
(2017) 11 AHC CK 0027
In the Allahabad High Court
Case No : 21298 of 2017

Qamar Ahmad

APPELLANT

Vs

C.E.C. Nirvachan Sadan Ashok Road New Delhi

RESPONDENT

Date of Decision : 13-11-2017

Acts Referred:

Constitution of India, Article 14, Article 215, Article 32, Article 51A, Article 329(b), Article 329(a) - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - High Courts to be Courts of record - Remedies for enforcement of rights conferred by this Part - Fundamental duties - Bar to interference by courts in electoral matters - Bar to interference by courts in electoral matters
Code of Civil Procedure, 1908, Section 114, Order 41 - Review
Representation of the People Act, 1951, Section 101, Section 100, Section 80, Section 147, Section 84, Section 116A, Section 151A, Section 98 - Grounds for which a candidate other than the returned candidate may be declared to have been elected - Grounds for declaring election to be void - Election petitions - Casual vacancies in the Council of States - Relief that may be claimed by the petitioner - Appeals to Supreme Court - Time limit for filling vacancies referred to in sections 147, 149, 150 and 151 - Decision of the a[High Court

Citation : (2017) 11 AHC CK 0027

Hon'ble Judges : Devendra Kumar Upadhyaya, Rajesh Singh Chauhan

Bench : Division Bench

Advocate : Qamar Ahmad, V.K. Dubey

Final Decision : Dismissed

Judgement

1. Heard the petitioner, Sri Qamar Ahmad in person and Sri O.P. Srivastava, learned Senior Advocate assisted by Sri Amit Sharma appearing for the Chief Election Commissioner, the sole respondent.

2. This petition has been filed with the following prayers :

"i. To restrain the Opp. Party from issuing a notification initiating the election process to fill the seat held by Sri Prabhu Manohar Gopal Krishna Parrikar in the Council of States (Rajya Sabha) from the State of Uttar Pradesh.

ii. In the nature of mandamus commanding the Opp. Party to decide the representation dated 30.08.2017 annexed as Annexure no.1 to the writ petition.

iii. In the nature of mandamus commanding the Opp. Party not to issue a notification initiating the election process to fill the seat held by Sri Prabhu Manohar Gopal Krishna Parrikar in the Council of States (Rajya Sabha) from the State of Uttar Pradesh till decision of Review Petition now C.M. Application No.39455/2016 In Re: Election Petition No.8 of 2014."

3. Facts of this case, which lie in a narrow compass, are that the petitioner had filed his nomination for election to the Council of States (Rajya Sabha) from Uttar Pradesh on 10.11.2014 pursuant to a notification issued for an election to 11 seats. However, his nomination was rejected on 11.11.2014 by the Returning Officer. The petitioner, feeling aggrieved by the rejection of his nomination, filed an election petition bearing No. 8 of 2014 before this Court at Lucknow under Section 80 of The Representation of the People Act, 1951 (herein after referred to as the 1951 Act). The said election petition has been dismissed on 15.5.2015 whereafter the petitioner has filed a petition seeking review of the judgment dated 15.5.2015 which is said to be pending before this Court. It has been stated by the petitioner that review petition filed by him is within the limitation prescribed.

4. The petitioner has further submitted that the review petition has been filed under Article 51A and 215 of the Constitution of India read with section 114 and Order 41 of the Code of Civil Procedure. His submission is that the said review petition has been filed as in his view the judgment rendered by this Court in the election petition is in utter disregard of the provisions of the Constitution of India, the laws and binding precedents, and hence, needs to be corrected in view of the provisions contained in Article 215 of the Constitution of India for the reason that High Court is a Court of Record. It has further been submitted by the petitioner that the said review petition (C.M. Application No. 39455 of 2016 in Re: Election Petition No. 8 of 2016) is still pending disposal and has not been listed before the Hon''ble Court which led the petitioner to make a complaint on 29.8.2017 to the Senior Registrar of this Court at Lucknow praying therein that the review petition be listed immediately before the Hon''ble Court. In the said complaint it has been stated by the petitioner that since the review petition was not being listed before the Court, he approached Hon''ble the Chief Justice on 25.1.2016 whereon an order was passed by Hon''ble the Chief Justice on 18.7.2016 for placing the review petition before the appropriate Bench. Petitioner's further submission is that the review petition has not been listed which amounts to utter contempt for the Constitution of India.

