

THE HIGH COURT OF MADHYA PRADESH

Writ Petition No. 8411/2020

(Aman Sharma Vs. The Chief Election Commissioner and another)

Jabalpur, Dated: 17.06.2020

Hearing convened through Video Conferencing.

Mr. A.M. Mathur, Senior Advocate with Mr. Abhinav Dhanodkar,
Advocate for the petitioner.

Mr. Siddharth Seth, Advocate for the respondents.

The present writ petition has been filed by way of a Public Interest Litigation under Article 226 of the Constitution of India seeking deferment of the biennial elections for three vacant seats of Rajya Sabha from the State of Madhya Pradesh scheduled to be held on 19.6.2020 vide order/Notification No.ECI/PN/37/2020 dated 1.6.2020 (Annexure P/1) issued by the Election Commission of India, primarily on the ground that there has been no application of mind while fixing the said date and that on 4.6.2020, the elections for filling of casual vacancies in Legislative Assembly of various States were postponed due to Covid-19 pandemic.

2. The Election Commission of India has filed advance response to the petition wherein a preliminary objection has been raised to the effect that the present writ petition should not be entertained as there is a bar provided under Clause (b) to Article 329 of the Constitution of India read with Section 18 and Section 100(1)(d)(iv) of the Representation of the People Act, 1951.

3. Learned counsel representing the Election Commission of India urged that the petitioner is neither a voter in the elections to be conducted for Rajya Sabha nor any statutory right of the petitioner has been violated. However, in case, there is violation of any statutory right, the petitioner would have a remedy of filing an election petition raising all the issues and contentions therein. Learned counsel placed reliance upon the judgments of the Apex Court in *N.P. Ponnuswami vs. Returning Officer*, AIR 1952 SC 64, *Mohinder Singh Gill and Another vs. Chief Election Commissioner, New Delhi and others* (1978) 1 SCC 405, *Election Commission of India through Secretary vs. Ashok Kumar and others*, (2000) 8 SCC 216=AIR 2000 SC 2977, *Manda Jaganath vs. K.S. Rathnam*, (2004) 7 SCC 492 and *Laxmi Bai vs. The Collector Nanded & others*, Civil Appeal No.1622/2020 decided on 14.02.2020. He also referred to a judgment of Madras High Court in WP (MD) No.11505/2019 (*P. Singaravel vs. The Chief Electoral Officer*) decided on 2.5.2019. Learned counsel further placed strong reliance upon the latest pronouncement of the Apex Court in the case of *Paresh Dhanani Vs. Election Commission of India* passed in Writ Petition (Civil) No.774/2019 decided on 25.6.2019.

4. Refuting the said objection raised by the learned counsel for the respondents, learned senior counsel appearing for the petitioner placed heavy reliance upon the judgments of the Apex Court in *Digvijay Mote Vs. Union of India and others*, (1993) 4 SCC 175 and *Ashok Kumar's case (supra)*, to contend that in spite of imposition of bar under Article 329(b) of the Constitution of India, the writ petition is maintainable.

5. We have heard learned counsel for the parties and find force in the preliminary objection raised by the learned counsel for the respondents-Election Commission of India.

6. The relevant clause (b) of Article 329 of the Constitution reads as under:-

“329. Bar to interference by courts in electoral matters.—

Notwithstanding anything in this Constitution-

(a) ***

(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.”

7. The aforesaid provision mandates that the election to either House of Parliament or to the House or either House of the Legislature of a State shall not be questioned except by filing an election petition in the prescribed manner and to such Authority and in such manner as may be provided for by or under any law made by the appropriate Legislature. The said provision has been subject matter of interpretation in various pronouncements. In *Mohinder Singh Gills*’ case (*supra*), the Constitution Bench of the Apex Court while dealing with the scope of Articles 329(b) and 226 of the Constitution of India held that Article 329(b) is a blanket ban on litigative challenges to electoral steps taken by the Election Commission and its officers for carrying forward the process of election to its culmination in the formal declaration of the result. The relevant extract of the said decision reads as under:-

“30. The plenary bar of Article 329 (b) rests on two principles : (1) The peremptory urgency of prompt engineering of the whole election process

without intermediate interruptions by way of legal proceedings challenging the steps and stages in between the commencement and the conclusion. (2) The provision of a special jurisdiction which can be invoked by an aggrieved party at the end of the election excludes other form, the right and remedy being creatures of statutes and controlled by the Constitution. Durga Shankar Mehta(Supra) has affirmed this position and supplemented it by holding that, once the Election Tribunal has decided, the prohibition is extinguished and the Supreme Court's over-all power to interfere under Art. 136 springs into, action. In Hari Vishnu (supra) this Court upheld the rule in Ponnuswami excluding any proceeding, including one under Article 226, during the on- going process of election, understood in the comprehensive sense of notification down to declaration. Beyond the declaration comes the election petition, but beyond the decision of the Tribunal the ban of Article 329(b) does not bind.

