**CASE ANALYSIS OF N.P. PONNUSWAMI V. RETURNING OFFICER**

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**BRIEF FACTS OF THE CASE**

The appellant, N.P. Ponnuswami was one of the applicants who filed his nomination papers to the Madras Legislative Assembly elections from Namakkal constituency located in Salem district. The returning officer for the same constituency, while scrutinizing the nomination papers of various candidates on 28th November 1951, rejected the appellant's nomination paper on certain grounds. Aggrieved by the order of returning officer, the appellant moved to the High Court under Article 226 claiming the writ of certiorari and prayed to quash the order of the returning officer thereby adding his name in the valid candidates' list.

The High Court dismissed the appellant's petition on the ground that it had no jurisdiction by the constraint of Article 329(b) of the constitution to interfere with the order given by the returning officer.

The appellant then questioned the jurisdiction of the High Court in conformity with Article 329(b) in a further appeal in Supreme Court where the High Court verdict was upheld and the appellant's appeal was dismissed.

**Issues in The Case**

The issues in the present cases are precisely three,

Whether:

1. The high court has the power to decide election matters under writ jurisdiction specified under Article 226 of COI.
2. The returning officer has jurisdiction or authority to order the rejection of the nomination papers of a candidate.
3. High Court has authority to review the order of returning officer.

**Laws Concerned**

Article 329: "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 327 or Article 328, shall not be called in question in any court;

(b) No election to either House of Parliament or the House or either House of the Legislature 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"[[1]](#footnote-2).

Article 226: It states the power of the High Court to issue writs to any person within its area of jurisdiction including any authority, government or any other person as necessary.

The Representation of the People Act, 1951: "An Act to provide for the conduct of elections of the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections".[[2]](#footnote-3)

**Arguments from The Appellant Side**

1. The word 'election' does not comprehend to include the nomination of the candidate simply because the literal meaning of election is the final result of polling or the selection of the final candidate.

2. The fact that election petition can be filed only after the declaration of a final result and the only claim which one can make is questioning the final result therefore there cannot be any other meaning of the word 'election' suggested by Article 329(b) except the final result or selection of the candidate.

3. The language used in Article 324(1), 'arising out of or in connection with', and the language used in Articles 327 and 328, 'concerning all matters relating to, or in connection with' is quite different, that shows the contention of the constitution-makers to refer to two different matters, one which is prior the polling and the other is the result of the polling. If they intended to state similar matters they would have used similar language.

4. The Representation of the People Act 1951 which has also been questioned is made by exercising powers stated in Article 327 of the COI. After reading the language of Article 327 ' subject to the provisions of the constitution', the appellants claim that questioning the order of returning officer is subject to the special jurisdiction of High Court under Article 226.

**Arguments from the Respondent Side**

1. There cannot be two attacks on the single matter related to the election, with a different approach for before election queries and a different plan for the after election events.

Such a situation if assumed would be contrary to part XV of the constitution and to The Representation of the People Act 1951 and hence all the matters before and post elections should be brought up to a special tribunal at an appropriate time.

2. The election has a wide meaning that has been used in part XV of the constitution to connote the entire procedure to be gone through to return a candidate to the legislature.

3. The expression "conduct of the election" in Article 324 points out the wide meaning of the word "election".

**Legal Aspects**

There were certain crucial legal aspects which were questioned in the present appeal and were accordingly answered by the Supreme Court.

1. The appellants in the present case questioned the very essence of the word election. In the course of the proceeding the respondents and the bench analyses, the definition and meaning of 'election' and try to clarify why in the present case election has a wide meaning.

The court objectively certified by referring to the judgments Srinivasalu v. Kuppuswami[[3]](#footnote-4)and Sat Narain v. Hanuman Prasad[[4]](#footnote-5) that the meaning of the word election is certainly wide as well as narrow. But in part XV of the constitution, it has been used in a wider sense. The court refers to the language of Article 324 "conduct of elections" and states that the words used in the Article specifically point towards the wide meaning. Moreover, this wide meaning can be read in consonance with the other provisions of part XV of COI including Article 329(b).

