
(2013) 11 MP CK 0006

In the Madhya Pradesh High Court

Case No : Writ Petition No. 13340/2013

Sureshchandra Bhandari

APPELLANT

Vs

Commissioner, Election Commission of India and Others

RESPONDENT

Date of Decision : 20-11-2013

Acts Referred:

Citation : (2014) 2 MPHT 362 : (2014) 2 MPLJ 586

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Judgement

N.K. Mody, J.—The prayer in the petition is for quashment of nomination form of respondent No. 4, which has wrongly been accepted for election of Constituency No. 201, Dhar. Learned Counsel for the petitioner submits that in the Assembly Election, which is scheduled to be held on 25-11-2013, petitioner submitted nomination form. The respondent No. 4 also submitted nomination form. Along with nomination form, affidavit is required to be filed. The affidavit submitted by respondent No. 4 is having 24 blank columns, which have not been answered. It is submitted that as per circular issued by the Election Commissioner, if affidavit is filed having blank columns, then the form is required to be rejected. It is submitted that in a scrutiny the respondent No. 3 has accepted the form in spite of the objection raised by the petitioner. It is submitted that petition filed by the petitioner be allowed and candidature of respondent No. 4 be rejected.

2. Learned Counsel for the respondent Nos. 2 and 3 submit that since election is in process, therefore, the petitioner is not entitled for any relief from this Court. Reliance is placed on Article 329 of Constitution of India, which reads as under:--

329. Bar to interference by Courts in electoral matters.--

(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.

3. The scrutiny of the nomination form has been conducted by the Returning Officer as per Section 36 of the Representation of People Act, 1951, which reads as under:--

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

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

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

Articles 84, 102, 173 and 191,

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

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

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

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

(4) The Returning Officer shall not reject any nomination paper on the ground of any defect, which is not of a substantial character.

(5) The Returning Officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of Section 30 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control:

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

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

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

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

4. Election petition is being filed u/s 100 of the Act. As per sub-clause (6) of sub-section (1) of Section 100 of the Representation of People Act, if the form has wrongly been rejected or accepted then it is the ground for filing Election Petition. In the matter of N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, , Hon"ble Apex Court had an occasion to take into consideration Article 329(b) of the Constitution of India wherein the word "election" is used and held that rejection or acceptance of nomination paper is included in the term. Hon"ble Apex Court has further observed that the word "election" has been used in Part XV of the Constitution in the wide sense, that is to say, to connote the entire procedure to be gone through to return a candidate to the legislature. The use of the expression "conduct of election" in Art. 324 specifically points to the wide meaning, and that meaning can also be read consistently into the other provisions, which occur in Part XV including Art. 329(b). The term "election" may be taken into embrace the whole procedure, which consists of several stages and embraces many steps, whereby an "elected member" is returned, whether or not is be found necessary to take poll. It is not used in a narrow sense.

5. Keeping in view the aforesaid position of law, no relief can be granted in the petition. Hence, the petition stands dismissed. However, the petitioner shall be at liberty to file election petition raising the grounds, as raised in the petition. With the aforesaid, petition stands disposed of.