

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

M.A.T. 1654 of 2023
With
IA CAN 1 of 2023

The Block Development Officer & Anr.
Vs
Surajit Pramanik & Ors.

Before: **The Hon'ble Justice Arijit Banerjee**
&
The Hon'ble Justice Apurba Sinha Ray

For the Appellants : Mr. Amal Kumar Sen, Ld. AGP.,
 Mr. Santanu Kumar Mitra, Adv.
 Mr. Arka Kr. Nag, Adv.
 Mr. Amartya Pal, Adv.

For the Respondent No. 1 : Mr. Sabyasachi Chatterjee, Adv.
and 2 Mr. Subhrajit Saha, Adv.
 Mr. Sayan Banerjee, Adv.
 Mr. Sandipan Das, Adv.
 Mr. Omar Faruk Gazi, Adv.
 Mr. P. Karan, Adv.
 Mr. Akashdeep Mukherjee, Adv.
 Mr. Sandipan Das, Adv.
 Mr. Badrul Karim, Adv.
 Mr. Kiron Sk, Adv.
 Mr. Indranil Munshi, Adv.

For West Bengal State : Ms. Sonal Sinha, Adv.
Election Commission Mr. Tarun Kumar Chatterjee, Adv.
 Mr. Sujit Gupta, Adv.
 Mr. Sayan Datta, Adv.
 Mr. Soumen Chatterjee, Adv.

learned Junior Standing : Mr. Sirsanya Bandopadhyay, Ld. Jr. St.
Counsel Counsel

For Proforma State Respondents : Mr. Ritesh Kumar Ganguly, Adv.

For the State : Mr. Arindam Chattopadhyay, Adv.
Ms. Lipika Chatterjee, Adv.

For orders on : 10.04.2024

Arijit Banerjee, J. :-

1. This appeal is directed against a judgment and order dated August 3, 2023, passed on a writ petition filed by the respondent nos. 1 and 2 herein being WPA 15705 of 2023. The writ petition is still pending before the learned Single Judge.

2. The respondent no. 1 herein aspired to contest the Panchayat General Elections, 2023, in the State of West Bengal. He filed his nomination papers. His nomination was rejected on the alleged ground of mis-match of the electoral data of his proposer as mentioned in the nomination papers.

3. Being aggrieved, the respondent no. 1 (herein after referred to as 'Surajit') approached a learned Judge of this Court by filing the present writ petition. Surajit alleged that his nomination papers had been tampered with by the Panchayat Returning Officer (in short 'PRO').

4. On behalf of the PRO it was submitted that prior to rejection of Surajit's nomination, an opportunity of hearing was granted to him as well to as his proposer. None responded when their names were announced calling then for a hearing. Scrutiny of the nomination papers was carried out strictly following the relevant rules and according to the pre-announced schedule. In course of doing so, if any confusion/defect/mis-match was noticed, the concerned candidate or his representative was duly informed

and consulted and only then a decision was taken. In the concerned Block, out of 586 nominations, only 7 were rejected. It was submitted that had the decisions of rejection been motivated, the figure of rejection would have been much higher.

5. On behalf of Surajit and his proposer it was submitted that they left after filing the nomination papers since they were told that the papers were in order and their further presence was not required. Hence, when their names were called on for hearing, nobody responded. It was submitted that Surajit's nomination papers were tampered with and rejected to enable his rival candidate to be elected un-opposed. The writ petitioners prayed for, inter alia, the following reliefs:-

- (i) A writ in the nature of Mandamus setting aside/quashing/rescinding the cancellation of nomination done by the BDO/PRO and joint BDO/PRO of the Petitioner no. 1.
- (ii) A writ in the nature of Mandamus directing the concerned authority to allow the petitioner no. 1 to contest the Panchayat election in accordance with law.
- (iii) A writ in the nature of mandamus directing the Police Authorities to register FIR in respect of the representation dated 19.06.2023.
- (iv) A writ in the nature of Mandamus directing the BDO/PRO to produce all the relevant documents before this Hon'ble Court.
- (v) A writ in the nature of Certiorari directing the respondents to transmit the entire records of the case to this Hon'ble Court so that conscionable justice may be done.

6. On behalf of the State it was submitted that the election is long over, the result has been declared and at this stage Surajit's only remedy is to file an election petition.

7. The learned Judge passed the order impugned in this appeal, the relevant portions whereof read as follows:-

“.....

The thumb rule for conducting an election is that the same should be absolutely free and fair. Occasion should not arise that either the contestant or the elector alleges any illegality or unfair practice in the election process.

In the present case, allegation has been made against the Block Development Officer, who is responsible for acting as the Panchayat Returning Officer, for tampering the nomination paper of a prospective candidate.

.....

