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

+ W.P.(C) 10798/2022

SATVIR SINGH Petitioner

Through: Sh. Satvir Singh (Party-in-person).

versus

UNION OF INDIA & ANR. Respondents

Through: Mr. Sidhant Kumar, Advocate for
Election Commission of India.
Mr. Chetan Sharma, Additional
Solicitor General with Mr. Waize Ali
Noor, Advocate for UOI.

**CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA**

ORDER
18.07.2022

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1. In the backdrop of ongoing polling for presidential election, the instant petition has been filed seeking issuance of directions to Respondent No. 1 [Union of India] and Respondent No. 2 [Election Commission of India] for disqualifying those Members of Parliament (“MPs”) and Members of Legislative Assemblies (“MLAs”) who have been imprisoned/incarcerated for various offences from participating in the elections.
2. Petitioner – Sh. Satvir Singh, who appears in person, asserts that he has filed the nomination form for the post of President of India. Although Petitioner has contended that he is a public-spirited person, but the instant petition has been filed in his own right, and not by way of a Public Interest

Litigation.

3. The petition is extremely brief and averments are contained in just one page. It also appears that not much research has not been put in, before approaching the Court. Nonetheless, since the Petitioner is aged 70 years, a carpenter by profession, and is unassisted by a counsel, the Court has heard him patiently and has given due consideration to the arguments urged.

4. The primary grievance of Petitioner is that Respondents are not taking any effective steps to remove/ disqualify such Members of Parliament and Members of Legislative Assemblies from the Electoral College for electing various dignitaries *viz.* Hon'ble President of India and Vice President of India. He argues that there is evident dereliction of duty on the part of statutory Respondents in not acting in accordance with Section 27G of Representation of People Act, 1950 as well as Sections 7, 8 & 8A of Representation of People Act, 1951 [*hereinafter*, "**R.P. Act**"], which cast a duty thereon. He also places reliance on Article 324 to 329 of the Constitution of India to support his submissions, and in particular Article 326 of the Constitution, which is premised on the concept of Universal Adult Suffrage – which, at the same time, also delineates exclusion of candidature on the grounds of "*non residence, unsoundness of mind, crime or corrupt or illegal practice*".

5. At the outset, Mr. Chetan Sharma, learned Additional Solicitor General of India, objects to the maintainability of the petition by placing reliance on Article 71(1) of the Constitution and the Presidential and Vice-Presidential Elections Act, 1952 [*hereinafter*, "**1952 Act**"], which he states, is *pari materia* to Article 329(b) of the Constitution and submits that the Supreme Court is the only Court to try an election petition in respect of

election of the President of India. Likewise, Mr. Sidhant Kumar, counsel for ECI also relies upon the afore-noted provisions to buttress his arguments. He argues that a writ petition is not the appropriate remedy and only an election petition can be filed after declaration of results. He also places reliance on Section 8 of R.P. Act which prescribes the disqualification of persons from being a member of the Parliament or a State Legislature on conviction of certain offences specified. This disqualification, he argues, is automatic and by operation of law, and disables any member of the Parliament or a State Legislature to act in any manner in such capacity, including to vote in elections of the Hon'ble President of India as per Article 54 of the Constitution. He submits that members of the Parliament or a State Legislature cease to be members of such body upon being disqualified in terms of Section 8 of R.P. Act.

6. At this juncture, reliefs sought in the present petition must also be noted, which reads as follows:

“a) to issue an appropriate writ, order or direction in the nature of mandamus, certiorari thereby directing the respondents to delete the names of those Members of Parliament and Members of Legislative Assemblies suffering imprisonment/languishing in jail due to cases pending/decided against them so that they do not participate in the voting process for the forthcoming election of Hon'ble President of India;”

7. The Court has considered the afore-noted submissions. As already observed above, Petitioner has not put in much effort to understand the legal provisions before initiating the present petition. However, the aforementioned relief sought is *ex-facie* liable to be dismissed for several grounds. The timing of the petition on the eve of Presidential Election, and not before, makes the intention of the petition 'highly suspect'. The Court is also

informed that Petitioner's nomination for the post of President of India was rejected, and since he is not a candidate, the Court is unable to perceive Petitioner's *locus standi* to assail the election of the Hon'ble President of India, particularly since the instant petition is not in the nature of a public interest litigation; nonetheless, it is not maintainable before this Court in terms of Article 71(1) of the Constitution, which reads as follows:

71. Matters relating to, or connected with, the election of a president or Vice President

(1) All doubts and disputes arising out of or in connection with the election of a president or vice President shall be inquired into and decided by the Supreme court whose decision shall be final.

(2) If the election of a person as President or Vice President is declared void by the Supreme Court, acts done by him in the exercise and performance of the powers and duties of the office of President or Vice President, as the case may be, on or before the date of the decision of the Supreme Court shall not be invalidated by reason of that declaration.

(3) Subject to the provisions of this constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice President.

(4) The election of a person as President or Vice President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him.

[Emphasis Supplied]

8. Article 71(1) categorically provides that all doubts and disputes arising out of, or in connection with the election of the President or Vice President, shall be inquired and decided by the Supreme Court, and thus, since the above-extracted relief is *qua* the electoral college for the Presidential election, the same cannot be entertained by this Court.

9. Further, on a perusal of the 1952 Act, the Court is unable to discern any provision disqualifying members of Parliament and State Legislatures – who are imprisoned/ incarcerated from voting in the said elections. Mr. Kumar has relied upon Section 8 of R.P. Act, which prescribes for

disqualification of persons from being a member of Parliament and State Legislatures; however, in light of the fact that the present petition cannot be entertained by this Court, the Court refrains from expressing any opinion on this issue.

10. Further, Petitioner has neither given a single instance where an imprisoned/ incarcerated member has been allowed to vote, or otherwise, act as a member of Parliament or State Legislature, nor has such member been arrayed as a party.

11. Lastly, the present writ petition is also not maintainable, for the reason that the only remedy in relation to a Presidential election, can be by way of an election petition after declaration of the result.¹ Section 14(2) of the 1952 Act also confers exclusive jurisdiction on the Supreme Court to hear such matters.

12. In light of the above, this half-baked petition of Petitioner cannot be entertained by this Court.

13. Dismissed.

SANJEEV NARULA, J

JULY 18, 2022

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¹ *Mohinder Singh Gill v. Chief Election Commissioner*, AIR 1978 SC 851. See paragraphs no. 25, 30, 88 and 92.