

(2019) 05 DEL CK 0570

In the Delhi High Court

Case No : Civil Writ Petition No. 4515 Of 2019, Civil Miscellaneous No. 20101 Of 2019

S. Sadachari Sai Baba Om Ji

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 02-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 226, 327, 328, 329, 329(b)

Conduct Of Election Rules, 1961 — Rule 89

Representation Of People Act, 1951 — Section 10A, 11, 14(2), 80, 80A, 81, 100(1)(c), 101

Citation : (2019) 05 DEL CK 0570

Hon'ble Judges : Manoj Kumar Ohri, J

Bench : Single Bench

Advocate : Rahul Gupta, Sidhant Kumar, P. R. Chopra, Rajdipa Behura, Philomon Kani, Kriti Handa

Final Decision : Dismissed

Judgement

Manoj Kumar Ohri, J

1. This petition has been filed under Article 226 of the Constitution of India read with Section 80A of the Representation of People Act, 1951 seeking the following prayers:

"(I) To quash the order dated 07.06.2016 qua petitioner at Sr.No.17;

(II) also to quash the order dated 24.04.2019 passed by the respondent no.5;

(III) to direct the respondent no.5 to accept the all nomination papers as valid filed by the petitioner on 22.04.2019 and also permit the petitioner to contest the General Elections to House of People, 2019 from 04-New Delhi Parliamentary Constituency;

(IV) to stay the all proceedings of the General Elections to the House of People, 2019 from 04-New Delhi Parliamentary Constituency schedule to be held on

12.05.2019 till final disposal of this petition;

(V) to appoint Amicus Curiae Senior Advocate directly by this Hon'ble Court or by the Delhi High Court Legal Services Committee before starting arguments on this petition;

(VI) and any other relief(s) which this Hon'ble Court may deem fit and proper under the facts and circumstances may be granted to the petitioner;

(VII) pass such orders as may be deemed fit and proper in the facts and circumstances of the case may also be passed in favour of the petitioner, in the interest of justice."

2. The petition was taken up for hearing on 29.04.2019 in terms of Prayer (V) made in the petition. The Secretary, Delhi High Court Legal Service Committee (DHCLSC) was requested to provide the petitioner with the services of a lawyer. Accordingly, Mr.Rahul Gupta, Advocate, was appointed for the petitioner.

3. The Election Commission of India, vide notification dated 16.03.2019 issued under sub section (2) of Section 14 of the Representation of People Act, 1951, announced the "Lok Sabha General Elections, 2019" to elect members of the House of People. In terms of the above notification, the relevant election schedule published for NCT of Delhi is reproduced below:--

Schedule reference

Parliamentary Constituencies

Schedule no.

6

Sl.

PC No.

PC Name

Type

No. of PCs going to poll

7

1

1

Chandni Chowk

GEN

Issue of notification

16-04-2019

2

2

North East Delhi

GEN

Last date for filing nomination

23-04-2019

3

3

East Delhi

GEN

Scrutiny of nomination

24-04-2019

4

4

New Delhi

GEN

Last due date for withdrawal of candidature

26-04-2019

5

5

North West Delhi

SC

Date of Poll

12-05-2019

6

6

West Delhi

GEN

Counting of votes

23-05-2019

7

7

South Delhi

GEN

Date before which election shall be completed

27-05-2019

4. The petitioner filed his nomination paper for contesting the General Election to the House of the People (Lok Sabha), 2019 from New Delhi, Parliamentary Constituency-04, Delhi.

5. Learned counsel for the petitioner contended that the petitioner submitted his nomination papers along with all the requisite documents in the office of respondent no.5 on 22.04.2019. However, later on, the petitioner came to know that his nomination was rejected on the ground that his name appears in the list of disqualified persons issued by respondent no.3 under Section 10A of the Representation of People Act, 1951.

6. In the year 2015, the petitioner had contested 'General Elections to the Legislative Assembly, 2015', from 'New Delhi Assembly Constituency (AC-40)'. The petitioner, however, failed to lodge the amount of election expenses as required under the Representation of People Act, 1951 and Rules and Order made thereunder. Vide an Order dated 07.06.2016, passed by the respondent no.3, the petitioner was disqualified for being chosen as, and for being, a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of the State for a period of three years from the date of the aforesaid order.