The police appears to have addressed the issue in a different manner altogether. The petitioner never alleged that he was obstructed from filing the nomination paper. The petitioner neither alleged that there was any violence at the time of filing the nomination paper.

.....

The allegation of tampering brought against a responsible officer of the State if left unattended then the general public will lose their faith and confidence upon the public servant. To dispel any doubt from the mind of the petitioners and also the public at large that

the public servant was involved in tampering nomination papers, an inquiry is called for.

The direction passed hereinafter is only for the purpose of ensuring that the public servant acted in all fairness to maintain the purity in the election process for upholding the principle of democracy. The same is in the aid of the election and not contrary thereto.

.....

Accordingly, the Court thinks to fit to direct the Commissioner, Howrah Police Compassionate to inquire the matter under the supervision of Justice Debi Prosad Dey (retired) a former Judge of this Court. The Commission will be entitled to constitute a team for conducting the inquiry and it will be open for the Commission to examine or cause to be examined any person(s) as necessary to address the issue of tampering of nomination paper of the petitioner no. 1.

The enquiry be conducted by four weeks and a report be placed before this Court on the adjourned date.

.....”

8. Being aggrieved the Block Development Officer, Bally, Jagacha Development Block, Howrah, who was the concerned PRO, has come up by way of this appeal.

9. Appearing for the appellant, Mr. Amal Sen, learned Counsel, submitted that the writ petition is not maintainable in view of the Constitutional bar in Article 243-O of the Constitution of India read with

Sections 79, 80 and 93 of the West Bengal Panchayat Elections Act, 2003 and the Rules framed thereunder.

10. On the point of maintainability of the writ petition, learned Advocate relied on the following decisions:-

- (i) ***N.P. Ponnuswami v. The Returning Officer, Namakkal Constituency, reported at AIR 1952 SC 64. Paras 8,9,12,16,18,27.***
- (ii) ***Laxmibai v. Collector, Nanded & Ors., reported at (2020) 12 SCC 186. Para 43***
- (iii) ***West Bengal State Election Commission & Ors. v. Communist Party of India (Marxist) & Ors., reported at (2018) 10 SCR 100 Paras 27, 31.***
- (iv) ***Writ Petition (ST) No. 26 of 2021 (Karmaveer Tulshiram Autade & Ors. v. The State Election Commission, Mumbai & Ors. and Writ Petition (ST) no. 28 of 2021 (Bhagyashree Mahadeo Gaikwad & Ors. v. The State election Commission, decision of Special Bench of Bombay High Court paras 59 and 68.***
- (v) ***Judgment dated 25.07.2023 rendered by a Division Bench of this Court in MAT 1339 of 2023 (Munsi Nazbul Karim v. The W.B. State election Commission & Ors.)***

11. Learned Advocate for the appellant relied on the Supreme Court decision in the case of ***Jaishri Laxmanrao Patil v. Stae of Maharashtra (2021) 8 SCC 1 paras 11, 12*** in support of his submission that if there are

conflicting decisions of the Supreme Court, the decision of the larger Bench would prevail.

12. If there are conflicting decisions of Benches of equal strength, the decision earlier in point of time will prevail unless dealt with and distinguished by the co-equal bench in the subsequent case.

13. Learned Advocate for the respondents/writ petitioners raised an issue regarding maintainability of the appeal under clause 15 of the Letters Patent. He relied on the following decisions:-

(i) ***Shah Babulal Khimji v. Jayaben D. Kania & Anr., Reported in AIR 1981 SC 1786=(1981) 4 SCC 8.***

(ii) ***Shyam Sel & Power Limited & Anr. v. Shyam Steel Industries Limited, reported at (2023) 1 SCC 634.***

(iii) ***Decision of a Division Bench of this Court in the case of District Magistrate of Howrah and Ors. v. Kashmira Begum Khan & Ors. (MAT 1135 of 2023). Judgment dated 29/06/2023.***

(iv) ***Gourlal Mitra v. Sm. Hara Sundari Paul, reported at AIR 1974 Cal 331 para 7.***

(v) ***State of West Bengal v. Biswanath Ghosh, reported at 97 CWN 199 para 16, 17.***

14. In addition to the point of maintainability of the writ petition, learned Advocate for the appellant submitted that the learned Single Judge erred in directing police investigation against the appellant on the basis of the allegations contained in the writ petition and the connected application, without affording an opportunity to the appellant to deal with such

allegations by filing an affidavit. According to learned Advocate, this amounted to breach of the principles of natural justice.

