

**Court No. - 3****Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 17 of 2022****Petitioner :- Atul Kumar And Another****Respondent :- Election Commission Of Bharat Thru. C.E.C. And Another****Counsel for Petitioner :- Rama Kant Dixit,Asok Pande,Shraddha Tripathi****Counsel for Respondent :- C.S.C.****Hon'ble Attau Rahman Masoodi,J.****Hon'ble Narendra Kumar Johari,J.**

In the pre-lunch session today, after hearing the parties' counsel we had passed the following order:

*“Heard Sri Ashok Pandey and Ms. Shraddha Tripathi, learned counsel for the petitioner and Sri O.P. Srivastava, learned Senior Counsel, assisted by Sri Kaushalendra Yadav and Ms. Anupriya Srivastava for the Election Commission of India and Sri Abhinav N. Trivedi, learned counsel for the State through virtual mode.*

*For the reasons to be recorded, we decline to entertain the writ petition at the instance of the petitioners and the same is accordingly dismissed.”*

We now proceed to record the reasons as under:

The present writ petition has questioned the legality of election schedule notified by the Election Commission of India on 8.1.2022 insofar as it relates to the holding of general elections of U.P. State Assembly. The notification is annexed as Annexure-1 to the writ petition.

Sri O.P. Srivastava, learned Senior Counsel assisted by Sri Kaushalendra Yadav and Ms Anupriya Srivastava, learned counsel for the Election Commission of India and Sri Abhinav N. Trivedi, learned counsel for the State, have argued that the present writ petition filed by the petitioners is not maintainable; firstly for the reason that the petitioners in paragraph-3 of the writ petition are espousing a personal interest which they claim to have in the ongoing process of

election and; secondly Article 329 of the Constitution of India bars the justiciability of any such cause relating to the election of a house of State Legislature under writ jurisdiction.

Sri Ashok Pandey, assisted by Ms Shraddha Tripathi, learned counsel for the petitioner in reply to the preliminary objections raised by the learned counsel for opposite parties, is unable to justify as to how a person who is espousing his personal cause can maintain a writ petition in public interest. He, however, laid emphasis that a person having an interwoven cause inclusive of personal interest in the important matters cannot be prevented to approach this Court in public interest for adjudication on questions of public importance, no matter his own interest constitutes a part thereof.

Public Interest Litigation in our humble opinion must remain away from any personal interest and to this extent the objection raised by learned counsel for opposite parties has force.

More relevant is the objection that is raised on the touchstone of Article 329 of the Constitution of India which for ready reference is reproduced hereunder:

**"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 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."

The rider operating upon the exercise of jurisdiction under Article 226 of the Constitution of India in relation to the matters of election to a State Legislative Assembly has invited the attention of this Court ever since the case of **Ponnuswami (N.P. Ponnuswami v. Returning officer, Namakkal Constituency and others** reported in **1952 AIR 64**). In a catena of judgements rendered by the apex court, it has succinctly been held that justiciability of a cause relating to election pertaining to State Legislative Assembly is permissible only through an election petition.

In the present case, it is not in dispute that a notification under Section 15 of the Representation of the People Act, 1951 has already come to be issued on 8.1.2022 and it is equally not in dispute that the prayer made in the writ petition affects the election process which has already commenced with the issuance of impugned notification.

Public Interest Litigation is not an exception to Article 329 of the Constitution of India, thus, the objection raised on behalf of the opposite parties deserves to be sustained and we also do not find any fruitful purpose to be served in embarking upon merit of the case once the very cause agitated in the writ petition is not justiciable.

Besides the above, we are unable to estimate the magnitude of affected parties as a result of relief sought in the present writ petition which undoubtedly suffers from non-joinder of the necessary parties.

For the reasons recorded above, the writ petition has thus been dismissed.

**Order Date :- 20.1.2022**

Fahim/-