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03-07-2023
Tanmoy Ghosh/
PA
(Ct. No.01)

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side**

**(From Circuit Bench at Jalpaiguri)
(Through Video Conference)**

**M.A.T. 1139 of 2023
I.A. CAN 2 of 2023**

**Sanjay Mondal & Others
Vs
Boothnath Mondal & Others**

With

**M.A.T. 1141 of 2023
IA CAN 2 of 2023**

**Mamoni Naskar & Others
Vs
Dipa Naskar & Others**

With

**M.A.T. 1142 of 2023
IA CAN 2 of 2023**

**Dinonath Biswas & Others
Vs
Bablu Biswas & Others**

With

**M.A.T. 1144 of 2023
IA CAN 2 of 2023**

**Niranjan Mondal & Others
Vs
The State of West Bengal & Others**

With

**M.A.T. 1158 of 2023
IA CAN 2 of 2023**

**Jhilik Bar & Others
Vs
Sushanta Pramanik & Others**

With

**M.A.T. 1161 of 2023
IA CAN 1 of 2023**

**The West Bengal State Election Commission & Anr.
Vs
Boothnath Mondal & Others**

With

**M.A.T. 1162 of 2023
IA CAN 1 of 2023**

**The West Bengal State Election Commission & Anr.
Vs
Bablu Biswas & Others**

With

**M.A.T. 1163 of 2023
IA CAN 1 of 2023**

**The West Bengal State Election Commission & Anr.
Vs
Dipa Naskar & Others**

With

**M.A.T. 1164 of 2023
IA CAN 1 of 2023**

**The West Bengal State Election Commission & Anr.
Vs
Ranjit Mondal & Others**

With

**M.A.T. 1165 of 2023
IA CAN 1 of 2023**

**The West Bengal State Election Commission & Anr.
Vs
Sushanta Pramanik & Others**

Mr. Saptangsu Basu, Sr. Adv.
Mr. Subhrangshu Panda, Adv.
Ms. Ina Bhattacharya, Adv.
Ms. M. Singha Mahapatra, Adv.
Mr. Sumitava Chakraborty, Adv.

... For the Appellants in MAT 1139
of 2023, MAT 1141 of 2023, MAT
1142 of 2023, MAT 1144 of 2023
& MAT 1158 of 2023

Mr. Kishore Datta, Sr. Adv.,
Ms. Sonal Sinha, Adv.
Ms. Sumita Shaw, Adv.
Mr. T. Kr. Chatterjee, Adv.

Mr. Sujit Gupta, Adv.
 Mr. Sayan Dutta, Adv.
 Mr. Soumen Chatterjee, Adv.

... For the Election commission

Mr. Kalyan Kr. Banerjee, Sr. Adv.
 Ms. Lalit Mohan Mahata, Adv.
 Mr. Sursanya Bandyopadhyay, Adv.
 Mr. Rudranil De, Adv.
 Mr. Arka Kumar Nag, Adv.

... For the State

In Re: M.A.T. 1165 of 2023 with CAN 1 of 2023

The Court:-

This appeal is directed against the judgment and order dated June 21, 2023, whereby the writ petition of the respondent nos. 1 to 3 herein being WPA 14718 of 2023 was disposed of.

As appears from the order under appeal, the writ petitioners approached the learned Single Judge with the case that they had submitted their nominations for contesting the Panchayat Elections 2023. Their names were published in the list after scrutiny. However, in the final list, their names are absent. No reason for disappearance of their names from the final list of contesting candidates has been furnished. They prayed for a direction on the respondent authorities including the State Election Commission to allow them to contest the 2023 Panchayat elections.

It was submitted on behalf of the State that once the list of final candidates has been published, the Election Commission cannot

permit other candidates to contest the election. It was also submitted that since the dispute related to an election, the writ petitioners should seek remedy by way of filing election petition after completion of election. The court, in its writ jurisdiction, ought not to interfere in the matter.

The learned Judge disposed of the writ petition with the following direction:-

“It appears from the submissions made on behalf of the parties and upon perusal of materials on record that the nomination papers of the petitioners were scrutinized and their names published in a list. When the final list was published the names of the petitioners disappeared.

