

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

RESERVED ON: 04.05.2023
DELIVERED ON: 19.05.2023

CORAM:

**THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**MAT NO. 411 OF 2023
(I.A. NO. CAN 01 OF 2023)
(I.A. NO. CAN 02 OF 2023)**

**WEST BENGAL PHARMACY COUNCIL AND ANOTHER
VERSUS
RUSHA PODDER AND OTHERS**

Appearance:-

**Mr. Kishore Datta, Advocate.
Mr. Avik Ghatak, Advocate.
Mr. Soham Banerjee, Advocate.
Mr. Parashar Baidya, Advocate.
Mr. Soham De Dhara, Advocate.**

....For the Appellants

**Mr. Tapan Kumar Mukherjee, Advocate
Ms. Debdooti Dutta, Advocate**

...For the State

**Mr. Aniruddha Chatterjee, Advocate.
Mr. Rahul Karmakar, Advocate.
Ms. Gargi Goswami, Advocate.**

.....For the Respondent

Mr. Ananta Shaw, Advocate.
Mr. Falguni Bandyopadhyay, Advocate.
Ms. Sreetama Neogi, Advocate.
Ms. Riya Ballav, Advocate.

**....For the Appellants in
CAN 2 of 2023**

JUDGMENT

(Judgment by T.S. SIVAGNANAM, CJ.)

1. This intra court appeal has been filed by the West Bengal Pharmacy Council challenging the correctness of the order passed in WPA No. 509 of 2023 dated 28.02.2023 filed by the respondents 1 to 4 herein. The respondent writ petitioners had filed the writ petition praying for issuance of writ of mandamus to direct the appellants/authorities to forthwith grant a hearing of the objections raised by them vide email dated 01.01.2023; to issue a writ of prohibition to restrain the appellant from sending election papers to the electors on January 09, and January 10, 2023 and for issuance of a writ of certiorari to quash the notice dated December 20, 2022 by which the appellant council published the list of accepted/rejected candidates for the election to the West Bengal Pharmacy Council.
2. The Learned Single Bench by the impugned order held that the rejection of the nomination of the respondent writ petitioners was flawed and directed the appellant council to reconsider the nominations filed by the writ petitioners in accordance with Rule 5(1) of the Rules for Election of Members including the President and the Vice President of the West Bengal Pharmacy Council and of the Members of the Executive Committee of the said council. The learned writ court further directed that the appellant council will give effect to the final list/notice published on 20.12.2022 only

after the direction is complied with. Further it was observed that since the last election of the council was held in 2007 with the tenure of office expired in 2013, no prejudice is caused if the question of the writ petitioner's candidatures is decided within the time directed. The appellant council being aggrieved by such order have preferred this appeal.

3. Heard Mr. Kishore Dutta, learned senior advocate assisted by Mr. Avik Ghatak, Mr. Soham Banerjee, Mr. Parashar Baidya and Mr. Soham De Dhara, learned advocates for the appellants. Mr. Tapan Kumar Mukherjee assisted by Ms. Debdooti Dutta, learned advocates for the state. Mr. Aniruddha Chatterjee assisted by Mr. Rahul Karmakar and Ms. Gargi Goswami learned advocates for the respondent. Mr. Ananta Shaw assisted by Mr. Falguni Bandyopadhyay, Ms. Sreetama Neogi and Ms. Riya Ballav learned advocates for the appellants in CAN No. 02 of 2023.

4. The facts leading to the filing of the writ petition are as hereunder. The writ petitioners are registered pharmacists under the appellant council having valid registration as on the date when they filed the writ petition. It was stated that 15 members constitute the body of the council and out of the said 15 members, 6 members are elected among the registered pharmacists of the State of West Bengal, 5 members to be nominated by the State of West Bengal of whom 3 must possess prescribed degree or diploma in pharmacy and one member has to be elected from the West Bengal Medical Council and the other three members are ex-officio Chief Administrative Medical Officer, Ex-officio Officer-in-charge, Drugs Control and Ex Officio Government analyst under the Drugs and Cosmetics Act, 1940, the entire panel of members as specified under Section 19 of the

Pharmacy Act, 1948. The writ petitioners sought to bring out the lacunae in the election process to be held for the members under Section 19(1)(a) of the Pharmacy Act. It was stated that in terms of the Rules of Election which were published in the Calcutta Gazette on 21.07.1966, the Registrar, the second appellant, is empowered to Act as a returning officer for conducting and holding the elections. Rule 2 of the said rules provides for preparation of draft electoral roll followed by the final electoral roll after effecting correction in the said draft, if any. Rule 3 relates to the nomination of candidates whose names appear in the said final roll. Rule 5 provides for a Dispute Redressal Mechanism in case of any grievance of the candidates of their nomination. The remaining provision deals with the conduct of the electoral process.

5. The appellant council vide gazette publication dated 14.09.2022 published an election notice indicating the relevant dates for filing of nomination papers and their scrutiny. It is stated that after 2013, there was no election conducted however the members who were elected in the year 2007 continued in office in gross violation of the provisions of the Pharmacy Act. By notice dated 28.09.2022, it was indicated that pharmacist whose names are renewed on or before August 25, 2022, their names shall appear in the draft electoral roll. Any missing names was sought to be included in the draft but the persons whose registration have not been renewed shall not be considered. It was stated that the registration of all the writ petitioners were duly renewed on or before 25.08.2022 as per Section 34 of the Pharmacy Act. The nomination for the election is to be filed in Form C as provided in Rule 3 wherein the candidate was required to furnish any

additional details, if the name of the candidate appeared in the electoral roll. It was stated that there is no provision made in the said form or the rule to provide for any professional address nor furnishing documentary proof. It was stated that the reason for such a provision being the members whose names appeared in the register have already provided all requisite information required to publish the final electoral roll and the only requirement for a candidate is to renew the registration within the time specified. By notice dated 12.10.2022, the appellant extended the time for inclusion of names and correction of postal address from 12.10.2022 to 18.10.2022. Date of filing nomination was from 12.12.2022 to 16.12.2022 and scrutiny was to be done on 19.12.2022. The despatch of voting papers to the electors was stipulated to be done between 09.01.2023 to 10.01.2023. It was further submitted that in the final electoral roll which was published on 14.11.2022, the names of the writ petitioners were appearing in the said list in serial nos. 11077, 85874, 2545 and 16446 respectively. The writ petitioners filed their nomination with the second appellant/returning officer in Form C on 15.12.2022 along with all the requisite documents and the nomination was accepted by the second appellant. On 20.12.2022, the appellant rejected the nomination of the writ petitioners on the ground of the non-compliance of professional address and date of birth, non-compliance of residential and professional address, submission of incorrect Form C, non-submission of ID proof respectively. It is the case of the writ petitioners that all documents were available before the appellants and there was no requirement to file fresh documents and the renewal of the registration of the writ petitioners presupposes the fact that all documents

and particulars were duly verified and made up to date. By election notice dated 23.12.2022, the appellants published the names of only ten candidates who were found to be duly nominated after scrutiny and all other nominations were rejected. The petitioners on coming to know about the rejection of their nomination had sent an email on the very same date namely 19.12.2022 requesting for the reasons for rejection as the same was not disclosed to the writ petitioners. This was followed by another email dated 01.01.2023 and since there was no response from the appellants, the writ petitioners lodged a formal objection with the authorities in terms of Rule 5 of the election rules. Since no action was initiated on the said objections, the writ petition was filed.

