

13	श्री अरूण कुमार श्रीवास्तव	मु रादाबाद
14	श्री आशीष कुमार श्रीवास्तव	आ गरा
15	श्री मनु सिंह,	अ लीगढ़
16	श्री जय कुमार	ब स्ती
17	श्री आजाद खान	फै जाबाद
18	श्री तारिका मकबूल खान	गो रखपुर

2- उक्त अधिवक्ताओं द्वारा पैरवी करने पर देय फीस गांव सभा के संचित कोष से वहन की जायेगी। कृपया उक्त आदेशों से अपने नियंत्रणाधीन समस्त अधिकारियों को अवगत कराने का कष्ट करें।

भवदीय,
(किशन सिंह अटोरिया)
प्रमुख सचिव"

9. From bare perusal of engagement/appointment letter dated 16.5.2023, it is apparent that the petitioner was authorized to appear in all the cases (writ petitions/appeals) in which Gaon Sabha was a party. It is nowhere mentioned that petitioner was not required to appear in the cases which relates to fair price shop, Lohia Awas, Prime Minister Awas, proceedings against Pradhan, family register, Aangabadi stipend and ration card.

10. Since the petitioner was authorized to appear in all the cases where the Gaon Sabhas of district Jaunpur was a party and the copy of the writ petitions/appeals were served upon the petitioner and he appeared before the Court and assisted the Hon'ble Court in all the matters, he is entitled to receive professional fees.

11. Learned Standing Counsel has failed to point out any communication served upon the petitioner that petitioner was not required to appear on behalf of Gaon Sabha in the cases,

which relates to fair price shop, Lohia Awas, Prime Minister Awas, proceedings against Pradhan, family register, Aangabadi stipend and ration card. Since the petitioner was authorized to receive notices in all the matters where the Gaon Sabha was a party and he appeared before the Court and assisted the Court, the petitioner is entitled for professional fees. The action of respondent no.2 in denying the professional fees to the petitioner is arbitrary and malafide. It may be noted that the professional fees for the district Varanasi, Ghazipur and Chandauli have already been paid to the petitioner for all the cases in which he appeared on behalf of Gaon Sabha. In light of the same, the impugned order dated 20.7.2023 is liable to be set aside.

12. In view of above, the writ petition is allowed. The impugned order dated 20.7.2023 is set-aside. The respondent no.2 District Magistrate, Jaunpur is directed to re-consider the claim of the petitioner and pay the outstanding professional fees to the petitioner for the cases, where notices for Gaon Sabhas of District Jaunpur were served upon him and he represented the Gaon Sabha before the Court.

13. The writ petition is allowed accordingly.

(2024) 11 ILRA 462
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 18.11.2024

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE VIPIN CHANDRA DIXIT, J.

Writ -C No. 36846 of 2024

Sukramapal

...Petitioner

Versus

Chief Election Commissioner & Ors.

...Respondents

Counsel for the Petitioner:

Ashish Mishra, Dinesh Mishra

Counsel for the Respondents:

C.S.C.

Civil Law - The Representation of the Peoples Act, 1951-Section 80-Petitioner's seeks quashing of order of rejection of the nomination papers –rejected due to non-filling up of the affidavit accompanying the Form 26,- Clause 6(K) and Clause 8(ii) were not filled up for the bye-election 2024 for the post of M.L.A.- the relief sought is one which can be challenged by way of an election petition under Section 80 of the Act-alternative efficacious remedy .

W.P. dismissed. (E-9)

List of Cases cited:

Resurgence India Vs Election Commission of India & anr., AIR 2014 Supreme Court 344

(Delivered by Hon'ble Shekhar B. Saraf, J.
& Hon'ble Vipin Chandra Dixit, J.)

1. Heard learned counsel appearing for the petitioner and Sri Jitendra Ojha, learned counsel appearing on behalf of the respondent no.1.

2. This is a writ petition under Article 226 of the Constitution of India wherein the writ petitioner seeks quashing of order dated October 28, 2024□ passed by the Returning Officer, State Legislative Assembly, for the bye-election 2024 for the post of M.L.A. from 16-Meerapur, Muzaffarnagar.

3. Learned counsel appearing on behalf of the respondent has objected the filing of this writ petition and stated that the same is not maintainable keeping in mind Article 329 of the Constitution of India read with Section 80 and Section 100 of the Representation of the Peoples Act,

1951 (hereinafter referred to as 'The Act'). Learned counsel for the respondent submits that Section 80 categorically bars an election to be called in question except by way of election petition provided in accordance with the provisions of the Act. He further submits that Section 100(1)(C) specifically provides that one of the grounds for declaring election to be void is when a nomination has been improperly rejected. In light of the same he submits that the petitioner has already an alternative efficacious remedy and the challenge made via the route of writ petition is not maintainable. He further submits that since the elections are to be held on November 20, 2024 i.e., two days from date, it is not possible now to include the petitioner in the election process for technical reasons. He further relied on the judgement of the Hon'ble Apex Court in **Resurgence India vs Election Commission of India & Another dated September 13, 2013** reported in **AIR 2014 Supreme Court 344**, wherein the Hon'ble Supreme Court categorically held that non-filling of any portion of the election form and the affidavit that accompanies the same would make the nomination paper liable to be rejected.

4. Learned counsel appearing on behalf of the petitioner has submitted that his fundamental right is being violated without any proper reasons having been offered and he submits that some parts were not filled up since the answers to the questions had been given in the paragraph above.