7. Learned counsel for the petitioner contended that the impugned order dated 24.04.2019, rejecting petitioner's nomination, is primarily based on the aforesaid order of the Commission dated 07.06.2016. Learned counsel contend that if the order dated 07.06.2016 is found to be illegal and arbitrary, the entire basis for the rejection of petitioner's nomination, goes away. The learned counsel has assailed the order dated 07.06.2016 on the ground that neither any show cause notice was issued to the petitioner nor any personal hearing was accorded to him.

8. In this context, the learned counsel has relied on Rule 89 of the Conduct of Election Rules, 1961. In support of his arguments, he has also relied upon the decision of the Supreme Court in "Ashok Shankarrao Chavan v. Madhavrao Kinhalkar" reported as (2014) 7 SCC 99.

9. Learned counsel appearing on behalf of the respondents, has relied upon Article 329 (b) of the Constitution of India, Sections 80, 81 and 100 (1) (c) of the Representation of People Act, 1951, to urge that the only remedy available with the petitioner is to file an Election Petition. For the sake of felicity, Article 329 of

the Constitution of India, Sections 80, 81 & 100(1)(c) of Representation of People Act, 1951 are reproduced herein below: -

"Article 329 in The Constitution of India 1949:

XXX XXX XXX

(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. (emphasis supplied)

Representation of the People Act, 1951

80. Election petitions-No election shall be called in question except by an election petition presented in accordance with the provisions of this Part. 2 [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.]

81. Presentation of petitions.-(1) An election petition calling in question any election may be presented on one or more of the grounds specified in 3 [sub-section (1)] of section 100 and section 101 to the 4 [High Court] by any candidate at such election or any elector 5 [within forty-five days from, but not earlier than the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates].

100. Grounds for declaring election to be void.-

(1) Subject to the provisions of sub-section (2) if 2[the High Court] is of opinion-

(a) xxxx

(b) xxxx

(c) that any nomination has been improperly rejected;"

10. Learned counsel for the respondents submitted that the proceedings for disqualification of the petitioner conducted under Section 10A of the Representation of People Act, 1951 were carried in accordance with law. He has invited attention of this Court to a summary report of District Election Officer (DEO) for Assembly Constituency No. AC-40, New Delhi with respect to lodging of election expenses account by the candidates. The aforesaid summary report relates to elections for Legislative Assembly for New Delhi (AC-40) held in the year 2015.

Learned counsel for the respondents pointed out that when the petitioner failed to lodge election expenses with the respondent no.3, proceedings were carried out and notice dated 24.06.2015 was issued to the petitioner. The notice was attempted to be served by the District Election Officer at the given address of the petitioner i.e. 29, New Khanna Market, Lodhi Colony, New Delhi-110003. However, as per the service report, no person by such name was found residing at that address. On 03.10.2015, the notice was pasted at the address of the petitioner. In these circumstances, the order dated 07.06.2016 was passed, against the petitioner.

11. It is an admitted fact that till date the petitioner has not lodged any account of election expenses for the Legislative Assembly, 2015. So far as prayer No.(I) is concerned, Section 11 of the Representation of People Act, 1951 provides an alternate remedy for removal or rejection of the period of disqualification by the Election Commission. The petitioner has already availed that remedy. He has filed a representation dated 27.04.2019 under Section 11 of Representation of People Act, 1951 seeking removal or rejection of the period of disqualification by the Election Commission.

12. The petitioner's reliance on Ashok Shankarrao Chavan's case (supra) is misplaced, as the captioned case does not relate to exercise of jurisdiction under Article 226 of the Constitution of India, in election matters with respect to 'improper rejection of nomination'.

