

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

Present :- Hon'ble Justice Amrita Sinha

WPA 14917 of 2023

**Tariqul Islam
Vs.
The State of West Bengal & Ors.**

For the writ petitioner	:-	Mr. Bikash Ranjan Bhattacharyya, Sr. Adv. Mr. Samim Ahammed, Adv. Mr. Arka Maiti, Adv. Md. Nazimuddin Siddique, Adv. Ms. Saloni Bhattacharyee, Adv. Ms. Gulsanward Pervin, Adv. Mr. Aniruddha Singh, Adv.
For the State	:-	Mr. Kalyan Kumar Bandopadhyay, Sr. Adv. Mr. Sirsanya Bandopadhyay, Adv. Mr. Arka Kumar Nag, Adv.
For the Election Commission	:-	Ms. Sonal Sinha, Adv. Mr. Tarun Kumar Chatterjee, Adv. Mr. Sujit Gupta, Adv. Mr. Sayan Datta, Adv. Mr. Soumen Chatterjee, Adv.
Hearing concluded on	:-	23.06.2023
Judgment on	:-	26.06.2023

Amrita Sinha, J.:-

The case of the petitioners as made out in the writ petition is that for contesting the panchayat general elections, 2023 in Bhangore-II block, Dist. – South 24 Parganas they filed their nomination papers as candidates nominated by the Communist Party of India (Marxist). Their nomination papers were scrutinised and their names appeared as validly nominated candidates in the official website of the West Bengal State Election Commission, hereinafter referred to as ‘the Commission’, till 19th June, 2023. Without assigning any reason their names were deleted from the list of selected candidates. In view of deletion of their names the petitioners will not be able to contest the elections. The petitioners are aggrieved by the same.

The petitioners submit that immediately after publication of the notification declaring the dates of the election process by the Commission, huge spread violence broke out in the area in question and the ruling political party assaulted and terrorised the government officers and prevented them from distributing the nomination papers to the prospective candidates. The police remained a mute bystander and did not take any step to arrest the violence. Non-action on the part of the police to curb the unrest resulted in flaring up the agitation causing death of three persons in Bhangore. The situation became politically aggravated to such an extent that the Hon'ble Governor had to visit the affected areas to take note of the ground realities.

According to the petitioners, the members and supporters of the ruling political party, with the aid and assistance of the police and the State administration, openly prevented the members of the opposition from filing their nomination.

After overcoming a lot of hurdles the petitioners were ultimately able to enter the nomination centres within the prescribed time period and also filed their nomination on the very last date. 15th June, 2023 being the last date for filing the nominations there was a huge queue at the nomination centre. The Returning Officer verified the documents submitted at the time of filing the nomination. The said process of verification of documents consumed some time and by the time the nomination papers were actually accepted by the Returning Officer, it was well past 3 p.m. As the Presenting Officer personally witnessed the ruckus at the time of filing the nomination papers, the said officer accepted the nominations without raising any objection despite the prescribed time limit being over.

On the date of scrutiny, the nomination papers were duly scrutinized and on being satisfied that the nomination papers of the petitioners were correctly filed, the names of the petitioners were included in the list of validly nominated candidates and published in the official website of the Commission on 16th June, 2023. The petitioners were personally present at the time of scrutiny of their

nomination papers on 17th June, 2023 and recorded their presence by affixing their signatures at the time of scrutiny. The Returning Officer never raised any objection during the time of scrutiny as regards the late filing of the nomination papers.

The petitioners submit that the Returning Officer, as per Section 49(6) of the West Bengal Panchayat Elections Act, 2003, herein after referred to as 'the Act', was obliged to endorse on each nomination paper his decision either accepting or rejecting the same and, in case of rejection to record in writing the reasons for rejection in brief.

The petitioners assert that the Returning Officer did not make any endorsement on the nomination paper as required under law and on the contrary intimated the petitioners that their nomination papers have been accepted.

