

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 2234 of 2025 (M/S)

Sri Ram Singh

.....Petitioner

Vs.

State Election Commission, Uttarakhand and others

..... Respondents

Present : Mr. Jai Krishna Pandey, Advocate for the petitioner.
Mr. Sanjay Bhatt, Advocate for the State Election Commission.

JUDGMENT

Hon'ble Ravindra Maithani, J. (Oral)

By means of the instant petition, the petitioner seeks the following reliefs:-

- I. Issue a writ, order, or direction in the nature of Mandamus directing the respondents, particularly the State Election Commission and the Returning Officer, to forthwith reject the nomination of Respondent No.5 for the election to Kshettra Panchayat 1 Baraon, District Nainital, on the ground of her ineligibility arising from her simultaneous registration in two distinct electoral rolls in contravention of the statutory provisions;
 - II. Issue a writ, order, or direction in the nature of Mandamus directing the respondents to conduct fresh elections of Kshettra Panchayat 11 Baraon, District Nainital in accordance with law, ensuring strict compliance with the statutory provisions and the constitutional mandate of free and fair elections;
 - III. Or/and pass any other order which this Hon'ble court may deem fit and proper under the circumstances of the case.
2. Heard learned counsel for the parties and perused the record.
3. Learned counsel for the petitioner submits that the respondent no.5 is not eligible for contesting the election of

Members, Kshetra Panchayat because her name is included in two Voters List, despite that her nomination has been accepted.

4. Learned counsel for the petitioner submits that the judicial review is not totally barred, the Court may examine this issue. He referred to the principle of law as laid down in the case of Election Commission of India vs. Ashok Kumar and others, (2000)8 SCC 216, in which case, the Hon'ble Supreme Court laid down the guidelines as follows:-

“18. Is there any conflict between the jurisdiction conferred on the High Courts by Article 226 of the Constitution and the embargoes created by Article 329 and if so how would they coexist came up for the consideration of a Constitution Bench of this Court in *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency* (1952) 1 SCC 94 : AIR 1952 SC 64. The law enunciated in *Ponnuswami* (1952) 1 SCC 94 : AIR 1952 SC 64 was extensively dealt with, also amplified, by another Constitution Bench in *Mohinder Singh Gill v. Chief Election Commr.* (1978) 1 SCC 405 : AIR 1978 SC 851. The plenary power of Article 329 has been stated by the Constitution Bench to be founded 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.

On these principles the conclusions arrived at in *Ponnuswami case* (1952) 1 SCC 94 : AIR 1952 SC 64 were so stated in *Mohinder Singh Gill case* (1978) 1 SCC 405 : AIR 1978 SC 851: (SCC p. 426, para 26)

“(1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognised to be a matter of first importance that *elections should be concluded as early as possible according to time schedule* and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so

that the election proceedings may not be unduly retarded or protracted.

(2) In conformity with this principle, the scheme of the election law in this country as well as in England is that no significance should be attached to anything which does not affect the 'election'; and, if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, *would have the effect of vitiating the 'election' and enable the person affected to call it in question*, they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before any court *while the election is in progress.*”

5. Learned counsel for the petitioner also referred to the principle of law, as laid down in the case of Harnek Singh vs. Charanjit Singh and others, (2005)8 SCC 383, in which, Hon'ble Supreme Court observed as under:-

“16. Article 243-O of the Constitution mandates that all election disputes must be determined only by way of an election petition. This by itself may not per se bar judicial review which is the basic structure of the Constitution, but ordinarily such jurisdiction would not be exercised. There may be some cases where a writ petition would be entertained but in this case we are not concerned with the said question.”

6. Learned counsel for the State Election Commission, Uttarakhand (“the Commission”) submits that in case of wrong acceptance of the nomination form, the petitioner may file election petition under Section 131-H of the Uttarakhand Panchayati Raj Act, 2016 (“the Act”). He would submit that elections have already been concluded yesterday; in view of Article 243-O of the Constitution of India, at this stage, this matter may not be taken up.

7. Before proceeding further, it would be apt to reproduce the Constitution and statutory provisions on the subject. Article 243-O reads as follows:-

“243-O. 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 243-K, shall not be called in question in any court;
- (b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.”

8. Further, Section 131-H of the Act is as follows:-

“ (1) The election of a person, Chairman or as members of a Panchayat including the election of a person appointed as a Panch shall not be called in question except by an application presented to such authority within such time and in such manner as may be prescribed on the ground;

That this election has not been a free election by reason that the corrupt practice of bribery or undue influence has extensively prevailed at the election,
.....
.....

- (2) that the result of the election has been materially affected-
 - (i) by the improper acceptance or rejection of any nomination; or
 - (ii) by gross failure to comply with the provisions of this Act or the rules framed thereunder.”

9. Undoubtedly, the jurisdiction of Article 226 of the Constitution of India cannot be obstructed by any statute. There are self imposed restrictions on it that the Courts at times, under Article 226, refrain to make any interference.

10. In the case of West Bengal State Election Commission and others Vs. Communist Party of India (MARXIST) and others,

(2018)18 SCC 141, the Hon'ble Supreme Court discussed the scope of Panchayat Elections and Article 343-O of the Constitution of India. In para 28 and 29, the Hon'ble Supreme Court observed as follows:-

"28. The Panchayat Elections Act is a complete code in regard to the conduct of the poll and for the resolution of disputes concerning the validity of the election. Article 243-K entrusts the superintendence, direction and control over the conduct of all elections to the panchayats in the State Election Commission. Clause (b) of Article 243-O stipulates thus:

"243-O. Bar to interference by courts in electoral matters.— Notwithstanding anything in this Constitution—

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the legislature of a State."