5. The petitioner in the writ petition has stated that apart from the aforesaid circumstances which have emerged on account of non-listing of the review petition, certain other developments have taken place after filing of the review petition which have compelled the petitioner to file the instant writ petition. As stated by him, one of the persons elected as Member of Council of States in the election in which the petitioner had filed his nomination which was rejected, namely, Sri Prabhu Manohar Gopal Parrikar has resigned causing vacancy in the seat occupied by him and accordingly, the petitioner made a representation dated 30.8.2017 to the Election Commission praying therein that the petitioner be declared elected as Member to the Council of States in place of Sri Prabhu Manohar Gopal Parrikar from Uttar Pradesh and further that vacancy occurring in the seat occupied by said Sri Parrikar be not notified for fresh election and it may not be filled till disposal of the review petition filed by the petitioner calling for a review of the judgment of this Court whereby his election petition has been dismissed. Sri Qamar Ahmad, who pleaded his cause appearing in person, has further submitted that in view of the aforementioned facts, to avoid any further/future complications, fresh notification may not be issued for election to fill up the seat which was occupied by Sri Parrikar till disposal of the review petition.

6. Citing various authorities of Hon'ble Supreme Court it has primarily been submitted by Sri Qamar Ahmad, the petitioner, that in case, before disposal of the review petition pending consideration before this Court, notification for election to the Rajya Sabha Seat in question is issued, the same would amount to re-writing the provisions of Article 329(b) of the Constitution of India for the reason that election petition challenging an election to either houses of the parliament is filed under Section 80 of the Representation of the People Act, 1951 as in terms of the mandate contained in Article 329(b) of the Constitution of India, validity of an election to either houses of parliament can be called in question only by an election petition presented in the manner prescribed for the said purpose and the manner for presentation of an election petition, as mentioned in Article 329(b) of the Constitution of India, has been prescribed under Section 80 of the Representation of the People Act, 1951. His submission, thus, is that proceedings of review petition filed by him are in continuance of the proceedings of the election petition and as such before disposal of the review petition, if any notification for holding an election against the seat which was earlier occupied by Sri Parrikar is issued by the Election Commission, the same would be violative of Article 329(b).

7. Sri Qamar Ahmad has made lengthy arguments to impress upon the Court that in case notification for holding election against the Rajya Sabha seat in question is issued by the Election Commission before decision on review petition, it shall, in effect result in rendering the review petition infructuous as such keeping in mind the relevant provisions of the Constitution, more particularly Article 329(b), such an action on the part of the Election Commission would result in doing something indirectly what could not be done by it directly. Sri Qamar Ahmad more vociferously has argued that if the Election Commission in

such a situation issues notification for election before decision of the review petition, it will amount to annulment of Article 329(b) and that of the review petition itself which is the outcome of election petition. Such an impending act on the part of the Election Commission may not be permissible for the reason that no authority, may be constitutional or even legislative, can be permitted to make 329(b) redundant. His submission is that this Court being a Court of Record under Article 215 of the Constitution of India and also being a Court of Plenary jurisdiction ought to hear the review petition for correcting its own record relating to the election petition dismissed on 15.5.2015, hence, the petitioner has invoked the review jurisdiction. It has further been submitted that in case notification is issued before hearing of the review petition takes place, it would result in a situation where Article 329(b) and Section 147 of the Representation of the People Act, 1951 would be wiped off. Further submission is that the action which the petitioner apprehends that is the issuance of election notification before disposal of the review petition, would amount to colourable exercise of power which the executive as also the constitutional authorities are barred to exercise.

8. In sum and substance, the submission of the petitioner is that in case notification for election is issued before decision of the review petition, nothing would be left to be decided in the review petition which will amount to Election Commission exceeding its jurisdiction and, thus, such a notification, if issued would be violative of Article 14 of the Constitution of India. It has also been stated that no authority can act in violation of fundamental rights or Constitutional rights which in this case is the right to seek redressal of grievance in relation to an election to either houses of Parliament by invoking Article 329(b) of the Constitution read with Section 80 of Representation of the People Act, 1951.

