

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

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

WRIT PETITION No.4998 of 2024

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

Mr. P.Pareekshith Reddy, the petitioner, appears as party-in-person.

Mr. Gadi Praveen Kumar, learned Deputy Solicitor General of India for the respondent No.1.

Mr. Avinash Desai, learned Senior Counsel representing Mr. Mohammed Omer Farooq, learned counsel, appears on advance notice for the respondent No.2.

2. Heard on the question of admission.

3. In this writ petition, the petitioner has assailed the validity of Section 38(2) of the Representation of the People Act, 1951 (hereinafter referred to as, "the Act"), as well as Rule 5.7.1 of the Handbook for Candidate issued by the

Election Commission of India (hereinafter referred to as, “the Handbook”).

4. Facts giving rise to filing of this writ petition briefly stated are that the petitioner is an Advocate and has taken part in the general elections to the State Legislative Assembly. The petitioner had previously filed public interest litigation, namely W.P (PIL).No.9 of 2024, challenging the validity of the very same provisions, which was dismissed on 12.02.2024 with the liberty to the petitioner to take recourse to the remedy available to him under the law. The petitioner thereafter has filed this writ petition.

5. The party-in-person submits that Section 38(2) of the Act, which provides for a preferential treatment to be given to the candidates of a political party over the other independent candidates and other candidates belonging to registered unrecognized political parties in the matter of publication of list of contesting candidates, is arbitrary and is violative of Article 14 of the Constitution of India, as all the candidates contesting the election are equal. It is

submitted that Rule 5.7.1 which is based on Section 38(2) of the Act also suffers from the vice of arbitrariness.

6. We have considered the submissions made by the party-in-person and have perused the record.

7. Section 38 of the Act deals with publication of list of contesting candidates. Section 38(1) and 38(2) of the Act reads as under:

38. Publication of list of contesting candidates -

(1) Immediately after the expiry of the period within which candidatures may be withdrawn under sub-section (1) of Section 37, the returning officer shall prepare and publish in such form and manner as may be prescribed a list of contesting candidates, that is to say, candidates who were included in the list of validly nominated candidates and who have not withdrawn their candidature within the said period.

(2) For the purpose of listing the names under sub-section (1), the candidates shall be classified as follows, namely:—

- (i) candidates of recognised political parties;
- (ii) candidates of registered political parties other than those mentioned in clause (i);
- (iii) other candidates.

8. Rule 5.7 of the Handbook deals with arrangement of names in the list of contesting candidates. Rule 5.7.1 is in consonance with Section 38(2) of the Act and is extracted below for the facility of reference:

5.7.1. As per the section 38 of the Representation of the People Act, 1951 and revised Form 4 (List of validly nominated candidates) and Form 7A (List of contesting candidates), names of candidates in the said lists are required to be arranged under three categories, i.e. (i) candidates of recognised National parties and State political parties in the State concerned, (ii) candidates of registered unrecognized political parties and (iii) other (independent) candidates. Therefore, names of candidates will be arranged in the said lists and also on the ballot papers in the said order under these categories. It may be noted that names will be arranged alphabetically in each of the above mentioned three categories separately. (However, the headings of the above mentioned three categories as given in the revised Form 7A shall not appear on the ballot papers). The serial numbering will however be continuous for all three categories.

9. It is trite law that the wrath of Article 14 of the Constitution of India is attracted when equals are sought to be treated unequally or unequals are sought to be treated equally. Section 38(2) of the Act, for the purpose of

publication of list of contesting candidates, classifies the candidates in three categories, namely (i) candidates belonging to the recognized political parties, (ii) candidates belonging to the registered political parties other than those mentioned in clause (i) and, (iii) other candidates. Thus, Section 38(2) of the Act, for the limited purpose of publication of list of contesting candidates, does not treat the equals as unequals, as the candidates belonging to recognized political parties, registered political parties and independent political parties stand on a different footing.

10. It is noteworthy that Section 52 of the Act was amended by the Representation of the People (Amendment) Ordinance, 1992 (Ordinance No.1 of 1992), which provided for countermanding elections on death of a candidate belonging to a political party only. The validity of the aforesaid Ordinance was challenged by way of a writ petition under Article 32 of the Constitution of India before the Supreme Court in **Rama Kant Pandey v. Union of India**¹. The Supreme Court in the said case while dealing

¹ (1993) 2 SCC 438

with the issue held that the right to contest the election as a candidate is neither a fundamental right nor a civil right.

In paragraph 10 of the said decision it was held as under:

10. There is also no merit whatsoever in the contention that candidates set up by political parties should not receive any special treatment. The fact that candidates set up by political parties constitute a class separate from the other candidates has been recognised by this Court in numerous cases. In paragraph 14 of judgment in the case of *Dr P.N. Thampy Terah v. Union of India* [1985 Supp SCC 189] the Constitution Bench observed thus: (SCC pp. 200-01, para 14)

“It is the political parties which sponsor candidates, that are in a position to incur large election expenses which often run into astronomical figures. We do not consider that preferring political parties for exclusion from the sweep of monetary limits on election expenses, is so unreasonable or arbitrary as to justify the preference being stuck down upon that ground.”

In *D.M.L. Agarwal v. Rajiv Gandhi* [1987 Supp SCC 93] a Division Bench of this Court took note of and emphasised the vital role of political parties in a parliamentary form of democracy and anxiety was expressed about the growing number of independent candidates.

11. Thus, in view of the aforesaid enunciation of law by the Supreme Court, the contention that Section 38(2) of the Act treats the equals as unequals cannot be accepted. Neither Section 38(2) of the Act nor Rule 5.7.1 of the Handbook can be said to be violative of Article 14 of the Constitution of India.

12. For the aforementioned reasons, we do not find any merit in the writ petition. The same fails and is hereby dismissed.

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

ALOK ARADHE, CJ

N.V.SHRAVAN KUMAR, J

27.02.2024
vs