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**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE  
BEFORE  
HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI  
&  
HON'BLE SHRI JUSTICE GAJENDRA SINGH  
ON THE 3<sup>rd</sup> OF MAY, 2024  
WRIT APPEAL No. 1039 of 2024**

**BETWEEN:-**

**MOTI SINGH**

**.....APPELLANT**

***(SHRI VIBHOR KHANDELWAL, ADVOCATE ALONGWITH SHRI JAYESH GURNANI, ADVOCATE FOR THE APPELLANT).***

**AND**

- 1. ELECTION COMMISSION OF INDIA THROUGH CHIEF ELECTION COMMISSIONER, NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI (DELHI)**
- 2. DISTRICT ELECTION OFFICER, CONSTITUENCY NO. 26 - INDORE, ADMINISTRATIVE COMPLEX, MOTI TABELA, INDORE (MADHYA PRADESH)**
- 3. RETURNING OFFICER CONSTITUENCY NO. 26 - INDORE, ADMINISTRATIVE COMPLEX, MOTI TABELA, INDORE (MADHYA PRADESH)**
- 4. DR. AKSHAY BAM**

**.....RESPONDENTS**

***(MS. MINI RAVINDRAN, ADVOCATE FOR RESPONDENTS NO. 1 TO 3).***

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*This appeal coming on for admission this day, Justice Sushrut Arvind*

***Dharmadhikari passed the following:***

**JUDGMENT**

Heard on the question of admission.

In this appeal under Section 2(1) of the Madhya Pradesh Uchcha Nyayalay (Khand Nyaypeeth Ko Appeal) Adhiniyam 2005, the appellant has assailed the legality, validity and propriety of the order dated 30.04.2024 passed by the learned Single Judge in Writ Petition No. 11783/2024 dismissing the petition.

2. Brief facts of the case are that the appellant is a member of the Indian National Congress (hereinafter referred to as the "INC") which is a political party recognized as National Party as per paragraph 6B of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as the 'Order of 1968'). The respondent No.1/Election Commission of India has notified the general election for the House of People on 16.03.2024 and has issued the election program. The extract of the election program declared by the respondent No.1 for Indore parliamentary constituency is reproduced hereinbelow :

S.L.No.	Program	Date
1	Issue of notification	18.04.2024
2	Last date for filing nominations	25.04.2024
3	Scrutiny of nominations	26.04.2024
4	Last date for withdrawal	29.04.2024
5	Date of poll	13.05.2024
6	Counting of votes	04.06.2024
7	Date before which the election shall be completed	06.06.2024

3 . As per the election program, the appellant had submitted his nomination form together with an affidavit in the prescribed format as required under the Conduct of Election Rules, 1961 (hereinafter referred to as 'Rules of 1961'). Similarly, respondent No. 4 has also submitted his nomination form

alongwith an affidavit in the prescribed format. The appellant and respondent No.4 were to contest the general election for the House of People from the constituency Indore-26, however, the INC has declared respondent No.4 as the 'approved candidate' and the appellant as the 'substitute candidate' by issuing Form-B in the prescribed form as mentioned under the Order of 1968. While scrutinizing the nomination forms, respondent No. 3 rejected the form of appellant on the ground that the appellant was only a '**substitute candidate**' and respondent No.4 has been declared as '**approved candidate**'. On 29.04.2024, respondent No.4 being an approved candidate, withdrew his nomination form to contest the parliamentary elections. As a result, the appellant immediately submitted representation to declare him as the 'approved candidate' and allotment of the official symbol of INC, however, the same was not considered and the appellant was deprived of his legal rights. In this backdrop, appellant had filed the writ petition seeking for the following reliefs :

- (1) That, the instant writ petition may kindly be allowed and the respondent No.1 to 3 may kindly be directed to accept the candidature of the petitioners as an official recognized candidate of Indian National Congress by allotting the recognized election symbol of INC to the petitioner, enabling the petitioner to contest the ensuing general election of the House of People from Indore - 26 constituency;
- (2) That, the respondent No.1 to 3 may kindly be directed to consider and decide the pending representation dated 29.04.2024 filed by the petitioner, by passing a reasoned and speaking order thereon;
- (3) That, the cost of the present writ petition may also be awarded to the petitioner and any other relief which this Hon'ble Court may consider appropriate, may also be granted in favour of the petitioner.

4. The learned Single Judge, after hearing both the sides and perusing the record, dismissed the petition being misconceived. Being aggrieved, the

present writ appeal has been filed by the appellant.