The petitioners assert that they did not file any application for withdrawal of their nominations. If the petitioners have not withdrawn their nominations voluntarily, then the State Election Commission ought not to have removed their names from the final list.

There is nothing on record to suggest that there was voluntarily withdrawal of the nomination.

In view of the above, the State Election Commission through the Panchayat Returning Officer is directed to permit the petitioners to contest the election. Steps shall be taken by the Commission in compliance of the above direction.”

Being aggrieved, The West Bengal State Election Commission and its secretary have come up by way of this appeal.

Appearing for the appellants, Mr. Kishore Dutta, learned Senior Advocate, urged the following legal points:-

“(i) Article 243-O of the Constitution is a bar to interference by courts in electoral matters. Sub-clause (b) of the said Article provides 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 is provided for by or under any law made by the Legislature of a State.”

(ii) Section 79 of the West Bengal Panchayat Elections Act, 2003, read with Section 93 of the Act provide the writ petitioners with adequate remedy by way of filing of election petition. One of the grounds for declaring an election to be void is that any nomination has been improperly rejected. The relevant portions of Section 79 and Section 93 of the 2003 Act are set out hereunder:-

“79. Disputes as to elections.-

(1) If any dispute arises as to the validity of an election under this Act, any person entitled to vote at such election may, within thirty days after the date of declaration of the results of such election, file a petition, calling in question such election on one or more of the grounds specified in sub-section (1) of section 93 and section 94—

(a) before the Civil Judge having jurisdiction where such election is in respect of a Gram Panchayat or a Panchayat Samiti,

(b) before the District Judge of the district, where such election is in respect of a Zilla Parishad or the Siliguri Mahakuma Parishad.

93. Grounds for declaring election to be void.- (1) Subject to the provisions of sub-section (2) if the Court is of opinion—

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under this Act;

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of this Act, or of any rules made under this Act, the Court shall declare the election of the returned candidate to be void.” [Emphasis added].

(iii) Mr. Dutta relied on paragraphs 15 and 25 of the decision of the Hon’ble Supreme Court in the case of ***N.P. Ponnuswami v. Returning Officer Namakkal Constituency & Ors., reported at AIR 1952 SC 64***. The said paragraphs read as follows:-

“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 later, seems to be that any 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 legislatures have to perform in democratic countries, it has always been recognized 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.**" [Emphasis added].

(iv) Reliance was also placed on paragraph 7 of the decision of the Hon'ble Supreme Court in the case of ***Boddula Krishnaiah & Anr. v. State Election Commissioner, A.P. & Ors. reported at (1996) 3 SCC 416***, which reads as follows:-

"7. Article 243-O of the Constitution envisages bar on interference by Courts in election matters. Notwithstanding anything contained in the Constitution, under sub-clause (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". **Thus there is a constitutional bar on interference with the election process except by an election petition, presented to an Election Tribunal as may be made by or under law by the competent legislature and in the manner**

provided thereunder. Power of the Court granting stay of the election process is no longer *res integra*”

(v) Mr. Dutta then relied on paragraphs 17, 21 and 29 of the decision of the Hon’ble Supreme Court in the case of ***West Bengal State Election Commission & Ors. V. Communist Party of India (Marxist) & Ors., reported at (2018) 18 SCC 141.*** The said paragraphs are set out hereunder:-

“17. Despite having noticed the above position in law, in our view correctly, the High Court proceeded to issue a mandamus directing the State Election Commission to accept nominations in the electronic form. **While the Division Bench of the High Court may have been guided by a desire to ensure a free and fair election, the direction to accept nominations in the electronic form has clearly transgressed the permissible area within which the jurisdiction under Article 226 could have been exercised. The jurisdiction under Article 226 has to be exercised in a manner consistent with law.** The Panchayat Elections Act contains detailed provisions in Part VI for the conduct of elections. Chapter VII contains provisions for the nomination of candidates.

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-O**

of the Constitution. In this view of the matter, we are of the 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.

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.....**” [Emphasis added].

