IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8558 of 2024

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Abhishek Dangi S/o Ramesh Kumar, R/o Dangi Market, N.H. 08, Near Walmi Gate No. 1, P.S. - Phulari Sharif, District- Patna, Bihar ... Petitioner

Versus

1. The Election Commission of India x
2. The District Returning Officer (Lok Sabha Election 2024)-cum District Magistrate, Jehanabad.
3. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna.

... ... Respondents

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Appearance :
For the Petitioner : Mr.Rohit Kumar Tripathi, Advocate
For the ECI : Mr.Siddhartha Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL ORDER

2 21-05-2024 Present writ application has been filed seeking direction upon the concerned Respondent to accept nomination of the petitioner for the upcoming Lok Sabha Eelction-2024 from 36 (Jehanabad Constituency). Petitioner's nomination form has been rejected on hypermetrical ground on 15.05.2024 by the District Magistrate-cum-Returning Officer, Jehanabad. The Polling date for the said Constituency is 01.06.2024. Petitioner has made detailed representation to the concerned Respondents on 16.05.2024 but the same has not been considered. The present case was filed on 17.05.2024. However, on application seeking urgent listing of the case made by the petitioner before the Joint Registrar, List on 18.05.2024, this case has been notified today in the bench.

2. Learned counsel for the Election Commission of

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India submits that this writ petition is not maintainable before the High Court in view of Article 329 of the Constitution of India. He submits that in the similar matter, Hon'ble Supreme Court has held that the word 'election' in Article 329 (b) connotes the entire electoral process commencing with the issue of the notification calling the election and culminating in the declaration of result, and that the electoral process once started could not be interfered with at any intermediary stage by Courts. Thus, jurisdiction of the High Court under Article 226 has been excluded in regard to matters provided for an Article 329 which covers all 'electoral matters'.

3. Heard learned counsel for the parties.

4. It is crystal clear that there is no appeal provided by the Representation of the People Act, 1951, against order of returning officer accepting or rejecting nomination paper. Nomination and scrutiny, being part of election process, Hon'ble Supreme Court decided in case of **N. P. Ponnuswami vs Returning officer, Namakkal Constituency & Ors. [1952] S.C.R.has** that bar created by Art 329 (b) of the Constitution is applicable to the orders of returning officer accepting or rejecting nomination papers and those orders also will have to be challenged in an election petition and not otherwise at a pre-

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poll stage. Article 329(b) of the Constitution lays down that "no election to either House of Parliament or to the either House of the Legislatures 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", Similar bar is also created by Section 80 of the Act of 1951 which reads that “no election shall be called in question except by an election petition presented in accordance with the provisions of this part”. Therefore, a suit, an appeal or a writ petition challenging the acceptance or rejection of nomination paper in an election to Central or State legislature is not competent.

5. In view of the pronouncement of law by the Hon’ble Supreme Court, this writ petition is dismissed as being not maintainable.

(Prabhat Kumar Singh, J)

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