

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(PUBLIC INTEREST LITIGATION)
APPELLATE SIDE**

RESERVED ON: 06.07.2023
DELIVERED ON: 12.07.2023

CORAM:

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

WPA (P)/306/2023

UJJWAL TRIVEDI

VERSUS

THE STATE OF WEST BENGAL AND OTHERS

WITH

WPA (P)/307/2023

SAVE DEMOCRACY AND OTHERS

VERSUS

THE STATE OF WEST BENGAL AND OTHERS

Appearance:-

Mr. Bikash Ranjan Bhattacharya, Sr. Adv.

Mr. Shamim Ahammed, Adv.

Mr. Siddhartha Sankar Mondal, Adv.

Mr. Rajit Lal Maitra, Adv.

Mr. Arka Maity, Adv.

Ms. Arunima Das Sharma, Adv.

Ms. Saloni Bhattacharjee, Adv.

Ms. Gulsanwara Pervin, Adv.

Mr. Arnab Sinha, Adv.

Ms. Sayanti Sengupta, Adv.

Mr. Jamir Khan, Adv.

Mr. Arka Ranjan Bhattacharya, Adv.

.....For the Petitioner.

Mr. Jishnu Saha, Adv.
Ms. Sonal Sinha, Adv.
Mr. Sujit Gupta, Adv.
Mr. Sayan Datta, Adv.
Mr. Soumen Chatterjee, Adv.

.....For the State Election Commission.

Mr. S.N. Mookherjee, Ld. Advocate General.
Mr. Kalyan Bandopadhyay, Sr. Adv.
Mr. Sirsanya Bandopadhyay, Ld. Jr. Standing Counsel
Mr. Arka Kumar Nag, Adv.

.....For the State [in WPA (P) 306 and 307 of 2023]

JUDGMENT

(Judgment of the Court was delivered by T.S. Sivagnanam, CJ.)

1. Since the reliefs sought for in both the writ petitions are identical, they were heard together and are disposed of by this common judgment and order. The petitioners have filed these writ petitions as public interest litigation praying for issuance of writ of mandamus to declare the West Bengal Panchayat Election, 2023 as void because of non-compliance of basic principles of Constitution and the statute to ensure free and fair elections; for issuance of a direction for an independent agency to investigate into the affairs of filing of nomination of candidates belonging to the ruling party in an abnormally short span of time i.e. 76000 nominations in two days including filing of nominations by persons who are not in India; to declare that the present State Election Commissioner is incapable of conducting election independently and to remove him from his post and be replaced by an independent person. The petitioners have prayed for other reliefs which are incidental and ancillary to the main relief.
2. Mr. Bikas Ranjan Bhattacharya, learned Senior Advocate appearing for the petitioner submitted that in many cases the candidates were prevented

from filing the nominations, a person who was in Saudi Arabia has filed nomination, nominations are not being filled up in its entirety, several of the persons who had filed nominations were threatened to withdraw the nominations and considering all these factors in such areas where all these illegalities have occurred, the elections have to be stalled and elections can be conducted in other places. It is further submitted that though the learned Writ Court had issued direction for granting police protection to the candidates for filing the nominations those nominations have been rejected on the ground that it was filed after 3 P.M. without noting that the candidates were prevented from filing the nominations which necessitated them to approach the Court for appropriate directions. Further, the decisions which are always referred to by the Election Commission and the State, rendered by the Hon'ble Supreme Court are pertaining to elections to the Parliament or the State Legislature and the said decisions would not be applicable to elections to the Panchayats as the elections are governed by the West Bengal Panchayat Elections Act, 2003. Further, it is submitted that two orders passed by this Court in a public interest litigation in WPA (P) 250 of 2023 etc. dated 13.06.2023 and WPA (P) 301 of 2023 dated 15.06.2023 were not implemented and was deliberately delayed so as to make the orders unworkable. The learned Senior Advocate referred to Section 64 of the Election Act, 2003 and various other provisions of the Act to demonstrate that the State Election Commission has inherent power to defer the polls. After referring to Section 46(1) and (2) of the Election Act, 2003, it is submitted that the essence of the statute is to ensure that none are prevented from filing nomination and the inaction of the State Election

