



2026:UHC:4513-DB

HIGH COURT OF UTTARAKHAND AT NAINITAL

THE HON'BLE CHIEF JUSTICE SHRI MANOJ KUMAR GUPTA

AND

THE HON'BLE JUSTICE SHRI SUBHASH UPADHYAY

8th June, 2026

Writ Petition (M/B) No. 460 of 2026

Rajendra Singh Gusain

-----Petitioner

Versus

State Election Commission and others

-----Respondents

Presence:-

Mr. Abhijay Negi and Ms. Snigdha Tiwari, learned counsel for the petitioner.

Mr. Sanjay Bhatt, learned counsel for the respondent nos.1 and 3.

Mr. Amrendra Pratap Singh, learned Additional Advocate General, Mr. Rajeev Singh Bisht, learned Deputy Advocate General, Mr. Pooran Singh Bisht, learned C.S.C. and Mr. Pradeep Hairiya, learned Standing Counsel for the State/respondent no.2.

JUDGMENT: (per Manoj Kumar Gupta, C.J.)

1. Heard Mr. Abhijay Negi, learned counsel for the petitioner, Mr. Sanjay Bhatt, learned counsel for the respondent nos.1 and 3 and Mr. Amrendra Pratap Singh, learned Additional Advocate General, Mr. Rajeev Singh Bisht, learned Deputy Advocate General, Mr. Pooran Singh Bisht, learned C.S.C. and Mr. Pradeep Hairiya, learned Standing Counsel for the State/respondent no.2.

2. The present writ petition has been filed challenging the order dated 31.05.2026, issued by Returning Officer, i.e., respondent no.3, whereby the



nomination of the petitioner for the post of Chairman Nagar Palika Parishad, Narendra Nagar, has been rejected. The petitioner has also prayed for an order declaring his nomination as valid and for directing respondent no. 1, i.e., State Election Commission to accept his nomination and permit him to participate in the forthcoming Nagar Palika Parishad elections for the post of Chairman, Nagar Palika Parishad, Narendra Nagar. Prayer has also been made for issuing a writ of mandamus commanding respondent no.1 to provide a mechanism for filing appeal against the rejection of the nomination papers and for further direction to the said respondent to decide his representation.

3. On 25.05.2026, the Uttarakhand State Election Commission (*herein referred to as 'the Commission'*) notified the election for the post of President and Members of various Nagar Palika Parishads in the State. The nominations were to be filed between 27.05.2026 and 29.05.2026. The scrutiny of the nomination was to take place on 30.05.2026. 31.05.2026 was fixed for withdrawal of nominations. 01.06.2026 was fixed for the allotment of symbol and 09.06.2026 as date for election.

4. By virtue of Section 43-AA(2) read with



Section 13-D(f) of the Uttar Pradesh Municipalities Act, 1916, a person who is in service in the State is disqualified for being chosen as President of a Municipality. The said provisions are as follows:-

“[43-AA. Qualification for Presidentship.-

(1).....

(2) A person shall be disqualified for being chosen as, and for being, President of a [Municipality] if he, -

(a) is or has become subject to any of the disqualification [mentioned] in clauses (a) to (g) and (i) to (k)] of Section 13-D and the disqualification has not ceased or been removed under the said section; or.”

“[13-D. Disqualification for membership.- A person, notwithstanding that he is otherwise qualified shall be disqualified for being chosen as, and for being, a member of a [Municipality] if he, -“

(a)

(aa)

(b)

(c)

(d)

(e)

(f) is in the service of the State or the Central Government or any local authority, or is a District Government Counsel or an Additional or Assistant District Government Counsel or an Honorary Magistrate or an Honorary Munsif or an Honorary Assistant Collector; or”

5. The petitioner held the post of Member, Bal Kalyan Samiti, Department of Women Empowerment and Child Development. According to the petitioner, he submitted his resignation from the said office at 10:00 A.M., on 29.05.2026, in order to participate in the election for the post of the Chairman, Nagar Palika Parishad, Narendra Nagar. It is also his case that on the same date, the Chairman, Bal Kalyan Samiti forwarded his resignation to the District Probation Officer. On