1. One of the doubts which were born was when does the election start i.e. at which stage one can note that the process of election has begun. The bench referred to a passage from the Halsbury Law of England which cleared that the word election can be and has been appropriately used while referring to the entire process which consists of several stages and embraces many steps, among which some of them have an important bearing on the result.
2. The next important aspect that was dealt with in the judgment is the meaning of the words "no election shall be called in question". In S. 100 of The Representation of the People Act, 1951, it has been clearly stated that one of the grounds for election is the improper rejection of nomination paper and hence the election petition there is a remedy to question the validity of any elections.
3. When the appellants contested about the narrow meaning of the word election they claimed that half of the process of election should contend in a court and the other half should be resolved by the special tribunal for election disputes. But the bench declared that such a position would be contrary to Part XV of the constitution and The Representation of the People Act, 1951. And since election tribunal has to be an independent body, at any stage with the interference of the court it would not remain independent.
4. Another important question which was put forth was about the interpretation of Article 329(b) of the constitution. The court pointed out an essential feature of legal functionality that clause (b) of Article 329 must be read as complementary to the other clauses of the Article. Clause (a) of the Article bars the jurisdiction of the court to try the election matters which has been stated in Article 327 and Article 328 of the constitution. The Court speculates that if 329(a) prohibits the court's jurisdiction to try election matters then why the constitution-makers would leave a small part of the whole process to be tried by High Court. And therefore the court quoting the more reasonable view declares that the word election covers "all the electoral processes and matters" and the appellants claim has no value.
5. After referring to The Representation of the People Act the question was raised about the dominance of the statues. If there are two laws regarding the issue of the election, which should prevail? In this matter, the bench referred Judge Willes who ruled in one of his judgments that when a right or a liability is created by a statue and provides a special remedy for enforcing it the remedy provided by the statute only must be availed.[[5]](#footnote-6)The rule laid down in the above judgment was approved House of Lords in several cases like Neville v London Express Newspaper Limited[[6]](#footnote-7), Attorney General of Trinidad and Tobago v. Gordon Grant & Co.[[7]](#footnote-8), Secretary of State v. Mask & Co.[[8]](#footnote-9) and Hurdutrai v. Official Assignee of Calcutta[[9]](#footnote-10).
6. The court, though, accepted that there is no clear mention about the exclusion of High Court's writ jurisdiction in the matters of the election, but it can be inferred by S. 107(1) and S. 80 of The Representation of the People Act which mentions that only the special tribunal will have the power to try the disputes in regard with election matters. Rule 13 of the Ballot Act of 1872 and the Rules in Parliamentary Election Rules of 1949 were also referred to state that the decision of returning officer in the matter of rejection of a nomination is final until it is challenged by filing an election petition.
7. One of the critical aspects which the judgment dealt with was certainly on the objection that wouldn’t the late remedy given, after the elections, by the tribunal undermine the right to obtain justice and would also sabotage the right to contest elections. The court explained that the right to vote or the right to contest elections does not come under the ambit of fundamental or civil rights, they are the matters concerning statutory rights and as stated by number of precedents the statutory rights are a creation of statute and are subject to limitations by the statute itself[[10]](#footnote-11).

It is the sole right of the legislature to examine and determine all the matters related to the election of its members, and hence if the legislature gives the jurisdiction to look into the matters of election by an all-new special tribunal, then the jurisdiction should be exercised accordingly. And in the present case legislature has given a remedy to protect these rights i.e. filing an election petition.

1. The second facet of the objection is that election is a very elaborative process. It deals with many stages and is a complex process even if we take the election in a small district. It not only involves a lot of expenditure but also needs a lot of human effort. Hence to postpone the election process for an inquiry would be a lot of administrative effort. An election is a process which legislature demands to be completed as soon as possible and delay in which might cause national wide chaos and therefore the remedy of post-election inquiry is for the greater good.
2. The court addressed a much compelling argument of the appellants of interpreting the contrasting language used in Article 329(b) and Article 71(1) of the constitution. Article 71(1) reads that for the dispute in the president or vice president's election would be decided by the Supreme Court. The court suggested that the contrasting language used in both the Article cannot be intended to have the same meaning. That the framers of the constitution if intended to include all the matters of election under the ambit of Article 329(b) they could have expressed it more objectively and there would not have been a need to insert Article 71 altogether.

But since the framers knew how to make the constitution and the fact that the two Articles were written, it indicates that they wanted Supreme Court to enter only when the matter concerns the election of president or vice-president[[11]](#footnote-12). Also, the court held that it is not at all necessary to use similar language for similar intention, but one can always use better ways and methods to interpret and convey more properly what Article 329(b) tries to convey.

1. Furthermore, it has also been simplified in the judgment that the negative language used in Article 329(b) is due to the primary intention to exclude the jurisdiction of all the courts in election matters. Similarly, the positive language used in S. 71 is to affirm that the Supreme Court has a special jurisdiction to decide matters of the election regarding president or vice president elections.
2. One of the crooked argument presented by the appellant was that the dispute in the nomination is the dispute in the election, and can only be questioned as per Article 329(b) i.e. only the special tribunal can order the rejection of the nomination of any candidate and therefore the returning officer did not have any jurisdiction or authority to scrutinize and reject the appellant's nomination papers at the first.