Section 49(8) of the Act requires preparation of a list of validly nominated candidates after scrutiny of nomination papers. In terms of the aforesaid statutory requirement, the names of the petitioners did appear in the list of validly nominated candidates and their names were published by the Commission in its official portal. The date for scrutiny of nominations was 17th June, 2023 and on 18th and 19th June, 2023 the names of the petitioners featured in the said list.

On 20th June, 2023 which was the last date for withdrawal of candidature, the names of the petitioners stood deleted without assigning any reason. The petitioners confirm that they did not withdraw their nomination.

According to Section 51(1) of the Act, immediately after the expiry of the period for withdrawal of candidature, the Returning Officer is to prepare a list of contesting candidates whose nominations have been finally accepted and thereafter allot symbol to the said contesting candidates as per their choice and preference.

According the Section 52 of the Act immediately after allotment of symbols the Returning Officer is to publish a list of contesting candidates. The said list

has since been published but the names of the petitioners do not figure in the said list.

The petitioners argue that after their nominations were scrutinised and found to be in order and as the petitioners did not withdraw their nominations, their names ought to have been included in the final list of contesting candidates.

The petitioners contend that the names of the candidates from the opposing parties are being deliberately picked out for deletion in a clandestine manner to give advantage to the candidates of the ruling political party. It has been contended that had the nomination form not been in order, then the same ought to have been rejected at the stage of scrutiny and their names ought not to have been published in the list of validly nominated candidates.

The rejection of the candidature of the petitioners is an afterthought and the names of the petitioners have been dropped from the list of validly nominated candidates at the instance of the members of the ruling political party who are scared of contesting against the petitioners.

The learned senior counsel appearing on behalf of the petitioners categorically submits that the petitioners submitted their nomination with a view to contest the panchayat general elections and the petitioners are not in any manner challenging the validity of the election or intend to stall or interdict the election process. Their only intention is to bring to the notice of this Hon'ble Court the highhanded attitude of the State administration and the arbitrary action on the part of the Commission in acting as per the dictum of the State Government.

The petitioners pray for a direction upon the Commission to publish an updated list of contesting candidates and to permit them to contest the election.

Learned senior counsel representing the State respondents vehemently opposes the prayer of the petitioners. It has been submitted that Article 243-O of the Constitution of India specifically bars interference by Courts in electoral

matters. Article 243-O(b) specifically lays down that no election to any panchayat shall be called in question except by an election petition.

Reliance has been placed on Sections 79, 80, 93 and 94 of the Act. It has been argued that the ground agitated by the petitioners in the instant writ petition seeking relief may be a ground for filing an election petition. The petitioners may agitate all their points in an election petition and not by way of filing a writ petition as the same is impermissible in law.

It has been submitted that the prayer of the petitioners as made in the writ petition may amount to holding up of the election, which under any circumstances ought not to be allowed.

It has been submitted that there are several disputed questions of facts in the present writ petition which ought not to be adjudicated by the writ Court. The allegation that the petitioners could not file their nominations within the prescribed time period because of violence and that the petitioners were prevented and obstructed from filing their nominations within the prescribed time period are disputed. It has been stated that there are several candidates from the opposing parties who filed their nominations within the prescribed period and accordingly the allegation of preventing/obstructing the petitioners ought not to be accepted.

It has been stated that the nomination of the petitioners stood cancelled at the stage of scrutiny on consideration of the objection raised by the candidates who filed their nominations within the prescribed time schedule. Neither the petitioners nor their representative was present at the time of scrutiny.

On rejection of the petitioners' candidature, several candidates have been declared to be elected uncontested and certificate to that effect has been issued by the Returning Officer. Any order passed in the instant writ directing the Commission to permit the petitioners to contest the election, will infringe the right of the candidates who were declared elected, uncontested.