(vi) Decision of a Full Bench of the Bombay High Court in the case of ***Karma Veer Tulshiram Autade & Ors. v. State Election Commission, Mumbai and Ors., reported at AIR 2021 BOM 90***. In particular paragraphs 27 and 68 of the judgment were referred to, which read as follows:-

“27. Although 3 (three) questions have been referred by the Division Bench for being answered by the larger Bench, upon hearing the parties and the learned amicus curiae and on perusal of the authorities cited at the Bar as well as the statutory provisions governing the elections in question, we are of the considered view that the answer to a solitary fundamental question arising for determination before us would guide us to answer the questions referred without much ado. **The fundamental question is, whether a writ petition before the Bombay High Court**

exercising jurisdiction under Article 226 of the Constitution would be maintainable if the petitioner seeks to challenge an order of rejection of his nomination paper (to contest a Gram Panchayat election) by the Returning Officer/the competent authority having regard to the provisions in Article 243-O of the Constitution as well as section 15-A of the MVP Act read with section 15 thereof?

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:-

(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 sub-serve 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) Article 243-O(b) of the Constitution of India is a bar for entertaining a writ petition under Article 226 of the Constitution against an order passed by the Returning Officer rejecting nomination paper and such provision would clearly be attracted whenever a writ petition is presented before a Court for its consideration; and

(iii) The law laid down in Vinod Pandurang Bharsakade (supra) represents the correct view of law; consequently, we hold that the decision in Smt. Mayaraju Ghavghave (supra) and Sudhakar s/o Vitthal Misal (supra) do not lay down the correct law;”

(vii) An order dated February 23, 2022, passed by a Division Bench of this Court in the case of ***Malay Banerjee v. State of West Bengal & Ors., (MAT 18 of 2022) reported at 2022 SCC OnLine Cal 336.*** Paragraphs 11 to 14 of that order have been relied upon, which read as follows:-

“11. We have given our anxious consideration to the submissions of the respective parties. We are constrained to agree with Mr. Saha that it is too late in the day to direct the Election Commission to accept the nomination of the appellant. A statutory time schedule is prescribed in the 1994 Act following which the Election Commission has published the final list of contesting candidates on February 12, 2022. Today if we permit the appellant to file nomination papers, in all probability, the entire process will be disrupted, if not prolonged, which will be contrary to the decision of the Hon'ble Supreme Court in the case of *State of Goa v. Fouziya Imtiaz Shaikh*, reported in (2021) 8 SCC 401. In that case and in other decisions, which we need not refer to presently, the Hon'ble Supreme Court has in no uncertain terms held that **once an election is notified, the Courts including the writ courts should strictly follow a “hands-off” policy. No order should be passed at any anybody's instance which in any manner may impede the election process.**

From the date of declaration of the election till the date of declaration of the results, the election process shall not be interfered with by the Courts. This is also the mandate of the Constitution of India.

12. The appellant says that he was prevented from filing his nomination papers by the State administration. Sitting in writ jurisdiction, we are not in a position to adjudicate such factual disputes. If the State administration has violated the learned Single Judge's order dated February 09, 2022, then the consequences will follow in the contempt application that the appellant has filed for such alleged violation.

13. We are also of the view that the appellant is not totally remediless in the sense that Sections 75 and 76 of the 1994 Act may provide an avenue for the appellant to seek redress in the event he is of the view that he has been prevented wrongly by the State from contesting the election.

14. At this stage, we are unable to accede to the appellant's prayer to direct the Election Commission to accept his nomination. Whether or not the time to complete the election process should be extended in exercise of power under Section 84 of the 1994 Act, is a matter for the Election Commission to decide.”

(viii) On the factual score, Mr. Dutta submitted that the list that contained the names of the writ petitioners was in form 3 of the applicable rules. Such list is published containing names of all persons who have submitted nomination papers. The list in Form 3 is published prior to scrutiny. After scrutiny, a list of persons eligible to contest is published in Form

4. The final list is published in Form 7. In the present case, the writ petitioners placed before the learned Single Judge the list prior to scrutiny i.e, the list in Form 3. That list naturally contained the names of the writ petitioners. However, the post-scrutiny list of candidates in Form 4 was not placed before the learned Judge. The learned Judge was misled by the writ petitioners. The nomination papers of the writ petitioners were rejected as they were submitted beyond the time prescribed.

