

04.11.2025
Court No.13
Item No.1
AP

MAT 1903 of 2025

In

CAN 1 of 2025

Malati Modak and Ors.

Vs.

The State of West Bengal and Ors.

Mr. Suman Dey

... For the Appellants.

Mr. Swapan Kumar Dutta, Ld. G.P.

Mr. Dipankar Dasgupta

... For the State.

Mr. Srijan Nayak

Mrs. Rituparna Maitra

... For the Cooperative Election Commission.

Mr. Ankit Sureka

Mr. Biplab Das

Mr. Partha Sarathi Pal

... For the Respondent Nos.2, 6, 7 & 9

1. The server copy of the order dated 3rd November, 2025 has been placed before this Court for consideration. Leave was obtained yesterday and the matter was placed for urgent consideration today.

2. The urgency is that the election to the Jyoti Mahila Multipurpose Cooperative Society Limited, a registered society within the meaning of the Act of 2006, is scheduled today as per the schedule declared by the A.R.O..

3. The appellants before this Court, who are writ petitioners before the Single Bench, on 13th October, 2025 had addressed a communication to the B.D.O.,

Memari-1 with copies marked to the A.R.C.S., Purbo Burdwan and the D.R.D.C., Purbo Burdwan alleging likelihood of widespread violence and malpractices in the election process.

4. As anticipated by the appellants, on the 14th October, 2025 the appellants were prevented from receiving blank nomination papers to enable them to file the same on the next day. On 14th and 15th October, 2025 the appellants and their associates were heckled, manhandled and misbehaved with by several of persons some of whom were substantially inebriated. Filthy language was used against the appellants, who are ladies and representatives of self help groups. Each of the self help groups is required to nominate a member to participate in the election of the society.

5. The appellants, thereafter, moved before the Single Bench by way of a writ petition filed on 31st October, 2025. This was done with a view to bring to the notice of the Court the malpractices in the aforesaid elections.

6. The Single Bench did not believe the appellants and was of the view that they have not been able to demonstrate the reasons for non-receipt of nomination papers and consequently inability to file their nominations.

7. The Single Bench in paragraphs 6 and 7 of the impugned order dated 3rd November, 2025 while refusing

to stall the election process permitted the appellants to cast their votes in the election process.

8. Mr. Srijan Nayak, learned counsel for the Cooperative Election Commission submits that while it is true that three Upa-samities have not been able to nominate members, the balance 17 have been able to nominate members who have filed nominations and the election process as of now (11:04 am) the balance 17 persons are deemed to be declared uncontested.

9. This Court finds that without their representatives being present and participating in the election process who the petitioners would be compelled to vote for.

10. In any event, inability to file nomination papers due to obstruction from vested interests is a writ large from the communications dated 13.12.2024, 13.01.2025, 10.01.2025, 13.10.2025, 14.10.2025, 15.10.2025 and 29.10.2025 addressed to the writ petition and the pleadings in the appeal.

11. Mr. Swapan Kumar Dutta, learned Senior Counsel appearing for the State submits that two complaints were received on 14th October, 2025 which were diarized and enquiry was conducted.

12. This Court, however, notes that despite cognizable offences being reflected in the complaints no FIR has been registered by the police. The report dated 3rd

November, 2025 issued by the Officer-in-Charge, Memari Police Station is taken on record.

13. It is true that elections process is not generally interfered with and any dispute with regard to the election is required to be taken up thereafter before the Cooperative Election Commission. This Court is of the view that the instant election is more of a sham.

14. Inability to obtain nomination papers and the violence that ensued thereafter cannot be easily disbelieved. The election process being vitiated by failure to adhere to the stages of elections, particularly prevention from obtaining nomination papers, must be deemed to have been ex facie vitiated.

15. The decisions of the honourable Supreme Court, which have deprecated the interference of the High Court under Article 226 of the Constitution of India in respect of an ongoing election, have a distinct feature in them. The Supreme Court in **Nanhoo Mal v. Hira Mal, (1976) reported in 3 SCC 211 336** has held that there may be extraordinary circumstances in which the High Court under Article 226 can interfere in an ongoing election process. The distinct feature therefore is that the interference of the High Court is not absolutely barred. Para no. 5 of **Nanhoo Mal decision (supra)** may be referred to

‘5.....Whether there can be any extraordinary circumstances in which the High Courts could exercise

their power under Article 226 in relation to elections it is not now necessary to consider.....’