Commission goes against the intention of Section 46(2) of the Act in this regard, an order passed by the State Election Commission dated 25.06.2023 was referred to. The learned Senior Advocate elaborately referred to the various provisions of the Election Act, 2003 namely, Sections 46, 47, 64, 79 and 93 to demonstrate as to the procedure to be adopted while conducting the elections. It is further submitted that the candidate who was prevented from filing the nomination was a candidate who was compelled and threatened to withdraw the nomination has no other remedy as an election petition at this instance will not be maintainable as it is not one of the grounds which have been enumerated under Section 93(1)(c) of the Election Act, 2003. In support of his contention, reliance was placed on the decision of the Hon'ble Supreme Court in ***Mohindar Singh Gills Versus Chief Election Commissioner***¹, ***Union of India Versus Association for Democratic Rules***². In ***The matter of Gujarat Assembly Election***³ and ***Dravida Munnetra Kazhagam Versus State of Tamil Nadu***⁴. These decisions have been relied on to explain that a writ petition is not a complete bar under Article 329 (b) of the Constitution of India and the Court would be empowered to issue directions without any manner interfering with the distinct powers of the State Election Commission.

3. Mr. Jishnu Saha, learned Senior Advocate appearing for the State Election Commission submitted that the petitioners' plea is a very belated attempt and no specific instance had been pointed out and the allegations are absolutely vague. The averments in paragraph 8 of the writ petition in

¹(1978) 1 SCC 405

²(2002) 5 SCC 294

³(2002) 8 SCC 237

⁴(2020) 6 SCC 548

WPA (P) 306 of 2023 cannot be a cause of action and the writ petitions have been filed solely based upon media reports and are not maintainable. Further, it is submitted that when the writ petition is based on conjectures, the Writ Court will not entertain the writ petition. More particularly, when the prayer sought for in both the writ petitions indirectly seek to undo the entire election process. It is submitted that the averment set out in paragraphs 5 and 6 of the writ petition in WPA (P) 307 of 2023 are similar to the submissions which were made in the earlier writ petitions which were considered and the Court has passed final orders which has been affirmed by the Hon'ble Supreme Court and, therefore, the petitioners are not entitled to initiate the second round of litigation on the same aspects. Further, it is reiterated that there is no specific averment in the writ petitions as to who was the prospective candidate, who was prevented from filing their nomination or who was the candidate who was compelled to withdraw the nomination and in the absence of any details, the averments have to be treated as unsubstantiated allegations and the writ petition is liable to be dismissed. Further, the petitioners have not stated as to who prevented the prospective candidates from filing the nomination when they were prevented, how they were prevented and in the absence of any such details the writ petition is not maintainable. It is further submitted that whenever a complaint is lodged before the State Election Commission, the same was immediately considered and steps have been taken to redress the grievances. Therefore, it is prayed that the writ petition may be dismissed.

4. The learned Advocate General appearing for the State submitted that principle of non-interference by Court in election of the 3 tire Panchayat

system is on the same basis as that of parliamentary and Legislative Assembly elections as Article 243-O of the Constitution provides for a constitutional bar on similar terms as Article 329(b) of the Constitution. In support of his contention, the learned Advocate General placed reliance on the decision of the Hon'ble Supreme Court in **Boddula Krishnaiah & Anr. Versus State Election Commissioner, A.P.**⁵

5. In the case of **West Bengal State Election Commission and Ors. Versus Communist Party of India (Marxist) and Ors.**⁶ and also the decision of this Court in **Shri Dipankar Rit Versus State of West Bengal** dated 13.06.2023 in WPA (P) 250 of 2023, WPA (P) 286 of 2023 and WPA (P) 287 of 2023. Further, it is submitted that a complaint pertaining to a candidate being prevented from filing nomination papers cannot be a ground for directions to be given to the State Election Commission. In support of such contention reference was made to paragraphs 20, 21, 30 and 31 of the decision of the Hon'ble Supreme Court in the case of **West Bengal State Election Commission** and also the judgment of this Court in the case of **Shri Dipankar Rit** more particularly, paragraphs 14 to 20, 32 to 39. It is submitted that prevention of filing of nomination can be subject matter of Election Petition and to support such contention reference was made to Section 93(1)(d)(ii) and (1)(d)(iii) of the Election Act, 2003 read with Section 2(7) of the said Act and read with Section 123 of the Representation of the People Act, 1950. Further, the contentions raised in the writ petition are barred by principles of res judicata. To support such contention reliance