Appearing for the State, Mr. Kalyan Bandopadhyay, learned Senior Advocate, drew our attention to various provisions of the West Bengal Panchayat Elections Act, 2003, including Sections 42 to 52 thereof. Mr. Bandopadhyay supported the case of the appellants. Mr. Bandopadhyay relied on the decision of the Hon'ble Supreme Court in the case of *Kuldip Nayar v. Union of India*, reported at (2006) 7 SCC 1 and submitted that the right to vote, although fundamental it is to democracy, is neither a fundamental right nor a common law right, but pure and simple a statutory right.

Appearing for the respondents/writ petitioners, Mr. Bikash Ranjan Bhattacharya, learned Senior Advocate, submitted that when the law relating to elections was framed by the legislature, a situation like the one which has arisen in the facts of the present case, could not have been in the contemplation of the legislators. The writ petitioners were prevented from filing nomination papers by miscreants. They had approached the writ Court for protection. The

Court directed the administration to provide protection to the writ petitioners to enable them to file nominations. Even thereafter the State administration did not provide protection to the writ petitioners. They were not permitted to file the nomination papers by 3 p.m. on June 15, 2023, which was the deadline. They could only put in the nomination papers after the deadline. On that ground their papers have been rejected. Learned Senior Counsel submitted that the State and the State Election Commission cannot take advantage of their own wrong.

Learned Senior Counsel then submitted that the fundamental duty of the constitutional authorities like the State Election Commission is to ensure a free and fair election. The Election Commissioner ought to have exercised discretion under Section 46(2) of the West Bengal Panchayat Election Act and should have extended the time for the writ petitioners to file their nomination in view of the fact that they had been prevented by miscreants from filing the papers within the prescribed time.

Mr. Bhattacharyya further submitted that Section 79 Read with Section 93 of the West Bengal Panchayat Election Act does not provide a remedy to the writ petitioners. In the facts of the case, to succeed in an election petition, the writ petitioners would have to show that their nominations were improperly rejected. However, technically speaking, the rejection was proper since the papers were filed beyond time because of the illegal activities of miscreants. Hence, the ground of improper rejection of nomination may not be available to the writ petitioners. This is where, the writ Court rightly stepped in and

passed the impugned order. The order is in aid of a fair election and does not pose any hurdle or impediment in the way of holding of the election. Hence the bar in Article 243-O of the Constitution would not apply.

Learned Senior Counsel then submitted that the judgments cited by learned Advocate for the appellants all pertain to Parliamentary election or State Assembly election. Such election, if not concluded within the stipulated time period, may lead to constitutional crisis. In that context, the Supreme Court has laid down that there can be no interference with the election process. However, the case of Panchayat Election is different. There is no question of any constitutional crisis if the Panchayat Election is deferred. The State Election Commissioner has statutory power to extend the date for completion of the election.

Learned Counsel relied on the following decisions:-

(i) *Mohinder Singh Gill & Anr. V. The Chief Election Commissioner, New Delhi & Ors., reported at (1978) 1 SCC 405.* This case was relied upon in support of the submission that free and fair election is of supreme importance in a democracy. Paragraphs 2, 33, 107 and 130 of the judgment which were referred to, are reproduced hereunder:-

2. Every significant case has an unwritten legend and indelible lesson. This appeal is no exception, whatever its formal result. The message, as we will see at the end of the decision, relates to the pervasive philosophy of democratic elections which Sir

Winston Churchill vivified in matchless words:-

"At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper-no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point."

If we may add, the little, large Indian shall not be hijacked from the course of free and fair elections by mob muscle methods, or subtle perversion of discretion by men "dressed in little, brief authority". For "be you ever so high, the law is above you".

33. Our conclusion is not a matter of textual interpretation only but a substantial assurance of justice by reading s. 100 of the Act as covering the whole basket of grievances of the candidates. Sri P. P. Rao contended that the Court should not deny relief to a party in the area of elections which are the life-breath of democracy and people's power. We agree.