15. On the point of maintainability of the writ petition, learned Advocate for the respondents/writ petitioners submitted that the order of the learned Single Judge was in aid of the election process and not meant to hinder the process in any manner. Reliance was placed on the following decisions:-

(i) ***Union Territory of Ladakh & Ors. v. Jammu & Kashmir National Conference & Anr., reported at (2023) SCC OnLine SC 1140, paras 36,39.***

(ii) ***Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors. Reported at (1978) 1 SCC 405 (paras 34,36 to 39).***

(iii) ***Elections Commission of India v. Ashok Kumar & Ors.,(2000) 8 SCC 216.***

(iv) ***Karmaveer Tulshiram Autade & Ors. v. State Election Commission, Mumbai & Ors., reported at 2012 (2) MHLJ 349 (para 53).***

(v) ***State of Goa & Anr. v. Fouziya Imtiaz Shaikh & Anr., reported at (2021) 8 SCC 401.Para 68, 73 to 75.***

(vi) ***WB State Election Commission & Ors. v. Communist Party of India (Marxist) & Ors., reported at (2018) 18 SCC141.***

16. Learned Counsel submitted that in view of the serious allegation of tampering with nomination papers made against the appellant herein, the learned Judge was right in directing police investigation into the matter.

17. As regards maintainability of the appeal, two fold submission was made by the learned Advocate for the respondents/writ petitioners. Firstly, he submitted that nothing has been decided by the learned Single Judge by passing the order under appeal. No right of any of the parties has been decided finally or otherwise. The order impugned is not a judgment within the meaning of Clause 15 of the Letters Patent. Hence, even going by the principles laid down in the case of **Shah Babulal Khimji (supra)** this appeal is not maintainable.

Secondly, the State has not preferred appeal against the order of the learned Single Judge. The appellant cannot maintain the appeal on his own behalf being an officer of the State. If the State is not aggrieved, there cannot be any legitimate reason for the appellant to be aggrieved.

18. Apparently clearance to file appeal was granted to the appellant by the Legal Remembrancer. However, by that time the State police had issued notices to the concerned parties to appear before *Justice Debi Prasad Dey (Retd.)* the one man Commission constituted by the learned Single Judge. Therefore, the State accepted the order of the learned Judge. An officer of the State like the appellant, has no right to challenge that order. In this Connection, learned Advocate relied on the case of **Lloyd Electric and Engineering Limited v. State of Himachal Pradesh & Ors., reported at (2016) 1 SCC 560** in support of his submission that the Government shall speak only in one voice and it has only one policy. The departments of the Government are to implement the Government policy and not their own policy. What is given by the right hand cannot be taken back by the left hand.

19. As regards the point that the learned Judge erred in directing police investigation without allowing an opportunity to the appellant herein to deal with the allegations in the writ petition and the connected interlocutory application, learned Advocate submitted that there are exceptions to the principle of natural justice and the facts of the present case, exemplify such an exception. The learned Judge committed no error by directing police investigation without calling for affidavits. In this connection, learned Advocate relied on the decision of the Hon'ble Supreme Court in the case of ***State of U.P. v. Sudhir Kumar Singh (2020) SCC OnLine SC 847.***

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

21. First let us take up the point of maintainability of the appeal. Although various judgments have been cited by learned Advocates for the parties, we do not deem it necessary to discuss those judgments at any length. What ***Shah Babulal Khimji v. Jayaben d. Kania & Anr.,(Supra) and Shyam Sel & Power Limited & Anr. v. Shyam Steel Industries Limited, (Supra)*** decide is that if any right of any of the parties to a lis is finally decided by an order of a Single Bench of the High Court, the same would amount to a judgment within the meaning of Clause 15 of the Letters Patent and an intra Court appeal to the Division Bench would lie therefrom. Judgments may be preliminary, interlocutory or final. In ***Shah Babulal Khimji (supra)*** the Hon'ble Supreme Court observed, inter alia, that whenever a trial judge decides a controversy which affects a valuable right of one of the parties, it must be treated to be a judgment within the meaning of the Letters Patent. In the present case, learned Single Judge has finally

decided that an inquiry/investigation is necessary in respect of the allegations made against the PRO. That too, the order was passed on the basis of allegations made against the PRO without affording an opportunity to the PRO to deal with such allegations on affidavit. The appellant's right to be left alone and not to be handed and interrogated by interesting agencies has been affected adversely by the order impugned. In our considered view such an order must be treated as a judgment within the meaning of Clause 15 of the Letters Patent and, therefore, open to challenge in an intra Court appeal. We therefore hold this appeal to be maintainable.

22. Coming to the question of maintainability of the writ petition, ***in N.P. Ponnuswami v. The Returning Officer, Namakkal Constituency (supra)***, the Hon'ble Supreme Court was considering the effect of Article 329(b) of the Constitution of India which provides that notwithstanding anything in the Constitution, "no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature". In that context, the Hon'ble Supreme Court held in paragraphs 8,9,12,16 and 27, as follows:-

"8. The next important question to be considered is what is meant by the words "no election shall be called in question". A reference to any treatise on elections in England will show that an election proceeding in that country is liable to be assailed on very limited grounds, one of them being the improper rejection of a nomination paper. The law with which we are concerned is not materially

different, and we find that in section 100 Representation of the People Act, 1951, one of the grounds for declaring an election to be void is the improper rejection of a nomination paper.

