flexible practicability. Whether it has been complied with is left open for the Tribunal's adjudication. (emphasis ours).

20. In paragraph 11 4 of the report it was further observed

?The Chief Election Commissioner has thus to pass appropriate orders on receipt of reports from the returning officer with regard to any situation arising in the course of an election and power cannot be denied to him to pass appropriate orders. Moreover, the power has to be exercised with promptitude, (emphasis ours). Whether an order passed is wrong, arbitrary or is otherwise invalid relates to the mode of exercising the power and does not touch upon the existence of the power in him if it is there either under the Act or the rules made in that behalf, or under Article 324(1).? (emphasis ours)

21. The aforesaid proposition was further explained in the concluding portion of paragraphs 115 of the report, wherein it was observed:

? The Commission is, therefore, entitled to exercise certain powers under Article 324 itself on its own right, in an area not covered by the Acts and the rules. Whether the power is exercised in an arbitrary or capricious manner is a completely different question.?

22. It was further explained in the concluding portion of paragraph121 of the report:

? .. Even if it is a wrong order it does not cease to be an order passed by a competent authority charged with the conduct of elections with the aim and

object of completing the elections. Although that is not always decisive, the impugned order itself shows that it has been passed in the exercise of power under Art. 324(1) and Section 153 of the Act That is also the correct position. Such an order, relating, as it does, to election within the width of the expression as interpreted by this Court, cannot be questioned except by an election petition under the Act.?

23. Thus, the jurisdiction of the High Court to issue a writ in such matters, has been sealed, by Hon"ble Supreme Court in the matter pertaining to the powers exercised by the Election Commission under Article 324(1) and the challenge of any alleged wrong, before this Court regarding the conduct of elections, particularly, after the issuance of the notification. This Court in exercise of its power under Article 226 of the Constitution of India, cannot break open the seal, because it would amount to exercising a power not warranted under Article 141 of the Constitution which provides that the law declared by the Hon"ble Supreme Court shall be binding on all Courts within the Territory of India.

24. It was vehemently urged by the learned counsel for the petitioner, that when the Returning Officer found the nomination paper filed by the petitioner valid and included the name of the petitioner into the list of the candidates, neither election commission nor the Returning Officer can resile from its decision by deleting the name of the petitioner from the list or rejecting the nomination paper of the candidates. In that regard, the learned counsel for the petitioner has cited certain precedents i.e., *Natwar Lal v. Bhartendu* 5 ELR 408 and 6 ELR 204, AIR 1957 (Vol. 44) *Brij Sunder Sharma v. Election Tribunal Jaipur* and others wherein it was held that after the Returning Officer accepted the nomination paper of a candidate on the date of the scrutiny and put his name into the list of the candidates, he becomes functus officio and cannot reject the nomination.

25. There might have been some substance in the aforementioned argument, if the nomination paper would have been rejected by the Returning Officer only, but in the instant case, it was the Election Commission of India, in exercise of the power vested to it under Art. 324(1) of the Constitution which has passed the order. If it is assumed that the Election Commission has passed a wrong order, it can only be challenged into a election petition.

26. There is another aspect of the matter, which deserves consideration. The precedents which have been cited before us, relates to the decisions of the Election Tribunal, wherein rejection of the nomination paper was assailed by way of the election petition not by a writ petition under Article 226 of the constitution of India.

27. We have already pointed out that the Article 324 vests vast powers to the Election Commission, which are essentially administrative, marginally judicative or legislative. These powers are apart from the powers conferred by the Representation of the People Act and the Rules framed thereunder. The Ejection

Commission may exercise its powers in certain contingencies which are not provided in any act or the law for the time being in force.

28. If the contention of Mr. N.K. Seth, is accepted that the Election Commission's power to give any direction is circumscribed to the provisions of Representation of the People Act only, then the Election Commission shall have no power to make an order or direction to use the electronic machine at the time of polling or issue identity cards to every voter etc. as no such power exists anywhere under the Representation of the People Act. Such powers have been exercised by the Election Commission under Article 324(1) of the Constitution of India. Needless to mention that the use of electronic machine for recording the votes was upheld by the Kerala High Court in *Mathew v. Election Commissioner* (AIR 1982 Kerala 265). In similar fashion, the Election Commissioner, under Article 324(1), itself can pass appropriate orders as to the conduct of the election e.g. cancellation of poll, ordering repoll according to exigencies in particular polling stations or Constituencies. The validity of such order cannot be challenged,

29. In view of the aforesaid situation, it cannot be said that the Election Commission apart from the power conferred under any act, cannot exercise its Constitutional power, enshrined under Article 324(1) of the Constitution of India.

30. As the Returning Officer rejected the nomination paper of the petitioner in compliance with the directions issued by the Election Commission of India in exercise of its constitutional powers, hence it cannot be said that the Returning Officer became *functus officio* after accepting the nomination paper of the petitioner. He was duty bound to follow the directions of the Election Commission of India, in passing such an order.