16. In the present case, the appellants have not alleged improper rejection of the nomination paper. Such an allegation would have been dealt with under the statute. Instead, the allegation is that violence has prevented appellants from filing the nomination. The rule of law, therefore, has been violated by mob violence. Democracy, therefore, has been taken over by mobocracy. The concerned authority of the State, therefore, has failed to uphold Article 14 of the Constitution of India, in that it has failed to extend equal protection of law to the appellants. This Court therefore has to intervene in the election process to ensure the integrity of the election and Democracy.

17. The Supreme Court in **Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra, reported in (2001) 8 SCC 509** has held that when the challenge is not based on a ground found under the election statute in question, the High Court may interfere under Article 226, provided an extraordinary case has been made out.

18. Para no. 11 of **Sant Sadguru** decision (**supra**) is set out below:-

“11. In the aforesaid case, this Court held **that a writ petition under Article 226 of the Constitution should not be rejected on account of an alternative remedy by way of election petition where, firstly, the challenge is not a ground under the Act or the Rules for filing an election petition** and, secondly, where the validity of a rule is challenged being ultra vires and invalid.”

19. The Honourable Supreme Court in **Kuldeep Kumar v. U.T. Chandigarh and Other**, reported in **2024 INSC 129**, cancelled the election on the grounds of malpractice in the counting of votes, and has declared the real winner of the election. It is true that the Court in that case has exercised its extreme extraordinary powers under Article 142 of the Constitution of India.

20. The High Court, however, under Article 226, cannot shut its eyes when the citizens come to it seeking complete justice. The High Court, rather, every Court, is required to do complete justice in the facts of each case. The significance of local body election has been adverted by the Supreme Court in **Kuldeep Kumar decision (supra)**. Para no. 36 of **Kuldeep Kumar decision (supra)** is set out below:-

“36. This Court has consistently held that free and fair elections are a part of the basic structure of the Constitution. **Elections at the local participatory level act as a microcosm of the larger democratic structure in the country. Local governments, such as municipal corporations, engage with issues that affect citizens’ daily lives and act as a primary point of contact with representative democracy. The process of citizens electing councillors, who in turn, elect the Mayor, serves as a channel for ordinary citizens to ventilate their grievances through their representatives – both directly and indirectly elected. Ensuring a free and fair electoral process throughout this process, therefore, is imperative to maintain the legitimacy of and trust in representative democracy**”

21. To give real-time effect to the observations of the Honourable Supreme Court under para no. 36 of **Kuldeep Kumar decision (supra)**, we interfere in the

present election process, which is marred by malpractices and violence taking over the rule of law.

22. In view of the above, this Court directs the election process fixed today to Jyoti Mahila Multipurpose Cooperative Society Limited to be set aside.

23. The appellants and/or any other persons shall be entitled to receive nomination papers from the A.R.O. For the aforesaid purpose sufficient amount of police personnel particularly lady police officers shall be deployed by the Memari P.S.. The Superintendent of Police, Purba Bardhaman is directed to ensure strict compliance of the aforesaid directions.

24. Nomination papers shall be made available to all interested candidates including those other than the appellants on 12th November, 2025 at 11 am in the office of the society. The date for filling nominations is fixed on 13th November, 2025. Rest of the schedule for elections may be rescheduled by the ARO/Election Commission/Competent Authority. The B.D.O., Memari-I, shall provide a place for holding of the election.

25. This order is passed in a peculiar circumstance of the case and may not be cited as a precedent.

26. Since respondents are not being called upon to file affidavits given the urgency in the matter and the strong prima facie case made out, the allegations contains in

the appeal shall not be deemed to have been admitted by them.

27. With the aforesaid observations, MAT 1903 of 2025 is disposed of. Consequently, connected pending application being CAN 1 of 2025 is also disposed of.

28. After order is passed, Mr. Srijan Nayak prays for stay of the operation of the aforesaid orders, the same is considered and rejected.

29. There shall be no order as to costs.

30. All parties are to act on a server copy of this order duly downloaded from the official website of this court.

(Rajasekhar Mantha, J.)

(Rai Chattopadhyay, J.)