⁵(1996) 3 SCC 416

⁶(2018) 18 SCC 141

was placed on the decision of the Hon'ble Supreme Court reported in **(2006) 4 SCC 683**. The decision relied on by the learned Senior Advocate for the petitioner in the case of **Boddula Krishnaiah** was distinguished by submitting that the said decision has no application as the elections in the said case were held on 18th January, 1993 and on the said date Part IX had not come into force and it came into force only on April 20, 1993.

6. The learned Advocate appearing for the writ petitioner has submitted their written notes of argument and reiterated the contentions raised in the writ petition by highlighting that there was large scale obstruction during the filing of nomination, due to the failure to the State Election Commission and the State administration several people are victims of election related violence and they are to be compensated. Further, it is submitted when the intending candidates of the opposition parties could not file their nominations or even being forced to withdraw their nominations, the ruling party has filed 76000 nominations within two days and the same is impossible unless the nomination papers were filed in bunch with the assistance of the State Government machinery and this issue has to be investigated more particularly, when one of the candidates belonging to the ruling party had filed nomination though he was on the said date in Saudi Arabia. Further, it is submitted that the candidates of the opposition parties have been implicated in false cases. Therefore, it is submitted that Central Force should be immediate deployed in front of the entrance of each booth on the polling day, there should be at least three compartments for casting three separate votes, bike rally should be completely stopped on the polling day, provision should be made for uninterrupted and effective CCTV

recording in every booth and also to protect the ballot boxes in the distributing centers and the receiving centers etc. The key of the staff room must be kept in the custody of the returning officer entire process of counting should be under the CCTV surveillance and the entire process from the declaration of results and issuance of certificate has to be video-graphed. It can be done effectively only if there is uninterrupted power supply.

7. The State Election Commission in their brief notes of arguments had relied upon the following decisions:-

i) N.P. Ponnuswami and Ors. Vs. Returning Officer, Namakkal Constituency and Ors. reported in AIR 1952 SC 64: MANU/SC/0049/1952

ii) Sub-Committee of Judicial Accountability and Ors. Vs. Union of India (UOI) and Ors. reported in MANU/SC/0060/1992: AIR 1992 SC 320

iii) West Bengal State Election Commission and Ors. Vs. Communist Party of India (Marxist) and Ors. reported in AIR 2018 SC 3964: MANU/SC/ 0902/2018

iv) State of Goa and Ors. Vs. Fouziya Imtiaz Shaikh and Ors. reported in (2021)8SCC401: MANU/SC/0180/2021

v) Judgment of Calcutta High Court in MAT/1202/2023 decided on 05.07.2023 in the matter of The National Human Rights Commission and Ors. Vs. The West Bengal State Election Commission and Ors.

8. By referring to Article 243K(1) of the Constitution, it is submitted that the superintendence, directions and control of the preparation of electoral roll for, and the conduct of, all election to the panchayat is vested with the State Election Commission. Further in terms of Article 243K(4) of the Constitution of India subject to the provisions of the Constitution, the

legislature of West Bengal has made laws with regard to all matters relating to or in connection with, the elections to panchayats namely the Panchayat Election Act, 2003 and West Bengal Panchayat Election Rules, 2004. It is submitted that the date of election has been fixed and the schedule has drawn strictly in accordance with Section 42 and 43 of the Election Act, 2003. The other averments have been set out to bring on record the various steps taken by the State Election Commission to ensure free and fair election in the state.

9. We have elaborately heard the learned senior advocates for the parties and carefully perused the materials placed on record.
10. First we take up for consideration one of the prayers made in the writ petition, for removal of the State Election Commissioner. Such a prayer is not maintainable for the reasons that the State Election Commissioner is an independent constitutional body which has been vested with the powers of superintendence, directions and control of the preparation of electoral rolls and the conduct of all elections to the panchayat in terms of Article 243K(1) of the Constitution. The conditions of service and the tenure of office of the State Election Commissioner are in terms of the mandate under Article 243K(2) of the Constitution read with the provisions of the West Bengal State Election Commission Act, 1994. In terms of Article 243K(2), the State Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment. In the light of the said constitutional provisions, the prayer made by the writ petitioners to remove

the State Election Commissioner is not maintainable and the same is rejected.