The primary thrust of the State is the issue of maintainability of the writ petition. In support of the submission that the writ petition will not be maintainable and election petition is the only remedy, reliance has been placed on the judgment delivered by the Hon'ble Supreme Court of India in the matter of ***N. P. Ponnuswami & Ors. -vs- Returning Officer, Namakkal Constituency & Ors.*** reported in ***AIR 1952 SC 64*** and ***Lakshmi Charan Sen & Ors. -vs- A. K. M. Hassan Uzzaman & Ors.*** reported in ***(1985) 4 SCC 689***. Reliance has also been placed on the judgment delivered by this Court in the matter of ***Malay Banerjee -vs- State of West Bengal & Ors.*** reported in ***2022 SCC Online Cal 336***.

Prayer has been made for dismissal of the writ petition.

Learned advocate representing the Commission sticks to the contention that the petitioners' only remedy, at this stage, is to file an election petition in view of the bar imposed by law both under the Constitution of India and the Act to entertain any petition during the election process.

In reply to the issue of maintainability of the writ petition as raised by the respondents, the learned senior counsel representing the petitioners submits that the ratio laid down by the Hon'ble Supreme Court in the matter of Ponnuswami (supra) and Lakshmi Charan Sen (supra) will not be applicable in the facts and circumstances of the present case.

It has been submitted that in both the aforesaid matters the Hon'ble Supreme Court barred interference in respect of election matters under the Representation of the People Act where election to the Parliament was in question. Had the Parliament election been delayed because of the Court proceedings, a constitutional crisis may have arisen. No such crisis will arise in the present case as the matter concerns election to the panchayat under the Panchayat Elections Act, 2003 and not under the Representation of the People Act, 1951. The State Government can run the panchayats by appointing Administrator in the interregnum, if required.

It has been contended that the delay, if any, in filing the nomination by the intending candidates was absolutely beyond the control of the petitioners. The delay was deliberately caused by the members and supporters of the ruling political party with the help and assistance of the State administration. The Commission failed to create a healthy and peaceful atmosphere in which the nomination papers could be filed.

The respondents, being responsible for the wrong, ought not to take advantage of the situation. No person can be allowed to take advantage of his own wrong. Here wrong was committed on the part of the respondents and the respondents are taking advantage of the same. There is no deliberate, wilful or intentional error, delay or laches on the part of the petitioners in submitting their nominations within the prescribed time period.

The petitioners seek permission to contest the panchayat general elections.

I have heard the submissions made on behalf of all the parties and given anxious consideration to the facts and circumstances of the instant case. Quite a few litigations in connection with the panchayat general elections, 2023 have been filed before this Court. In a number of petitions allegation has been made that the intending candidates were not being permitted to submit their nominations. Specific case is that the intending candidates were prevented and obstructed from submitting their nominations. There are several instances where intending candidates were compelled to approach Court to obtain order relying upon which nomination was filed. In all such cases the principal allegation is that force and violence was resorted to prevent and obstruct the prospective candidates from filing their nomination.

It has been brought to the notice of this Court that in writ petition being WPA 14479 of 2023 (Sirajul Islam Gharami –vs- State of West Bengal & Ors.) the Hon'ble Court had to pass order for police protection to enable the petitioner and his supporters to return to their residences. In the said case the petitioner Sirajul Islam Gharami along with his supporters were on their way to file nominations for

the ensuing panchayat elections when they were prevented from reaching the nomination centre.

The issue of candidates being forcefully restrained from filing their nominations also fell for consideration before the Hon'ble PIL Bench of this Court and by a judgment delivered on 13th June, 2023 the Hon'ble Court in WPA (P) 250 of 2023 (***Sri Dipankar Rit –vs- State of West Bengal & Ors.***) observed that if there is any reasonable apprehension of prevention or obstruction to making nomination or there has been any alleged obstruction, the aggrieved party has to take recourse to Section 46(2) of the Act in the manner specifically provided therein.

The petitioners specifically contend that after overcoming all hurdles set up by the members and supporters of the ruling party, the petitioners were at last able to reach the nomination centre on the scheduled date and were able to file their nominations. The date and time of filing the nomination is mentioned in the acknowledgement receipt issued by the Assistant Panchayat Returning Officer. It is evident that the time mentioned in the acknowledgement slip is beyond the prescribed time schedule fixed by the Commission.