6. The main ground on which the action of the appellant was questioned is by contending that the appellants ought to have complied with the mandate contained in Rule 5(1) of the Election Rules thereby providing a hearing of the objections raised by the writ petitioners by their emails dated 01.01.2023 and having violated the said provision, the notification published by the appellant dated 20.12.2022 is liable to be set aside. A supplementary affidavit was filed by the petitioners contending that the second appellant refused to take written objection filed by them on record which necessitated them to approach this court to file the writ petition. The petitioners contended that their emails dated 19.12.2022 sent even before the communication of reasons for rejection to the writ petitioners read with the email of 01.01.2023 satisfies the requirements under Rule 5(1) of the election rules which states that if there be any objection by any candidate to the decision of the returning officer, it must be made forthwith and this

condition has been complied with. The appellant resisted the prayer sought for in the writ petition by contending that the writ petitioners 1, 2 and 4 were present at the time of scrutiny and were aware of the rejection of their nomination, they did not raise any objection under Rule 5(1) of the Rules. It was further contended that the election process should not be stopped as the election has already commenced with the publication of the election notice in September 20, 2022. Further it was submitted that the writ petitioners have a mechanism for redressal under the Rules where the State Government shall decide on any question as to the construction of the rules including the validity of the election.

7. The learned single bench had taken note of the Rule 5(1) of the Election Rules and found that the objection raised by the writ petitioners by their email dated 19.12.2022 followed by their email dated 01.01.2023 is due compliance of the requirement under Rule 5(1) of the Election Rules and the appellant ought to have considered the objection in terms of the provisions under the Rules and failure to do so would result in setting aside the rejection of the nomination. Dealing with the objection raised by the appellant that the High Court should not interfere in the election process by placing reliance on the decision of the Hon'ble Supreme Court in **Shaji K. Joseph Versus V. Viswanath and Others**¹, the learned writ court held that the said decision proceeded on the facts that an alternative statutory remedy was available to one of the parties in the said case and dealt with the Dental Council (Election) Regulation, 1952 by comparing Rule 9 of the Dental Council Regulation relating to the scrutiny of the nomination paper

¹ (2016) 4 SCC 429

with that of Rule 5(1) of the Election Rules of the West Bengal Pharmacy Council, the court found that there is substantial difference between both the rules and the present controversy must turn solely on the construction of the Pharmacy Council Rules. The learned writ court placed reliance on the decision of the Hon'ble Supreme Court in ***Maharashtra Chess Association Versus Union of India***² wherein the Hon'ble Supreme Court reiterated that Article 226 (1) of the Constitution confers the power to issue writs on all High Courts for enforcement of fundamental rights in Part III of the Constitution or "for any other purpose" and held that the power under Article 226 can be exercised by the High Court to reach injustice where it is found. Ultimately the writ petition was allowed with the direction to consider the nominations filed by the writ petitioners in accordance with the Act and the rules including Rule 5(1) of the election rules.

8. In this appeal, the appellant have reiterated their contention which was raised in the writ petition stating that the writ petitioners are guilty of delay, laches and negligence in approaching the legal forum at the appropriate time and voluntarily and knowingly fully allowed the period of filing the objection regarding their rejection of nomination to lapse and as such when the ballot papers have been printed, despatched to the voters and voters exercising their franchise and returned the ballot to the returning officer, the learned single bench was in error in nullifying the entire process of election. It is further submitted that the learned single bench cannot take post decisional consideration regarding the actual meaning of the word "forthwith" in Rule 5(1) of the election rules, which in ordinary sense

² (2020) 13 SCC 285

signifies urgent and/or immediate and without unnecessary delay and as such when a reasonable meaning has been implemented by notification dated 12.12.2022. The observations made by the learned Writ Court are not sustainable more particularly when the writ petitioners have not challenged the notification dated 12.12.2022. Further by referring to the Rules 5, 6 and 7 of the Election Rules, it is submitted that the time for raising objection could be stretched for three days at best and not beyond that period of time and therefore the order passed by the learned writ court cannot be sustained in the eye of law. Further the writ petitioners have efficacious alternate remedy under Rule 23 and Rule 25 of the Election Rules and the writ petition was not maintainable.

9. The learned senior advocate appearing for the appellant placed reliance on the decision of the Hon'ble Supreme Court in **Shaji K. Joseph** which was also placed before the learned writ court.
10. In exercise of the powers conferred by Section 46(1),(2) (b) of the Pharmacy Act, 1948 and in supersession of the notification dated 14.10.1952, the Rules for Election of Members of the West Bengal Pharmacy Council were notified and published in the Calcutta Gazette dated 22.07.1966. Part 2 of the said rules deal with the election under Clause (a) of Section 19 of the Pharmacy Act. The said part contains eight rules of which Rule No. 5 is of significance and subject matter of interpretation in the present litigation which is quoted hereunder:-

Rule 5:

1. *On the date and at the time as fixed for the scrutiny of nominations by the notification under Rule 2, the Returning*

Officer shall scrutinize all the nomination papers strictly with reference to the final electoral roll and decide which of them are in order and which are not. Nomination papers which do not comply with the requirements of Rule 3 shall be rejected. If there be any objection by any candidate to the decision of the Returning Officer, it must be made forthwith and the objections shall be heard by the Returning Officer and two members of the Council, not being candidates for the election, appointed by the President, and their decision thereon shall be final.

2. Every nominee for whom nomination paper has been received and one representative duly authorised by him in writing, or his proposer or seconder, shall be entitled to be present at the time of the scrutiny of nominations.

11. In terms of the above Rule on the date and the time as fixed for the scrutiny of nominations vide notification under Rule 2, the Returning Officer shall scrutinize all the nomination papers strictly with reference to the final electoral roll and decide which of them are in order and which are not. Nomination papers which do not comply with the requirements of Rule 3 can be rejected. If there be any objection by any candidate to the decision of the Returning Officer, it must be made forthwith, and the objection shall be heard by the Returning Officer and two Members of the Council, not being candidates for the election, appointed by the President and their decision thereon shall be final. Rule 3 of the Election Rules is as follows:

3. (1) Any person whose name is included in the final electoral roll prepared under Sub-rule (4) of Rule 2 is entitled to be nominated as a candidate for election under clause (a) of Section 19.

(2) Nominations of candidates shall be made in Form C and there shall be a proposer and a seconder. Every

nomination paper shall be filled in fully in all particulars as stated in the said Form.

