

AD. 5.
April 8, 2021.
MNS.

W. P. A. 8877 of 2021
(Via video conference)

Dr. Kunal Saha and another
Vs.
West Bengal State Election Commission
and others

Dr. Kunal Saha

... petitioner no. 1 in-person.

Mr. Dipayan Choudhury,
Mr. Suvradal Choudhury,
Ms. Priyanka Chowdhury

...for the respondent-authorities.

Dr. Saha, petitioner no. 1, representing both the petitioners, appears in person virtually and argues that although reliefs (a) and (b) prayed for in the writ petition have become infructuous since elections have already been held at the relevant Assembly Constituencies, however, relief (c) ought to be granted to the petitioners in view of flagrant violation of the order dated February 13, 2020 passed by the Supreme Court in Contempt Petition (C) No. 2192 of 2018 in WP(C) No. 536 of 2011.

Dr. Saha points out the guidelines of the Election Commission of India itself, annexed at page 21 of the writ petition, in particular Clause 2

thereof, in support of such submission and argues that the said relief does not come within the domain of challenge to an election process, regarding which the courts are debarred from interfering after commencement of the elections under Article 329(b) of the Constitution of India.

Dr. Saha also relies on the judgment rendered by the Supreme Court in ***Public Interest Foundation and others Vs. Union of India and another reported at (2019) 3 Supreme Court Cases 224*** in support of his arguments.

Learned counsel appearing for the respondent-authorities relies on the ratio laid down in ***(1978) 1 Supreme Court Cases 405 (Mohinder Singh Gill's case)*** and argues that the scope of judicial review after commencement of the election is extremely limited and fettered by Articles 324 and 329(b) of the Constitution of India.

It is further argued that, as far as the representations of the petitioners are concerned, annexed respectively at pages 56 and 73 of the writ petition, the first of those have already been dealt with by the Election Commission of India and the second was made at a stage when the

election process had already commenced, thereby leaving no scope for the Election Commission to take any further steps in that regard.

Upon considering the submission of parties, it is evident that the substantive challenge in the present writ petition is against alleged irregularities committed in connection with the election process, which has already commenced sometime back.

As such, in view of the specific bar envisaged in Articles 329(b) read with 324 of the Constitution of India, this Court does not have jurisdiction to decide on the allegations made in the present writ petition. The remedy of the petitioners, in my view, lies in filing an election petition after the conclusion of the election process before the appropriate authorities.

As such, W. P. A. 8877 of 2021 is dismissed as not maintainable with liberty to the petitioners to approach the appropriate forum with an election petition in accordance with law, ventilating the same grievances as urged in the present writ petition. If so approached, the said forum will not be prejudiced by any of the observations made in this order and shall decide

such petition independently on its own merits in accordance with law.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)