The petitioners stress on the argument that there was no intentional delay or laches on their part in arriving at the venue for filing their nominations. Firstly, because of the obstruction they got delayed and secondly, after reaching the nomination centre they had to wait in the long queue of the prospective candidates intending to file their nominations. The aforesaid two factors coupled with each other may have resulted in the delay in filing the nomination papers.

The Returning Officer accepted the nomination papers even though the same was allegedly filed beyond the prescribed time schedule. The nomination papers were scrutinized and found to be in order. The names of the petitioners were thereafter published in the list of validly nominated candidates and the names of the petitioners remained in the said list till the date of withdrawal of candidature. Even though none of the petitioners withdrew their candidature, but

for undisclosed reasons, the names of the petitioners did not figure in the final list of contesting candidates.

According to Section 49(8) of the Act, the Returning Officer, after scrutiny of nomination papers, is to prepare a list of validly nominated candidates and fix the same on the notice board. The list which was published in the official portal of the Commission was presumably prepared by the Returning Officer after scrutiny of the nomination papers of the prospective candidates.

According to Section 51(1) the Returning Officer is required to prepare a further list of contesting candidates whose nominations have been finally accepted and who have not withdrawn their candidature.

From the aforesaid two provisions it appears that, two lists are required to be prepared and published by the Panchayat Returning Officer; one after scrutiny of nomination papers and the other after the time for withdrawal of nomination is over. There is no provision in law to drop the name(s) of prospective candidate(s) from the list of validly nominated candidates if the said candidates did not withdraw their nominations. It is only the candidates who withdraw their nominations after scrutiny, are liable to be delisted from the list of contesting candidates.

As the petitioners contend that they did not withdraw their nominations and there has hardly been any change of facts in the interregnum, in the period between the date of scrutiny and the date of publication of the final list of contesting candidates, accordingly, the alleged ground of removal of the names of the petitioners from the list of validly nominated candidates, does not appear to be proper.

The learned senior counsel representing the State, upon instruction from the Returning Officer, has contended that as the candidates filed their nominations beyond the prescribed time period hence, their nominations stood cancelled. In usual course of events the said contention could have been the

appropriate step taken in the matter. It is true that the time schedule fixed by the Commission is liable to be strictly followed by all; but the Court is faced with an unprecedented situation where the candidates, for no fault on their part, were forcibly prevented, threatened and obstructed from submitting their nominations within the prescribed time period.

In such a situation, will the members and supporters of the ruling party, who prevented and obstructed the prospective candidates from filing their nominations within the scheduled time period be entitled to reap benefit of their acts and actions? Will the same not amount to tolerating the illegal/arbitrary action on the part of the ruling disposition? Why will the candidates who unleash fear and unrest in the society be permitted to steal a march over the candidates who fail to match their terror tactics? Will the same not amount to interfering with the free and fair election process which is the mandate of the Constitution and the statutory law?

Detailed arguments have been advanced challenging the maintainability of the writ petition. The petitioners have all along contended that they neither want to challenge nor interdict the process of election. They do not raise any dispute with regard to the validity of the election. They are only interested to contest the same.

Admittedly, improper rejection of nomination is a ground for filing an election petition. The Courts have consistently held that there is a need to maintain purity in the election process and the electoral process be afforded sanctity in a democracy. The bottom line is that the election should be conducted in a free and fair manner.

It is true that it is not possible for the writ court to adjudicate as to whether the petitioners were indeed forcefully prevented/obstructed from filing their nominations within the prescribed time period, but at the same time, what is drawing the attention of the Court is the series of litigations in respect of a couple of constituencies with uniform allegation of violence, assault, arson, murder/rape

threat etc. preventing/obstructing in filing the nominations. The candidates have to rush to Court to obtain order to permit them to file their nominations.

