

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10566 of 2019

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Gopal Prasad Malakar, aged about 50 years, Son of Late Sidheshwar Bhagat Resident of Mohalla- Uttari Mandiri, Ramraj Appartment, Flat No. A-102, Post office G.P.O., Patna, Police Station Budha Colony, District-Patna.

... .. Petitioner

Versus

1. The Union of India .
2. The State of Bihar.
3. The Chief Election Commissioner, New Delhi, India.
4. The Chief Election Officer, Bihar, Patna.
5. The Collector cum the District Election officer cum Returning Officer Patna, Bihar.

... .. Respondents

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Appearance :

For the Petitioner : Mr. Kameshwar Prasad Sinha, Advocate.
For the UOI : Mr. S.D. Sanjay, ASG
Mr. Rajesh Kumar Verma, Advocate.
For the ECI : Mr. Siddhartha Prasad
Mr. Om Prakash Kumar, Advocates.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 09-05-2019

The relief sought by the petitioner through the present writ petition has been formulated in paragraph-1 as follows-

“(1) That this writ application has been expended on behalf of the petitioner for the issuance of a writ in the nature of mandamus or some other writ or writs or orders or direction directing the respondents authorities to permit/allow the petitioner to make necessary minor correction i.e. the coma, full stop, yes or no in the respective columns hearing a soft corner for election contestants like the petitioner providing/giving an actual treatment in the Natural opportunity of the country protecting the Fundamental



Rights of the petitioner protected under the provisions of the Constitution of India to contest election in the ongoing Parliamentary Election for Patna Sahib (Patna Sahib) Constituency for District of Patna (Bihar) for which the petitioner has filed his nomination in the Patna Collectorate the respondent no. 5."

2. Learned counsel for the petitioner submits that having filed his nomination on 29th April, 2019 as a candidate for the Parliamentary Election for Patna Sahib Constituency, he was entitled to an opportunity for making formal corrections such as insertion of comma, full stop, yes or no in the nomination paper. It is submitted that despite being present on the next date, namely 30th April, 2019, and having filed a representation before the Returning Officer on the said date (Annexure-1), he was not permitted to make appropriate corrections even though other candidates present in the office were permitted to make corrections in their respective nomination papers.

3. Mr. S.D. Sanjay, learned Additional Solicitor General appearing on behalf of the Union of India and Mr. Siddhartha Prasad on behalf of the Election Commission of India submit that the writ petition in itself is completely vague and does not contain even the minimum particulars to support the averments of the petitioner. A copy of the nomination paper has not been enclosed with the writ petition to indicate the nature of the defects which were allegedly not permitted to be removed. Moreover, on the averments contained in paragraph-6 of the writ petition itself, it is manifest that the petitioner had been communicated with regard to the defects in the nomination paper and the Returning Officer had allowed the petitioner to make necessary corrections within the stipulated period. In this backdrop, it is highly unlikely that the petitioner would have been prevented or precluded from making



appropriate corrections if notice for the same purpose had admittedly been given to the petitioner.

4. Mr. Siddhartha Prasad further submits that at this belated stage, no relief ought to be granted to the petitioner in view of the specific bar contained in Article 329(b) of the Constitution, moreso when the process of election is underway and at an advanced stage as evident from the following facts-

- (i) Symbols have already been allotted to all the candidates.
- (ii) Ballot papers have already been printed.
- (iii) Postal ballots are in the process of distribution with respect to personnel on election duty.
- (iv) Ballot papers have been uploaded on Electronically Transmitted Postal Ballot System (ETPBS).
- (v) Polling is scheduled on 19th of May, 2019 which is less than two weeks away.

5. Having heard the parties and on consideration of the materials on record, this Court is not inclined to interfere in the matter. The objection raised by the petitioner with regard to non-grant of opportunity for making corrections in the nomination paper are matters of fact which will have to be established and *prima facie* it does not seem probable that the petitioner would have been denied such opportunity if notice for the very purpose had been communicated to him.

6. Moreover, this Court is of the view that once the election has been notified, the bar contained in Article 329(b) of the Constitution of India comes into operation, in view of which the petitioner would only have remedy by way of filing an election petition at the appropriate time for redressal of his grievances.



7. In this regard reference may be made to the case of *N.P. Ponnuswami Vs. The Returning Officer, Namakkal Constituency, Namakkal, Salem District and Ors; A.I.R. (39) 1952 SC 64* wherein it has been observed as follows -

“9. The questions 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 Art 226 of the Constitution (the ordinary jurisdiction of the Courts having been expressly excluded), and an other 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 People Act, which as I shall point out later, 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 Art. 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 views 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.”

8. In the circumstances, the writ petition stands dismissed.

(Vikash Jain, J)

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