31. The case of *Surendra Kaur v. State of Punjab and Ors.* (1996) 2 SCC 210, relied by the petitioners, covers a different field. In that case, the appellant was a candidate for the election to the office of Sarpanch of Gram Panchayat. She was prevented by a rival candidate for filing the nomination paper. The High Court passed an order staying the election process. The polling was to start at 3 p.m. but the order was communicated at 3.30 p.m. on the same day. Even after having knowledge of the stay order, the Returning Officer instead of staying the poll and awaiting the decision of the High Court continued the process of Polling till 4 p.m. The respondent was declared elected. In the circumstances, it was held that the conduct of election was not valid. It was observed that it being a case of unlawful prevention of the appellant from contesting the election, the election to the office of Sarpanch was in violation of law. Hence, election of respondent was set aside. In the present case, the petitioner was not prevented by a private person who was also a candidate. The petitioner was prevented to contest the election by the Election Commission of India in exercise of the constitutional power under Article 324(1) of the Constitution of India. We are of the view that the observation made in *Ms. Surendra Kaur v. State of Punjab* (supra) are not applicable to the present case.

32. It is also pertinent to mention here that after the process of election was over Ms. Surendra Kaur had filed the petition, but in the present case, the process of election is yet to be over. It will be over after the polling and the declaration of the result.

33. In *Boddula Krishnaiah and another v. State Election Commissioner A.P. and others* (1996) 3 SCC416, the following observation was relied upon

?Thus it would be clear that once an election process has been set in motion, though the High Court may entertain or may have already entertained a writ petition, it would not be justified in interfering with the election process giving direction to the election officer to stall the proceedings or to conduct the election process afresh, in particular when election has already been held in which the voters were allegedly prevented from exercising their franchise. As seen, that dispute is covered by an election dispute and remedy is thus, available at law for redressal.?

34. We are unable to understand as to how the observation in the foregoing paragraph, favour the petitioner. Actually, the pronouncement is against the petitioner.

35. *Ponnuswami v. Returning Officer Namakkal Constituency* (AIR 1952 SC64) (supra), actually amounted to the Bible of election law as culled out from interpretation of the provisions of Article 324 to 329 of the Constitution of India and were expanded further in *Mohinder Singh Gill's case* (supra), which was again relied upon in *A.C. Jose v. Sivan Pillai* AIR 1984 SC921.

36. It was argued before the Bench that Article 324 (1) gives an unbridled and uncanalised power in the hand of Election Commission without providing any guidelines, which will destroy the basic structure of the Rule of law. It was suggested that if the Commission is armed with such unlimited and arbitrary powers and if it ever happens that the person manning Commission shares to a particular ideology, he could by giving odd directions cause a political havoc or bring about a constitutional crisis, setting at naught, the integrity and independence of the electoral process, so important and indispensable to the democratic system. Hon'ble Mr. Justice Murtaza Fazal Ali, speaking for the Bench observed:

?It is manifest that such a disastrous consequence could never have been contemplated by the Constitution maker for such an interpretation as suggested by the counsel for the respondent, would be far from attaining the goal of purity and sanctity of the electoral process. Hence, we must construe Article 324 to 329 as an integral part of the same scheme collaborating rather than colliding with one and other. Moreover, a perusal of Art. 324 to 329, would reveal that the legislative powers in respect of matters relating to Parliament or the State legislature vest in Parliament and in no other body. The Commission would come into the picture only if no provision has been made by Parliament in regard to the election to the Parliament or State legislature. Further more, the power under Art

324 relating to superintendence, direction and control was actually vesting of merely all the executive powers and not the legislative power. In other words, the legislative power of Parliament or of the legislature of a State being made subject to Art. 324 only means that no law made by Parliament under Art. 327 or by a State legislature under Art 308, can take away or deprive the Commission of the executive power in regard to matters entrusted to it viz. superintendence, direction and control of election. The right to file an election petition, directly flows from Art. 329 and cannot be effected in any manner by the exercise of executive power by the commission under Art. 324.

37. Hon''ble Supreme Court thereafter, summed up legal and Constitutional position, in the following words:

(a) When there is no Parliament legislation or rule made under the said legislation, the Commission is free to pass any order in respect of the conduct of elections.

(b) Where there is an Act and express Rules made thereunder, it is not open to the Commission to override the Act or the Rules and pass orders in direct disobedience to the mandate contained in the Act or the Rules. In other words; the powers of the Commission are meant to supplement rather than supplant the law (both statute and Rules) in the matter of superintendence, direction and control as provided by Article 324.

(c) Where a particular direction by the Commission is submitted to the Government for approval, as required by the Rules, it is not open Ho the Commission to go ahead with implementation of it as its own sweet will even if the approval of the Government is not given.?