The Commission by a notification dated 9th June, 2023 declared the date for various stages of the panchayat elections in the State of West Bengal. 15th June was the last date for filing the nomination. In between the date of publication of the notification and the last date for filing the nomination there has been several instances of wide spread violence, political unrest leading to loss of several lives.

The Court is alive of the legal position that once the election process commences, the Courts ought to adopt a hands-off policy and exercise self-restraint in entertaining petitions in connection with election matters; but to what extent is the question.

Can the Constitutional Court keep its eyes shut when there are definite instances in support of the submission that there were genuine and valid reasons for not being able to file the nomination papers by the prospective candidates within the prescribed time period? Will that not amount to polluting the free and fair election process? Can the same be taken as proper democracy? Will the same not amount to infringement on the statutory right of a candidate to contest an election?

The fact that the names of the petitioners were enlisted in the list of validly nominated candidates implies that the nomination papers of the petitioners were in order and accordingly accepted by the Returning Officer. The same could not have been rejected and the name of the candidate could not have been abruptly dropped from the list of validly nominated candidates only on an objection filed by the opponent candidate.

In an election there is contest between two or more candidates to win a particular seat. The contest ought to be a healthy one and sharp practices ought not to be allowed to take over. With a view to restrict/remove competition, on

numerous occasions, corrupt practices are adopted. Preventing/obstructing a prospective candidate to file nomination is one of them.

It is for the Returning Officer to apply his mind and to take a conscious decision as to whether at all there was any genuine reason for the candidate to not submit the nomination within the prescribed time limit. Usually, a candidate who submits the statutory deposit may be considered as an interested person to contest the election. There is no plausible reason as to why a prospective candidate, despite submission of the deposit, will deliberately delay in filing the nomination being aware of the fact that delayed filing of nomination will result in cancellation of his candidature. Any prudent person will not act in a manner that will go against him.

On the contrary a contesting candidate, with a view to win the election uncontested, may resort to unfair practices to get the nomination of his rival cancelled.

The grounds on which the nomination papers of a prospective candidate can be rejected at the stage of scrutiny is set out in Section 49 of the Act. Section 49(4) of the Act lays down that the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

Can a slight delay in filing the nomination paper be treated as substantial ground so as to reject the nomination paper of a prospective candidate? What if the delay was not for any fault on the part of the candidate? What if the candidate was forcefully resisted to submit the nomination paper within the prescribed time limit? Does it make much of a difference if the nomination paper is filed a few minutes beyond the scheduled time? Will a candidate, who is interested to contest the election, deliberately delay in filing the nomination paper? Is it absolutely improbable that the delay was on account of forceful prevention/ obstruction to file the nomination paper on time? Who will be put to advantage if the nomination paper of an opposing candidate is rejected at the very first step?

The Commission is the competent authority to view each and every situation under an expert eye and take a call whether to accept or reject the nomination. It is not possible for the Court to frame a straight jacket formula passing direction upon the Commission to act or not to act in a prescribed manner. The Commission being a statutory authority is expected to act in an unbiased manner in accordance with the statute.

In the matter of West Bengal State Election Commission (supra) the Court was confronted with the issue whether to permit filing of nominations in the electronic mode. The Court observed that neither the Panchayat Elections Act nor the Rules contemplate filing of nominations in the electronic form. Any reform of the electoral process to permit filing of nominations electronically would have to be carried by a legislative amendment.

In the said matter the Court noticed that there was no specific relief claimed before the High Court with regard to seats where there was no contest. Neither were there adequate pleadings nor specific prayer set out. There was a need to formulate an adequate basis to invoke jurisdiction of the High Court and accordingly, the High Court only dealt with the plea that nomination should be allowed to be filed in the electronic form.

In the said matter the Court also noticed that the Commission announced the schedule of the panchayat elections 2018 on 31st of March, 2018, last date for filing nominations was 9th April, 2018, scrutiny was scheduled on 11th April, 2018 and the last date for withdrawal of candidature was 16th April, 2018 and the date of election was fixed on 1st May, 3rd May and 5th May. The State Election Commission extended the date for filing of nominations and on the plea of some of the candidates that they were restrained from filing nomination, the Court passed order directing the Commission to ensure acceptance of nominations. A further writ petition was filed seeking setting aside of the entire election process.

