



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No.17006/2024

Jagmohan S/o Late Shri Manohari, Aged About 67 Years, R/o 19-
20 Shiv Shakti Nagar, Iskon Road, Prathvi Raj Nagar, Jaipur

-----Petitioner

Versus

1. Election Commission of India, Through The Chief Election Officer, Election Department, Secretariat, Jaipur
2. The Returning Officer(SDM), Dausa Legislative Assembly Seat, Collectorate, Dausa.
3. Shri Deen Dayal S/o Shri Kishanlal, Aged About 48 Years, R/o Gaidolai Ki Ghani, Jeerota Khurd, Dausa.

-----Respondents

For Petitioner(s) : Dr.T. N. Sharma
Mr.Poonam Chand Bhandari
Mr.I.J. Kathuria
Mr.Vishnu Dutt Bhardwaj

JUSTICE ANOOP KUMAR DHAND

Order

05/11/2024

Reportable

1. The instant writ petition has been filed by the petitioner challenging the order dated 28.10.2024 passed by the Returning Officer by which the objections submitted by the petitioner against the nomination form of the respondent No.3 have been rejected and the nomination form of the respondent No.3 for contesting the elections of the Member of Legislative Assembly (for short, "the MLA") from Dausa constituency has been accepted.
2. Learned counsel for the petitioner submits that at the time of submitting the nomination form, the respondent No.3 has made



false declaration in his nomination form and he has submitted false affidavit with incorrect information. Counsel submits that an objection was taken by the petitioner before the Returning Officer to reject the nomination of the respondent No.3. In the said application, it was submitted that the respondent No.3 has not furnished the Income Tax Returns of the preceding three financial years and the complete details of his bank accounts are not furnished. Counsel submits that such an act of the respondent No.3 amounts to corrupt practice as defined by the Hon'ble Apex Court in the case of **Lok Prahari Vs. Union of India & Ors.** reported in **(2018) 2 SCR 892**. Counsel submits that such act of the respondent No.3 falls within the definition of the undue influence under Section 123(2) of the Representation of the People Act, 1951 (for short, "the Act of 1951"). Counsel submits that under these circumstances, the nomination submitted by the respondent No.3 for contesting election of the MLA should have been rejected by the Returning Officer. Counsel submits that none of the objections taken by the petitioner, were dealt and considered logically by the Returning Officer and the nomination of the respondent No.3 has been accepted vide impugned order dated 28.10.2024. Hence, under these circumstances, interference of this Court is warranted.

3. Heard and considered the submissions made at Bar and perused the material available on the record.

4. The only issue involved in this petition is improper acceptance of the nomination form of respondent No. 3 by the Returning Officer. As per the case of the petitioner, while submitting the nomination form, the respondent No. 3 has not



made correct declaration and has concealed and suppressed the material and correct information. Hence, such act of the respondent No.3 amounts to use of corrupt practices and he is not eligible and qualified to contest election of the MLA from Dausa Constituency.

5. As per Section 100 of the Act of 1951, improper rejection or acceptance of nomination is a ground for declaring an election as void. As per Section 80 of the Act of 1951, no election shall be called in question except by way of an election petition.

6. The Hon'ble Apex Court in the case of **N.P. Ponnuswami vs. Returning Officer** reported in **AIR 1952 SC 64** has held that the term 'election' is used to embrace the whole procedure of election and it is not confined only to final result thereof. Rejection or acceptance of nomination paper is also included in this term. Thus, improper rejection or acceptance of nomination is a continuing part of the process of election, which can be called in question by way of filing an election petition under Sections 80 & 100 of the Act of 1951.

7. Sections 80 and 100 of the Act of 1951 are reproduced as under:-

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

[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.

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 a 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;

(b)****

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

8. Legislature has placed "improper acceptance" and "improper rejection" of nomination on the same footing and these are the grounds available under Section 100 of the Act of 1951 for declaring election to be void. Hence, it is clear from bare reading of above two provisions that rejection and acceptance of nomination paper is one of the grounds for declaring the election to be void and an election petition can be submitted in this regard.

