

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE**

**AND**

**THE HON'BLE SRI JUSTICE N.V.SHRAVAN KUMAR**

**WRIT PETITION No.31741 of 2023**

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

Mr. Kondadi Ajay Kumar, learned counsel for the petitioner.

Ms. Divya Adepu, learned Standing Counsel for the Election Commission of India.

2. With the consent of the parties, the matter is heard finally.

3. The petitioner is a resident of Jukkal Assembly Constituency, Kamareddy District. The aforesaid constituency is a reserved constituency for Scheduled Caste. The petitioner is an Ex-MLA and has filed the nomination form for contesting the ensuing Assembly elections in respect of which polling is scheduled to be held on 30.11.2023. The respondent No.6 has also filed his nomination paper which has been accepted by the

Returning Officer. The petitioner filed an objection to the nomination paper filed by the respondent No.6 which has been rejected by an order dated 14.11.2023 by the Returning Officer. The petitioner in this writ petition, therefore, has sought quashment of the order dated 14.11.2023 and has sought a direction to the respondents to consider the representation/objection of the petitioner against respondent No.6.

4. Learned counsel for the petitioner submitted that in case an executive action is *per se* arbitrary, this Court in exercise of powers under Article 226 of the Constitution of India can intervene. It is also submitted that the representation submitted by the petitioner has been rejected without assigning any reasons. In support of the aforesaid submission, reliance has been placed on the decision of the Supreme Court in **Union Territory of Ladakh v. Jammu and Kashmir National Conference**<sup>1</sup>.

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

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<sup>1</sup> 2023 SCC OnLine SC 1140 : 2023 LiveLaw (SC) 749

6. The process of election has already commenced and the election schedule is extracted below for the facility of reference:

- a. The 10<sup>th</sup> November, 2023 (Friday), as the last date for making nominations;
- b. The 13<sup>th</sup> November, 2023 (Monday), as the last date for the scrutiny of nominations;
- c. The 15<sup>th</sup> November, 2023 (Wednesday), as the last date for the withdrawal of candidatures;
- d. The 30<sup>th</sup> November, 2023 (Thursday), as the date on which a poll shall, if necessary, be taken;
- e. The 5<sup>th</sup> December, 2023 (Tuesday), as the last date before which the election shall be completed.

7. The jurisdiction of this Court to interfere with the process of election once the same has commenced is well defined by a catena of decisions. It is trite law that only when an action of the Returning Officer results in stalling or stoppage of elections, this Court under Article 226 of the Constitution of India can interfere (See **Manda Jagannath v. K.S.Rathnam**<sup>2</sup>).

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<sup>2</sup> (2004) 7 SCC 492

8. Similar position has been reiterated by the Supreme Court in **Jammu and Kashmir National Conference** (supra). Paragraph 37 of the aforesaid decision is extracted below for the facility of reference:

37. We would indicate that the restraint, self-imposed, by the Courts as a general principle, laid out in some detail in some of the decisions supra, in election matters to the extent that once a notification is issued and the election process starts, the Constitutional Courts, under normal circumstances are loath to interfere, is not a contentious issue. But where issues crop up, indicating unjust executive action or an attempt to disturb a level-playing field between candidates and/or political parties with no justifiable or intelligible basis, the Constitutional Courts are required, nay they are duty-bound, to step in. The reason that the Courts have usually maintained a hands-off approach is with the sole salutary objective of ensuring that the elections, which are a manifestation of the will of the people, are taken to their logical conclusion, without delay or dilution thereof. In the context of providing appropriate succour to the aggrieved litigant at the appropriate time (**B S Hari Commandant v. Union of India**, 2023 SCC OnLine SC 413 @ Paragraph 50), the learned Single Judge acted rightly. In all fairness, we must note that the learned ASG, during the course of arguments, did not contest the power *per se* of the High Court to issue the directions it did, except that the same amounted to denying the Appellants their discretion. As stated hereinbefore, we are satisfied that in view of the

1968 Order, the Appellants' discretion was not unbridled, and rather, it was guided by the 1968 Order.

9. Therefore, the jurisdiction of this Court under Article 226 of the Constitution of India to interdict the process of election cannot be invoked at this point of time. It is also pertinent to note that improper acceptance of the nomination paper is a ground for an election petition under Section 100 of the Representation of the People Act, 1951. Therefore, no interference at this point of time is called for.

10. The writ petition is accordingly dismissed.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

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**ALOK ARADHE, CJ**

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**N.V.SHRAVAN KUMAR, J**

16.11.2023

vs