11. The sum and substance of the grievance of the writ petitioners in both the writ petitions is with regard to the filing of nominations, threats meted out to candidates to withdraw nominations, high number of nominations filed by the ruling party on the last two days, improper acceptance of nominations even from a person who was abroad and such other matters connected therein.
12. In ***N.P. Ponnuswami and Other Versus Returning Officer***⁷, it has been held that the interference with the elections under the writ jurisdiction will lead to serious consequences and if the election are unduly protracted or obstructed and any matter which has the effect of vitiating the 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 any intermediate stage before any court.
13. In ***West Bengal State Election Commission and Others Versus Communist Party of India***⁸, it was held that any dispute regarding validity of election has to be initiated by filing election petition, 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. If any irregularities are committed while the election is in progress and they belong to the category governed by the election law when the same must be questioned by filing election petition before the

⁷ AIR 1952 SC 64

⁸ (2018) 18 SCC 141

relevant tribunal and the same should not be made the subject of dispute before any court while the election is in progress.

14. In the said decision, the Hon'ble Supreme Court took into consideration the facts wherein the writ petition was filed before this Court by raising a grievance that the candidates who wish to contest the panchayat election were not being allowed to collect and submit their nomination forms as a result of violent action of the supporters of the ruling party. There were other allegations which were made which are more or less identical to the allegations which have been made by the petitioners in the present writ petitions. The matter ultimately travelled to the Hon'ble Supreme Court and the appeal filed by the State Election Commission was allowed and the order passed by this court directing acceptance of nomination was set aside. However, liberty was granted to the person aggrieved to raise a dispute in the form of an election petition in accordance with the provisions contained in the Election Act, 2003 and the period of limitation for filing such election petition was extended by a period of 30 days.

15. At this juncture, it will be beneficial to refer to certain paragraphs of the decision of the Hon'ble Supreme Court:-

19. Section 47 stipulates that in order to be declared nominated for election from a constituency, a candidate must deposit or cause to be deposited in cash with the Panchayat turning Officer, the amounts as stipulated vining provision. Under Section 48, the Panchayat Returning Officer, on receiving a nomination paper under Section 46(1), is required to inform the person delivering the nomination of the date, time and place fixed for scrutiny. Thereafter, a scrutiny takes place under Section 49. Section 50 provides

for withdrawal of nominations and Section 51 for the preparation of a list of d contesting candidates and the allotment of symbols. Section 52, thereafter provides for the publication of a list of contesting candidates. Chapter I of Part IV of the West Bengal Panchayat Elections Rules, 2006 contains supplementary provisions inter alia for the nomination of candidates.

20. The provisions contained in the Panchayat Elections Act and Rules constitute a complete code in regard to the conduct of the election, including in e the matter of filing of nominations. Neither the Panchayat Elections Act nor the Rules contemplate the filing of nominations in the electronic form. Any reform of the electoral process to permit the filing of nominations electronically would have to be carried out by a legislative amendment. The High Court ought not to have issued a mandatory direction of this nature in the face of the specific provisions contained in the Panchayat Elections Act and Rules.

21. Moreover, the election process had already been initiated. The last date for the filing of nominations was over. The directions issued by the High Court are in the teeth of the settled principle of self-restraint which governs the exercise of the jurisdiction under Article 226 once the election process commences. Moreover, such a direction would be contrary to the provisions of Article 243-0 of the Constitution. In this view of the matter, we are of the 9 view that the High Court was in error in issuing directions for the acceptance of nominations in the electronic form. The judgment of the High Court would accordingly have to be set aside.

