

(2018) 10 CHH CK 0061
In the Chhattisgarh High Court
Case No : Civil Writ Petition No.3009 of 2018

Pawan Awasthi @APPELLANT@Hash Dr. Raman Singh

Date of Decision : 29-10-2018

Acts Referred:

Constitution of India, 1950 — Article 329

Citation : (2018) 10 CHH CK 0061

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Single Bench

Advocate : Himanshu Kumar Sharma, B. Gopa Kumar, Shashank Thakur, Sanjay Patel

Final Decision : Dismissed

Judgement

1. Petitioner intends to contest in the election of the Chhattisgarh State Legislative Assembly from the Bilaspur Assembly Constituency as an independent candidate. The petitioner has preferred this writ petition claiming the following reliefs :

10.1 That, this Hon'ble Court may kindly be pleased to direct the Election Commission of India and Chief Electoral Officer, Raipur, CG, to cancel the Nomination of Dr. Raman Singh (Chief Minister, State of CG), Saroj Pandey (General Secretary, Bhartiya Janta Party), Shri Amar Agrawal (Minister in State of CG) and all candidates of Bhatiya Janta Party in election 2018.

10.2 That, this Hon'ble Court may kindly be pleased to direct the Election Commission of India and Chief Electoral Officer, Raipur, CG, to take a proper action against Dr. Raman Singh (Chief Minister, State of CG), Shri Amit Shah (National President of Bhatiya Janta Party), Saroj Pandey

(General Secretary, Bhartiya Janta Party), Shri Amar Agrawal (Minister in State of CG) and all candidates of Bhatiya Janta Party in election 2018

and in upcoming other elections and this Hon'ble Court also may kindly be

pleased to direct the Chief Secretary of C.G. State to take proper action against Principal Secretary of Department of Public Relation, State of C.G.

2. The above reliefs have been claimed on submission that the respondent No.1 & 9 are violating the Model Code of Conduct by providing link to the

Government Department's Website through the Website of the Bhartiya Janta Party (BJP), therefore, this is misuse of Government machinery to

augment their prospect in the ensuing Chhattisgarh State Legislative Assembly elections.

3. Without entering into merits of the allegations levelled in the writ petition, the relief claimed in the writ petition cannot be allowed at this juncture in

view of the express bar under Article 329 of the Constitution of India, which reads thus :

329. Bar to interference by courts in electoral matters.-- Notwithstanding anything in this Constitution

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made

under Article 327 or Article 328, shall not be called in question in any court;

(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.

4. The Supreme Court, way back in the year 1952, has held in N.P. Ponnuswami & v & The & Returning & Officer, & Namakkal Constituency,

Namakkal, Salem Dist. And Others reported in AIR (39) 1952 Supreme Court 64 that the term ""election"" may be taken to embrace the whole

procedure which consists of several stages and embraces many steps whereby an ""elected member"" is returned. The stage of filing of nomination, its

scrutiny, withdrawal, the actual poll and the result of election are all parts of the election process.

5. Under Article 329 of the Constitution of India the validity of an election to the house of Parliament or to the either house of the Legislature of a

State can be called in question only by an election petition and writ proceedings would not lie to challenge the election, which necessarily includes any

part of the election process as mentioned supra.

6. In view of the laid down by the Supreme Court in N.P. Ponnuswami (supra),

the instant writ petition seeking rejection of nomination paper of respondents No.1 & 9, is not maintainable and accordingly, it is dismissed at the motion stage itself leaving open the remedy of Election Petition to be exhausted by the person who is eligible and competent in law to entertain such Election Petition. In respect of relief claimed by the petitioner at para 10.2 of the writ petition, it is to be seen that the said part of relief also concerns election of the Legislative Assembly, therefore, the direction sought for would effect the election, which is not permissible under Article 226 of the Constitution of India.