38. In the recent years, we have noticed as to how the Apex Court of this Country strengthened the democratic process in this Country by not allowing the Chief Election Commission to become a despotic authority. When the office of Chief Election Commission was transformed as a three members Election Commission with a view to clip the wings of the Chief Election Commissioner the action was assailed before Hon''ble Supreme Court and the Hon. Supreme Court directed that the three members election commission would function like a Bench. The Apex Court is conscious enough to see that the despotism does not become a rule in the field of administration, Whether the executive, legislative, Constitutional or even judicial bodies, transgressed their authority or jurisdiction, they were cribbed or cabined within the frame work of law. The apprehension of the petitioners that accumulation of such vast powers within the Election Commission, without any proper guideline, would lead to the totalitarian tendencies, which could be fatal to democracy, is misconceived because the Constitution is based on the principle of "checks and balances". No authority, how so strong or powerful, in the scheme of the Constitution, can be allowed to run like a wild horse.

39. The contention of Mr. N.K. Seth, that the Election Commission of India,

cannot bypass or violate the provisions of the Representation of People Act or Rules framed thereunder or the Code of Conduct by exercising the powers under Article 324 of the Constitution of India cannot be disputed. But the counsel for the petitioners failed to show any provision contained in Representation of People Act or the rules made thereunder, to meet such a contingency, which had arisen in the present case. Such situation or the contingency is nowhere contemplated in the Act or the Rules framed thereunder. Statutory provisions are silent in that regard. Hence, it is only the Election Commission, which can exercise its plenary power under Article 324(1) of the Constitution of India and issue appropriate direction.

40. In *Election Commission of India v. State of Haryana* 1984 AIR SC1406, it was held that the ultimate decision, whether at a given time, it would be possible and expedient to hold the elections, it would be possible and expedient to hold the elections, must rest with the Election Commission. Election Commission is vested with the power to review its earlier decision as to the expediency of holding a poll on a notified date. It was further observed that it was the duty and obligation of the Commission to keep the situation under constant scrutiny so as to adjust the decision to the reality of the ground situation and until the elections are held, the Commission has the jurisdiction for good reason, to alter its decision to hold the poll on a particular day.

41. It is evident from the aforesaid observation that it is the Commission, which has to fix or alter the date of holding an election. This Court, has no jurisdiction to alter, change a date of the poll fixed by the Election Commission.

42. The only argument of Mr. N.K. Seth, which remains to be considered, is the violation of the principle of natural justice in the present case. We need not delve into that question because it has been the consistent view of Hon'ble Supreme Court as well as this Court that the principle of "*audi alteram partem*" is not a straight jacket formulae. This principle of equity has not been embodied as a Rule, but it is being attracted, whenever by means of any order, substantive right of a person is affected. It always depends upon the facts and the circumstances of the case where the principle "*Hear the other side*", should be adhered to or followed. The election process, which has been set into motion after the issuance of the notification, cannot be stalled, if a person is not given an opportunity to show cause before rejecting his nomination paper. Such an opportunity is available, according to the rule, at the time of scrutiny, but there is no provision anywhere in the Representation of the People Act, to provide such an opportunity, after the nomination paper was accepted and the name of the eligible candidate is brought on the list of the candidates. No power has been vested anywhere in the Representation of the People Act, to reject the nomination paper after it was validly accepted. As the law on the question is silent, the Election Commission of India, invoked the provision of Article 324(1) of the Constitution of India. As the process of election is to be completed with promptitude, notice to a person affected which is not provided anywhere, would

delay the declaration of the result. In such a situation, if the principle of "audi alteram partem" has not been followed, it cannot be said that the order of Election Commission of India, suffers from any infirmity.

43. Although, we have indicated in the foregoing paragraph that the principle of natural justice in such a situation, is not attracted, but in the present case, the Court was informed that the election agent of the petitioner, Anjani Kumar Sinha was given an opportunity to show cause and after hearing him, the Returning Officer, in pursuance of the order passed by the Election Commission of India, rejected the nomination paper of the petitioner. The order of the Returning Officer, which was placed by learned standing counsel, was kept on record.

44. As far as the contention of Mr. I.B. Singh, learned counsel for the petitioner is concerned, we have already indicated that under Article 324 of the Constitution of India, the Election Commission has been vested with vast powers to see that the election takes place in fair and just manner and it would be the obligation and duty of the Election Commission to allow the voters to exercise their franchise without fear or favour. This Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India, cannot look into the factual aspect of the matter and confine itself by observing that it will be the duty of the respondents to see that the responsibilities, which have been reposed upon them by the Constitution as well as the Representation of the People Act, would be fulfilled by the authorities, who are manning the election in the Kunda Constituency of District Pratapgarh, for which no direction from this Court is necessary.

45. With the aforesaid observation, both the writ petitions are dismissed. As regards the prayer for grant of special leave to appeal, we are of the view that the case does not involve a substantial question of law which needs to be decided by the Hon'ble Supreme Court. Prayer is rejected.

(Petitions dismissed)