22. While issuing notice in these proceedings on 10-5-20182, this Court directed that the election which was scheduled to take place on 14-5-2018 shall proceed in accordance with law and upon its conclusion, the results would be notified. However, the State Election Commission was directed not to notify the results in respect of constituencies where there was no contest, without the leave of the Court. On 3-7-201819, when the proceedings were taken up. this Court was informed by Mr P.S. Patwalia, learned Senior Counsel appearing on behalf of the BJP-West Bengal Unit that at the panchayat level as many

as 16,860 seats have remained uncontested out of a total of 48,650 seats; for the Panchayat Samitis, 3096 seats out of the 9217 were uncontested while in the Zila Parishads 203 out of the 825 seats were uncontested. An affidavit has been filed setting out the data in relation to uncontested seats, on behalf of the State Election Commission. The data placed on the record indicates that out of a total of 58,692 seats combined for Gram Panchayats, Panchayat Samitis and Zila Parishads, 20,159 seats have been uncontested. 3096 seats out of the 16,860 seats representing 36.1 per cent of the total seats for Gram Panchayats have been uncontested. In the case of the Panchayat Samitis, 33.5 per cent of seats were uncontested while 24.6 per cent seats for Zila Parishads were uncontested.

23. As regards the uncontested seats, the following submissions have been urged before this Court on behalf of the State Election Commission:

23.1. The State Election Commission has been alive to the need to conduct a free and fair election and after the election took place on 14-5-2018, it ordered a re-poll in 572 booths where problems had occurred; d

23.2. The State Election Commission had received only 1770 complaints and, as such, it would be incorrect to postulate that the elections of all the 20,159 uncontested seats have been vitiated.

28. The Panchayat Elections Act is a complete code in regard to the conduct of the poll and for the resolution of disputes concerning the validity of the election. Article 243-K entrusts the superintendence, direction and control over the conduct of all elections to the panchayats in the State Election Commission. Clause (b) of Article 243-0 stipulates thus:

"243-0. Bar to interference by courts in electoral Notwithstanding anything in this Constitution

(b) no election to any Panchayat 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."

29". There is merit in the submission that the discipline which is mandated by the provisions of the Constitution and enforced by the enabling State law on the subject must be maintained. Any dispute in regard to the validity of the election has to be espoused by adopting a remedy which is known to law, namely, through an election petition. It is at the trial of an election petition that factual disputes can be resolved on the basis of evidence. This principle has been consistently adhered to in decisions of this Court. In Boddula Krishnaiah, a three-Judge Bench adverted to the decisions of the Constitution Bench in N.P Ponnuswami v. Returning Officer, Namakkal Constituency²⁰ and in Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman. After referring to Ponnuswami²⁰, it was observed; (Boddula Krishnaiah case, SCC pp. 419-20, para 8)

8. "..... subject of a dispute before any court while the election is in progress."

16. The above decision clearly lays down the legal principle which would apply with full force to the cases on hand and therefore the relief sought for cannot be granted on the aforementioned technical grounds.

17. In WPA No. 307 of 2023, a supplementary affidavit has been filed by one Mr. Priyabrata Bhowmick enclosing affidavits said to have been signed by the various parties, we find those affidavits are all identically worded those affidavits have been affirmed before the Notary Public namely Mohammed P Hussain, City Civil Court, Calcutta and all dated 28.06.2023, we find that those affidavits have been sworn to by persons who are from the district of Uttar Dinajpur. In any event none of those persons, (alleged to have signed such affidavits) have voiced their individual grievance either before this court or before the State Election Commission. Therefore, in our view the affidavits enclosed along with the supplementary affidavit filed in WPA No. 307 of 2023 can in no manner improve the case of the writ

petitioner. Further we note that those candidates who had individual grievance had approached this court by way of filing writ petitions and in those writ petitions they sought for direction for setting aside the orders rejecting the nominations, prayer to accept the nominations, prayer to defer the election and such other reliefs and the learned writ court considering the factual and legal position had passed orders in those writ petitions. Therefore, at the instance of the writ petitioners that too on vague allegations the prayer sought for cannot be acceded to.