92. Diffusion, even more elaborate discussion, tends to blur the precision of the conclusion in a judgment and so it is meet that we synopsize the formulations. Of course, the condensed statement we make is for convenience, not for exclusion of the relevance or attenuation of the binding impact of the detailed argumentation. For this limited purpose, we set down our holdings:-

- (1)(a) Article 329(b) is a blanket ban on litigative challenges to electoral steps taken by the Election Commission and its officers for carrying forward the process of election to its culmination in the formal declaration of the result.
 - (b) Election, in this context, has a very wide connotation commencing from the Presidential notification calling upon the electorate to elect and culminating in the final declaration of the returned candidate.
- (2)(a) The Constitution, contemplates a free and fair election and vests comprehensive responsibilities of superintendence, direction and control of the conduct of elections in the Election Commission. This responsibility may cover powers, duties and functions of many sorts, administrative or other, depending on the circumstances.
 - (b) Two limitations at least are laid on its plenary character in the exercise thereof. Firstly, when Parliament or any State Legislature has made valid law, relating to or in connection with elections, the

Commission shall act in conformity with, not in violation of such provisions but where such law is silent Article 324 is a reservoir of power to, act for the avowed purpose of, not divorced from pushing forward a free and fair election with expedition. Secondly, the Commission shall be responsible to the rule of law, act bona fide and be amenable to the norms of natural justice in so far as conformance to such canons can reasonably and realistically be required of it as fairplay-in-action in a most important area of the constitutional order, viz., elections. Fairness does import an obligation to see that no wrongdoer candidate benefits by his own-wrong. To put the matter beyond doubt, natural justice enlivens and applies to the specific case of order for total re-poll, although not in full panoply but in flexible practicability. Whether it has been complied with is left open for the Tribunal's adjudication.

- (3) The conspectus of provisions bearing on the subject of elections clearly expresses the rule that there is a remedy for every wrong done during the election in progress although it is postponed to the post election stage and procedure as predicated in Article 329(b) and the 1951 Act. The Election Tribunal has, under the various provisions of the Act, large enough powers to give relief to an injured candidates if he makes out a case and such processual amplitude of power extends to directions to the Election Commission or other appropriate agency to hold a poll, to bring up the ballots or do other thing necessary for fulfilment of the jurisdiction to undo illegality and injustice and do complete justice within the parameters set by the "existing law."

(emphasis supplied)

8. In *Dr. P. Nalla Thampy Thera vs. B.L. Shanker*, AIR 1984 SC 135, the Apex Court held that elections and election disputes are a matter of special nature and though the right to franchise and right to office are involved in an election dispute, it is not a lis at common law nor an action in equity. Relying upon its earlier judgment in *N.P. Ponnuswami's* case (*supra*), it was held as under:-

“This Court has consistently taken the view that elections and election disputes are a matter of special nature and that though the right to franchise and right to office are involved in an election dispute, it is not a lis at common law nor an action in equity. As early as 1952 when the first election under the Constitution took place, a Constitution Bench of this

Court in *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency & Ors* (AIR 1952 SC 64) observed (para 18):

"The right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it." while dealing with an appeal in an election dispute arising out of the first series of elections under the Constitution, Mahajan, C.J., speaking for a Constitution Bench of this Court stated in *Jagan Nath v. Jaswant Singh & Ors.* (AIR 1954 SC 219 at p. 212):

"The general rule is well settled that the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and the Court possesses no common law power. It is also well settled that it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law."

9. Similar issue with regard to jurisdiction of the High Courts to entertain petition under Article 226 and to issue interim directions after commencement of electoral process came up for consideration before the Apex Court in *Ashok Kumar's* case (*supra*) wherein, taking note of its earlier judgments in *N.P. Ponnuswami's* case (*supra*), *Mohinder Singh Gill's* case (*supra*) and *Digvijay Mote's* case (*supra*), their Lordships came to hold as under:-

"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:

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 courts 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 things 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.

10. The Apex Court in its recent pronouncement in the case of ***Paresh Dhanani***'s case (*supra*) after considering its earlier judgments in ***N.P. Ponnuswami***'s case (*supra*), ***Dr. P. Nalla Thampy Thera*** (*supra*) and ***Ashok Kumar***'s case (*supra*) reiterated the view and held as under:-

“Learned Senior Advocate appearing for the petitioner has drawn our attention to para 32 in the *Election Commission of India Vs. Ashok Kumar and others (2000) 8 SCC 216*, in particular sub-paragraphs 2 and 4 thereof. We do not, however, agree with the contention of the learned counsel that the present case does not and will not amount to ‘calling in question the election’ and would not result in interpreting, obstructing or delaying the progress of election to the Rajya Sabha. The contention and challenge raised before us is not to a mere correction or to smoothen the progress of election proceedings by removing obstacles or to preserve vital piece of evidence if the same would be destroyed or rendered irretrievable by the time set for invoking jurisdiction of the statutory court. These are limited exceptions and not an alternative ground to the statutory right to challenge and question the election by filing a writ petition. The contentions raised challenging the notification/order dated 15th June, 2019 can and should be as per the constitution and statute raised by way of an election petition.”

11. In view of the above, we accept the preliminary objection raised by the learned counsel for the respondent-Election Commission of India, as the grounds urged by the learned senior counsel for the petitioner for deferment

of the elections that there has been no application of mind while fixing the date of poll and that earlier the elections for filling of casual vacancies in Legislative Assembly of various States were postponed due to Covid-19 pandemic, do not create any justification to bypass the mandate of Article 329(b) of the Constitution of India in writ jurisdiction of this Court. Accordingly, we decline to entertain the present writ petition leaving it open to the petitioner to take recourse to the remedy, as may be available to him, in accordance with law. However, we are not expressing any opinion on the merits of the contentions raised by the learned counsel for the petitioner.

12. Resultantly, accepting the preliminary objection of the respondents, the writ petition is dismissed with the liberty, as aforesaid.

(AJAY KUMAR MITTAL)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE

C.