It was further contended that S. 36 of Representations Act would be ultra vires as the returning officer would have no authority in conformity with Article 329(b). The court recognized the argument to be high on "dialectical ingenuity" and explained that the duty of scrutinizing the nomination paper by the returning officer is only a stage for the completion of the election process duly. If this important step would not have been there then there would have been plenty of candidatures in the election. Also, the fallacy in the argument, as mentioned by the bench was that they presumed a step of election to constitute the whole election.

**Indian Election Laws V. Uk Election Laws**

The election court, a special court in the UK which decides the election petition if filed against the result of parliamentary or local government elections[[12]](#footnote-13) of the Representation of the People Act, 1983. Election courts are managed and governed by one of the written laws of the UK i.e. The Representation of the People Act, 1983. The courts are supervised by the Rota of Court of Sessions judges (in Scotland) and High Court judges (England and Wales).

The election court comes active when an election petition is filed and ceases when the case is concluded. The adjudicating laws differ depending on which seat has been challenged, whether the seat for a local council or the parliament has been challenged. There are two judges from High Court or Court of Sessions when any parliamentary election is heard, whereas, in a local government election in England and wales, an experienced barrister is appointed by the judges to hear the case[[13]](#footnote-14). In a dispute regarding council election in Scotland, the case is heard by one or more sheriff principals as mentioned[[14]](#footnote-15).

The election court tries the matters (election petition) without a jury. The witnesses are compelled to answer even if it would incriminate themselves and in cases when the court finds that the corrupt practices were involved in the election, the election is declared void and the seat is held vacant, to fill the same another election is held[[15]](#footnote-16).

It is important to note that the appeal does not lie in the election court on the question of fact, it is only on the question of law that the order can be reviewed by High Court or Court of Session by the act of judicial review[[16]](#footnote-17).

**Other Important Judgments**

N.P. Ponnuswami v. Returning officers were one of the very early cases of Independent India and therefore the precedents cited and referred in the present case are mostly from the time of British Colony India. Every case-law referred to in the judgment is of unique quality and was precisely what the court wanted to explain. After N.P. Ponnuswami, there were several landmark judgments which have been ruled in the matter of election. Among them there are two most relevant cases which are as follows:

1. K. Venkatachalam v. A. Swamickan[[17]](#footnote-18)

It is one of the most significant yet contrasting cases where the High Court admitted writ petition for an election matter. The Supreme Court in the present case stated that the jurisdiction of the High Court under Article 226 can be exercised until there is a clear cut exclusion of it. Supreme Court also ruled that the writ jurisdiction can be exercised when the act is against any provision of law, or violative of any constitutional right and when the remedy cannot be claimed with the appropriate provision. In the present case, the allegations were made on the sitting elected member of the Tamil and legislative assembly for illegally being elected. Later the case proved to be the only case which revoked the candidature of the sitting member and declared the election void. Also, Venkatachalam's case is the only off-instance where the writ petition was admitted and upheld by the apex court.

2. Jyoti Basu &Others vs Debi Ghosal & Others[[18]](#footnote-19)

Jyoti Basu case is the original landmark judgment which declared that the right to contest an election is not civil or constitutional, it is a statutory right and can be revoked by any statute who gave the right.

**Critical Overview of The Judgment**

The landmark judgment of N.P. Ponnuswami v. returning officer is known for precisely three things:

1. High Court does not have any jurisdiction on election matters.

2. The only remedy which is available in election dispute is post-election through an election petition.

3. The definition of election covers the whole process of election not just the final declaration of the winning candidate.

The unanimous decision of the six judge bench clarifies the ambiguity which the country might have faced in its coming years of election. In the highly democratic country like India, the judgment highlighted, that it is necessary that the elections are not delayed and should be held in the due time without any interference.

The court, in the present case, was sensitive enough about the rights of an individual of contesting elections and sensibly stated the important legislative decisions which run the country due to which the elections cannot be delayed.

With an easement to the counsels, the court also explained with the help of many different examples about similar language provisions with different meanings, or the different language provisions which have a similar meaning, and the provisions which guided the present matter. The judgment has a simple and clear language and has not tried to over-explain anything. The arguments which were revoked were mentioned and then stated false.

The beauty of the judgment enhances where the bench stated even fallacies in the counsel's argument and appreciated the appellant. The order has exquisitely yet precisely mentioned every case law which was needed to prove the point. The judgment is a very decent judgment with an approach of strictly acting on laws and statutes. It is at the time where England laws were prevailing and there were not much of Indian precedents. The court has analyzed the interpretation of statutes and laws in a very objective manner with a thought to interpret the constitution-makers approach and idea. It has magnificently looked into the Laws of England from which our election process has been derived.In the end, the appeal was unanimously dismissed and the High Court was upheld.