(3) The proposer, or the seconder and their nominee shall be persons whose names are borne on the final electoral roll.

(4) A proposer, or a seconder may propose or second more than one candidates, provided that the number of candidates proposed does not exceed the number of seats for which the election is held and that a separate nomination paper is issued for each candidate proposed or seconded.

12. The above Rule provides for the requirements to be fulfilled by a candidate who seeks to offer himself for elections. Sub-rule (1) states that any person whose name is included in the final electoral roll prepared under Sub-rule (4) of Rule 2 is entitled to be nominated as a candidate for election under clause (a) of Section 19. Sub-rule (2) states every nomination paper shall be filled in fully in all particulars as stated in the said Form. Every nomination paper shall be filled in fully in all particulars as stated in the said form. Sub-rule (3) states that the proposer, or the seconder and their nominee shall be the persons whose names are borne on the final electoral roll. Sub-rule (4) states that a proposer, or a seconder may propose or second more than one candidates, provided that the number of candidates proposed does not exceed the number of seats for which the election is held and that a separate nomination paper is issued for each candidate proposed or seconded. Form C is the form of nomination paper which is as follows:

FORM C

Nomination Paper

[Vide rule 4]

1. Name of candidate (in full as registered).....
.....
2. Father's Name.....
3. Registration number..... in Part.....
4. Qualification as registered.....
5. Address (residential address).....

I..... a registered pharmacist in West Bengal with registration number.....in Part..... proposed the abovenamed candidate for election as member of the West Bengal Pharmacy Council under clause (a) of section 19 of the Pharmacy Act, 1948 (Act 8 of 1948).

Dated the.....20

.....
Signature (in full) of proposer

I..... a registered pharmacist in West Bengal with registration number.....in Part..... Second the above proposal.

Dated the.....20

.....
Signature (in full) of Seconder

*Name in full as registered

Declaration by the candidate nominated

I, the abovenamed, a citizen of India..... *hereby declare that I agree to this nomination; that I am a registered pharmacist in West Bengal with registration number..... in Partand that my address (residential address) is.....

*Name in full as registered.

Dated the.....20Signature (in full) of the candidate.

13. As could be seen from the above form, the particulars which were required to be furnished by a candidate have been stipulated and a declaration is sought for from the candidate. Thus, a nomination to be valid, it should be in accordance with Form C. If a candidate had filled up Form C with the particulars and information sought for coupled with a declaration, it should be treated as a valid nomination. The question would be as to whether the rejection of the nomination of the writ petitioners was in accordance with the said Rule. Admittedly, on the date of the scrutiny, the writ petitioners were not informed as to the reasons for rejection. Therefore, they sent e-mail on 19th December, 2022 at about 4 P.M. wherein they have requested that reasons of rejection of their nomination should be furnished to them within 24 hours. This request was not complied with and the writ petitioners sent another e-mail on 1st January, 2023 stating that the reason for cancellation of their nominations is non-compliance in respect of professional address and non-compliance of date of birth with the submitted documents. It was pointed out that the list of documents required relating to professional address and date of birth have not been mentioned anywhere in Form C and all of them have already submitted the relevant documents at the time of registration and renewal and based on those documents, renewal of the registration has been done and, therefore, it was incorrect to reject their nominations and requested that their nominations may be accepted. Since the writ petitioners were not favoured with any reply, they had filed the said writ petition.

14. As could be seen from the notification issued by the first appellant dated 20th December, 2022, the reason for rejection of the nomination of the first respondent herein was due to non-compliance in respect of professional address, non-compliance of date of birth recorded with the first register of the Council. The reasons for rejection are clearly outside the scope of Form C and when the writ petitioner had a valid registration and their name found place in the electoral roll, the rejection for the reasons assigned appear to be wholly beyond the scope of the Rules. Similar is the reason for rejection of the second respondent. In respect of the third respondent, it has been stated that the nomination has been rejected due to submission of incorrect Form C. However, the reasons do not indicate what was the mistake in the Form C declaration. Therefore, the reason for rejection though mentioned is non-speaking. So far as the fourth respondent is concerned, the reason for rejection is due to non-submission of any ID proof or verification, with the record of the First Register. This reason is clearly beyond the scope of the Form C. In any event all these documents, details and information were already available on record with the first appellant since, the writ petitioners had a valid registration on the date when they filed their nomination. Therefore, I entertain a serious doubt as to whether the enmass rejection of the nomination, not only that of the writ petitioners, but in total 25 nominations, is apparently for certain other reasons which are best known to the people in the helm of affairs of the appellants. It is rather surprising to note that out of 35 nominations which were filed, 25 nominations have been rejected and only 10 nominations are stated to be valid. This trend is very anomalous and rather surprising casting a cloud on the entire process

of election adopted by the appellants. I am conscious of the fact that there are several decisions of the Hon'ble Supreme Court which hold that once an election process has commenced, the same shall not be interdicted. At the same time when glaring irregularities and illegalities are pointed out, should the Court shut its eyes to reality and refuse to grant any indulgence to the aggrieved.

15. At this juncture, I shall consider as the issue regarding the maintainability of the writ petition qua the relief sought for by the writ petitioner. In ***Election Commission of India Versus Ashok Kumar & Ors.***³ The Hon'ble Supreme Court considered whether there is any conflict between the jurisdiction conferred on the High Courts under Article 226 of the Constitution and the embargo created by Article 329 and if so, how would they co-exist. The Hon'ble Supreme Court noted the decision in ***N.P. Ponnuswami Versus Returning Officer, Namakkal Constituency***⁴ and the decision of the Hon'ble Supreme Court in ***Mohinder Singh Gill Versus Chief Election Commr.***⁵ and the Hon'ble Supreme Court summed up its conclusion and by adding clarification to the earlier judgments held as follows:

32) For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove:

1) If an election, (the term 'election' being widely interpreted so as to include all steps and entire

³AIR 2000 SC 2977

⁴AIR 1952 SC 64

⁵(1978) 1 SCC 405

proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

2) Any decision sought and rendered will not amount to "calling in question an election" if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for the invoking the jurisdiction of the Court.

5) The Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the Court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or

hidden end. Needless to say that in the very nature of the things the Court would act with reluctance and shall not act except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material. (Emphasis Added)."

