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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 23rd January, 2025*

+ W.P.(C) 765/2025

VISHVANATH AGARWAL

....Petitioner

Through: Ms. Kiran Bala Agarwal, Advocate
with Petitioner in person.

versus

ELECTION COMMISSION OF INDIA AND ORS.....Respondents

Through: Mr. Ankit Agarwal, Standing Counsel
with Ms. Viyushti Rawat and Mr. Ashish Shukla,
Advocates for Respondent No.1/ECI.

Mr. Amit Sharma, Mr. Dipesh Sinha, Ms. Pallavi
Barua and Ms. Aparna Singh, Advocates for
Respondent No.2/SEC.

Mr. Rajeev Sharma, Advocate for Respondent
No.3.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

CM APPL. 3806/2025

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 765/2025 and CM APPL.4365/2025

3. This writ petition is preferred on behalf of the Petitioner under Articles 226/227 of the Constitution of India seeking the following reliefs:

“i. allow the Writ Petition;

ii. Declare the action of the No. 3 is unconstitutional in as much, as not allowing/ accepting nomination form from candidate who reached before or at 3 PM on 17-01-2025, last day of nomination.



- iii. *Set aside the nomination procedure adopted by the returning Officer AC-40 (new Delhi);*
- iv. *direct the Respondents to consider and allow the Petitioner's representation dated 19.01.2025 and consider the nomination form of petitioner;*
- v. *Injunct the State Election Commissioner or any the Respondent authority to declare the date of election schedule till pendency of this Writ Petition.*
- vi. *Impose exemplary cost on the RO AC-40 of new Delhi Assembly of causing disruption to good governance of Delhi; Assembly and halting the development process and prospects in NCT of Delhi.”*

4. Learned counsel for Respondent No.1 objects to the maintainability of this writ petition under Article 226 of the Constitution of India on the ground that there is a constitutional bar for entertaining the present writ petition and in this context, refers to Article 329(b) of the Constitution of India which reads as: “*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.*” It is urged that by virtue of Article 329(b) of the Constitution and Sections 80, 81 and 100(1)(c) of Representation of People Act, 1951 (‘1951 Act’), the only remedy available with the Petitioner is to file an Election Petition. In support of the preliminary objection, learned counsel relies on the judgment of the Supreme Court in ***N.P. Ponnuswami v. Returning Officer, Namakkal Constituency and Others, (1952) 1 SCC 94*** and judgment of a Coordinate Bench of this Court in ***Vijay Pal Singh v. Union of India and Others, 2019 SCC OnLine Del 8371.***

5. Having heard learned counsel for the parties, I find merit in the preliminary objection raised by counsel for Respondent No.1. In ***N.P.***



Ponnuswami (supra), the Constitution Bench of the Supreme Court was considering an appeal against an order of the High Court, whereby the writ petition in which there was a challenge to the order of the Returning Officer rejecting the nomination paper and a direction was sought to the Returning Officer to include Petitioner's name in the list of valid nominations, was dismissed by the High Court on the ground that it had no jurisdiction to interfere with the order of the Returning Officer in light of Article 329(b) of the Constitution. Examining Article 329(b) and provisions of 1951 Act, the Supreme Court observed that where a right or a liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of and invocation of writ jurisdiction during the ongoing election process was excluded. Relevant paragraph from the judgment is as follows:

“17. The Representation of the People Act, 1951, which was passed by Parliament under Article 327 of the Constitution, makes detailed provisions in regard to all matters and all stages connected with elections to the various legislatures in this country. That Act is divided into 11 parts, and it is interesting to see the wide variety of subjects they deal with. Part II deals with “the qualifications and disqualifications for membership”, Part III deals with the notification of General Elections, Part IV provides for the administrative machinery for the conduct of elections, and Part V makes provisions for the actual conduct of elections and deals with such matters as presentation of nomination papers, requirements of a valid nomination, scrutiny of nominations, etc., and procedure for polling and counting of votes. Part VI deals with disputes regarding elections and provides for the manner of presentation of election petitions, the constitution of Election Tribunals and the trial of election petitions. Part VII outlines the various corrupt and illegal practices which may affect the elections, and electoral offences. Obviously, the Act is a self-contained enactment so far as elections are concerned, which means that whenever we have to ascertain the true position in regard to any matter connected with elections, we have only to look at the Act and the Rules made thereunder.