9. The Hon'ble Apex Court in the case of **Manda Jaganath Vs. K.S. Rathnam and Ors.** reported in **(2004) 7 SCC 492** has held





that Representation of People Act, 1951 provides a proper forum for adjudicating the election disputes and no forum other than one constituted under the said Act is competent to decide disputes. It has been further observed that only those actions of the Returning Officer which have the effect of interfering in the free flow of scheduled elections or hindering the process of election are amenable to writ jurisdiction. It is not the case of the petitioner that action of the Returning Officer would have effect on the free flow of scheduled election process or it would hinder the progress of the election.

10. As per Article 329 (b) of the Constitution of India, no election to either House of Parliament or of the Legislature of a State shall be called in question except by way of filing of an election petition.

11. In the case of **Election Commission of India Vs. Ashok Kumar** reported in **2000 (8) SCC 216** has held in paras 29 to 32:-

"29. Section 100 of the Representation of the People Act, 1951 needs to be read with Article 329(b), the former being a product of the later. The sweep of Section 100 spelling out the legislative intent would assist us in determining the span of Article 329(b) though the fact remains that any legislative enactment cannot curtail or override the operation of a provision contained in the Constitution. Section 100 is the only provision within the scope of which an attack on the validity of the election must fail so as to be a ground available for avoiding an election and depriving the successful candidates of his victory at the polls. The Constitution Bench in Mohinder Singh Gill's case (vide para 33) asks us to read Section 100 widely as "covering the whole basket of grievances of



the candidates". Sub-clause (iv) of Clause (d) of Sub-section (1) of Section 100 is a "residual catch-all clause". Whenever there has been non-compliance with the provisions of the Constitution or of the Representation of the People Act, 1951 or of any rules or orders made thereunder if not specifically covered by any other preceding clause or sub-clause of the Section it shall be covered by Sub-clause (iv). The result of the election insofar as it concerns a returned candidate shall be set aside for any such non-compliance as aforesaid subject to such non-compliance also satisfying the requirement of the result of the election having been shown to have been materially affected insofar as a returned candidate is concerned. The conclusions which inevitably follow are: in the field of election jurisprudence, ignore such things as do not materially affect the result of the election unless the requirement of satisfying the test of material effect has been dispensed with by the law; even if the law has been breached and such breach satisfies the test of material effect on the result of the election of the returned candidate yet postpone the adjudication of such dispute till the election proceedings are over so as to achieve, in larger public interest, the goal of constituting a democratic body without interruption or delay on account of any controversy confined to an individual or group of individuals or single constituency having arisen and demanding judicial determination.

30. To what extent Article 329(b) has an overriding effect on Article 226 of the Constitution? The two Constitution Benches have held that Representation of the People Act, 1951 provides for only one remedy; that remedy being by an election petition to



be presented after the election is over and there is no remedy provided at any intermediate stage. The non-obstante clause with which Article 329 opens pushes out Article 226 where the dispute takes the form of calling in question an election (see para 25 of Mohinder Singh Gill's case, supra). The provisions of the Constitution and the Act read together do not totally exclude the right of a citizen to approach the Court so as to have the wrong done remedied by invoking the judicial forum; nevertheless the lesson is that the election rights and remedies are statutory, ignore the trifles even if there are irregularities or illegalities, and knock the doors of the courts when the election proceedings in question are over. Two-pronged attack on anything done during the election proceedings is to be avoided - one during the course of the proceedings and the other at its termination, for such two-pronged attack, if allowed, would unduly protract or obstruct the functioning of democracy.

31. The founding fathers of the Constitution have consciously employed use of the words 'no election shall be called in question' in the body of Section 329(b) and these words provide the determinative test for attracting applicability of Article 329(b). If the petition presented to the Court 'calls in question an election' the bar of Article 329(b) is attracted. Else it is not.

32. 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 court's 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 till 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."

12. Hence, it is clear that writ petition challenging the improper acceptance or rejection of nomination would not be maintainable, as the remedy available to the petitioner is to file election petition in terms of Sections 80 and 100 of the Act of 1951. This Court under Article 226 of the Constitution of India would not be in a position to examine as to whether the grounds on which the nomination form of the respondent No.3 is accepted, are flimsy or whether it is substantial or not. Accordingly, this petition stands dismissed *in limine*.

13. Stay application and all other application(s), pending if any, also stand dismissed.

(ANOOP KUMAR DHAND),J

Aayush Sharma /304