16. In ***Avtar Singh Hit Versus Delhi Sikh Gurdwara Management Committee And Ors.***⁶ the Hon'ble Supreme Court held that in the absence of any exceptional and extraordinary circumstances, the writ petition under Article 226 of the Constitution should not be entertained for resolving a factual dispute and the petitioners therein should have filed only an election petition. In ***K. Venkatachalam Vs. A. Swamickan*** ⁷ the Hon'ble Supreme Court held that Article 329 (b) which bar interference of the Court in electoral matters does not come into play when the case falls under Articles 194 and 193 which provide for disqualification for membership and penalty for sitting and voting when disqualified, a High Court should exercise jurisdiction under Article 226 of the Constitution and declare the election as illegal inasmuch as the elector did not possess the basic constitutional and statutory qualification.
17. In ***Jayrajbhai Jayantibhai Patel Versus Anilbhai Nathubhai Patel and Ors.***⁸ the Hon'ble Supreme Court discussed the scope of such judicial review under Article 226 in the matter of the election of President of Municipality. Having noticed that two Counsellors of the Municipality were detained by police few minutes before the election meeting and in spite of the fact being brought to the notice of the Returning Officer, the returning

⁶JT (2006) 9 SCC 111

⁷AIR 1999 SC 1723

⁸2006 AIR SCW 4670

Officer decided to continue with the election, the Hon'ble Supreme Court held that in facts and circumstances, the decision of the Returning Officer was perverse and irrational warranting interference under Article 226 of the Constitution. In **Rampakavi Rayappa Belagali Versus B.D. Jatti** ⁹ the Hon'ble Supreme Court held that free and fair elections are the very foundation of the democratic institutions and just as it is said that justice was not only be done but also seemed to be done; similarly the elections are not only be fairly and properly held but should also seem to be so conducted as to inspire confidence in the minds of the electors and everything has been above bar and has been done to ensure free election. In **Mohinder Singh Gill** the Hon'ble Supreme Court held that the Constitution contemplates a free and fair election and vests comprehensive responsibility of superintendence, direction and control of the conduct of elections in the Election Commission. This responsibility may cover powers, duties and functions of many sorts, administrative or other, depending on the circumstances.

18. At this juncture, it would be relevant to once again take note of the judgment of the Hon'ble Supreme Court in **Jayrajbhai Jayantibhai Patel (Supra)** wherein the Hon'ble Supreme Court was dealing with the election matter as hereunder:

“18. Having regard to it all, it is manifest that the power of judicial review may not be exercised unless the administrative decision is illogical or suffers from procedural impropriety or it shocks the conscience of the court in the sense that it is in defiance of logic or moral standards but no

⁹ (1917) 3 SCC 147

standardised formula, universally applicable to all cases, can be evolved. Each case has to be considered on its own facts, depending upon the authority that exercised the power, the source, the nature or scope of power and the indelible effects it generates in the operation of law or affects the individual or society. Though judicial restraint, albeit self-recognised, is the order of the day, yet an administrative decision or action which is based on wholly irrelevant considerations or material; or excludes from consideration the relevant material; or it is so absurd that no reasonable person could have arrived at it on the given material, may be struck down. In other words, when a Court is satisfied that there is an abuse or misuse of power, and its jurisdiction is invoked, it is incumbent on the Court to intervene. It is nevertheless, trite that the scope of judicial review is limited to the deficiency in the decision-making process and not the decision.”

19. In **Smt. Gunwant Kaur and Ors. Versus Municipal Committee, Bhatinda** ¹⁰ the Hon'ble Supreme Court considered the jurisdiction of the High Courts under Article 226 of the Constitution and held as follows:

“14. ... The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a

¹⁰ (1969) 3 SCC 769

writ petition, the High Court may decline to try a petition...

16. In the present case, in our judgment, the High Court was not justified in dismissing the petition on the ground that it will not determine disputed questions of fact. The High Court has jurisdiction to determine questions of fact, even if they are in dispute and the present, in our judgment, is a case in which in the interests of both the parties the High Court should have entertained the petition and called for an affidavit-in-reply from the respondents, and should have proceeded to try the petition instead of relegating the appellants to a separate suit.”

20. In **T.K. Rangarajan vs Government Of Tamil Nadu & Ors.**¹¹ the Hon'ble Supreme Court reiterated the jurisdiction of the High Court under Article 226 of the Constitution in the following manner:

“5. At the outset, it is to be reiterated that under Article 226 of the Constitution, the High Court is empowered to exercise its extraordinary jurisdiction to meet unprecedented extraordinary situation having no parallel. It is equally true that extraordinary powers are required to be sparingly used. The facts of the present case reveal that this was most extraordinary case, which called for interference by the High Court, as the State Government had dismissed about two lakh employees for going on strike.

10. There cannot be any doubt that the aforesaid judgment of larger Bench is binding on this Court and we respectfully agree with the same. However, in a case like this, if thousands of employees are directed to approach the Administrative Tribunal, the Tribunal would not be in a position to render justice to the cause. Hence, as stated earlier, because of very very exceptional circumstance that arose in the present

¹¹(2003) 6 SCC 581

case, there was no justifiable reason for the High Court not to entertain the petitions on the ground of alternative remedy provided under the Statute. (emphasis added)”

21. Thus, the legal principle which can be culled out from the aforementioned decision is that there is no absolute bar for entertaining a writ petition when exceptional and extraordinary circumstances exist which will justify the Court exercising power under Article 226 to bypass alternate remedies. If the monstrosity of the situation or other exceptional circumstance cries for timely jurisdictional interdict or mandate, the Court should not hesitate to exercise its extraordinary power under Article 226 of the Constitution.

22. As pointed out earlier, the rejections of 25 nominations out of 35 nominations for reasons which appear to be clearly outside the scope of the particulars called for in Form C is undoubtedly an exceptional circumstance and, therefore, the writ petitioners were fully justified in approaching the Writ Court. Interestingly when the election notice was published on 12th December, 2022, the schedule of the election has been mentioned however, the publication of the list of valid nominations has not been specifically mentioned and no date and time has been notified. The election notice fixes the time limit for withdrawal of nomination as any time before the scrutiny of the nomination and 3 days thereafter i.e. dated 22.12.2022. However, the date on which the list of valid nomination will be published has not been mentioned in the notification. This appears to be a very serious lacuna. In any event on the date of scrutiny of nomination i.e. on 19th December, 2022, it is clear that some of the writ petitioners were present but it is not in

dispute that the reason for rejection of the nomination was not disclosed to the writ petitioners or to the other 21 candidates whose nominations have been rejected. The grievance redressal mechanism under Rule 5(1) of the Election Rules is not an empty formality. The word “immediate” occurring in Sub-rule (1) of Rule 3 has to be given an interpretation based on the facts and circumstances. If the candidate whose nomination has been rejected, has not been put on notice as to the reasons for rejection cannot be called upon to file their objection immediately because the person aggrieved has not been intimated as to on what grounds his nomination is rejected. That apart the Rule also states that the objections shall be heard by the Returning Officer with two Members of the Council not being candidates for election appointed by the President and their decision shall be final. Thus, the Rule contemplates an opportunity of being heard, it goes without saying that it shall be an opportunity of being heard in person and this hearing has to be given by a three Member Body two of whom should be Members of the Council who are not candidates for the election. Thus, it is evidently clear that the people at the helm of affairs of the first appellant and the second appellant have abused their powers vested with them. In fact, it is not clear as to how the persons whose terms of office had expired in the year 2013 continued to claim himself as President and members of the Council and in spite of the process being lingering so long, the State Government has not taken any action to remedy the situation.