13. The election process has already commenced. There is no scope of interference in the same, as remedy against the 'rejection of nomination', is clearly provided in the Representation of People Act, 1951, by way of an election petition. Reliance is placed on the decision of the Supreme Court in N.P. Punnuswamy vs. Returning Officer, reported as 1952 SCR 218, wherein it was held as under:

"8. The next important question to be considered is what is meant by the words "no election shall be called in question. A reference to any treatise on elections in England will show that an election proceeding in that country is liable to be assailed on very limited grounds, one of them being the improper rejection of a nomination paper. The law with which we are concerned is not materially different, and we find that in Section 100 of the Representation of the People Act, 1951, one of the grounds for declaring an election to be void is the improper rejection of a nomination paper.

9. The question now arises, whether the law of elections in this country contemplates that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution (the ordinary jurisdiction of the courts having been expressly excluded), and another after they have been completed by means of an election petition. In my opinion, to affirm such a position would be contrary to the scheme of Part XV of the Constitution

and the Representation of the People Act, which, as I shall point out later, seems to be that any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at an intermediate stage before any court. It seems to me that under the election law, the only significance which the rejection of a nomination paper has consists in the fact that it can be used as a ground to call the election in question. 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. I think it follows by necessary implication from the language of this provision that those grounds cannot be urged in any other manner, at any other stage and before any other court. If the grounds on which an election can be called in question could be raised at an earlier stage and errors, if any, are rectified, there will be no meaning in enacting a provision like Article 329(b) and in setting up a special tribunal. Any other meaning ascribed to the words used in the Article would lead to anomalies, which the Constitution could not have contemplated, one of them being that conflicting views may be expressed by the High Court at the pre-polling stage and by the election tribunal, which is to be an independent body, at the stage when the matter is brought up before it."

"17. It may be pointed out that Article 329(b) must be read as complimentary to clause (a) of that Article. Clause (a) bars the jurisdiction of the courts with regard to such law as may be made under Articles 327 and 328 relating to the delimitation of constituencies or the allotment of seats to such constituencies. It was conceded before us that Article 329(b) ousts the jurisdiction of the courts with regard to matters arising between the commencement of the polling and the final selection. The question which has to be asked is what conceivable reason the legislature could have had to leave only matters connected with nominations subject to the jurisdiction of the High Court under Article 226 of the Constitution. If Part XV of the Constitution is a code by itself, i.e., it creates rights and provides for their enforcement by a special tribunal to the exclusion of all courts including the High Court, there can be no reason for assuming that the Constitution left one small part of the election process to be made the subject-matter of contest before the High Courts and thereby upset the time-schedule of the elections. The more reasonable view seems to be that Article 329 covers all "electoral matters."

18. The conclusions which I have arrived at may be summed up briefly as follows:--

(1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted. (2) In conformity with

this principle, the scheme the election law in this country as well as in England is that no significance should be attached to anything which does not affect the "election" and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the "election" and enable the person affected to call it in question, they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before any court while the election is in progress."

14. Similarly, in the case of Election Commission of India through Secretary v Ashok Kumar & Ors (2000) 8 SCC 216, it was held :

"For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove: -

1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

2) Any decision sought and rendered will not amount to calling in question an election if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the Court.

5) The Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the

courts indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the Court would act with reluctance and shall not act except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material."

15. Reliance is also placed upon the decision of a Division Bench of this Court in LPA 383/2011 dated 25.04.2011 in the case of "Braj Kishore Bhagat vs. Chief Election Commissioner.

16. The dicta in the aforementioned decisions unequivocally declares that an "Election" means, all steps and entire proceedings from the date of election till declaration of results. Thus, the only way to challenge the election is by way of an Election Petition. The courts have time and again cautioned that there cannot be two-pronged attack on the matters connected with elections, i.e., one during the course of elections by invoking extraordinary jurisdiction of the High Courts under Article 226 of the Constitution of India and secondly, after the elections have been completed, by way of filing an Election Petition.

17. As the petitioner has already approached the Election Commission, with respect to his disqualification, the same be considered expeditiously.

18. In view of the above, there is no merit in this petition and the same is accordingly dismissed along with the pending application.

19. Copy of the order be given dasti to the learned counsel for the parties under the signatures of the Court Master.