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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL)-9475/2022, CM APPL. 28293/2022**

VISHWANATH PRATAP SINGH Petitioner

Through: Petitioner in person.

versus

ELECTION COMMISSION OF INDIA

& ANR.

..... Respondents

Through: Mr. Amit Sharma and Mr. Dipesh
Sinha, Advs. for R-1.

CORAM:

HON'BLE MS. JUSTICE POONAM A. BAMBA

ORDER

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10.06.2022

CM APPL. 28293/2022

1.0 Allowed, subject to just exceptions. Application is disposed of accordingly.

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2.0 Vide this petition under Article 226 of the Constitution of India, the petitioner has prayed as under :

"I. issue a writ of mandamus or any other appropriate writ/order/direction commanding the respondents to decide the candidature of the petitioner to file his Nomination for Rajya Sabha Election 2022 at earliest;

II. issue a writ of mandamus or any other appropriate writ/order/ direction commanding the respondents to grant

permission to the petitioner to file his Nomination for the candidature of Rajya Sabha Election 2022;

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III. issue a writ of mandamus or any other appropriate writ or direction, thereby directing the respondents to withdraw the column of proposer in the Nomination Form (annexure P-3 herein) and quash the same;

IV. pass an order awarding the cost in favour of the petitioner and against the respondents; and

V. pass such other orders, which this Hon'ble Court may deem fit and proper under the circumstances of the case.”

3.0 It is submitted that the respondent no. 1 issued Notification bearing no. ECI/PN/45/2022 dated 12.05.2022 for Biennial Elections to the Council of States to fill the seats of members retiring between 21.06.2022 to 01.08.2022. The last date for submission of nomination was 31.05.2022.

3.1 It is further submitted that the petitioner is a citizen of India and intended to file his nomination as independent candidate for Rajya Sabha Election, 2022. Accordingly, he collected the nomination form on 30.05.2022. But the petitioner was not allowed to file his nomination and was required to get the signatures of the proposer, as mentioned in a column in the said Nomination Form. In absence of the proposer, the petitioner was prevented from filing his nomination for candidature for MP Rajya Sabha Election July 2022 on time. Hence, this petition.

3.2 It is submitted that the petitioner approached the respondent to allow him to file his candidature without proposer, but the officials did not pay any

heed to his request in view of its own, rules, regulations and policies.

3.3 The petitioner has also submitted that his fundamental right of free

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speech and expression and the right to personal liberty has been infringed by the respondent by *mala fide* not granting him permission to file nomination for Rajya Sabha Election 2022.

4.0 On the other hand, Ld. Counsel for respondent no. 1 seeks dismissal of this petition at the outset. He submitted that the present petition is not maintainable as it is barred by Article 329(b) of the Constitution of India and Section 80 of the Representation of the People Act, 1950. Ld. counsel also submitted that once the election process has begun, no court can entertain any such litigation. If at all, the petitioner could approach Election Commission of India, that too only after the elections are over. In support, he placed reliance upon the judgment of Hon'ble Supreme Court in *Mohinder Singh Gill & Another V. Chief Election Commissioner, New Delhi & Others (1978) 1 Supreme Court Cases 405*.

5.0 Admittedly, as required, the Nomination Form of the petitioner did not bear the particulars and signatures of the proposers. The date for filing of Nomination Forms for the Rajya Sabha Elections 2022, is already over. It is also not in dispute that the list of candidates for the aforesaid elections has already been published and the said elections are scheduled for 10.06.2022 i.e. today.

6.0 It would be pertinent to refer here to Article 329 of Constitution of India, which reads as under :

“329. Bar to interference by courts in electoral matters.–
[Notwithstanding anything in this Constitution]

(a) *the validity of any law relating to the delimitation of constituencies or the allotment*

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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.”***

6.1 Section 80 of the Representation of the People Act, 1950 reads 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.”

6.2 From the plain reading of Clause (b) of Article 329 as extracted

above, it is evident that any challenge to the election to either House of the Parliament can be made only by way of an election petition before the Election Commission of India. The Hon'ble Supreme Court in Mohinder Gill's case (supra) (as relied upon by the respondent no. 1), observed that:

“26.....The rainbow of operations, covered by the compendious expression “election”, thus commences from the initial notification and culminates in the declaration of the return of a candidate. The paramount

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policy of the Constitution-framers in declaring that no election shall be called in question except the way it is provided for in Article 329(b) and the Representation of the People Act, 1951, compels us to read, as Fazl Ali, J. did in Ponnuswami the Constitution and the Act together as an integral scheme. The reason for postponement of election litigation to the post-election stage is that elections shall not unduly be protracted or obstructed. The speed and promptitude in getting due representation for the electors in the legislative bodies is the real reason suggested in the course of judgment.

27. Thus far everything is clear. No litigative enterprise in the High Court or other court should be allowed to hold up the on-going electoral process because the parliamentary representative for the constituency should be chosen

promptly. Article 329 therefore covers “electoral matters”. One interesting argument, urged without success in Ponnuswami elicited a reasoning from the Court which has some bearing on the question in the present appeal.”

6.3 Even Section 80 of the Representation of the People Act, 1950 prohibits challenging of any election except by way of an election petition.

7.0 The petitioner has efficacious remedy available under law and could not have invoked writ jurisdiction. Furthermore, in view of the

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above bar by the Constitution of India, Representation of the People Act, 1950 and the settled position of law, the present petition before this court is not maintainable.

8.0 The petition is accordingly dismissed.

**POONAM A. BAMBA
(VACATION JUDGE)**

JUNE 10, 2022/manju

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Click here to check corrigendum, if any
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