9. Opposing the very maintainability of the writ petition Sri O.P. Srivastava, learned Senior Advocate has submitted that the resignation of Sri Parrikar was accepted by the Chairman of the Council of States on 4.9.2017 w.e.f. 2.9.2017 which has resulted in a casual vacancy. It has also been stated by the learned counsel for the Election Commission that the elections were held to elect 11 members and since the casual vacancy has now been caused, as per the mandate of Section 151A of the Representation of the People Act, 1951, a bye-election for filling up the said vacancy has to be held within a period of six months from the date of occurrence of the vacancy. It has, thus, been stated by learned Senior Advocate Sri O.P. Srivastava that mandate of Article 151A of Representation of the People Act, 1951 is binding on the Election Commission. He has also stated that mere pendency of review petition does not create any right in the petitioner to seek any of the reliefs prayed for by him in this writ petition. His submission, further, is that right to contest and right to vote are statutory rights and since in this case the petitioner has utterly failed to establish violation of any statutory or Constitutional right, no interference by this Court in the facts and circumstances of this case, is warranted.

10. Sri O.P. Srivastava, learned Senior Advocate has also stated that the review petition preferred by the petitioner against the judgment of this Court dismissing the election petition filed by the petitioner is not maintainable in view of the scheme of the Representation of the People Act, 1951, according to which, if any person is aggrieved by dismissal of the election petition, the remedy available before such a person is to invoke Section 116 A of Representation of the People Act, 1951 by filing an appeal to the Supreme Court.

11. We have given our anxious consideration to the rival submissions made by the petitioner who has addressed the Court in person and by Sri O.P. Srivastava, learned Senior Advocate representing the Election Commission.

12. The basic premise of the arguments advanced by the petitioner is that during the pendency of the review petition in case any election notification is issued by the Election Commission for holding election for the seat of the Rajya Sabha which has fallen vacant on account of acceptance of resignation of the occupant of the seat, the same would render the review petition infructuous, which, in effect, will affect his right to question the election under Section 80 of the Representation of the People Act, 1951 which prescribes procedure and forum for challenging the election in terms of the provisions contained in Article 329(b) of the Constitution of India. His submission, thus, is that in a situation which this case has presented, issuance of an election notification by the Election Commission would ruin his constitutional right emanating from Article 329(b) of the Constitution which under the Constitution and laws of the country, no authority, either executive or constitutional, is permitted to do.

13. In the light of the arguments made and also taking to account the situation which the facts of this case has presented before us what we are called upon, while deciding this writ petition, is to decide the issue as to whether any of the constitutional, statutory or any other right of the petitioner is being infringed or will be infringed in case during the pendency of the review petition the Election Commission issues the notification for holding election for the Rajya Sabha seat in question.

14. Some provisions of Representation of the People Act, 1951 are relevant to be taken note of while deciding the aforesaid issue culled by us in preceding paragraph. Section 80 of the The Representation of the People Act, 1951 states that no election shall be called in question except by an election petition to be presented in accordance with the provisions contained in the said Act. Section 80 of the Act is extracted herein below :

"80. Election petitions.--

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

15. The grounds on which election petition can be filed are available in Section 100 of the said Act which also is extracted herein below :

"Section 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;

[* * *]

(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 fiat the election of the returned candidate is not void."

16. It is noticeable that Section 100 enumerates the grounds for declaring an election to be void, whereas Section 101 of the Representation of the People Act, 1951 enumerates the grounds on which a candidate other than a returned candidate may be declared to have been elected. Section 101 of the said Act is also reproduced herein below:

"101. Grounds for which a candidate other than the returned candidate may be declared to have been elected.--

If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and [the High Court] is of opinion--

(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or

(b) that but for the votes obtained by the returned candidate by corrupt [***] practices the petitioner or such other candidate would have obtained a majority of the valid votes, [the High Court] shall, after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected."

17. Reference to Section 84 of the Representation of the People Act, 1951 may also be made at this juncture which embodies the relief which may be claimed by a person instituting an election petition, according to which a person filing an election petition, in addition to seek declaration that election of all or any of the returned candidate is void, can claim a further declaration that he himself or any other candidate has been duly elected. Section 84 is also quoted herein below :

"[84. Relief that may be claimed by the petitioner.--

A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.]"

18. The High Court acts as an Election Tribunal under Section 80 of the Representation of the People Act, 1951 and makes an order after conclusion of the trial in terms of the provisions contained in Section 98 of the said Act, according to which three types of orders can be passed, (i) dismissing the election petition, or (ii) declaring the election of all or any of the returned candidates to be void or (iii) declaring the election of all or any of the returned candidates to be void and declaring the petitioner or any other candidate to have been duly elected.