5. Upon perusal of the documents and the explanation provided by the petitioner and the counter arguments raised by the respondent it is noted that the reason for rejection of the nomination papers were

due to non-filling up of the affidavit accompanying the Form 26, wherein Clause 6(K) and Clause 8(ii) were not filled up. The order passed by the Election Officer is provided below:-

नोमिनेशन पत्र क्रम-34/LA/2024/RO-सुक्रमपाल

आदेश

नामांकन पत्र क्रमांक 34/LA/2024/RO की सम्यक संवीक्षा की गयी। उक्त नामिनेशन पत्र इस कार्यालय में दिनांक 25.10.2024 को अपरान्ह 2:38 बजे प्रस्तुत किया गया। नाम निर्देशन पत्र के साथ संलग्न शपथ पत्र प्रारूप-26 के भाग-क 6 (क), 8 (ii) को मा० उच्चतम न्यायालय के आदेशों व मा० आयोग के निर्देशों के अनुसार पूर्ण एवं सही रूप से नहीं भरा गया जिसके क्रम में संबंधित अभ्यर्थी को चेकलिस्ट (नोटिस) दिनांक 25.10.2024 को प्राप्त कराया गया है एवं पूर्ण व सही भरा हुआ शपथ पत्र ससमय दाखिल करने हेतु सूचित किया। जिसके क्रम में आज दिनांक 28.10.2024 को संवीक्षा प्रारम्भ होने से पूर्व अभ्यर्थी द्वारा नया शपथपत्र दाखिल किया गया। नये शपथपत्र के PART-A के स्तम्भ-8 (ii) (B) (ii) को खाली छोड़ा गया है। रिटर्निंग अधिकारी के लिए पुस्तिका - 2023 के अध्याय-5 के पैरा-5.16.4 के अनुसार मा० न्यायालय ने कहा है कि यदि किसी मद के लिये प्रस्तुत किये जाने हेतु कोई सूचना नहीं है तो ऐसे स्तम्भ में उपर्युक्त अभियुक्तियां "शून्य" या "लागू नहीं" या "ज्ञात नहीं" को यथा प्रयोज्य दर्शाया जाएगा तथा अध्याय 6 नाम निर्देशन पत्रों की अस्वीकृति के लिये आधार के पैरा-6.10.1 के बिन्दु संख्या 10 के अनुसार शपथ पत्र में कालम खाली छोड़े गये और

सूचना के बावजूद नया शपथ पत्र दाखिल नहीं किया गया है तो नाम निर्देशन पत्रों की अस्वीकृति के लिये आधार होगा। जो उक्त नाम निर्देशन पत्र को निरस्त करने का पर्याप्त आधार है।

चूंकि पूर्ण भरा हुआ शपथ पत्र प्रारूप-26 नाम निर्देशन पत्र का आधारभूत तत्व है और उक्त अभ्यर्थी द्वारा इस नामांकन पत्र में पूरा नहीं किया गया है। अतः नये शपथ पत्र के सभी कॉलम पूर्ण न होने के कारण तथा कुछ कॉलम रिक्त होने के कारण शपथ पत्र अपूर्ण माना जाता है।

अतः संवीक्षा उपरान्त उक्त नाम निर्देशन पत्र निरस्त किया जाता है।

दिनांक: 28-10-2024

रिटर्निंग आफीसर
विधानसभा-16 मीरापुर

6. Before going into the merits of the present case one may examine the ratio of the Hon'ble Supreme Court judgement in **Resurgence India (supra)**. The relevant paragraph is reproduced hereinbelow:-

"27) What emerges from the above discussion can be summarized in the form of following directions:

(i) The voter has the elementary right to know full particulars of a candidate who is to represent him in the Parliament/Assemblies and such right to get information is universally recognized. Thus, it is

held that right to know about the candidate is a natural right flowing from the concept of democracy and is an integral part of Article 19(1)(a) of the Constitution.

(ii) The ultimate purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right of the citizens under Article 19(1)(a) of the Constitution of India. The citizens are supposed to have the necessary information at the time of filing of nomination paper and for that purpose, the Returning Officer can very well compel a candidate to furnish the relevant information.

(iii) Filing of affidavit with blank particulars will render the affidavit nugatory.

(iv) It is the duty of the Returning Officer to check whether the information required is fully furnished at the time of filing of affidavit with the nomination paper since such information is very vital for giving effect to the 'right to know' of the citizens. If a candidate fails to fill the blanks even after the reminder by the Returning Officer, the nomination paper is fit to be rejected. We do comprehend that the power of Returning Officer to reject the nomination paper must be exercised very sparingly but the bar should not be laid so high that the justice itself is prejudiced.

(v) We clarify to the extent that Para 73 of People's Union for Civil Liberties case (supra) will not

come in the way of the Returning Officer to reject the nomination paper when affidavit is filed with blank particulars.

(vi) The candidate must take the minimum effort to explicitly remark as 'NIL' or 'Not Applicable' or 'Not known' in the columns and not to leave the particulars blank.

(vii) Filing of affidavit with blanks will be directly hit by Section 125A(i) of the RP Act. However, as the nomination paper itself is rejected by the Returning Officer, we find no reason why the candidate must be again penalized for the same act by prosecuting him/her."

7. It may be noted that point (iv) and (vi) at paragraph 27 clearly lay down the requirements of the candidates requiring to fill up each column and not leave a single particular blank.

8. In the present case we are of the view that this Court should not go into the issue on merits as the relief sought by the petitioner is one which can be challenged by way of an election petition under Section 80 of the Act. Our comments on the merits are only tentative in the nature and should not influence the Court hearing the election petition, if any.

9. In light of the alternative efficacious remedy available to the petitioner, this writ petition is dismissed with liberty granted to the petitioner to approach the appropriate forum for redressal of his grievance at the appropriate time.