23. As already noted, if the nomination is in accordance with Form C, there could be no ground to reject such a nomination and the reasons set out for rejection of the nomination of the writ petitioners are clearly outside

the scope of the requirements to be complied with in Form C. Thus, I am fully convinced that the learned Single Bench was perfectly right in allowing the writ petition and directing the objection raised by the writ petitioners to be considered by the Committee which is to be constituted in terms of Rule 5(1) of the Rules. In the light of the direction issued by the learned Writ Court it goes without saying that the entire election process thus far conducted, is required to be scrapped and the matter should stand restored to the stage where the scrutiny of nominations were conducted. Thus, the election process needs to be pushed back to the said date and the objections of the writ petitioners as well as the other 21 candidates whose nominations were rejected has to be considered by the 3 Member committee.

24. I am of the further view that there should be an Observer nominated by the Government to ensure that the entire election process is conducted in a free and fair manner without any irregularity or complaints. Therefore, while affirming the decision of the learned Single Bench, it is directed that not only the correctness of the rejection of the nominations of the writ petitioners should be considered but also such of those 21 nominations which were rejected whoever files objection, is required to be considered by the committee in terms of the Rules 5(1) of the Election Rules. In order to ensure that the election process is conducted in a proper manner, we direct the Secretary, Ministry of Health and Family Welfare Department, Government of West Bengal to nominate a Senior Officer of the said Department to act as Observer to ensure that the election process is conducted in a free and fair manner. The Observer is required to made known all the developments and all actions and decisions shall be taken in

the presence of the Observer. The appellants are directed to publish a notification giving the text of the directions issued above and making it known to all the 25 candidates whose nominations were rejected would be at liberty to file their objections within 3 days from the date of publication of the said notification and the objections shall be dealt with in the manner as directed by the learned writ court.

25. With the above direction, the appeal is dismissed.

(T.S. SIVAGNANAM, CJ.)

(P.A- PRAMITA/SACHIN)

(Judgment by HIRANMAY BHATTACHARYYA, J.)

I have had the privilege of reading the judgment proposed by the Hon'ble Chief Justice. With deepest of respect to the Hon'ble Chief Judge, I am unable to agree with the reasoning as well as the conclusion arrived at by the Hon'ble Chief Justice. For such reason, I am recording my findings and conclusions hereinafter.

26. The West Bengal Pharmacy Council (for short "the Council") and its Registrar has filed this intra court appeal challenging the order dated 28.02.2023 passed by a learned Single Judge in WPA 509 of 2023.

27. By the impugned order, the Registrar was directed to reconsider the nominations filed by the four writ petitioners within a specified time frame

and the final list published on December 20, 2022 shall be given effect to by the council thereafter.

28. The writ petitioners/respondent nos. 1 to 4 herein claim to be the registered pharmacists under the Council. The Registrar of the Council being the Returning Officer published an Election Notice dated 12.12.2022 notifying holding of General Election of Members of the Council under Clause (a) of Section 19 of the Pharmacy Act, 1948 (for short “the 1948 Act”). Writ petitioners filed their nomination papers which were ultimately rejected on scrutiny. Writ petitioners claim to have filed objections against the order of rejection vide Electronic Mails dated January 1, 2023, on which, no decision was communicated. Being aggrieved by the order of rejection of nomination papers, the private respondents herein approached the writ court praying for issuance of a writ of mandamus to command the concerned authority to hear out their objections and for quashing of the notice/list dated December 20, 2022.

29. The learned Single Judge, by the order impugned, directed reconsideration of the nomination papers and the Council and its Registrar being aggrieved by such decision have approached this Court.

30. Mr. Datta, learned Senior Council appearing in support of the appeal, after referring to the relevant dates from the Election Notice as well as the provisions of the 1948 Act and the rules framed thereunder, at the threshold challenged the maintainability of the writ petition by submitting that it is the settled proposition of law that courts should not interfere with the process of election after its commencement. In support of such contention

reliance was placed upon the decision of the Hon'ble Supreme Court of India in the case of **Shaji K. Joseph Versus V. Viswanath & ors.**¹². Mr. Dutta further contended that there was no inaction on the part of the concerned authority by not considering the e-mails dated January 1, 2023 raising objection against the order of rejection of nomination as the same was submitted at a belated stage. He also contended that since there was no stay upon the election process excepting the order of restraint from declaring the result, nomination papers could not have been directed to be reconsidered once polling and counting of votes are completed.

31. Mr. Chatterjee, learned advocate representing the writ petitioners /respondents seriously disputed the submissions of Mr. Datta. By referring to Rule 5 of the relevant rules governing the election of members to the Council, Mr. Chatterjee contended that it was incumbent upon the Returning Officer and two members of the Council to hear out the objections filed by the writ petitioners and since there has been a failure on the part of such authorities to perform the duties vested upon them, the writ court was well within its powers to interfere in such cases. By drawing the attention of the Court to the grounds for rejection of the nomination papers, Mr. Chatterjee tried to impress upon this Court that the order of rejection was improper.

32. Mr. Shaw, learned advocate appeared for the applicants in **CAN 2 of 2023** and submitted that the nominations of the applicants have also been

¹² (2016) 4 SCC 429

rejected by the Returning Officer on frivolous grounds. He prays for adding the applicants as parties to this appeal.

33. The application for addition of party is to be decided first before entering into the merits of the appeal.

34. The order of rejection of nomination of the applicants in CAN 2 of 2023 was not the subject matter of the writ petition out of which the instant appeal arises. That apart an order of rejection by the Returning Officer cannot be assailed by an affected party for the first time in an intra court appeal and that too being added in the capacity of the respondents in this appeal. For such reason, I am not inclined to allow the prayer of the applicants in **CAN 2 of 2023** for being added as a party to this appeal. However, such applicants are left free to seek appropriate remedy in accordance with law. The application stands disposed of accordingly.

35. From the elaborate arguments advanced by the learned advocates for the parties the following question arises for consideration in this appeal.

36. Whether the learned Single Judge was justified in allowing the objections against the order of rejection of nomination papers in an application under Article 226 of the Constitution of India?

37. Election notice was issued on 12.12.2022 notifying that a General Election of Member of the Council under Section 19(a) of the 1948 Act will be held. In the said notice it was stated that filing of Nomination shall start on 12.12.2022 and will continue till 16.12.2022. The date for scrutiny was fixed on 19.12.2022. It was stated that nominations can be withdrawn at

any time before the scrutiny of the nominations and three days thereafter i.e. till 22.12.2022. In case polling is required, voting papers shall be dispatched to the electors from 09.01.2023 to 10.01.2023. The election notice was published in the Kolkata Gazette on December 12, 2022.