19. Section 98 of The Representation of the People Act, 1951 is reproduced herein below :

98. Decision of [the High Court].--

At the conclusion of the trial of an election petition [the High Court] shall make an order--

(a) dismissing the election petition; or

(b) declaring the election of [all or any of the returned candidates] to be void; or

(c) declaring the election of [all or any of the returned candidates] to be void and

the petitioner or any other candidate to have been duly elected.

[***] From a perusal of the scheme of the Representation of the People Act, 1951 what unambiguously emerges in our considered opinion, is that there can be two situations after conclusion of trial of an election petition, namely, (i) the election petition may be dismissed, or (ii) It may be allowed. In case election petition is allowed, two types of orders as enumerated in Section 98(b) and (c) can be passed by the High Court that is to say, High Court can (a) simply declare the election of all or any of the returned candidates to be void and (b) while declaring the election to be void it can also make declaration that petitioner or any other candidate has been duly elected. The relief as envisaged in Section 98(b) will be available in an election petition in case the election, after completion of the trial of the election petition, is found to be illegal. However, a simultaneous relief of declaration of the petitioner or any other candidate to have been duly elected can be granted only in case the petitioner had participated in the election which subsequently would become subject matter of the election petition. In a situation where the petitioner filing an election petition, for any reason whatsoever, was not permitted or was not able to contest or had not contested the election, though relief declaring the election of all or any of the returned candidates to be void can be granted by the High Court after conclusion of the trial of the election petition, but in such a situation simultaneous relief of declaration of the petitioner to have been duly elected would not be permissible.

20. The nature of relief as enumerated in Section 98 is clearly worded and does not leave any room of doubt that in a situation where the petitioner of an election petition had not contested the election, he can not seek relief of declaration that the petitioner has been duly elected. (Emphasis supplied)

21. It is also relevant to notice that clauses (a), (b) and (c) occurring in Section 98 of The Representation of the People Act, 1951 are all separated by the word "or" which, in our considered opinion, means that only either of the three consequences as given in clauses (a), (b) and (c) of Section 98 ensue after conclusion of the trial of the election petition. It would also mean that in a given fact situation, the relief as envisaged in clause (b) of Section 98 will be granted that is to say that it is quite possible that without declaring the petitioner or any other candidate to have been duly elected, a declaration that the election of all or any of the returned candidates is void, can be made by the High Court on conclusion of trial of the election petition. In other words it is not necessary that in case after conclusion of the trial of the election petition a declaration is made by the High Court that the election under challenge was void then in every situation simultaneously a relief of declaration of the petitioner or any other candidate to have been duly elected will be granted. The simultaneous relief of declaration of the petitioner to have been duly elected will be permissible only in case the petitioner filing the election petition had contested the election.

22. From the aforesaid discussion and from a closure scrutiny of the provisions of Section 84 read with Section 98 of the Representation of the People Act, 1951,

the irresistible conclusion to which we have reached is that in a case where election is challenged by a person whose nomination itself was rejected, the relief which is permissible in the election petition is that election of the returned candidate may be declared to be void, however, the relief of declaration of such a person to have been duly elected would not be permissible.

23. We now proceed to consider as to what relief the petitioner would have been entitled to even if he had succeeded in the election petition.

24. We may hasten to add that we are refraining ourselves from pronouncing any verdict as to whether the review petition filed by the petitioner against the judgment and order passed by this Court dismissing his election petition is maintainable under law or not for the reason that this may amount to pre-judging the issue in these proceedings.

25. Even if we presume that review petition would be maintainable, the question for the purpose of maintaining this petition would be as to what relief the petitioner would be entitled to in case the review petition is allowed. Presuming the review petition to be maintainable, the relief which would be permissible would not travel beyond the relief which the petitioner would be entitled to in the election petition. The reliefs which are permissible in an election petition cannot go beyond what has been prescribed in Section 84 read with Section 98 of The Representation of the People Act, 1951. Admittedly, in the instant case the petitioner had not contested the election for the reason that his nomination was rejected and the ground on which the election petition was filed by the petitioner was illegal rejection of his nomination. In this fact situation, even if the Election Petition would be allowed, the petitioner at the most can get the relief of declaration of election of all or any of the returned candidates to be void. Since he had not contested the election, he cannot be granted relief of a declaration that he was duly elected.

