

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).13013/2022

(Arising out of impugned final judgment and order dated 10-06-2022 in WP(C) No.9475/2022 passed by the High Court Of Delhi At New Delhi)

VISHWANATH PRATAP SINGH

Petitioner(s)

VERSUS

ELECTION COMMISSION OF INDIA & ANR.

Respondent(s)

(IA No.103431/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.103429/2022-PERMISSION TO APPEAR AND ARGUE IN PERSON)

Date : 09-09-2022 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE SUDHANSHU DHULIA

For Petitioner(s) Petitioner-in-person

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Application for permission to appear and argue in-person is allowed.

The challenge in the present special leave petition is to an order passed by the High Court of Delhi on 10.06.2022 whereby a writ petition filed by the petitioner claiming a mandamus to decide the candidature of the petitioner to file his nomination for Rajya Sabha Elections 2022, was dismissed.

The petitioner filed a writ petition before Delhi High Court raising a grievance that a notification for election to Rajya Sabha was issued on 12.05.2022 to fill up the seats of members retiring

from 21.06.2022 to 01.08.2022. The last date for submission of the nomination was 31.05.2022.

The stand of the petitioner is that he collected nomination form but was not allowed to file his nomination without a proper proposer proposing his name. The petitioner sought his candidature without proposer which was not accepted and, therefore, he claims that his fundamental right of free speech and expression and right to personal liberty has been infringed.

We find that the writ petition before the High Court was entirely misconceived and so is the present special leave petition. The right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a statute. In Javed v. State of Haryana, (2003) 8 SCC 369, this Court held that:-

“22. Right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a statute. At the most, in view of Part IX having been added in the Constitution, a right to contest election for an office in Panchayat may be said to be a constitutional right – a right originating in the Constitution and given shape by a statute. But even so, it cannot be equated with a fundamental right. There is nothing wrong in the same statute which confers the right to contest an election also to provide for the necessary qualifications without which a person cannot offer his candidature for an elective office and also to provide for disqualifications which would disable a person from contesting for, or holding, an elective statutory office.

23. Reiterating the law laid down in N.P. Ponnuswami v. Returning Officer, Namakkal Constituency [AIR 1952 SC 64 : 1952 SCR 218] and Jagan Nath v. Jaswant Singh [AIR 1954 SC 210 : 1954 SCR 892] this Court held in Jyoti Basu v. Debi Ghosal [(1982) 1 SCC 691] : (SCC p. 696, para 8)

"8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation."

In a later judgment reported as Rajbala v. State of Haryana, (2016) 2 SCC 445, this Court held that the right to contest for a seat in either of the two bodies is subject to certain constitutional restrictions and could be restricted further only by a law made by the Parliament. It was held as under:-

"39. Insofar as the Rajya Sabha and the Legislative Councils are concerned, such rights are subject to comparatively greater restrictions imposed by or under the Constitution. The right to vote at an election to the Lok Sabha or the Legislative Assembly can only be subjected to restrictions specified in Article 326. It must be remembered that under Article 326 the authority to restrict the right to vote can be exercised by the "appropriate legislature". The right to contest for a seat in either of the two bodies is subject to certain constitutional restrictions and could be restricted further only by a law made by Parliament."

Thus, the petitioner did not have any right to contest election to the Rajya Sabha in terms of the law made by the Parliament. The Representation of People Act, 1950 read with the Conduct of Elections Rules, 1961 has contemplated the name of a candidate to be proposed while filling the nomination form.

Therefore, an individual cannot claim that he has a right to contest election and the said stipulation violates his fundamental right, so as to file his nomination without any proposer as is required under the Act.

In view of the said fact, we dismiss the present special leave petition with cost of Rs.1,00,000/- (Rupees one lakh only). The said cost be paid to the Supreme Court Legal Aid Committee within four weeks.

Pending application(s), if any, stands disposed of.

(ARJUN BISHT)
COURT MASTER (SH)

(RENU BALA GAMBHIR)
COURT MASTER (NSH)