

10.04.2024

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PG/KS

Ct. No.1

**M.A.T. 91 of 2024
With
I.A. No. CAN 2 of 2024**

**Gopal Seth
Versus
Election Commission of India & Ors.**

Ms. Sonal Sinha
Mr. Avishek Prasad
Ms. Shrabasti Borai.....for the West Bengal State
Election Commission

Mr. Sk. Md. Galib
Ms. Sujata Mukherjee.....for the State

Mr. Anuran Samanta.....for the Election Commission of
India

In Re: I.A. No. CAN 2 of 2024

1. I.A. No. CAN 2 of 2024 is being filed to restore the appeal, which was dismissed for non-prosecution on 19th March, 2024.
2. We have heard the learned advocates for the parties and perused the averments set out in the affidavit and the non-appearance of the learned advocate on the said date appears to be neither willful nor wanton. Therefore I.A. No. CAN 2 of 2024 is allowed and the appeal is restored to the file of the Court.

In Re: M.A.T. 91 of 2024

3. The appellant is stated to be a voter in the State of West Bengal and has challenged the election of the 14th

respondent to the West Bengal Assembly in the 2021 Election.

4. The Election Commission of India has raised a preliminary objection before the learned writ Court with regard to the maintainability of the writ petition. This has also been noted by the learned Single Bench. That apart, we find that the private respondent had previously filed a writ petition.
5. It is seen that one unreturned candidate viz. Alo Rani had filed a writ petition challenging the respondent no. 14's election, which was dismissed on August 13, 2021 and the appeal preferred against the same was also dismissed.
6. After a lapse of more than two years, the present appellant had filed the writ petition.
7. This aspect has also been noted by the learned Single Bench in paragraph 19. Further, we find that the *locus standi* of the appellant has also been considered in the light of the embargo in Section 36 of the Act, which is discussed by the learned Single Bench in paragraph 36 of the impugned order to which we fully agree.
8. That apart, the challenge to an election can only be by way of an election petition and no writ petition is maintainable, more particularly, in the absence of any monstrosity of the situation warranting exercise of jurisdiction under Article 226 of the Constitution of India. Furthermore, the appellant will have no *locus*

standi to file even an election petition and assuming he had *locus standi*, the same would be not maintainable and barred by time.

9. Thus, we find no ground to interfere with in the order passed by the learned Single Bench.
10. Accordingly, appeal stands dismissed.
11. No costs.
12. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)