38. From the dates indicated hereinbefore it is evident that the election process commenced with the publication of the election notice on 12.12.2022. The writ petitioners, by a letter dated December 19, 2022, wanted to know the reasons for rejection of their nomination. The reason for rejection of nominations was published by the Council on December 20, 2022. The writ petitioners vide letters sent through e-mail on January 1, 2023 raised objection against rejection of their nomination. Alleging inaction on the part of the concerned authorities, the private respondents herein approached the writ court.

39. In order to decide the question that has cropped up in this instant appeal, it would be relevant to take note of some of the provisions laid down in the 1948 Act and the relevant rules for election framed thereunder.

40. For the purpose of electing the requisite members from amongst the registered pharmacists of the State, election notice was issued under the provisions of Section 19(a) of the 1948 Act. Chapter III of the said Act starts with Section 19. Section 24 falls under Chapter III and states that elections under that Chapter shall be conducted in the prescribed manner and where any dispute arises regarding any such election, it shall be referred to the State Government, whose decision shall be final. Section 46 of the said Act empowers the State Government to frame rules and in exercise of such

power, the Rules for election was framed. Rule 23 states that if any question arises as to the validity of any election, the question shall be referred under Section 24 to the State Government, whose decision shall be final.

41. From a conjoint reading of Section 24 and Rule 23, it is evident that the power to decide any dispute arising regarding such election has been vested upon the State Government who shall exercise the jurisdiction vested upon it by the statute which conferred such jurisdiction.

42. Section 24 uses the expression “any dispute arises regarding any such election”. Such expression has a very wide connotation. The said expression necessarily implies that any dispute arising out of such election can be raised only before the authority vested with such power under the statute and in the manner and the time as prescribed under the relevant Rules. This court has to thus consider whether rejection of nomination can be said to be a dispute arising out of such election.

43. The right to contest the election flows from the said statute. Therefore, such right shall have to be exercised strictly in accordance with the provisions of such statute and shall be subject to the limitations imposed by it.

44. Rejection of nomination, no doubt, curtails the right of the nominee to contest the elections. But the question remains as to the forum and the stage for redressal of such grievances.

45. The learned Single Judge was of the view that rejection of nomination of the writ petitioners caused serious injustice to them and for such reason the

writ court interfered in the matter. The learned Single Judge also took great pains to look into the reasons for rejection of nomination to ascertain as to whether such rejection was proper or not. Furthermore, the learned Single Judge was of the view that the objection to the impugned rejections was within the parameters of Rule 5(1) as, according to the writ court, there is no time limit within which such objection is to be taken. On such findings the objection against rejection of nominations were allowed.

46. Mr. Chatterjee would contend that the concerned authorities failed to perform their duties vested upon them by not hearing out the objections against rejection of nominations. In order to decide the issue raised by Mr. Chatterjee, it would be profitable to refer to Rule 5 and, therefore, the same is extracted hereinbelow.

“5.(1) On the date and at the time as fixed for the scrutiny of nominations by the notification under Rule 2, the Returning Officer shall scrutinise all the nomination papers strictly with reference to the final electoral roll and decide which of them are in order and which are not. Nomination papers which do not comply with the requirements of Rule 3 shall be rejected. If there be any objection by any candidate to the decision of the Returning Officer, it must be made forthwith, and the objections shall be heard by the Returning Officer and two members of the Council, not being candidates for the election, appointed by the President, and their decision thereon shall be final.

(2) Every nominee for whom nomination paper has been received and one representative duly authorised by him in writing, or his proposer or seconder, shall be entitled to be present at the time of the scrutiny of nominations.”

47. Sub rule (2) of Rule 5 entitles every nominee and one duly authorised representative or his proposer or seconder to be present at the time of scrutiny. The object behind insertion of such provision is to afford an opportunity to a nominee to raise an objection at the spot in case he is aggrieved by the decision of the Returning Officer. Though no time limit has been fixed for filing of objection under Rule 5(1) but the said rule uses the expression “forthwith”. It is well settled that if the meanings of words used in the relevant statutes or the rules framed thereunder cannot be gathered therefrom the dictionaries may be used as an aid to resolve an ambiguity. The Hon’ble Supreme Court in the case of **Commissioner of Wealth Tax, Andhra Pradesh Versus Officer-in-Charge (Court of Wards), Paigah** ¹³ held that the ordinary dictionary meaning cannot be discarded simply because it is given in a dictionary and to do that would be to destroy the literal rule of interpretation. It was further observed therein that it is a basic rule to rely upon the ordinary dictionary meaning which, in the absence of some overriding or special reasons to justify a departure, must prevail. Therefore, the dictionary meaning of the word “forthwith” can be relied upon in order to resolve an ambiguity as to the time limit within which the objection under Rule 5(1) is to be filed.
48. The word “forthwith” has been defined in Black’s Law Dictionary to mean immediately, without delay. It also means directly, promptly, within a reasonable time under the circumstances.

¹³ 1976 (3) SCC 864

49. Upon a harmonious reading of sub rules (1) and (2) of Rule 5, I hold that the objection against rejection of nomination is to be made immediately and without any delay i.e., it should be made at the spot or within a reasonable time immediately thereafter.
50. Even if for some reason, the objection against nomination could not be made at the spot, the same has to be done within a reasonable time. Reasonable time, however, shall depend on the facts of each case. In this regard it is to be borne in mind that the list of nominated candidates are to be published after the last date of withdrawal of nominations and several steps are to be undertaken thereafter in terms of the relevant rules more particularly Rule 8 thereof.
51. Record reveals that in pursuance of Rule 8(1) of the Election Rules, the names of the nominated Registered Pharmacist was published on December 27, 2022 in the Kolkata Gazette. The authorities cannot, however, be faulted for publication of the names of nominated candidates in terms of Rule 8(1) on December 27, 2022. The objections were filed only after such publication for reasons best known to the writ petitioners. Considering the relevant dates for scrutiny of nomination; withdrawal of nomination and the publication of the names of nominated candidates, the objection filed on January 1, 2023 cannot be held to be within the reasonable time in the facts of the case on hand. Therefore, the objection filed on January 1, 2023 against the order of rejection is a highly belated one. For such reason, I hold that the objection dated January 1, 2023 cannot fall within the parameters of Rule 5(1).

52. Mr. Chatterjee would contend that the letter dated 19.12.2022 ought to have been considered as an objection. I cannot accept such contention as from a bare reading of the said letters it is evident that the said letters were issued only to know the reasons for rejection of nomination. I therefore hold that the letter dated 19.12.2022 cannot be construed to be the objection as per Rule 5.
53. In my considered view, the writ court should not have embarked upon an enquiry into the reasons for rejection of nomination papers as the objection do not fall within the parameters of Rule 5(1) in view of the observations made hereinbefore.
54. Mr. Chatterjee would contend that if it can be shown that injustice has been caused due to improper rejection of nomination, the writ court can certainly step in and interfere.
55. It is not in dispute that three out of four writ petitioners were present at the time of scrutiny. Therefore, it shall be deemed that they were aware of the reasons for rejection of their nominations at the time of such scrutiny. The remaining writ petitioner, for reasons best known to him/her did not attend at the time of scrutiny. However, their request for disclosing the reasons for rejection was duly complied with. The writ petitioners even after being made aware of the reasons for rejection did not avail of the remedies provided under the statute promptly and in the manner as provided therein. Therefore, no injustice can be said to have been done to the writ petitioner as alleged by them.