5. Learned counsel for the appellant contended that the learned Single Judge has failed to consider the fact that as per Proviso to Sub Section (1) of Section 33 of the Representation of People Act, 1951 (hereinafter referred to as 'Act of 1951') a candidate not set-up by a recognized political party shall not be deemed to be duly nominated for election from the constituency unless the nomination paper is subscribed by 10 proposers being elector of the constituency. It is a crystal clear mandate of Section 33(1) of the Act of 1951 that a candidate set-up by a recognized political party can submit his nomination form only with one signature i.e. an elector of the constituency as proposer. Therefore, action of the Returning Officer rejecting his nomination on 26.04.2024 may be correct since at that time the petitioner was not approved candidate of the INC as also his form was not signed by 10 proposers, but in view of the Proviso to sub Section (5) of Section 36 of the Act of 1951, the Returning Officer ought to have given a day's time to the appellant to get signatures of 10 proposers and examine the nomination form next day.

6. Learned counsel for the appellant further contended that the learned Single Judge also failed to consider that as per Form-B, there are two stages on which a substitute candidate can be stepped into the shoes of approved candidate. Firstly, on the approved candidate nomination being rejected on scrutiny or on withdrawing from the contest, therefore, if at the stage of scrutiny of the nomination paper, the nomination form of respondent No. 4 was accepted, therefore, at this stage there was no occasion for the appellant to become an approved candidate. However, at the second stage, when the respondent No.4 withdrew his candidature, the form of the appellant should have been scrutinized and accepted and allowed him to contest the election.

7. Learned counsel for the appellant also contended that the statutory provisions of law would prevail over the Handbook for the Returning Officer, 2023 (hereinafter referred to as 'Handbook 2023') as well as the Order 1968, since these are only executive instructions. Learned counsel for the appellant contended that artificial instructions cannot curtail the rights of the appellant to contest the elections. In fact, an independent candidate is required to obtain 10 signatures and not the substitute candidate nominated by the INC. Learned counsel for the appellant relied upon the judgment of the Apex Court in the case of **Benedict Denis Kinny vs. Tulip Brian Miranda & Ors.,(2021) 12 SCC 780** has held as under :

"32. This Court laid down in the above case in **Election Commission of India vs. Ashok Kumar, (2000) 8 SCC 216** that arbitrariness and malafide destroy the validity and efficacy of all orders passed by public authorities. This Court in the above case held that the jurisdiction of Article 226 is not even barred in election matter though it has to be sparingly exercised. This Court held that 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. In paragraph 30, the following was laid down:-

'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 vs. Chief Election Commissioner, (1978) 1 SCC 405**). 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."

8. In view of the aforesaid legal position, the appellant is entitled to contest the parliamentary elections. The learned Single Judge has erred in not considering the provisions in its true perspective, therefore, the impugned order deserves to be set aside.

9. Per contra, Ms. Mini Ravindran, learned counsel for the respondent No.1 submitted that in fact the writ petition itself is not maintainable. The Apex Court in the case of **Election Commission of India (supra)** had held that any interference by the High Courts entertaining petition under Article 226 of the Constitution of India and issuing directions after commencement of the electoral process has the effect of interpreting, obstruction or protracting the election proceedings, in such a situation remedy should be postponed till after the completion of such proceedings and after the elections are over, the aggrieved candidate would have the remedy of filing an election petition. The High Courts are not supposed to exercise the writ jurisdiction but the same can be exercised only in exceptional and rare cases. Learned counsel for the respondent further contended that in case of **Manda Jagannath vs. K. Ratnam & Ors., (2004) 7 SCC 492**, the Apex Court held as under :

"In our opinion, whether the returning officer is justified in rejecting this Form B submitted by the first respondent herein or not, is not the matter for the High Court to decide in exercise of its writ jurisdiction. This issue could be agitated by an aggrieved party in an election petition only."

10. Learned counsel for the respondent No.1 also submitted that since the nomination form of the appellant having already been rejected on

25.04.2024, there is no question of allowing him to participate in the elections. The appellant did not challenge the rejection of nomination at any point of time. Moreover, the directions contained in the Handbooks, 2023 and the Order 1968 are not put to challenge by the appellant in the writ petition. Therefore, the contention of learned counsel for the appellant that the statutory provisions would have the overriding effect and the Handbook, 2023 and the Order, 1968 cannot be countenanced. Moreover, altogether new prayer has been made by the appellant in the writ appeal which was never prayed before the learned Single Judge. Hence, the learned Single Judge has rightly passed the impugned order and no interference is warranted.

11. Heard learned counsel for the parties. Perused the record.

12. Considering the peculiar facts and circumstances of the case and in the light of the principles laid down in the case of **Election Commission of India (supra) and Manda Jagannath (supra)**, we find force in the submissions made by the learned counsel for the respondents. When the impugned order is tested on the anvil of the above facts, we do not perceive any error therein.

13. Accordingly, this appeal being bereft of merit and substance is hereby dismissed.

(S. A. DHARMADHIKARI)  
JUDGE

*vidya*

(GAJENDRA SINGH)  
JUDGE