9. 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 view 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.

12. It is now well-recognized that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes J. in *Wolverhampton New Water Works Co. v. Hawkesford* (1859) 6 C.B. (N.S.) 336, at p. 356 in the following passage :-

“There are three classes of cases in which a liability may be established founded upon statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law; there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the

statute gives the right to sue merely, but provides no particular form of remedy; there, the party can only proceed by action at common law. But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it..... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to."

16. 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.

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

23. In ***Laxmibai v. Collector Nanded & Ors., Supra***, at paragraphs 36-38 and 40-43 of the judgment, the Hon’ble Supreme Court observed as follows:-

“36. The High Court in *Gokul Chandanmal Sangvi*, while considering argument that the remedy of an aggrieved person accepting nomination papers of the present appellant is by way of election petition, held that if there were illegalities in the election, it would have effect of vitiating the election. The High Court held as under:

“10.There is a reference in this case about the judgment in *N. P. Punnuswami v. The Returning Officer, Namakkal Constituency*, AIR 1952 SC 64. In Punnuswami's case, the appellant's nomination was rejected and he challenged the same

by a writ of certiorari to quash the order and include his name. The High Court dismissed the petition on the ground that it had no jurisdiction to interfere with the order of the Returning Officer. The Supreme Court held that, the only remedy provided was by election petition to be presented after the election was over and even the High Court had no jurisdiction under Article 226 of the Constitution of India during the intermediate period. However, if there were illegalities in the election, it would have effect of vitiating the election.

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17. We find that, the Returning Officer has taken a stand totally contradictory to the provisions of law while upholding the nomination of Respondent No. 5. Since Respondent No. 5 was disqualified but was allowed to contest the election, the whole election stands vitiated.”

37. In the judgment reported as ***N. P. Punnuswami v. The Returning Officer, Namakkal Constituency (Supra)*** it was held by this Court that the only remedy provided was by election petition to be presented after the election was over and even the High Court had no jurisdiction under Article 226 of the Constitution of India during the intermediate period. It was held that the ground of rejection of nomination paper cannot be urged in any other manner, at any other stage and before any other court. It further held that under the election law, the rejection of a

nomination paper can be used as a ground to call election in question before the Authority prescribed by law in terms of Article 329 of the Constitution of India.

.....

38. The 73rd Constitutional Amendment inserted Part IX in the Constitution of India. Article 243-O of the Constitution of India as inserted provides that no election to any panchayats 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 under the Legislature of the State. Article 243-O of the Constitution of India reads as under:

“243-O. ***Bar to interference by courts in electoral matters.-***

Notwithstanding anything in this Constitution-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243-K, shall not be called in question in any court;

(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.”

40. A Constitution Bench in ***Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors. (1978) 1 SCC 405*** examined ***N.P. Ponnuswami's Case, AIR 1952 SC 64*** and held that Article 329 of the Constitution of India starts with a non

obstante clause that notwithstanding contained in this Constitution, no election to either house shall be called in question except by an election petition. Therefore, Article 226 of the Constitution of India stands pushed out where the dispute takes the form of calling in question an election, except in special situations pointed out but left ***AIR 1952 SC 64 unexplored in Ponnuswami***. It was held that there is a remedy for every wrong done during the election in progress although it is postponed to the post-election stage. The Election Tribunal has powers to give relief to an aggrieved candidate.

41. In respect of elections to a local body, this Court in a judgment reported as *S. T. Muthusami v. K. Natarajan & Ors.*, approved Full Court Judgment of Madhya Pradesh High Court reported as ***Malam Singh v. The Collector***, wherein it was held that there is no constitutional bar to the exercise of writ jurisdiction in respect of election to local bodies such as Municipalities, Panchayat and the like but it is desirable to resolve the election dispute speedily through the machinery of election petitions. In *Malam Singh's* case, the Madhya Pradesh High Court held as under:

“7. The Act, therefore, furnishes a complete remedy for the particular breach complained of. The Legislature prescribed the manner in which and the stage at which the rejection of a nomination paper can be raised as a ground to call the election in question. We think it follows by necessary implication from the

language of Section 357(1) that this ground cannot be urged in 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 Section 357(1) and in setting up an Election Tribunal. The question of improper rejection of a nomination paper has, therefore, to be brought up before the Election Tribunal by means of an election petition after the conclusion of the election.

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17. Lastly, their Lordships stated that the law of election in this country does not contemplate that there should be two attacks on matters connected with election proceedings, in the following passage:— (N.P. Ponnuswami Case, AIR p.68, para 9)

“9..... 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.”