In the said matter the Hon'ble Supreme Court was apprised by an affidavit filed by the Commission that out of the total 56,692 seats combined for gram

panchayat samities and zilla parishads, 20,159 seats remained uncontested. As regards the uncontested seats in 572 booths re-poll was conducted. Complaint was received only in respect of 1,770 seats out of the total uncontested seats and submission was that it cannot be said that election to all uncontested seats have been vitiated. In the absence of cogent complaint of obstruction in filing nominations, a generalised presumption cannot be made in respect of each and every seat.

From the aforesaid submission of the Commission before the Hon'ble Supreme Court in the matter of West Bengal State Election Commission (supra) it implies that the Commission does have the power and authority to redress the issue of prevention/obstruction to file nomination. The Commission ought to take independent decision in each and every case where there is a complaint of obstruction in filing nomination. The Commission ought not to reject nominations mechanically if the same were filed after the prescribed time schedule in the event there was no fault on the part of the candidate.

The Hon'ble Supreme Court in ***State of Goa & Anr. -vs- Fourziya Imtiaz Shaikh & Anr.*** reported in ***(2021) 8 SCC 401*** in the context of municipal elections was of the opinion that judicial review of State Election Commission's order is available on grounds of review of administrative orders. It was held that the writ court must adopt a hands-off policy while the election process is on and interfere before the process commences or after such process is completed unless interfering with such orders sub-serves and facilitates the progress of the election. The constitutional bar applies only to courts and not to the State Election Commission, which is to supervise, direct and control preparation of electoral rolls and conduct elections.

Coming to the aid of the intending candidates to permit them to contest the election is a mode to facilitate the process of election which the Commission ought to do. Prior to rejecting the nomination, the Commission ought to be doubly

sure that no wrong is committed. Rejection of nomination, without proper application of mind, is sheer injustice.

In *Lakshmi Charan Sen (supra)* the issue arose in connection with election to the legislature conducted under the Representation of the People Act, 1950. The Court observed that the process of election to legislature cannot be arrested on the allegation of improper revision of electoral roll.

In the present case, the election is conducted under the statutory provisions of the Act and the election is in connection with panchayat and not with the legislature. Specific detailed instances have been mentioned in the writ petition seeking interference by the Court, only with the view of conducting a free and fair election.

A Constitutional Court cannot be taken to be so powerless so as not to rise to the occasion and prevent perpetration of injustice and act in aid of dispensation of justice. The Courts should not only strive to build up confidence among the people about the rule of law but should also ensure that the same law is not misused by the powerful to trample the oppressed. People in power tend to overpower and rule the people and they do not want to lose their power come what may. It is for this reason that there is so much of political aggression the moment there is opposition from any quarter. A candidate ought not to be permitted to win on a walkover from the contesting candidate. The contesting candidates ought to be ready to face the electorate as there is no credit to win uncontested. The Commission ought to act in a neutral manner and not take sides at the time of election.

It is very easy to submit that the writ will not be maintainable and the only recourse is an election petition. There will certainly be situations where election petition may be required to be filed. The Court, in series of matters have in fact dismissed petitions holding that the writ petition will not be maintainable, but there may be instances where, to prevent miscarriage of justice, the Constitutional Court is required to step in and act as the watchdog. The faith of

the electorate in the democracy is to be sacredly preserved, because any dent in the same may leave an irreparable scar in the mind of the general public. The Court is required to maintain a balance to see that it is not overstepping its jurisdiction but is acting within its limits.

If the grievance of the petitioners can be redressed by the Commission at this stage, then it will be prudent for the Commission to take immediate remedial steps to redress the issue. It is both illogical and impractical to keep the issue pending to be agitated at a later stage after the election process is over.