26. The grounds on which an election can be declared to be void are enumerated in Section 100 whereas grounds for which a candidate other than a returned candidate will be declared to have been elected can be found in Section 101 of the Representation of the People Act. A perusal of Section 101 establishes that there are two grounds on which a candidate other than the returned candidate may be declared to have been elected and these grounds are (i) the petitioner received a majority of valid votes or (ii) but for the votes obtained by the returned candidate by the corrupt practices the petitioner would have obtained majority of valid votes.

27. The aforesaid two grounds enumerated in Section 101 will be available to a person challenging the election by way of filing an election petition only when he contests the election. In the instant case the petitioner could not contest the election for the reason that his nomination was rejected. Accordingly, the grounds as mentioned in Section 101 would not be available to the petitioner and hence in this view of the matter also the relief of declaration of the petitioner to

have been duly elected will be impermissible. Thus, we also conclude that occupancy or vacancy of the seat in question will have no bearing even on the review petition.

28. In these circumstances, there does not appear to be any justifiable reason to restrain the Election Commission not to issue the election notification for holding election to fill the vacancy in question till disposal of the Review Petition, as has been urged by the petitioner.

29. We may further notice that since on account of acceptance of resignation of the returned candidate the vacancy has now occurred, even declaration of the election of Sri Parrikar to be void is a relief which in the facts of this case would not be permissible for the reason that in case of declaration of his election to be void he would be required to vacate the seat which he has already done by submitting his resignation and the resignation as on today stands accepted.

30. We may also notice that the vacancy which has been caused on account of acceptance of resignation of Sri Parrikar is a casual vacancy in terms of Section 147 of The Representation of the People Act, 1951 for the reason that it has occurred before expiration of the term of the office of Sri Parrikar as Member of the Council of States. Section 151 A mandates that bye-election for filling such a vacancy shall be held within a period of six months from the date of occurrence of such a vacancy. The language of Section 151A of the Act, thus, makes it mandatory to hold the bye-election for filling up any casual vacancy in the Council of States.

31. We may now advert to the judgments cited by Sri Qamar Ahmad, the petitioner. We have already observed that emphasis of Sri Qamar Ahmad, the petitioner is that in case the Election Commission issues election notification for holding election on the seat which has fallen vacant on account of resignation of Sri Prabhu Manohar Gopal Krishna Parrikar, the same would amount to subversion of Article 329 (a) of the Constitution of India, which would not be permissible and that this Court would, thus, be justified in granting the reliefs prayed for by him in this writ petition to check such subversion. However, after having gone through the judgments cited by Sri Qamar Ahmad, we have no doubt in our mind that there cannot be any quarrel as to the principle of law laid down in the judgments cited by him, however, the said judgments have no application to the facts of this case and hence, they do not come to his aid.

32. The first judgment relied upon by Sri Qamar Ahmad is Hari Vishnu Kamath vs. Ahmad Ishaque and others, reported in AIR 1955 SC 233. Sri Qamar Ahmad has drawn attention of the Court to the observations made by Hon^{ble} Supreme Court in the said case in para 38, wherein it has been observed by Hon^{ble} Supreme Court that if there is an error which is manifest on the face of record, the same calls for interference in a writ of ""certiorari". In the facts of this case, we have not been called upon to examine any manifest error on the record of any judgment hence, the judgment cited does not have any bearing on this case.

33. Sri Qamar Ahmad thereafter relied upon the judgment in the case of Sukhdev Singh vs. Hon''ble C. J., S. Teja Singh and the Hon''ble Judges of the Pepsu High Court at Patiala, reported in AIR 1954 SC 186. He has relied upon paragraphs 1 to 4, 21, 23 and 24 of the said judgment. Hon''ble Supreme Court in the said case was faced with the issues relating to Article 215 of the Constitution of India. In the instant case, no such issue, in our opinion, has emerged, hence, this judgment is also of no avail to the petitioner.

34. The next case relied upon by the petitioner is M. M. Thomas vs. State of Kerala and another, reported in AIR 2000 SC 540. Sri Qamar Ahmad referring the paragraphs 13 and 14 of this judgment has stated that in the review petition this Court has every power to correct its own orders rendered by it while dismissing the election petition.