18. There is no constitutional bar to the exercise of writ jurisdiction in respect of elections to Local Bodies such as, Municipalities, Panchayats and the like. However, as it is desirable to resolve election disputes speedily through the machinery of election petitions, the Court in the exercise of its discretion should always decline to invoke its writ jurisdiction in an election dispute, if the alternative remedy of an election petition is available. So, their Lordships of the Supreme Court in **Sangram Singh v. Election Tribunal, Kotah, AIR 1955 SC 425**, stated:— (AIR p. 429, para 14)

“..... though no legislature can impose limitations on these constitutional powers it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be. Therefore, writ petitions should not be lightly entertained in this class of case.”

42. This Court again examined the question in respect of raising a dispute relating to an election of a local body before the High Court by way of a writ petition under Article 226 of the Constitution of India in a judgment reported as **Harnek Singh v. Charanjit Singh & Ors.** It was held as under: (SCC pp. 388-89, paras 15-17)

“15. Prayers (b) and (c) aforementioned, evidently, could not have been granted in favour of the petitioner by the High Court in exercise of its jurisdiction under Article 226 of the Constitution. It is true that the High Court exercises a plenary jurisdiction under Article 226 of the Constitution. Such jurisdiction being

discretionary in nature may not be exercised inter alia keeping in view the fact that an efficacious alternative remedy is available therefor. (See Mrs. Sanjana M. Wig Vs. Hindustan Petro Corporation Ltd., (2005) 8 SCC 242.

16. Article 243-O of the Constitution mandates that all election disputes must be determined only by way of an election petition. This by itself may not per se bar judicial review which is the basic structure of the Constitution, but ordinarily such jurisdiction would not be exercised. There may be some cases where a writ petition would be entertained but in this case we are not concerned with the said question.

17. In C. Subrahmanyam, a three Judge Bench of this Court observed that a writ petition should not be entertained when the main question which fell for decision before the High Court was non-compliance with the provisions of the Act which was one of the grounds for an election petition in terms of Rule 12 framed under the Act.”

43. Section 10A of the 1959 Act and Section 9A of the 1961 Act read with Articles 243-K and 243-O, are pari materia with Article 324 of the Constitution of India. In view of the judgments referred, we find that the remedy of an aggrieved person accepting or rejecting nomination of a candidate is by way of an election petition in view of the bar created under Section 15-A of the 1959 Act. The said Act is a complete code providing machinery for redressal to the grievances pertaining to election as contained in

Section 15 of the 1959 Act. The High Court though exercises extraordinary jurisdiction under Article 226 of the Constitution of India but such jurisdiction is discretionary in nature and may not be exercised in view of the fact that an efficacious alternative remedy is available and more so exercise restraint in terms of Article 243-O of the Constitution of India. Once alternate machinery is provided by the statute, the recourse to writ jurisdiction is not an appropriate remedy. It is a prudent discretion to be exercised by the High Court not to interfere in the election matters, especially after declaration of the results of the elections but relegate the parties to the remedy contemplated by the statute. In view of the above, the writ petition should not have been entertained by the High Court. However, the order of the High Court that the appellant has not furnished the election expenses incurred on the date of election does not warrant any interference.”

24. In ***West Bengal State Election Commission & Ors. v. Communist Party of India (Marxist) & Ors., (Supra)***, a three Judge Bench of the Hon’ble Supreme Court, at paragraphs 27 to 29 of the judgment, observed as follows:-

“27. 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 (supra)***, a three Judge bench, adverted to the decisions of the Constitution Bench in ***N.P Ponnuswami v Returning Officer, Namakkal Constituency, reported at 1952 SC 64*** and in ***Lakshmi Charan Sen v AKM Hassan Uzzaman, reported at (1985) 4 SCC 689***. After referring to Ponnuswamy, it was observed:-

“In NP Ponnuswamy v Returning Officer, Namakkal Constituency a Constitution Bench of this Court had held that having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognised to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over so that the election proceedings may not be unduly retarded or protracted. In conformity with the principle, the scheme of the election law 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.”

The binding principle must be followed.

28. The intervention of this Court has been sought on the basis that free and fair elections are a part of the basic feature of the Constitution. Mr Patwalia urged, the entire electorate vicariously is a party to the contest. Exercise of the jurisdiction by this Court has been sought on the ground that the process of election was polluted, there having occurred large scale obstructions to the filing of nomination papers by candidates. The submission is that as many as 20,159 seats have gone uncontested and an overwhelmingly large majority of them have been bagged by candidates supported by the ruling dispensation in the State of West Bengal. Mr Patwalia urged that there is contemporaneous material to indicate that as a result of obstruction and violence, candidates were prevented from filing their nominations. Mr. Patwalia invoked the observations contained in the judgment of this Court in *Mohinder Singh Gill v The Chief Election Commissioner, New Delhi*⁷, emphasising the need to maintain the purity of the election process.