**Conclusion and Suggestions**

The 1952 judgment has proven to be a landmark judgment in the history of election matters, but there were a few questions which were still unsatisfactorily answered by the court. Among which is the 'dialectical ingenuity' argument. The argument as stated earlier claimed that S. 36 of act 43 of 1951 would be ultra vires following Article 329(b). There are two things to be focused on:

1. Questioning the rejection of nomination papers come under questioning the whole election process. As stated under Article 329(b) of COI, this questioning can be done only by filing an election petition.
2. The validity of nomination papers is a dispute regarding who will contest the election and therefore it a dispute about the election process. This dispute is decided by returning officer under S. 36 of the representation of people act.

But as stated in Article 329(b) all the matters regarding the election will only be decided by an election petition and nothing except special tribunal will have the authority and jurisdiction to decide the election petition. Therefore the above given two points are contradicting to each other. In first the questions about the rejection of nomination papers cannot be asked except through election petition, but in the second case, the returning officer has the authority to look into who can stand in the election process. The argument was settled down by the court saying it’s just a stage to make sure that elections are held properly.

The question remained unanswered until,in 1996, Section 80-A was inserted in The Representation of the People Act. With this amendment the question of whether high court can indulge into election matters was resolved and the logical validity of Article 329 was revoked. S. 80-A states that the election petition post-election should be filed at the High Court of jurisdiction and with this one of the basis on which the present case was filed was removed. The only difference is that now instead of any writ petition the application would be filed in the High Court with the name of 'election petition'. And now the High Court will have the jurisdiction to decide election matters under the name of the election petition.

**REFERENCES**

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2. *Sarvothama Rao v. Chairman Municipal Council, Saidapet,*(1924) I.L.R. 47 mad. 585 at 600
3. *Desi Chettiar v. Chinnaisami Chettiar,*(1928) A. I.R. Mad. 1271 at 1272
4. *Srinivasalu v. Kuppuswami* (1928), A. I.R. Mad. 1271 at 1272
5. *Sat Narain v. Hanuman Prasad* (1945), A.I.R. Lah. 85
6. *Wolverhampton New Water Co. v. Hawkesford,*6 C.B. (N.S.) 336, 356
7. *Neville v London Express Newspaper Limited,*L.R. [1919] A.C. 368
8. *Attorney General of Trinidad and Tobago v. Gordon Grant & Co.,*[1935] A.C. 532
9. *Secretary of State v. Mask & Co.,*(1940) 44 C.W.N. 709
10. *Hurdutrai v. Official Assignee of Calcutta* (1948), 52 C.W.N. 343
11. *Theberge v. Laundry* (1876), 2 App. Cas. 102, (1876) 2 AC 102
12. *K. Venkatachalam v. A. Swamickan* (1999), 4 SCC 526, 1999 AIR SCW 1353
13. *Jyoti Basu & Others vs Debi Ghosal & Others,*1982 SCR (3) 318
14. *The Representation of the People Act* 1951
15. *The Representation of the People Act* 1983
16. *Constitution of India* 1951

**BRIEF ABOUT THE AUTHOR**

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1. *Constitution of India*, 1950, art. 329 [↑](#footnote-ref-2)
2. *The Representation of the People Act*, 1951 [↑](#footnote-ref-3)
3. *Srinivasalu v. Kuppuswami*,(1928) A. I.R. Mad. 1271 at 1272 [↑](#footnote-ref-4)
4. *Sat Narain v. Hanuman Prasad*, (1945) A.I.R. Lah. 85 [↑](#footnote-ref-5)
5. *Wolverhampton New Water Co. v. Hawkesford,* 6 C.B. (N.S.) 336, 356. [↑](#footnote-ref-6)
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10. *Theberge v. Laundry* (1876), 2 App. Cas. 102, (1876) 2 AC 102. [↑](#footnote-ref-11)
11. *Constitution of India*, Art. 71 [↑](#footnote-ref-12)
12. *The Representation of People Act* 1983, s.13 (Representation Act) [↑](#footnote-ref-13)
13. *Representation Act*, s.130 [↑](#footnote-ref-14)
14. *Representation Act*, s.134 [↑](#footnote-ref-15)
15. *Representation Act*, s.158 – 169 [↑](#footnote-ref-16)
16. *Representation Act*, s.58 –60 [↑](#footnote-ref-17)
17. *K. Venkatachalam v. A. Swamickan*,(1999) 4 SCC 526. [↑](#footnote-ref-18)
18. *Jyoti Basu & Others vs Debi Ghosal & Others*,1982 SCR (3) 318. [↑](#footnote-ref-19)