

TELANGANA HIGH COURT**Bench: Chief Justice Alok Aradhe and Justice N.V. Shravan Kumar****Date of Decision: 20th November 2023**

WRIT PETITION NO. 31971 OF 2023

KAMBALAPALLY RAVINDRA PRASAD ...PETITIONER(S)**VERSUS****THE ELECTION COMMISSION OF INDIA ...RESPONDENT(S)****Legislation:**

Article 329 of the Constitution of India
Representation of People Act, 1951

Subject: Writ petition challenging the rejection of the petitioner's nomination form for the Ibrahimpatnam Assembly Constituency. The main issue is the non-tallying of proposer names with electoral rolls and the application of Article 329(b) of the Constitution barring court interference in electoral matters.

Headnotes:

Nomination Rejection and Judicial Review – Challenge against the rejection of nomination form by the Returning Officer for the Ibrahimpatnam Assembly Constituency – Rejection based on the mismatch of proposer names with electoral rolls. [Para 2]

Arbitrary Decision Allegation – Petitioner contends the decision of the Returning Officer as arbitrary, mechanical, and lacking in consideration. Reliance placed on the Supreme Court's decision in Mohinder Singh Gill v. Chief Election Commissioner. [Paras 3-4]

Constitutional Provisions – Examination of Article 329(b) of the Constitution of India, which bars judicial intervention in electoral matters, with reference to N.P. Ponnuswami v. Returning Officer, Namakkal Constituency and other relevant cases. [Paras 6-7, 8]

Supreme Court Precedents – Discussion of Supreme Court rulings affirming that challenges to electoral processes, including nomination rejections, can only be addressed through an election petition post-election and not through intermediate judicial remedies. [Para 8]

Decision – Writ petition dismissed due to constitutional constraints on judicial interference in electoral matters as per Article 329(b). Liberty granted to petitioner to pursue an election petition, if advised. [Para 9-10]

Referred Cases:

- Mohinder Singh Gill v. Chief Election Commissioner (1978) 1 SCC 405
- N.P. Ponnuswami v. Returning Officer, Namakkal Constituency (1952) 1 SCC 94
- Ram Phal Kundu v. Kamal Sharma (2004) 2 SCC 759

ORDER: (Per the Hon'ble the Chief Justice Alok Aradhe)

Mr. R. Anurag, learned counsel for the petitioner.

Mr. Avinash Desai, learned Senior Counsel represents Ms. Divya Adepu, learned Standing Counsel for the Election Commission of India.

2. The petitioner had submitted the nomination form from the Ibrahimpatnam Assembly Constituency on 10.11.2023. The nomination form submitted by the petitioner was rejected by the Returning Officer on 15.11.2023 on the ground that the names of the proposers entered and mentioned in the nomination form did not tally with the electoral rolls.

3. Learned counsel for the petitioner submits that the order passed by the Returning Officer is arbitrary, mechanical and suffers from the vice of non-application of mind.

4. In support of the aforesaid submission, reliance was placed on the decision of the Supreme Court in ***Mohinder Singh Gill v. Chief Election Commissioner***¹.

5. We have considered the submission made by the learned counsel for the petitioner and perused the record.

6. Section 329 of the Constitution of India deals with bar to interference by courts in electoral matters. Article 329(b) is extracted below for the facility of reference:

“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.”

¹ (1978) 1 SCC 405

7. In **N.P.Ponnuswami vs. Returning Officer, Namakkal Constituency²**, the petitioner filed nomination papers for election to **Madras Legislative Assembly** and the nomination paper of the petitioner therein was rejected. Thereupon, the petitioner in the said case filed a writ petition which was dismissed in the light of mandate contained in **Article 329(b) of the Constitution of India**. Thereupon, the **Supreme Court dealt with the scope and ambit of Section 329(b) of the Constitution of India**. In paragraphs 12, 14 and 15, it was held as under:

“12. It seems to me 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 elections” in Article 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 Article 329(b). That the word “election” bears this wide meaning whenever we talk of elections in a democratic country, is borne out by the fact that in most of the books on the subject and in several cases dealing with the matter, one of the questions mooted is, when the election begins.

(13) xx xxx

14. 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.

15. 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

² (1952) 1 SCC 94

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.”

8. The law laid down in **N.P.Ponnuswami** (supra) was referred to in a subsequent decision in **Ram Phal Kundu vs. Kamal Sharma**³ and in paragraph 24, it was held as under:

“**24.** It may be noticed that the petition by Kamal Sharma was filed on 6-2-2000 and the same was allowed by the Election Commission the very next day i.e. on 7-2-2000 by which a direction was issued to the Returning Officer to hold a fresh scrutiny. There is nothing on record to indicate nor it appears probable that before passing the order, the Election Commission issued any notice to Bachan Singh. Apparently,

³ (2004) 2 SCC 759

the order was passed behind his back. **The order of the Election Commission to the effect that the Returning Officer shall take further consequential steps as may become necessary, by treating all earlier proceedings in relation to the said candidates, as void ab initio and redraw the list of validly nominated candidates, could not have been passed without giving an opportunity of hearing to Bachan Singh. That apart, it has been held by a catena of decisions of this Court that once the nomination paper of a candidate is rejected, the Act 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. (See *N.P. Ponnuswami v. Returning Officer* [(1952) 1 SCC 94 : AIR 1952 SC 64], *Mohinder Singh Gill v. Chief Election Commissioner* [(1978) 1 SCC 405 : AIR 1978 SC 851] and *Election Commission of India v. Shivaji* [(1988) 1 SCC 277 : AIR 1988 SC 61].) Therefore, the order passed by the Election Commission on 7-2-2000 was not only illegal but was also without jurisdiction and the respondent Kamal Sharma can get no advantage from the same. The inference drawn and the findings recorded by the High Court on the basis of the order of the Election Commission, therefore, cannot be sustained.**

(emphasis supplied)”

Thus, it is evident that in the aforesaid decision, it has been held that once the nomination paper of a candidate is rejected, the Representation of People Act, 1951 only provides for one remedy, that is the remedy by way of an election petition to be presented after the election is over and there is no remedy provided at any intermediate stage. Therefore, no case for interference is made out.

9. In view of the aforesaid enunciation of law by the Supreme Court, we are not inclined to entertain the writ petition. However, liberty is given to the petitioner to take recourse to the remedy of election petition, if so advised.
10. With the aforesaid liberty, the writ petition is dismissed.

As a sequel, miscellaneous petitions, pending if any, stand closed.

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