29. Having given our anxious consideration to the rival submissions which have been urged at the bar, we find that there are several reasons why it would be inappropriate for this Court to exercise its jurisdiction to interdict the declaration of results of the uncontested seats. First and foremost, it is necessary for the Court

to notice that no specific relief was claimed before the High Court in regard to those seats where there was no contest. Neither were there adequate pleadings nor indeed were specific prayers set up before the High Court when its jurisdiction under Article 226 was invoked. The proceedings before the High Court were brought by several political parties, each of whom would have been well aware of the situation on the ground and the need to formulate an adequate basis in fact to invoke the jurisdiction of the High Court. Absent of such a factual foundation, the High Court dealt with the only issue which had been addressed, which was the plea that nominations should be allowed to be filed in the electronic form. No other plea was raised. The second important consideration which must weigh with the Court is that if the above submission is accepted, election results to over 20,000 seats will be set at naught in the absence of the affected parties before the Court. Thirdly, once the election process has commenced, it is trite law that it should not be interdicted mid stage. The electoral process is afforded sanctity in a democracy. That is the reason why in a consistent line of precedent, this Court has insisted upon the discipline of the law being followed so that any challenge to the validity of an election has to be addressed by adopting the remedy of an election petition provided under the governing statute. For this Court to set aside elections to over 20,000 seats would be to prejudge the basic issue as to whether in each of those constituencies, the election stands vitiated by obstruction having

been caused to candidates from filing their nominations. A general assumption of this nature cannot be made. Ultimately whether this is correct would depend upon the evidence adduced in the facts of individual cases where such a grievance has been made in an election petition. The Court has been apprised that approximately 1,700 complaints were filed and about 168 election petitions have been instituted. We are emphatically of the view that any challenge to the election must take place in a manner which is known to law.”

25. In ***Munshi Nazbul Karim v. The W.B. State election Commission & Ors., supra***, a coordinate Bench of this Court reiterated that there is a constitutional bar to the maintainability of any proceeding other than an election petition for adjudicating of an election dispute.

26. In a recent decision in the case of ***Karmaveer Tulshiram Autade & Ors. v. State Election Commission, Mumbai & Ors., reported at 2021(2) Mh.L.J. 349***, a Full Bench of the Bombay High Court, on a reference made by a Division Bench considered the following questions:-

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

(ii) Whether rejection of nomination form would attract the provisions of Article 243-O(b) of the Constitution of India?”

After reviewing almost all the Supreme Court decisions on this point, the Bombay High Court at paragraphs 54,59,60,66 and 68 observed as follows:-

“54. In all the aforesaid decisions, provisions of Part XV of the Constitution together with the provisions of the Representation of the People Act, 1951 were under consideration. The law laid down therein admits of no doubt that a petition under Article 226 of the Constitution would not be maintainable if it calls in question a step in election and such questioning before the Court may have the effect of interrupting, obstructing or protracting the election.

59. It is not in dispute that the strength of the Bench deciding N.P. Ponnuswami (supra) is numerically superior than the strength of the Benches which decided Mohinder Singh Gill (supra) and Ashok Kumar (supra). Not only that, the ratio laid down in N.P. Ponnuswami (supra) has been approved by Benches of larger strength in Hari Vishnu Kamath (supra) and Dr. Narayan Bhaskar Khare (supra). If indeed the subsequent Benches in Mohinder Singh Gill (supra) and Ashok Kumar (supra) were inclined to disagree or dissent from or doubt the view of law taken in N.P. Ponnuswami (supra), all that it could have done was to record the reasons for disagreement/dissent and refer the matter to the Chief Justice for constitution of a larger Bench. Far from adopting such procedure, the law laid down in N.P. Ponnuswami (supra) was approved and as the Court in Ashok Kumar (supra) says, Mohinder Singh Gill (supra) amplified the law in N.P. Ponnuswami

(supra) to specify that in special situations, the writ remedy would be available. More than anything else, one cannot overlook that both Mohinder Singh Gill (supra) and Ashok Kumar (supra) dealt with challenges not akin to the challenge with which N.P. Ponnuswami (supra) was concerned. N.P. Ponnuswami (supra) being a direct authority on the point in respect of challenge mounted to an order of rejection of nomination form, it is such decision which would bind us notwithstanding that a limited area has been carved out by Mohinder Singh Gill (supra) and Ashok Kumar (supra) for entertainment of writ petitions instituted not to interrupt/obstruct/protract the election process in any manner, but intended to sub-serve the progress of election and to facilitate its completion. A distinction has to be drawn towards completing the election as against questioning the election.

