

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) No. 800/2024

Abdul Bari Naik

.... Petitioner/Appellant(s)

Through:- Mr. Shah Faisal, Advocate

V/s

Election Commission of India and
others

.....Respondent(s)

Through:- Mr. M.I. Dar, Advocate for R-1
Mr. Mohsin Qadri, Sr. AAG with
Mr. Jehangir Dar, GA for R-2&3

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

ORDER
19.04.2024

01. By way of this petition, the petitioner has prayed for the following relief: -

“Issue a Writ of Mandamus commanding the respondents to accept the candidature of the petitioner after completion of all the requisite formalities and consequently allow the petitioner to contest as independent candidate for upcoming Anantnag-Rajouri Parliamentary seat 2024.”

02. The contention of the petitioner is that he is an activist having strong and robust background of having served the people of Jammu & Kashmir for last so many years. He being actively involved in public life is desirous of contesting the upcoming parliamentary elections 2024 from Anantnag-Rajouri Parliamentary seat as an independent candidate. The respondent No. 3 has not accepted the candidature of the petitioner despite completion of all requisite formalities. It is submitted that the petitioner was dismissed from services vide order

dated 30.04.2021, and although he has assailed the order of dismissal before the Central Administrative Tribunal, Srinagar Bench, this dismissal is a ground for rejecting the candidature of the petitioner for contesting the upcoming parliamentary elections 2024 from Anantnag-Rajouri Parliamentary seat.

03. It is averred that the petitioner was conveyed verbally by the respondent No. 2 that since his services are terminated by the Government, therefore, he is to furnish a certificate from the respondent No. 1 as per Section 9 of The Representation of the Peoples Act, 1951. The petitioner, thereafter, filed a detailed representation before respondent No. 1 on 23.03.2024, and the respondents have asked the petitioner to appear before them on 04.04.2024.
04. The petitioner appeared on the scheduled date along with requisite record but respondents have not taken any decision on the same. The petitioner, thus, seeks indulgence of this Court to allow him to submit his nomination papers, as according to him, he is eligible to contest the elections as there is no bar under any provision of law to disentitle him from contesting the elections. The requirement of certificate under Section 9 of The Representation of the Peoples Act, 1951 would come into force only after the scrutiny of his nomination papers, when the respondents can reject the candidature of the candidate. and it is only then the respondents can reject the nomination papers of the petitioner. The respondents have singled out the petitioner by not accepting his nomination paper for vexatious reasons. In support of this contention, reliance has been

placed upon judgment titled **Nandiesha Reddy Vs. Kavitha Mahesh, (2011) 7 SCC 721.**

05. This petition was filed on 16.04.2024, and listed on 18.04.2024 when notice was issued to the respondents. Mr. M.I. Dar, appearing on behalf of respondent No. 1 accepted notice on behalf of respondent No. 1. Mr. Jehangir Dar accepted notice on behalf of respondent Nos. 2 and 3.
06. Learned counsel for respondent No. 1, Mr. M.I. Dar submits that they have considered the representation of the petitioner for issuance of certificate under Section 9 of The Representation of the Peoples Act, 1951 and this request of the petitioner was not accepted by the Commission in view of the fact that his dismissal from the service was by invoking Article 311(2) of the Constitution of India relating to the interest of the security of the State. Copy of the same is placed on record. The petitioner was communicated the decision on 16.04.2024, but he has not brought this fact to the notice of the Court on 18.04.2024.
07. Mr. Mohsin Qadri, learned Sr. AAG appearing on behalf of respondents Nos. 2 and 3 submit that the authorized representative of the petitioner had taken two forms from the Returning Officer i.e. respondent No. 3, but these forms have not been submitted till date, therefore, there the question of not entertaining the nomination form does not arise at all. It is further submitted that the petitioner was dismissed from service as such his nomination paper was to be accompanied by a certificate issued in the prescribed manner by Election Commission and he would not be a duly nominated

candidate unless his nomination was accompanied by a certificate issued by the Election Commission under Section 9(2) of the Act.

08. Mr. Jehangir Dar, learned counsel for respondent Nos. 2 & 3 has also raised a preliminary objection to the maintainability of the writ petition. He has submitted that since the election process has already started, the same shall not be called in question except by election petition as there is bar for interference of the courts in electoral matters. Reliance has been placed on the constitutional bench judgment in case titled “**N.P. Ponnuswami Vs. Namakkal Constituency and others**”, AIR 1952 SCC 39 and submitted that the writ petition for filing nomination paper is not maintainable.
09. The notification for election of parliamentary seat of Anantnag-Rajouri was notified by respondent No. 3 vide notice dated 12.04.2024. As per the notification issued by respondent No. 3, the candidates were to file their nomination till 19.04.2024 to the Returning Officer or the Assistant Returning Officer. The scrutiny of the nomination papers as well as withdrawal would take place on 20.04.2024 and 22.04.2024.
10. The respondents have raised the issue regarding maintainability of the writ petition. The electoral process, admittedly, has already started with the publication of the notification dated 12.04.2024 and the last date for filing nomination was 19th of April 2024. It is well settled that if the election process has started the only course open is to file an election petition and the court has no power to interfere with the election process. In this regard, Article 329(b) of the Constitution of India is taken note of. It 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 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.”