18. The provisions of the Act which are material to the present discussion are Sections 80, 100, 105 and 170, and the provisions of Chapter II of



Part IV dealing with the form of election petitions, their contents and the reliefs which may be sought in them. Section 80, which is drafted in almost the same language as Article 329(b), provides that “no election shall be called in question except by an election petition presented in accordance with the provisions of this Part”. Section 100, as we have already seen, provides for the grounds on which an election may be called in question, one of which is the improper rejection of a nomination paper. Section 105 says that “every order of the Tribunal made under this Act shall be final and conclusive”. Section 170 provides that:

“170. Jurisdiction of civil courts barred.—No civil court shall have jurisdiction to question the legality of any action taken or of any decision given by the Returning Officer or by any other person appointed under this Act in connection with an election.”

These are the main provisions regarding election matters being judicially dealt with, and it should be noted that there is no provision anywhere to the effect that anything connected with elections can be questioned at an intermediate stage.

*19. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in *Wolverhampton New Waterworks Co. v. Hawkesford* [*Wolverhampton New Waterworks Co. v. Hawkesford*, (1859) 6 CB NS 336 at p. 356 : 141 ER 486] in the following passage : [CB (NS) p. 356 : ER p. 495]*

“... There are three classes of cases in which a liability may be established founded upon statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law : there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, and the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy : there, the party can only proceed by action at common law. But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. ... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.”

*The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspapers Ltd.* [*Neville v. London Express**



Newspapers Ltd., 1919 AC 368 (HL)] and has been reaffirmed by the Privy Council in Attorney General of Trinidad v. Gordon Grant & Co. Ltd. [Attorney General of Trinidad v. Gordon Grant & Co. Ltd., 1935 AC 532 (PC)] and Secy. of State v. Mask & Co. [Secy. of State v. Mask & Co., (1939-40) 67 IA 222 : (1940) 44 CWN 709 : 1940 SCC OnLine PC 10] ; and it has also been held to be equally applicable to enforcement of rights (see Hurdutrai Jagadish Prasad v. Official Assignee of Calcutta [Hurdutrai Jagadish Prasad v. Official Assignee of Calcutta, (1948) 52 CWN 343 at p. 349 : 1948 SCC OnLine Cal 19]). That being so, I think it will be a fair inference from the provisions of the Representation of the People Act to state that the Act provides for only one remedy, that remedy being by an election petition to be presented after the election is over, and there is no remedy provided at any intermediate stage.

20. *It was argued that since the Representation of the People Act was enacted subject to the provisions of the Constitution, it cannot bar the jurisdiction of the High Court to issue writs under Article 226 of the Constitution. This argument however is completely shut out by reading the Act along with Article 329(b). It will be noticed that the language used in that article and in Section 80 of the Act is almost identical, with this difference only that the article is preceded by the words “notwithstanding anything in this Constitution”. I think that those words are quite apt to exclude the jurisdiction of the High Court to deal with any matter which may arise while the elections are in progress.*

21. *It may be stated that Section 107(1) of the Representation of the People Act, 1949 (12 & 13 Geo. 6, c. 68) in England is drafted almost in the same language as Article 329(b). That section runs thus:*

“No parliamentary election and no return to Parliament shall be questioned except by a petition complaining of an undue election or undue return (hereinafter referred to as a parliamentary election petition) presented in accordance with this Part of this Act.”

22. *It appears that similar language was used in the earlier statutes, and it is noteworthy that it has never been held in England that the improper rejection of a nomination paper can be the subject of a writ of certiorari or mandamus. On the other hand, it was conceded at the Bar that the question of improper rejection of a nomination paper has always been brought up in that country before the appropriate tribunal by means of an election petition after the conclusion of the election. It is true that there is no direct decision holding that the words used in the relevant provisions exclude the jurisdiction of the High Court to issue appropriate prerogative writs at an intermediate stage of the election, but the total absence of any such decision can be accounted for only on the view that the provisions in question have been generally understood to have that effect.*



23. Our attention was drawn to Rule 13 of the Rules appended to the Ballot Act of 1872 and a similar rule in the Parliamentary Elections Rules of 1949, providing that the decision of the Returning Officer disallowing an objection to a nomination paper shall be final, but allowing the same shall be subject to reversal on a petition questioning the election or return. These Rules however do not affect the main argument. I think it can be legitimately stated that if words similar to those used in Article 329(b) have been consistently treated in England as words apt to exclude the jurisdiction of the courts including the High Court, the same consequence must follow from the words used in Article 329(b) of the Constitution. The words “notwithstanding anything in this Constitution” give to that article the same wide and binding effect as a statute passed by a sovereign legislature like the English Parliament.