60. We repeat, a reading of the decision in Ashok Kumar (supra) reveals that Mohinder Sing Gill (supra) amplified N.P. Ponnuswami (supra) rather than disagreeing therewith or dissenting therefrom or in any manner doubting the same. Insofar as rejection of a nomination form by the Returning Officer and challenge to such decision during the process of election before the High Court under 226 of the Constitution are concerned, where Article 329(b) is attracted, N.P. Ponnuswami (supra) is the decision which holds the field and binds us. The bar of Article 243-O(b), on the same analogy, would spring in as and when the High Court is approached under Article 226 of the Constitution and urged to

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

66. In ***Sudhakar s/o Vitthal Misal (supra)***, three of the questions arising for the decision of the Division Bench were, (i) whether rejection of nomination could be challenged by a writ petition under Article 226; (ii) whether a writ petition would be maintainable due to availability of alternative remedy or because of the specific bar as contained in Article 243-O(b) of the Constitution and section 15-A of the Bombay Village Panchayat Act; and (iii) whether the bar, if any, as created by the above provisions is relaxable as contended on behalf of the petitioner. The Division

Bench held that the petitioner had approached the Court to assert his "right to contest" and not to "call in question the election". On facts of that case, the Division Bench observed that the prayer of the petitioner was not such which could have compelled the authorities to send the voters for second poll. The Division Bench recorded its conviction that the writ petition was not for the purpose of interrupting, obstructing, protracting or stalling the election process and that the relief sought and rendered does not call in question the election but is intended to sub-serve the progress of the election. We find from paragraph 4 of the decision that a submission was advanced before the Division Bench that the decision in N. P. Ponnuswami (supra) had been diluted by the subsequent decision in Mohinder Singh Gill (supra), and it is so interpreted in Ashok Kumar (supra). The discussions in paragraph 7 of the decision would reveal that the submission was accepted and it was held that N.P. Ponnuswami (supra) has been explained and diluted to some extent. For the reasons discussed in the several paragraphs above, we hold that the finding arrived at by the Division Bench that the ban against entertaining writ petitions, as enunciated in N.P. Ponnuswami (supra), has been diluted is based on erroneous and incorrect reading of Mohinder Singh Gill (supra) and Ashok Kumar (supra).

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 subserve the progress of election and/or facilitate its completion in the sense enunciated in *Mohinder Singh Gill* (supra) and explained in *Ashok Kumar* (supra) though it may not always amount to intervention, obstruction or protraction of the election;
- (ii) 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;"

We respectfully agree with and adopt the observations made and conclusion reached by the Hon'ble Full Bench of the Bombay High Court in the above judgment.

27. From the aforesaid, it is absolutely clear that rejection of nomination paper gives rise to an election dispute. Such a dispute can be resolved only by filing an election petition in accordance with the provisions of the West

Bengal Panchayat Elections Act, 2003, read with the Rules framed thereunder. Under Article 243-O of the Constitution, there is a Constitutional bar to the maintainability of any other form of legal proceeding for adjudicating an election dispute. It is time that Judicial Review is part of the basic structure of the Constitution and that power of the High Courts cannot be ousted by any piece of legislation. However, it is a discretionary power, and it will be a sound exercise of discretion to decline to exercise such power always when an election dispute is sought to be made the subject matter of a writ petition.

28. The respondents/writ petitioners relied on several authorities in support of their contention that the order of the learned Single Judge was in aid of the election process and did not call the election process in question in any manner. Learned Counsel relied on the decision in the case of ***Union Territory of Ladakh v. Jammu & Kashmir National Conference & Ors., (Supra)***. The controversy involved in that case was non allocation of a particular symbol to the writ petitioner which was the respondent no. 1 before the Hon'ble Supreme Court. The learned Single Judge had passed an interim order directing the authorities to allot the Plough symbol to the writ petitioner. The Division Bench dismissed the appeal preferred by the ***Union Territory of Ladakh***. The Hon'ble Supreme Court upheld the orders of the High Court and dismissed the appeal preferred by the ***Union Territory of Ladakh***. One of the reasons, and it appears to us to be the primary reason for the Hon'ble Supreme Court to intervene in the matter was, as observed in paragraph 31 of the reported judgment, "having chosen, with eyes open, to not comply with successive orders of the learned Single Judge and the

learned Division Bench, both of which were passed well in time, such as not to stall/delay the notified election schedule, the Appellants cannot be permitted to plead that interference by us at this late juncture should not be forthcoming". Although a reference has been made to the decision in **N. P. Punnuswami v. The Returning Officer, Namakkal Constituency, (Supra)**, it was not discussed as to why the principle of law enunciated in that case did not apply. As we read it, in the very special facts of that case, the decision in the case of **Union Territory of Ladakh** was rendered.