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30.05.2026, District Probation Officer forwarded his resignation to the Secretary, Women and Child Development Department. As acceptance of the resignation was not received by 30.05.2026, the date fixed for scrutiny, on objection of the other candidates that the petitioner was in service of the State, his nomination was rejected by the Returning Officer by impugned order dated 31.05.2026. The Returning Officer has recorded a finding to the effect that the petitioner was in service of the State, therefore, his nomination was invalid under Section 13-D (f) of the U.P. Municipalities Act, 1960. A further finding has been recorded to the effect that the affidavit filed by the petitioner along with the nomination stating that he was not holding any office under the State Government was incorrect and the said misrepresentation amounts to an offence under Section 125A of Representation of People Act, 1951.

6. The main thrust of the argument of the learned counsel for the petitioner is that the respondents have not provided reasonable time to the petitioner to get his resignation accepted. It is contended that on 29.05.2026, the resignation was submitted. The resignation letter was forwarded to the



competent authority on 30.05.2026 and since 31.05.2026 was a Sunday, the resignation could not be processed and accepted. Thus, in absence of a reasonable opportunity to the petitioner to get his resignation accepted, the respondents have illegally deprived him from contesting the election. It is submitted that the timelines prescribed by respondent no.1 were unduly short, resulting in serious prejudice to the petitioner.

7. Learned counsel for the petitioner in support of his submission relies on the judgments of the Apex Court in *D.R. Gurushantappa vs. Abdul Khuddus Anwar and Ors*, 1969 AIR 744, and the judgment of the Division Bench of this Court in *Vipul Jain vs. State of Uttarakhand*, 2019 SCC OnLine Utt 1024.

8. On the other hand, learned counsel for the respondent no.1 has placed reliance on the judgment of Supreme Court in *Sandeep Singh Bora vs. Narendra Singh Deopa and Others*, 2026 SCC OnLine SC 136 and order dated 30.01.2026 in *Special Leave to Appeal (C) No. 1675 of 2025, "District Election Officer & Another vs. Yamini Rohilla & Ors."*

9. Learned counsel for the respondent no.1



submitted that the rejection of nomination is one of the ground, on which, election petition could be filed under Section 43(2) read with Section 19 of the Municipalities Act and, therefore, the writ petition under Article 226 of the Constitution is not maintainable. He further submitted that under Section 15 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016, one month's notice period is prescribed for the resignation, which, in any case had not expired. Therefore, mere tender of resignation by the petitioner on 29.05.2026 was not sufficient. According to him, the option to accept the resignation before expiry of 30 days was available only to the State Government. The option to cut short the notice period is not available to the person tendering resignation. He further submits that the resignation was also not addressed to the State Government.

10. Article 243ZG(b) of the Constitution stipulates that 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.



11. Section 19 of the U. P. Municipalities Act, 1960, as applicable to the State of Uttarakhand, provides that election of any person as a member of the Municipality could be questioned by an Election Petition, *inter alia*, on the ground of improper rejection of nomination, as is being contended by the petitioner. Section 43(3) of the Act makes applicable the provisions of the Act and the Rules framed thereunder in relation to election (including disputes in relation to electoral offences) of a member *mutatis mutandis* applicable to the election of a President. Thus, the State Legislature has specifically provided the manner in which a candidate, whose nomination is alleged to be illegally rejected, can challenge the same, namely by way of an election petition.

12. In Sandeep Sing Bora (*supra*), the Supreme Court has reiterated the legal position that where remedy of Election Petition is provided under the legislation, the High Court shall not entertain the challenge under Article 226 of the Constitution.

13. Although, the State Government as well as learned counsel for the Election Commission have also tried to demonstrate that the resignation would not



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become effective immediately and one month's notice was needed and which period could have been waived by the State Government only, we refrain from examining the said contentions, as we are of the considered opinion that there issues should not be examined in writ jurisdiction in view of the constitutional and statutory law.

14. Accordingly, the writ petition is dismissed with liberty to the petitioner to avail the remedy of filing an Election Petition, if so advised.

15. Pending application, if any, also stands disposed of.

(MANOJ KUMAR GUPTA, C.J.)

(SUBHASH UPADHYAY, J.)

Dated: 08.06.2026
Kaushal/PP