107. What is the scope and ambit of Article 324 of the Constitution? The Constitution of our country ushered in a Democratic Republic for the free people of India. The founders of the Constitution took solemn care to devote a special chapter to Elections niched safely in Part XV of the Constitution. Originally there were only six articles in this Part opening with Article 324. The penultimate Article in the chapter, as it stands, is Article 329 which puts a ban on interference by courts in electoral matters. We are not concerned in this appeal with the

newly added Article 329A which is the last Article to close the chapter.

130. Being not altogether certain of all the facts and circumstances that may be made available, in the appropriate forum, it may be a premature exercise by this Court even to lay down guidelines when there is no hide-bound formula of rules of natural justice to operate in all cases and at all times when a decision has to be made. Justice and fair play have often to be harmonised with exigencies of situations in the light of accumulated totality of circumstances in a given case having regard to the question of prejudice not to the mere combatants in an electoral contest but to the real and larger issue of completion of free and fair election with rigorous promptitude. Not being adequately informed of all the facts and circumstances, this Court will not make the task of the election court difficult and embarrassing by suggesting guidelines in a rather twilight zone.”

(ii) ***Union of India v. Association for Democratic Reforms & Anr., reported at (2002) 5 SCC 294.*** Paragraphs 21, 22 and 26 of the reported judgment were referred to, which read as follows:-

“21. Further, it is to be stated that (a) one of the basic structure of our Constitution is “republican and democratic form of government”; (b) the election to the House of People and the Legislative Assembly is on the basis of adults suffrage, that is to say, every person who is citizen of India and who is not less than 18 years of age on such

date as may be fixed in that behalf by or under any Law made by the appropriate Legislature and is not otherwise disqualified under the Constitution or any law on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election (Article 326); (c) holding of any asset (immovable or movable) or any educational qualification is not the eligibility criteria to contest election; and (d) Under Article 324, the superintendence, direction and control of the “conduct of all elections” to Parliament and to the Legislature of every State vests in Election Commission. The phrase “conduct of elections” is held to be of wide amplitude which would include power to make all necessary provisions for conducting free and fair elections. Question No.1 Whether Election Commission is empowered to issue directions as ordered by the High Court?

22. For health of democracy and fair election, whether the disclosure of assets by a candidate, his/her qualification and particulars regarding involvement in criminal cases are necessary for informing voters, may be illiterate, so that they can decide intelligently, whom to vote for. In our opinion, the decision of even an illiterate voter, if properly educated and informed about the contesting candidate, would be based on his own relevant criteria of selecting a candidate. In democracy, periodical elections are conducted for having efficient governance for the country and for the benefit of citizens

voters. In a democratic form of government, voters are of utmost importance. They have right to elect or re-elect on the basis of the antecedents and past performance of the candidate. The voter has the choice of deciding whether holding of educational qualification or holding of property is relevant for electing or re-electing a person to be his representative. Voter has to decide whether he should cast vote in favour of a candidate who is involved in a criminal case. For maintaining purity of elections and healthy democracy, voters are required to be educated and well informed about the contesting candidates. Such information would include assets held by the candidate, his qualification including educational qualification and antecedents of his life including whether he was involved in a criminal case and if the case is decided its result, if pending whether charge is framed or cognizance is taken by the Court. There is no necessity of suppressing the relevant facts from the voters.

26. The aforesaid decision of the Constitution Bench unreservedly lays down that in democracy the little man voter has overwhelming importance on the point and the little-large Indian (voter) should not be hijacked from the course of free and fair elections by subtle perversion of discretion of casting votes. In a continual participative operation of periodical election, the voter does a social audit of his candidate and for such audit he must be well informed about the past of his candidate. Further, Article 324 operates in areas left unoccupied by legislation and the

words “superintendence, direction and control” as well as “conduct of all elections” are the broadest terms. The silence of statute has no exclusionary effect except where it flows from necessary implication. Therefore, in our view, it would be difficult to accept the contention raised by Mr. Salve, learned Solicitor General and Mr. Ashwini Kumar, learned senior counsel appearing on behalf of Intervenor that if there is no provision in the Act or the Rules, the High Court ought not to have issued such directions to the Election Commission. It is settled that the power of the Commission is plenary in character in exercise thereof. In statutory provisions or rules, it is known that every contingency could not be foreseen or anticipated with precision, therefore, Commission can cope with situation where the field is unoccupied by issuing necessary orders.”