56. By referring to the grounds of rejection, Mr. Chatterjee would contend that the nomination of the writ petitioner were rejected by the Returning Officer on extraneous considerations. The substratum of the impugned order is the grounds for rejection which is the secondary issue and the primary being whether such an order could be challenged under Article 226 of the Constitution of India. The secondary issue will be considered if the primary issue is decided in favour of the writ petitioners.
57. For the purpose of deciding whether an improper rejection of nomination can be challenged by approaching the writ court, I shall now deal with the various decision on the said issue.
58. The issue as to whether improper rejection of nomination can be assailed by filing an application under Article 226 of the Constitution of India came up for consideration before the Constitution Bench of the Hon'ble Supreme Court of India in the case of ***N.P. Ponnuswami Versus Returning Officer, Namakhal Constituency, Namakhal, Salem District*** ¹⁴.

Six Hon'ble Judges of the Hon'ble Supreme Court held thus-

"15. The question now arises whether the law of elections in this country contemplates that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under article 226 of the Constitution (the ordinary jurisdiction of the courts having been expressly excluded), and another after they have been completed by means of an election petition. In my opinion, to affirm such a position would be contrary to the scheme of Part XV of the Constitution and the Representation of the People Act, which, as I shall point out latter, seems to be that any

¹⁴ (1952) 1 SCC 94

matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a Special Tribunal and should not be brought up at an intermediate stage before any court. It seems to me that under the election law, the only significance which the rejection of a nomination paper has consists in the fact that it can be used as a ground to call the election in question. Article 329(b) was apparently enacted to prescribe the manner in which and the stage at which this ground, and other grounds which may be raised under the law to call the election in question could be urged. I think it follows by necessary implication from the language of this provision that those grounds cannot be urged in any other manner, at any other stage and before any other court. If the grounds on which an election can be called in question could be raised at an earlier stage and errors, if any, are rectified, there will be no meaning in enacting a provision like article 329(b) and in setting up a Special Tribunal. Any other meaning ascribed to the words used in the article would lead to anomalies, which the Constitution could not have contemplated, one of them being that conflicting views may be expressed by the High Court at the pre-polling stage and by the Election Tribunal which is to be an independent body, at the stage when the matter is brought up before it."

"25. The conclusions which I have arrived at may be summed up briefly as follows :-

(1) Having regard to the important functions which the legislature have to perform in democratic countries, it has always been recognised to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

(2) In conformity with this principle, the scheme of the election law in this country as well as in England is that no significance should be attached to anything which does not affect the "election : " and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed,

would have the effect of vitiating the "election " and enable the person affected to call it in question, they should be brought up before a Special Tribunal by means of an election petition and not be made the subject of a dispute before any court while the election is in progress."

59. The Hon'ble Supreme Court in paragraph 40 of the said reports held as follows-

"40. We are informed that besides the Madras High Court, seven other State High Courts have held that they have no jurisdiction under article 226 of the Constitution of the entertain petitions regarding improper rejection of nomination papers. This view is, in my opinion, correct and must be affirmed. The appeal must, therefore, fail and is dismissed. In view of the nature and importance of the points raised in this appeal, there should be no order to costs."

60. **Ponnuswami** (supra) held against the maintainability of writ petitions while the election is in progress.
61. However, the Hon'ble Supreme Court in **Mohinder Singh Gill Versus Chief Election Commissioner**¹⁵ provided a window to an affected party to approach the writ court in connection with election matters.
62. The Constitution Bench of the Hon'ble Supreme Court of India in the case of **Mohinder Singh Gill (supra)** held thus-

29. Thus, there are two types of decisions, two types of challenges. The first relates to proceedings which interfere with the progress of the election. The second accelerates the completion of the election and acts in furtherance of an election. So, the short question before us, in the light of the illumination derived from Ponnuswami, is as to whether the order for re-poll of the Chief Election Commissioner is "anything done

¹⁵ (1978) 1 SCC 405

towards the completion of the election proceeding' and whether the proceedings before the High Court facilitated the election process or halted its progress. The question immediately arises as to whether the relief sought in the writ petition by the present appellant amounted to calling in question the election. This, in turn, revolves round the point as to whether the cancellation of the poll and the reordering of fresh poll is "part of election" and challenging it is "calling it in question".

63. In **Mohinder Single Gill (supra)** it was held that an approach made to the writ Court will be maintainable if it is to facilitate the completion of election and the writ petition will be barred if a step in the election is called in question.

64. Three Hon'ble Judges of the Supreme Court of India in the case of **Election Commission of India through Secretary vs. Ashok Kumar and others**¹⁶ took into consideration the decision in the case of **Ponnuswami** (supra) and **Mohinder Singh Gill (supra)** and in Paragraph 19 of the said decision observed as follows-

"19. However, the Constitution Bench in Mohinder Singh Gills case could not resist commenting on Ponnuswami case by observing (vide para 25) that the non-obstante clause in Article 329 pushes out Article 226 where the dispute takes the form of calling in question an election, except in special situations pointed out at, but left unexplored in Ponnuswami case."

65. In Paragraph 27 of **Ashok Kumar** it was observed that in **Mohinder Singh Gill** case it was held that a writ petition challenging the cancellation of poll coupled with repoll amounted to calling in question a step in "election". It further noted that in Paragraph 32 of **Mohinder Singh Gill** it

¹⁶ (2000) 8 SCC 216

has been observed that had it been a case of mere cancellation without an order for repoll, the course of election would have been thwarted and different considerations would have come into play.

66. In Paragraph 32 of **Ashok Kumar (supra)** the Hon'ble Supreme Court summed up the conclusions by partly restating what the aforesaid two constitution Benches have already said and then clarifying what follows therefrom.

"32. For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove:-

1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

2) Any decision sought and rendered will not amount to "calling in question an election" if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

4) *Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the court.*

5) *The court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the courts indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the court would act with reluctance and shall not act, except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material.”*

67. It therefore, follows from the observations made in **Mohinder Singh Gill** case and **Ashok Kumar**’s Case that invocation of judicial remedy has to be postponed till after the completion of proceedings in election if an election is called in question. However, if the approach made is to facilitate the completion of the election, such challenge before the Court would not be barred. Any action taken or orders passed by the authorities vested with the power to conduct election can be made the subject matter of judicial review on the ground of *mala fide* or arbitrary exercise of power of such authorities if the approach does not amount to calling in question an election.