35. We have already observed that the issue relating to maintainability of the review petition in the wake of rival submissions made by the petitioner as also by the Election Commission, cannot be gone into in this writ petition as the same would amount to prejudging the issue, hence, this judgment in the case of M. M. Thomas (supra) also does not have any bearing to the facts of this case.

36. Sri Qamar Ahmad has also relied upon the judgment of Hon''ble Supreme Court in the case of M/s. Tilokchand Motichand and others vs. H. B. Munshi, Commissioner of Sales Tax, Bombay and another, reported in AIR 1970 SC 898. Reliance is on paragraph 12 of the said case. We, however, are unable to comprehend as to how the legal proposition laid down in this judgment has any application to the facts of this case.

37. Laying emphasis on paragraph 1, 2 and 16 of the judgment rendered by a Constitution Bench of Hon''ble Supreme Court in the case of Rupa Ashok Hurra vs. Ashok Hurra and another, reported in (2002) 4 SCC 388, Sri Qamar Ahmad has stated that in cases of gross abuse of the process of the Court or gross miscarriage of justice review petition filed by him challenging the judgment and order dismissing the election petition would be maintainable. The Constitution Bench of Hon''ble Supreme Court in the said case Rupa Ashok Hurra (supra) was dealing with a question posed to the Bench as to whether a judgment of Hon''ble Supreme Court in Civil Appeal No.1843 of 1997 can be regarded as a nullity and whether a writ petition under Article 32 of the Constitution of India can be maintained to question the validity of the said judgment after the review petition had been dismissed. In this case Hon''ble Supreme Court has dealt with the scope of curative petition hence, this judgment is also of no avail to the petitioner.

38. Sri Qamar Ahmad has also argued that in terms of the judgment rendered by Hon''ble Supreme Court in the case of K.C. Gajapati Narayan Deo and others vs. State of Orissa, reported in AIR 1953 SC 375 since no colourable legislation is permissible, any colourable exercise by the Election Commission in this case is also impermissible. This case cited by Sri Qamar Ahmad has nothing to do with the issue involved in this writ petition. We have already dealt with the issue

which has emerged for our decision in this case in the preceding paragraphs of this judgment.

39. The petitioner has thereafter placed reliance on another judgment of Hon''ble Supreme Court in the case of Dhirendra Kumar Mandal vs. the Superintendent and Remembrancer of Legal Affairs, reported in AIR 1954 SC 424. He has further relied upon another judgment reported in AIR 1954 SC 569 and also on the judgment reported in AIR 1954 SC 630 to state that in case the notification for election by the Election Commission is issued before the review petition is heard and decided, the same would amount to violation of his fundamental rights enshrined in Article 14 of the Constitution of India. We have gone through these judgments as well, however, we do not find any application of these judgments to the matter at hand.

40. On the same issue of Article 14 of the Constitution of India, Sri Qamar Ahmad has also relied upon yet another authority of Hon''ble Supreme Court in the case of Menka Gandhi vs. Union of India, reported in AIR 1978 SC 597 and has submitted that in this case fundamental right embodied in Article 14 of the Constitution of India would be violated as issuance of notification by the Election Commission before the disposal of review petition would be in violation of Article 329 (b) of the Constitution. We, however, do not agree with the said submission.

41. Lastly, Sri Qamar Ahmad has referred to two judgments, one rendered by Hon''ble Supreme Court in the case of Sasi (D) through LR's vs. Aravindakshan Nair and others, reported in AIR 2017 SC 1432 and the other rendered by this Court in the case of Sanjay Gandhi vs. V.D. Keshri, reported in 1980 All. L. J. 892 to emphasize that the review petition filed by the petitioner ought to have been decided at the earliest and non-listing of the same before the Court would amount to contempt. In the case of Sasi (D) through LR's (supra) it has been laid down with emphasis by Hon''ble Supreme Court that an application for review has to be disposed of as expeditiously as possible and that it is the duty of the Registry of every High Court to place the matter before the concerned judge/Bench so that the review application can be dealt with within quite promptitude. In view of the aforesaid judgment in the case of Sasi (D) through LR's (supra), we observe that the registry is required to list the review petition for its disposal as early as possible.

42. For the discussions made and reasons given above, we are unable to find ourselves in agreement with the submissions made by the petitioner.

43. Resultantly, we find that the reliefs prayed for in this writ petition being misconceived, cannot be granted.

44. The writ petition is thus, dismissed.

45. There will be no order as to costs.