18. The learned advocate appearing for the writ petitioners placed reliance on the decision of the Hon'ble Supreme Court in ***Dravida Munnetra Kazhgam (DMK) Versus Secretary, Governor's Secretariat and Others***. In the said case, the respondents had raised an objection as regards the maintainability of the matter on the ground that the relief sought for would amount to "calling in question an election". This argument was not accepted by the Hon'ble Supreme Court and it was held that the said proceedings are only to further the expeditious completion of pre-requisites of fair election. The facts noted by the Hon'ble Supreme Court in paragraph 5 of the judgment will clearly show that the said decision can have no application to the facts and circumstances of the case on hand. As rightly pointed out by the learned Advocate General several of the contentions raised by the petitioners in the present writ petitions were identical to the contention raised in the case of ***Dipankar Rit Versus State of West Bengal and Others*** and judgment dated 13.06.2023 the court had considered the said contentions and has disposed of the writ petition and

the decision was upheld by the Hon'ble Supreme Court. At this juncture, it will be useful to refer to certain paragraphs of the order dated 13.06.2023:-

16. *The proviso to Section 43(1) empowers the Commission to extend the date for completion of any election by issuing a notification for sufficient reasons. The extension of the date for completion of any election may or may not require alteration of the date or dates for holding election fixed by the State Government under Section 42. In the event, the Commission is of the opinion that there is sufficient and just reasons for which the elections cannot be held on the date fixed in the Notification issued by the State Government under Section 42, then the Commission has to take recourse to the provisions laid down under Subsection (2) of Section 43 i.e., a reference is to be made to the State Government in that regard and if the State Government upon being satisfied with the reasons shown by the Commission revokes the earlier notification the Commission shall consequently revoke the notification issued under Section 43(1).*

17. *This Court is, therefore, of the considered view that alteration of the date fixed for election cannot be done by the Commission in exercise of its powers under proviso to Subsection (1) of Section 43. However, if the Commission, for sufficient reasons, considers to extend the date of completion of any election without interfering with the date fixed for holding elections under Section 42, such power of extension of various stages of election other than interfering with the date of election can be exercised by the Commission under the said proviso.*

20. *Record reveals that notification under Section 42 of the 2003 Act fixing the date and hours of poll has been issued on 08.06.2023. It further reveals therefrom that notification under Section 43 of the 2003 Act was issued on 9th June 2023. It is not in dispute that WPA (P) No. 286 of 2023 and WPA (P) 287 of 2003 were filed after issuance of the election notification.*

21. Article 243-O of the Constitution of India commences with the nonobstante clause. Clause (b) of Article 243-O states that no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as provided for by or under any law made by the legislature of a State.

22. Section 79 of the 2003 Act provides that disputes as to elections can be raised by filing a petition before the forum and within the time and in the manner laid down under such provision.

23. The question therefore crops up is whether the writ Court can entertain a petition after commencement of the election process and that too at the intermediate stage.

24. Three Hon'ble judges of the Hon'ble Supreme Court of India in the case of Election Commission of India through Secretary vs. Ashok Kumar and others reported at (2000) 8 SCC 216 took into consideration the decision of the Constitution Bench of the Hon'ble Supreme Court of India in the case of N.P.Ponnuswami vs. Returning Officer, Namakhal Constituency, Namakhar Salen District reported at (1952) 1 SCC 94 and another constitution bench decision of the Hon'ble Supreme Court in the case of Mohinder Singh Gill vs. Chief Election Commissioner reported at (1978) 1 SCC 405 and summed up the conclusions in paragraph 32 of the said reports. The Hon'ble Supreme Court in Ashok Kumar (supra) held thus- "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.”

25. From the propositions of law laid down in the aforesaid reports, this court is of the considered view

that any action taken or orders passed by 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 such an approach does not amount to calling in question an election. However, the invocation of judicial remedy has to be postponed till after the conclusion of election if the subject matter of challenge amounts to calling in question an election.

33. The issue as to whether there has been prevention of or obstruction to the intending candidates from making nominations at the specified place is a disputed question of fact which cannot be decided by way of exchange of affidavits. Therefore, this Court was not inclined to invite the parties to deal with such allegations by filing objections thereto. If there is any reasonable apprehension of prevention of or obstruction to making of nominations, or there has been any alleged obstruction, the aggrieved party has to take recourse to the provisions laid down under Subsection 2 of Section 46 of the 2003 Act in the manner specifically provided therein.