68. Therefore, there is no conflict in between the decisions of the Hon'ble Supreme Court in **Ponnuswami (supra)** on one hand and **Mohinder Singh Gill (supra)** and **Ashok Kumar (supra)** on the other hand insofar as the maintainability of writ petition qua the challenges which tends to interrupt, obstruct or protract the election. All the aforesaid decision have held against the maintainability of writ petitions wherein challenges have been made against any step connected with the process of election before declaration of the results if it has the effect of interrupting, obstructing or protracting the election.

69. Now the question arises whether improper rejection of nominations can be challenged by filing a writ petition.

70. A Hon'ble Division Bench of the Bombay High Court, after noticing conflict of opinion of two different Division Benches on the point whether writ petitions under Article 226 of the Constitution of India would be maintainable challenging the orders of rejection of nomination form thought it appropriate to refer three issues for decision by a larger bench and one of such issue which is relevant for the case on hand was as follows-

- (1) Does allowing a challenge in a writ petition to rejection of nomination form to contest an election and granting the relief claimed by setting aside such order of rejection, amount to intervention, obstruction or protraction of the election or is it a step to facilitate the process of completion of election.

71. The larger bench was thereafter constituted and the Full Bench of the Hon'ble Bombay High Court in the case of **Karma Veer Tulshiram Autade and ors. Versus State Election Commission, Mumbai and ors.**

¹⁷ answered the reference.

72. Three Hon'ble Judges of the Bombay High Court after considering the decisions in the cases of *Ponnuswami* (supra), *Mohinder Singh Gill* (supra) and *Ashok Kumar* (supra) in paragraph 60 of the said reports held thus-

*“60. ***** Whatever be the reason for rejection of nomination, its quality ~ sub-standard or otherwise ~ is neither material nor relevant when the challenge is laid at an intermediate stage of the election by an intending candidate seeking orders from the Court to participate in the election though the Returning Officer has rejected his nomination. We hold so in view of the Court in N.P.Ponnuswami (supra) not even considering it necessary to refer to the grounds of rejection of the nomination paper of the appellant in view of the clear enunciation of law that the law of election does not contemplate an intermediary challenge when, by law, a forum is constituted and made available by any statute for resolution of an election dispute which would take within its fold validity of an election challenged on the ground of improper rejection of the nomination paper.”*
(emphasis supplied)

73. The Full Bench in Para 68 of the case of **Karma Veer Tulshiram Autade (supra)** held thus-

“68. For the reasons aforesaid, while agreeing with the view in Vinod Pandurang Bharsakade (supra), we answer the fundamental question as formulated in paragraph 27 in the negative. As a sequel thereto, we answer the questions referred by the Division Bench in the manner as follows:-

¹⁷ AIR 2021 Bom 90

(i) *Allowing a challenge in a writ petition to rejection of nomination form to contest an election and granting the relief claimed by setting aside such order of rejection is definitely not a step to subserve the progress of election and/or facilitate its completion in the sense enunciated in Mohinder Singh Gill (supra) and explained in Ashok Kumar (supra) though it may not always amount to intervention, obstruction or protraction of the election;*

(ii) *****

(iii) ***** ”

74. The Full Bench of the Bombay High Court after noticing various decisions of the Hon'ble Supreme Court in Paragraph 66 of the reports held that the finding arrived at by the Division Bench that the ban against entertaining writ petitions as enunciated in **N.P. Ponnuswami (supra)** has been diluted is based on erroneous and incorrect reading of **Mohinder Singh Gill (supra)** and **Ashok Kumar (supra)**.

75. Issue of rejection of nomination papers was raised in **Ponnuswami (supra)** and it was held that writ petitions challenging improper rejection of nominations should not be entertained. **Mohinder Singh Gill (supra)** and **Ashok Kumar (supra)** did not express any view contrary to or in conflict with the view expressed in **Ponnuswami (supra)** on the maintainability of writ petition against rejection of nominations.

76. In view of the aforesaid discussion and observations, I hold that the decision of **Ponnuswami (supra)** still holds the field on the issue involved in this appeal.

77. It is accordingly held that an approach made before the writ court challenging nomination form cannot be said to be a step to facilitate the

election and rejection of nomination papers is a dispute arising out of election and improper rejection of nomination can be a ground to challenge the validity of an election.

78. The Hon'ble Supreme Court in **Shaji K. Joseph (supra)** after noticing several decisions of the Hon'ble Supreme Court including **Ponnuswami (supra)** held that the High Court should not have interfered with the election after commencement of the election process even after observing that it prima facie appears that the respondent therein had the eligibility to contest the election.

“15. In our opinion, the High Court was not right in interfering with the process of election especially when the process of election had started upon publication of the election programme on 27-1- 2011 and more particularly when an alternative statutory remedy was available to Respondent no.1 by way of referring the dispute to the Central Government as per the provisions of Section 5 of the Act read with Regulation 20 of the Regulations. So far as the issue with regard to eligibility of Respondent no.1 for contesting the election is concerned, though prima facie it appears that Respondent no.1 could contest the election, we do not propose to go into the said issue because, in our opinion, as per the settled law, the High Court should not have interfered with the election after the process of election had commenced. The judgments referred to hereinabove clearly show the settled position of law to the effect that whenever the process of election starts, normally courts should not interfere with the process of election for the simple reason that if the process of election is interfered with by the courts, possibly no election would be completed without court's order. Very often, for frivolous reasons candidates or others approach the courts and by virtue of interim orders passed by courts, the election is delayed or cancelled and in such a case the basic purpose of having election and getting an elected body to run the administration is

frustrated. For the aforesaid reasons, this Court has taken a view that all disputes with regard to election should be dealt with only after completion of the election. (emphasis supplied)

16. This Court, in N.P. Ponnuswami v. Returning Officer (supra) has held that once the election process starts, it would not be proper for the courts to interfere with the election process. Similar view was taken by this Court in Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra .”

79. In view of the aforesaid well settled binding precedents, the question raised in this appeal has to be necessarily answered in the negative. I, therefore, hold that improper rejection of nomination, cannot be assailed by filing an application under Article 226 of the Constitution of India and the learned Single Judge was not justified in allowing the objection against rejection of nomination while the election was in progress.

80. For the reasons as aforesaid, I am inclined to interfere with the order impugned.

81. Accordingly this appeal stands allowed. The impugned order dated February 28, 2023 stands set aside and quashed. Consequently the writ petition being WPA 509 of 2023 stands dismissed. There shall be a direction upon the Returning Officer to conclude the election process and to publish the result as expeditiously as possible but positively within four weeks from the receipt of the server copy of this order. The respondent nos. 1 to 4 as well as any other aggrieved person are left free to approach the competent authority as per the 1948 Act and the rules framed thereunder for referring the dispute in accordance with law if they are advised to do so.

There shall be, however, no order as to costs. The connected application, if any stands disposed of accordingly. There shall be however, no order as to costs.

82. I make it clear that I have not entered into the merits of the objections raised against the order of rejection of nominations and the same are left open to be decided at the appropriate stage.

83. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)

(P.A.-Sanchita)

सत्यमेव जयते
Calcutta