(iii) ***Gujarat Assembly Election Matter (2002) 8 SCC 237*** paragraphs 108, 139 and 153 of the judgment were relied upon, which read as follows:-

“108. “Democracy” and “free” and “fair election” are inseparable twins. There is almost an inseverable umbilical cord joining them. The little man's ballot and not the bullet of those who want to capture power (starting with booth capturing) is the heartbeat of democracy. Path of the little man to the polling booth should be free and unhindered, and his freedom to elect a candidate of his choice is the foundation of a free and fair election.

139. In the interpretation of a constitutional document words are but the framework of concepts and concepts may change more than words themselves. The significance of the change of the concepts themselves is vital and constitutional issues are not solved by a mere appeal to the meaning of words without an acceptance of the line of their growth. It is aptly said that the intention of the Constitution is rather to outline principles than to engrave details. (See *R.C. Poudval v. Union of India and Ors.*).

153. Free and fair election is the sine qua non of democracy. The scheme of the Constitution makes it clear that two distinct Constitutional authorities deal with election and calling of session. It has been pointed out to us that as a matter of practice the elections are completed within a period of six months from the date of dissolution, on completing the prescribed tenure or on pre-mature dissolution except when for inevitable reasons there is a delay. The Election Commissioner is a high constitutional authority charged with the duty of ensuring free and fair elections and the purity of electoral process. To effectuate the constitutional objective and purpose it is to draw upon all incidental and ancillary powers. Six months' period applicable to elections held on expiry of the prescribed term would be imperatively applicable to elections held after pre-mature dissolution. This of course would be subject to such rare exceptional cases occasioned on account of facts situation (like acts of God) which make holding of elections impossible.

But manmade situation intended to defer holding of elections should be sternly dealt with and should not normally be a ground for deferring elections beyond six months period, starting point of which would be the date of dissolution. As was observed in *Digvijay Mote v. Union of India and Ors*:

“timely election which is not free and fair subverts democracy and frustrates the ultimate responsibility to assess objectively whether free and fair election is possible. Any man made attempt to obstruct free and fair election is antithesis to democratic norms and should be overcome by garnering resources from the intended sources and by holding the elections within the six months' period.”

(iv) ***Surinder Kaur v. State of Punjab & Ors., reported at (1996) 3 SCC 210.*** Paragraph 4 of the reported judgment which was referred to reads as follows:-

“4. Though it is denied that the appellant had submitted her nomination papers for contest as a Sarpanch, it would be difficult to believe the statement of the respondents that she had not filed the nomination papers. She had taken all necessary steps to file the nomination papers well within time. She had already been a sitting Sarpanch for over 15 years. Under those circumstances, one would legitimately expect that she had an intention to contest the election and having secured necessary papers, in normal course she would have filed the nomination papers but for some supervening event. It is her case that the 7th

respondent had forcibly taken the nomination papers from her and torn them off. Since her husband was already under police custody at the relevant time, she was incapable of resisting the high handed action. It is obvious that she was prevented from filing the nomination papers. Under those circumstances, she was constrained to approach the authorities. But when she did not get any tangible result, she had gone to the High Court and filed the writ petition making all the allegations therein. Under these circumstances, we are of the considered view that the conduct of the election in the circumstances was not valid in law.”

We have given our anxious consideration to the rival contentions of the parties.

It is indisputable that free and fair election is the *sine-qua-non* of democracy. Democracy is defined by the Oxford Advanced Learner’s Dictionary, 10th Edition as, “a system of government in which the people of a country can vote to elect their representatives.” Therefore, for a democracy to function effectively, each citizen of the country should be free to offer himself/herself as a candidate for being elected as the people’s representative. Equally, each citizen must be permitted to exercise his/her suffrage freely and in the manner that person chooses.