34. Section 46(2) provides that if the Commission, on receipt of complaints from the intending candidates or the recognized political parties is satisfied that there is reasonable apprehension of prevention of or obstruction to, the intending candidates from making any nominations at the place and before the authority specified under Section 44, the Commission may, by order, issue a direction to the Panchayat Returning Officer to depute one Assistant Panchayat Returning Officer at the office of the concerned Sub-Divisional officer to receive nomination papers within the specified date and hour.

35. The West Bengal State Election Commission is a statutory authority appointed under Section 3(1) of the West Bengal State Election Commission Act, 1994 (for short the “1994 Act”).

36. It is well settled that a statutory authority can do only what the statute permits it to do. Such authority can act only in a manner specified in the relevant

statute. Section 46 of the 2003 Act does not empower the Commission to direct nominations to be filed before the Commission, the concerned District Magistrate or before any authority other than what has been specified under Section 46 of the 2003 Act.

37. Section 44 of 2003 Act states that on the issue of the notification under Section 43 the District Panchayat Election Officer shall in such manner as may be prescribed give public notice of the intended election inviting the nomination of candidates of such election specifying the place where the nominations papers are to be delivered. Thus the public notice of the election which is required to be issued under Section 44 of the Act has to specify the place at which the nomination papers are to be delivered. Sub section (1) of Section 46 states that on or before the date appointed under clause (a) of Section 43 each candidate shall either in person or by his proposer between the hours as may be prescribed, deliver to the Panchayat Returning Officer, at the place specified in this behalf in the notice issued under Section 44, the nomination paper completed in the prescribed form and signed by the candidate and by a voter of the constituency as proposed. The proviso to Section 46 (1) states that no nomination papers shall be delivered to the Panchayat Returning Officer on a day which is a public holiday. The Panchayat Returning Officer in respect of Gram Panchayat and Panchayat Samity is the Block Development Officer (BDO) and in respect of Zilla parishad it is the Sub Divisional officer (SDO). Thus the statute mandates the notification specifying the place at which the nomination papers are to be delivered. The statute also mandates that the nomination papers to be delivered in person to the Panchayat Returning Officer at the place specified in this behalf in the notice issued under Section 44. Therefore a direction in derogation of the scheme of the Act cannot be issued and if done it may tantamount to interdicting the election process. Therefore the prayer sought for by the petitioners to permit filing of nomination before the District Magistrate of the district concerned or the

State Election Commission is not feasible of consideration.

38. It is also well settled that a Mandamus cannot be issued to compel a statutory authority to act dehors the provisions of the relevant statute. Therefore, this Court cannot direct acceptance of nomination papers either by the Commission or permit filing of nominations before the concerned District Magistrate as prayed for by the writ petitioners.

39. It would be relevant at this stage to take note of the proviso to Section 46 of the 2003 Act which empowers the Commission to extend the last date for making nomination for one day under the contingencies mentioned in Section 46(2). This Court is of the considered view that an aggrieved person takes reverse to Section 46 (2), the Commission shall take a decision in accordance with law.

19. The above decision having attained finality as a special leave petition filed by the State Election Commission as well as State of West Bengal were dismissed by the Hon'ble Supreme Court, the present writ petition is hit by the principles of res judicata. The Hon'ble Supreme Court in the decision reported in ***State of Karnataka and Another Versus All India Manufacturers Organisation***⁹ considered the question as to whether the doctrine of res judicata, as a matter of principle, can be applied to the public interest litigations. It was held that in view of the Explanation (vi) it could not be disputed that the Section 11 of the Code of Civil Procedure applies to the public interest litigation as long as it is shown that the previous litigation was in public interest and not by way of private grievance. Further it was held in a public interest litigation, the petitioner is not agitating his individual rights but represents the public at large and

⁹ AIR 2006 SC 1846

as long as litigation is bonafide, the judgment in previous public interest litigation would be the judgment in rem. It arises public at large and bars any member of the public from coming forward before the court and raising any connected issue or an issue which had been raised/and should have been raised at an earlier occasion by way of public interest litigation.

20. In the light of the above reasons, the reliefs sought for in the writ petitions cannot be granted. Accordingly, the writ petitions are dismissed.
No costs.

(T.S. SIVAGNANAM, CJ.)

I Agree.

(HIRANMAY BHATTACHARYYA, J.)

(P.A. PRAMITA/SACHIN)