11. The Hon’ble Supreme Court while considering the matter connected with election proceedings has held in **“N.P. Ponnuswami Vs. The Returning Officer, Namakkal Constituency, Namakkal, Salem Distt. and others”**, AIR 1952 SC64 held as under: -

“9. The question now arises whether the law of elections in this country contemplates that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under [Article 226](#) of the Constitution (the ordinary jurisdiction of the courts having been expressly excluded), and another after they have been completed by means of an election petition. In my opinion, to affirm such a position would be contrary to the scheme of [Part XV of the Constitution and the Representation of the People Act](#), which, as I shall point out latter, seems to be that any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at an intermediate stage before any court. It seems to me that under the election law, the only significance which the rejection of a nomination paper has consists in the fact that it can be used as a ground to call the election in question. [Article 329\(b\)](#) was apparently enacted to prescribe the manner in which and the stage at which this

ground, and other grounds which may be raised under the law to call the election in question could be urged. I think it follows by necessary implication from the language of this provision that those grounds cannot be urged in any other manner, at any other stage and before any other court. If the grounds on which an election can be called in question could be raised at an earlier stage and errors, if any, are rectified, there will be no meaning in enacting a provision like [article 329\(b\)](#) and in setting up a special tribunal. Any other meaning ascribed to the words used in the article would lead to anomalies, which the Constitution could not have contemplated, one of them being that conflicting view may be expressed by the High Court at the pre-polling stage and by the election tribunal, which is to be an independent body, at the stage when the matter is brought up before it.”

12. In **“Mohinder Singh Gill and another Vs. Chief Election Commissioner”**, AIR 1978 SC 851, the Hon’ble Apex Court has held as under: -

“(f) The plenary bar of Art. 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 274 steps and stages in between the commencement and the conclusion; and (2) the provision of a special jurisdiction which can be invoked by an aggrieved party at the end of the election excludes other forms, the right and remedy being creatures of statutes and controlled by the Constitution.”

The Hon’ble Apex Court while placing reliance on the case of N.P. Ponnuswami Vs. The Returning Officer, Namakkal dismissed the appeal and observed as under: -

“91. For this limited purpose, we set down our holdings :

- (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.”

13. The reliance placed by the petitioners in Nandiesha Reddy Vs. Kavitha Mahesh *supra* also does not support his contention as the petitioner had filed an election petition challenging the fact that her nomination papers were not accepted by the returning officer. The writ petition in these facts and circumstances is not maintainable.
14. This apart, there is no merit in the petition also in view of the fact that it is admitted case of the petitioner that he was dismissed from service vide Government Order No. 399-JK(GAD) of 2021 dated 30.04.2021 and the Lieutenant Governor was satisfied that under sub-clause (c) of the proviso to clause (2) of Article 311 of the Constitution of India, in the interest of security of the State, it was not expedient to hold an enquiry in the case of petitioner.
15. The petitioner was also aware of the fact that after his dismissal from service, his nomination form would only be accepted if it was accompanied by certificate under Section 9(2) of The Representation of the Peoples Act (hereinafter referred as the Act). Section 9(2) of the Act provides as under: -

“9. Disqualification for dismissal for corruption or disloyalty. –

(2) For the purposes of sub-section (1), a certificate issued by the Election Commission to the effect that a person having held office under the Government of India or under the Government of a State, has or has not been dismissed for corruption or for disloyalty to the State shall be conclusive proof of that fact: Provided that no certificate to the effect that a person has been dismissed for corruption or for disloyalty to the State shall be issued unless an opportunity of being heard has been given to the said person.”

16. The nomination of candidates is provided in part-V of the Act. Section 33 provides for presentation of nomination paper and requirements for a valid nomination. Section 33(3) provides as under: -

“33.Presentation of nomination paper and requirements for a valid nomination. –

(3)Where the candidate is a person who, having held any office referred to in section 9 has been dismissed and a period of five years has not elapsed since the dismissal, such person shall not be deemed to be duly nominated as a candidate unless his nomination paper is accompanied by a certificate issued in the prescribed manner by the Election Commission to the effect that he has not been dismissed for corruption or disloyalty to the State.”

17. The petitioner, thus, was aware that he been dismissed from the office was disqualified for a period of five years of the dismissal till he provides a certificate from Election Commission that he has not been dismissed for corruption or disloyalty to the State. That is precisely why the petitioner made a representation and even appeared before the Election Commission. The petitioner, however, did not reveal the rejection of his application when the matter was taken up for consideration on 18th and 19th of April, 2024.
18. The Election Commission having rejected the request of the petitioner, as such, the petitioner was not a duly nominated person in terms of the Act and his nomination papers even if he had presented the same could not be accepted.
19. In view of the law laid down above, this writ petition is not maintainable and this apart, otherwise also, there is no merit in the same. In view of the aforesaid facts and circumstances, the writ

petition is dismissed both on the grounds of maintainability as well as on merit.

20. Dimissed.

**(SINDHU SHARMA)
JUDGE**

Srinagar:

19.04.2024

Vishal