The question is, if a person’s right to offer himself/herself as a candidate in an election is infringed in any manner, what is that person’s remedy? Can that person approach the Civil

Court or the Writ Court for relief? The answer, it is fairly well established by now, is in the negative. Once the process of election starts with the declaration of the dates on which election will be held, and till the election ends with the declaration of result, the courts will not intervene. No order will be passed which even remotely may tend to interfere with the process of election in any manner.

Article 243-O of the Constitution of India which pertains to Panchayat Elections is a clear bar to interference by Courts in electoral matters. The only remedy available to an aggrieved party would be to challenge the result of the election as per the provisions of Sections 79 and 93 of the West Bengal Panchayat Elections Act, 2003.

We have extracted above relevant portions of the celebrated judgments of the Supreme Court in the cases of ***N.P. Ponnuswami v. Returning Officer Namakkal Constituency & Ors., Boddula Krishnaiah & Anr. v. State Election Commissioner, A.P. & Ors.*** and other cases and we do not repeat the principles of law laid down in the same. We have also extracted the relevant paragraphs of the judgment of a Full Bench of the Bombay High Court in the case of ***Karma Veer Tulshiram Autade & Ors. v. State Election Commission, Mumbai and Ors., (supra)*** with which we respectfully agree. Article 243-O of the Constitution bars a writ petition under Article 226 challenging an order of the Returning Officer rejecting the nomination papers of an aspiring candidate proposing to contest the election.

It was argued on behalf of the writ petitioners that it would be unfair to relegate them to the remedy under Sections 79 and 93 of the West Bengal Panchayat Elections Act, 2003, when their nominations have been rejected wrongfully and with oblique motive. Such rejection was at the behest of the ruling party so that in the relevant constituencies, candidates of the ruling party may be declared elected uncontested. We cannot say that this argument is completely illogical. However, the Courts hands are bound. A Court has to apply the laws as they are and not as they ought to be in its opinion. The courts cannot legislate.

The decisions cited on behalf of the respondents/writ petitioners, do not advance their case to any extent. In the case of ***Mohinder Singh Gill & Anr. V. The Chief Election Commissioner, New Delhi & Ors., (supra)***, Article 243-O of the Constitution did not fall for consideration. The decision emphasizes the importance of having a free and fare election in a democracy. In the case of ***Union of India v. Association for Democratic Reforms & Anr., (supra)***, again, Article 243-O of the Constitution did not fall for consideration. The question was whether the election commission could issue certain directions to the candidates wanting to contest the election. In the case of ***Gujarat Assembly Election, (supra)***, the Supreme Court again highlighted the importance of timely free and fair election. In none of those cases, power of the Court to issue directions to the Election Commissioner after the election process has begun, was in

issue. Even in the case of ***Surinder Kaur v. State of Punjab & Ors., (supra)***, that point was not before the Hon'ble Supreme Court.

In view of the above, the order under appeal cannot be sustained and is set aside. Needless to say, the respondents/writ petitioners will be free to exercise their right under Section 79 of the West Bengal Panchayat Elections Act, 2003 read with Section 93 thereof, in the prescribed manner. The appeal and the connected application are accordingly disposed of.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)

In Re: M.A.T. 1139 of 2023 IA CAN 2 of 2023+ M.A.T. 1141 of 2023 IA CAN 2 of 2023+ M.A.T. 1142 of 2023 IA CAN 2 of 2023+ M.A.T. 1144 of 2023 IA CAN 2 of 2023+ M.A.T. 1158 of 2023 IA CAN 2 of 2023+ M.A.T. 1161 of 2023 IA CAN 1 of 2023+ M.A.T. 1162 of 2023 IA CAN 1 of 2023+ M.A.T. 1163 of 2023 IA CAN 1 of 2023+ M.A.T. 1164 of 2023 IA CAN 1 of 2023

By a judgment and order dated July 3, 2023, we have disposed of M.A.T. 1165 of 2023

which was an appeal against the same order which is under challenge in the present appeals. Hence, these appeals and the connected applications are disposed of in terms of the judgment and order passed in M.A.T. 1165 of 2023.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)