29. Learned Advocate for the respondents/writ petitioners also relied on the decisions of the Hon'ble Supreme Court in the cases of **Mohinder Singh Gill v. Chief Election Commissioner, New Delhi & Ors, (Supra)**, **Elections Commission of India v. Ashok Kumar & Ors., (Supra)**. Those two decisions have been dealt with by the Hon'ble Full Bench of the Bombay High Court in the case of **Karmaveer Tulshiram Autade & Ors. v. State Election Commission, Mumbai & Ors., (supra)**. I completely and respectfully agree with the observations made in that case that the Hon'ble Supreme Court in **Mohinder Singh Gill v. Chief Election Commissioner, New Delhi & Ors, (Supra)** and **Elections Commission of India v. Ashok Kumar & Ors., (Supra)**, rather than in any manner dissenting from or disapproving the view of the Hon'ble Court in Punnuswami, amplified the law as laid down in Punnuswami, to specify that in special situations, the writ remedy would be available. Further both the said cases dealt with challenges not similar to the challenge with which N. P. Punnuswami was concerned. In so far as, challenge to an order of rejection of nomination form is concerned, **N. P. Punnuswami**, is a direct authority and is binding on us.

30. Learned Advocate also relied on the decision of the Hon'ble Supreme Court in the case of ***State of Goa & Anr. v. Fouzia Imtiaz Sheikh & Anr., Supra***. In that case, the appointment of the law secretary as the State Election Commissioner, came to be challenged by way of a writ petition. Whether or not the constitutional bar under Article 243 ZG was attracted fell for determination by the Hon'ble Supreme Court. It was found that in the facts of that case the constitutional bar was not attracted. Further, the directions that were passed by the Hon'ble Supreme Court in that case as recorded in paragraphs 73 and 74 of the judgment were under Article 142 of the Constitution of India as would be evident from paragraph 75 of the reported judgment. To my mind, there is nothing in that judgment which detracts from the principle of law laid down by the five Judges Bench of the Hon'ble Supreme Court in the ***N. P. Punnuswami v. The Returning Officer, Namakkal Constituency*** case.

31. Another case relied upon by learned Advocate for the respondents/ writ petitioners is that of the ***District Magistrate of Howrah and Ors. v. Kashmira Begum Khan & Ors., (MAT 1135 of 2023)***. In that case the decision was rendered by a Coordinate Bench on June 26, 2023. The two questions that were involved in that case were, firstly, what are the circumstances in which a CBI enquiry may be justifiably directed by the Court? Secondly, whether or not the facts of that case, depicted one of such circumstances? The learned Single Judge had directed CBI enquiry into allegations of tampering with nomination papers. The Division Bench modified such order by directing the State Police to conduct requisite investigation under the supervision of a learned retired Judge of this Court.

The question as regards maintainability of the writ petition was not in issue in that case. The only issue was whether or not the learned Single Judge was justified in directing the CBI to conduct the enquiry instead of the State police. Hence, that decision cannot be said to be to the effect that a writ petition challenging alleged improper rejection of nomination papers, is maintainable.

32. Learned Counsel for the respondents/writ petitioners relied on the decision in the case of ***State of U.P. v. Sudhir Kumar Singh, (supra)***, in support of his contention that in the present case, it was not necessary for the learned Single Judge to observe the principles of natural justice by affording an opportunity of filing affidavit to the PRO for controverting the allegations made against him in the writ petition. With respect, I do not find any observation in the said decision of the Hon'ble Supreme Court which would support the contention of the writ petitioner that in the present factual matrix, it was not necessary for the learned Judge to allow the PRO to deal with the allegations made against him in the writ petition before passing an order of enquiry against him on the basis of such allegations.

33. In so far as ***Lloyd Electric and Engineering Limited v. State of Himachal Pradesh & Ors., (Supra)***, is concerned, the ratio of the decision in that case does not apply to the facts of the present case. In this case, the Block Development Officer who was the concerned PRO has come up being aggrieved by the learned Judge's direction of holding enquiry against him. He is not acting against any Government Policy, which he cannot, being an employee of the Government. However, a judicial order, even if not challenged by the State, may well be open to challenge at the instance of an

officer of the State if such order infringes some personal right of that officer or otherwise causes prejudice to him.

34. In view of the aforesaid, this appeal must succeed. The learned Judge ought not to have entertained the writ petition. The order under appeal is set aside. The writ petitioners will be at liberty to pursue the statutory remedy that is available to them, in accordance with law, if they are still entitled to do so in law.

35. M.A.T. 1654 of 2023 With IA CAN 1 of 2023 is accordingly disposed of. There will be no order as to costs.

36. Urgent certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(ARIJIT BANERJEE, J.)

I agree.

(APURBA SINHA RAY, J.)