29 Ed. : Para 29 corrected vide Official Corrigendum No. F.3/Ed.B.J./57/2018 dated 29-10-2018. There is merit in the submission that the discipline which is mandated by the provisions of the Constitution and enforced by the enabling State law on the subject must be maintained. Any dispute in regard to the validity of the election has to be espoused by adopting a remedy which is known to law, namely, through an election petition. It is at the trial of an election petition that factual disputes can be resolved on the basis of evidence. This principle has been consistently adhered to in decisions of this Court. In *Boddula Krishnaiah, Boddula Krishnaiah v. State Election Commr., A.P.*, (1996) 3 SCC 416, a three-Judge Bench adverted to the decisions of the Constitution Bench in *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency* [N.P. Ponnuswami v. Returning Officer, Namakkal Constituency, (1952) 1 SCC 94 : 1952 SCR 218 : AIR 1952 SC 64 and in *Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman*, (1985) 4 SCC 689. After referring to *Ponnuswami* [N.P. Ponnuswami v. Returning Officer, Namakkal Constituency, (1952) 1 SCC 94 : 1952 SCR 218 : AIR 1952 SC 64, it was observed : (*Boddula Krishnaiah case, Boddula Krishnaiah v. State Election Commr., A.P.*, (1996) 3 SCC 416, SCC pp. 419-20, para 8)

"8. In *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency, N.P. Ponnuswami v. Returning Officer, Namakkal Constituency*, (1952) 1 SCC 94 : 1952 SCR 218 : AIR 1952 SC 64, a Constitution Bench of this Court had held that having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognised to be a matter of first importance that elections should be concluded as early as possible according to time-schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over so that the election proceedings may not be unduly retarded or protracted. In conformity with the principle, the scheme of the election law is that no significance should be attached to anything which does not affect the "election"; and if any irregularities are committed while it is in progress and they belong to the category or class which under the law by which elections are governed, would have the effect of vitiating the "election"; and enable the person affected to call it in question, they should be brought up before a Special Tribunal by means of an election petition and not be made the subject of a dispute before any court while the election is in progress."

The binding principle must be followed.”

11. Further having considered the law on the field, the Hon’ble Supreme Court in the case of West Bengal State Election Commission (*supra*) observed that, **“once the election process has commenced, it is trite law that it should not be interdicted mid stage. The electoral process is afforded sanctity in a democracy. That is the reason why in a consistent line of precedent, this Court has insisted upon the discipline of the law being followed so that any challenge to the validity of an election has to be addressed by adopting the remedy of an election petition provided under the governing statute.”** This principle of law, as laid down in the case of West Bengal State Election Commission (*supra*) has further been followed by the Hon’ble Supreme Court in the case of State of Goa and another Vs. Fouziya Imtiaz Shaikh and another, (2021)8 SCC 401.

12. In the case of State of Goa (*supra*), the Hon’ble Supreme Court has discussed the provisions of Municipality Elections and the provisions of Section 243-ZG(b), which reads as follows:-

“243-ZG. Bar to interference by courts in electoral matters.—

Notwithstanding anything in this Constitution,—

(a)

(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.”

13. A bare reading of Article 243-ZG(b) and Article 243-O(b) of the Constitution of India makes it abundantly clear that they are similarly worded except interchanging the word

‘Panchayat’ and ‘Municipality’. In the case of State of Goa (*supra*), the Hon’ble Supreme Court in para 68.1 of the judgment observed that from the date of notification of the election till the date of the declaration of result a judicial hands-off is mandated by the non obstante clause contained in Article 243-ZG(B). It reads as follows:-

“68.1. Under Article 243-ZG(b), no election to any municipality can be called in question except by an election petition presented to a Tribunal as is provided by or under any law made by the legislature of a State. This would mean that from the date of notification of the election till the date of the declaration of result a judicial hands-off is mandated by the non obstante clause contained in Article 243-ZG debarring the writ court under Articles 226 and 227 from interfering once the election process has begun until it is over. The constitutional bar operates only during this period. It is therefore a matter of discretion exercisable by a writ court as to whether an interference is called for when the electoral process is “imminent” i.e the notification for elections is yet to be announced.”

14. In the case of State of Goa (*supra*), the Hon’ble Supreme Court has further held as under:-

“68.5. Judicial review of a State Election Commission's order is available on grounds of review of administrative orders. Here again, the writ court must adopt a hands-off policy while the election process is on and interfere either before the process commences or after such process is completed unless interfering with such order subserves and facilitates the progress of the election.”

15. Against improper acceptance of nomination papers, the petitioner has a remedy of filing election petition. In fact, elections have already been concluded yesterday. It has been told that the respondent no.5 remained uncontested. Therefore, at this stage, this Court is of the view that in view of the settled principle of law, this Court has to adopt hands-off approach.

16. Accordingly, there is no reason to interfere in the instant petition. The petition deserves to be dismissed at the stage of admission itself.

17. The petition is dismissed *in limine*.

(Ravindra Maithani, J.)
25.07.2025

Sanjay

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Digitally signed by SANJAY KANOJIA
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