Let's take a very crude and hypothetical example. Mr. X is contesting on a ticket from the ruling party and Mr. Y intends to contest the election as an independent candidate. If Mr. X is successful in getting the nomination of Mr. Y rejected at the very first stage, then Mr. X will not be required to face the election at all. Mr. X will be elected uncontested. As the candidate is declared elected, the electors of the constituency is deprived of their constitutional right to vote, as the candidate stood elected even before the process of voting started.

India being a democratic country, people have the right to choose a candidate of their choice. A choice must be given to the electors to choose their representative. Getting elected uncontested robs off the electors to exercise their choice. Even though there is a candidate interested to contest the election but has been denied to contest the same, implies that all is not right in the process and the loopholes in the process is required to be plugged immediately. All the intending candidates should be permitted to face the electors to save the democracy.

Attention of the Court has been drawn to the judgment passed by the Hon'ble PIL Bench of this Court on 15th June, 2023 in WPA (P) 301 of 2023; **Suwendu Adhikari & Anr. Vs State of West Bengal & Ors.** and order dated 21st June, 2023 in CPAN 831 of 2023 in **Suwendu Adhikari & Anr. Vs Sri Rajiva Sinha** wherein taking note of the emergent political situation in the entire State and for aiding a free and fair election, the Court was pleased to issue

specific direction upon the Commission for requisition of deployment of Central Forces in all districts of the State.

In the aforesaid matter the Court was apprised that the elections are to be held over 75,000 seats. It is not unusual that there may be instances of political violence in some of them. This State has witnessed wide spread pre and post poll violence in the past. The Constitutional Courts had to come to the rescue of the complainants. This was more the reason why the Hon'ble Supreme Court affirmed the order passed by the Hon'ble PIL bench of this Court for deploying Central Forces throughout the State in the entire election process and observed that holding elections cannot be a license for violence.

There may be issues relating to forceful prevention/obstruction in filing nomination papers, delisting of names from the list of validly nominated candidates, forceful withdrawal of candidature, filing nomination papers relying on fake documents and false details etc. All the above issues can be and is liable to be resolved at the end of the Commission. These issues ought not to be left undecided as people lose interest after the elections are over and by this manner the alleged illegality gets legalised. If this type of situation persists, then in no time will people shy away from protesting against arbitrary acts of the political goons and the largest democracy of the world will be in danger. With the sole idea of protecting the democracy, the Commission should act in a very fair, unbiased, neutral and transparent manner.

The Court cannot overlook the fact that instead of the Commission, it is the State who is vociferously opposing the prayer of the petitioners. The acts and actions of the Commission is under question. During the course of election, the Returning Officer is under the direct control and supervision of the Commission. The fact that the State is opposing the petition goes to show that the State administration does not want to face the contest and is interested to win the elections uncontested. Seats where there are no opposing contestants will certainly go uncontested, but seats where there are intending contestants, the

Commission ought to ensure that the seat is filled up only on contest and not uncontested.

After all, no person has a vested right to be elected uncontested. The moment a candidate files nomination he is aware that he has to contest or compete against one or more candidates for a particular seat. The meaning of the word 'election' as appearing in the Black's Law Dictionary, 9th edition is the exercise of a choice; esp., the act of choosing from several possible rights or remedies in a way that precludes the use of other rights or remedies. The same implies that in an election there may be one or more candidates eying for a single seat and one is required to compete the other by obtaining votes from the electorate to win the said seat. The elimination of a candidate ought not to be on frivolous grounds but in a democracy the elimination ought to be on the number of votes obtained by the candidate.

In view of the discussions made hereinabove, the Commission is directed to verify each and every allegation separately and if it appears to the Commission that the names of the intending candidates have been wrongly removed from the list of contesting candidates, then steps shall be taken by the Commission positively by 28th June, 2023 to redress the issue and make sure that the validly nominated candidates are able to contest the election and face the electors. Decision shall be taken by the Commission independently without being swayed by the fact that certificate has already been issued to the candidates who have been elected uncontested.

Writ petition stands disposed of.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)