24. It may be pointed out that Article 329(b) must be read as complementary to clause (a) of that article. Clause (a) bars the jurisdiction of the courts with regard to such law as may be made under Articles 327 and 328 relating to the delimitation of constituencies or the allotment of seats to such constituencies. It was conceded before us that Article 329(b) ousts the jurisdiction of the courts with regard to matters arising between the commencement of the polling and the final selection. The question which has to be asked is what conceivable reason the legislature could have had to leave only matters connected with nominations subject to the jurisdiction of the High Court under Article 226 of the Constitution. If Part XV of the Constitution is a code by itself i.e. it creates rights and provides for their enforcement by a Special Tribunal to the exclusion of all courts including the High Court, there can be no reason for assuming that the Constitution left one small part of the election process to be made the subject-matter of contest before the High Courts and thereby upset the time schedule of the elections. The more reasonable view seems to be that Article 329 covers all “electoral matters”.”

6. The Constitution Bench of the Supreme Court in ***Mohinder Singh Gill and Another v. Chief Election Commissioner, New Delhi and Others***, (1978) 1 SCC 405 again considered the bar imposed by Article 329(b) of the Constitution and Section 100 of 1951 Act and held as follows:

“20. Right at the forefront stands in the way of the appellant's progress the broad-spectrum ban of Article 329(b) which, it is claimed for the respondents, is imperative and goal-oriented. Is this Great Wall of China, set up as a preliminary bar, so impregnable that it cannot be bypassed even by Article 226? That, in a sense, is the key question that governs the fate of this appeal. Shri P.P. Rao for the appellant contended that,



however, wide Article 329(b) may be it does not debar proceedings challenging, not the steps promoting, election but dismantling it, taken by the Commission without the backing of legality. He also urged that his client, who had been nearly successful in the poll and had been deprived of it by an illegal cancellation by the Commission, would be left in the cold without any remedy since the challenge to cancellation of the completed poll in the entire constituency was not covered by Section 100 of the Act. Many subsidiary pleas also were put forward but we will focus on the two interrelated submissions bearing on Article 329(b) and Section 100 and search for a solution. The problem may seem prickly but an imaginative application of principles and liberal interpretation of the Constitution and the Act will avoid anomalies and assure justice. If we may anticipate our view which will presently be explained, Section 100(1)(d)(iv) of the Act will take care of the situation present here, being broad enough, as a residual provision, to accommodate, in the expression “non-compliance”, every excess, transgression, breach or omission. And the span of the ban under Article 329(b) is measured by the sweep of Section 100 of the Act.

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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 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 overall power to interfere under Article 136 springs into action. In Hari Vishnu 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.”

7. Relying on the aforesaid judgments, the Supreme Court in ***Election Commission of India through Secretary v. Ashok Kumar and Others, (2000) 8 SCC 216***, held as follows:

“30. To what extent Article 329(b) has an overriding effect on Article 226 of the Constitution? The two Constitution Benches have held that Representation of the People Act, 1951 provides for only one remedy; that



remedy being by an election petition to be presented after the election is over and there is no remedy provided at any intermediate stage. The non obstante clause with which Article 329 opens, pushes out Article 226 where the dispute takes the form of calling in question an election (see para 25 of Mohinder Singh Gill case [(1978) 1 SCC 405 : AIR 1978 SC 851]). The provisions of the Constitution and the Act read together do not totally exclude the right of a citizen to approach the court so as to have the wrong done remedied by invoking the judicial forum; nevertheless the lesson is that the election rights and remedies are statutory, ignore the trifles even if there are irregularities or illegalities, and knock the doors of the courts when the election proceedings in question are over. Two-pronged attack on anything done during the election proceedings is to be avoided — one during the course of the proceedings and the other at its termination, for such two-pronged attack, if allowed, would unduly protract or obstruct the functioning of democracy.”

8. Two Co-ordinate Benches of this Court in ***Vijay Pal Singh (supra)*** and in ***Kiran Pal Singh Tyagi and Others v. State (NCT of Delhi) and Others, 2020 SCC OnLine Del 421***, have dismissed the writ petitions under Article 226 of the Constitution relegating the parties to the remedy of filing Election Petition, if so advised. In ***Vijay Pal Singh (supra)***, following the dicta of the Supreme Court, it was observed that “election” means all steps and entire proceedings from the date of election till declaration of the results and the only way to challenge any step is by way of an Election Petition. Courts have time and again cautioned that there cannot be two-pronged attack on matters connected with elections, i.e. one during the course of elections by invoking extraordinary jurisdiction of the High Courts under Article 226 of the Constitution and second after elections have concluded, by way of filing an Election Petition. Therefore, the remedy of the Petitioner in the present case lies in filing an Election Petition and this writ petition cannot be entertained.

9. Accordingly, this writ petition is dismissed as not maintainable giving liberty to the Petitioner to take recourse to appropriate remedies, if



2025:DHC:407



aggrieved and if so advised. It is made clear that this Court has neither entered into nor expressed any opinion on the merits of the case.

10. Pending application also stands disposed of.

JYOTI SINGH, J

JANUARY 23, 2025

B.S. Rohella