

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble The Chief Justice Sujoy Paul

And

The Hon'ble Justice Partha Sarathi Sen

WPA(P) 11 of 2026

Samik Bhattacharya
Vs.
Union of India &Ors.

For the Petitioner :

Mr. Indrajit Dasgupta, Adv.
Mr. Kabir Shankar Bose, Adv.
Mr. Rahul Agarwala, Adv.
Mr. Madhu Jana, Adv.
Mr. Gourab Maity, Adv.
Mr. Wahed Reza, Adv.
Mr. Simran Sureka, Adv.

For the State :

Mr. Kishore Dutta, Ld. A.G.
Mr. Jahar Lal De, Ld. A.G.P.
Ms. Sumita Shaw, Adv.
Mr. Kaustav Bhattacharya, Adv.
Mr. Soumen Chatterjee, Adv.

For the Respondent No.1:
/U.O.I.

Mr. Ashok Kr. Chakraborty, Ld. A.S.G.I.
Mr. Kumar Jyoti Tewari, Sr. Adv.
Ms. Amrita Pandey, Adv.
Mr. A. Sinha, Adv.
Mr. Aniruddha Sinha, Adv.
Mr. T. P. Acharya, Adv.
Mr. Dinesh Bachar, Adv.

For the Election Commission: Mr. S. N. Mukherjee, Sr. Adv.
of India Mr. Soumya Majumder, Sr. Adv.
Ms. Anamika Pandey, Adv.
Mr. Ghanashyam Pandey, Adv.
Mr. Surjaneil Das, Adv.
Mr. N. Chowdhury, Adv.

For the Respondent No.5: Mr. Arnab Chakraborty, Adv.
Ms. Pragya Bhowmick, Adv.
Ms. Rimi Mondal, Adv.

Hearing concluded on: 25.03.2026

Judgment on : 25.03.2026

PER, SUJOY PAUL, C.J.:

1. This public interest litigation (PIL) is filed seeking enforcement of Assured Minimum Facilities (AMF) and Extended Minimum Facilities (EMF) as per order dated 10th June, 2023 Annexure 'P-1' issued by the Election Commission of India (for short, 'ECI').
2. The said facilities are broadly regarding (i) polling station at ground floor; (ii) ramp; (iii) drinking water; (iv) adequate furniture; (v) proper lighting/electricity arrangements; (vi) proper signage; (vii) toilets (viii) Shade in polling station (ix) creche for children; (x) display of voter facilitation posters; (xi) voter assistance booths and certain other facilities like medical kit, volunteers, queue management etc.

- 3.**At the outset, parties fairly submitted that in order to provide these facilities, initially the respondent no. 5 was entrusted to complete this work but respondent no. 5 by a written communication has already expressed its inability to complete the same. Thus, the PIL as against the respondent no. 5 has lost significance.
- 4.**The main prayer of petitioner is to appoint a fit and proper agency to undertake such task of ensuring the availability of AMF/EMF facility in all polling booths.
- 5.**During the course of hearing, learned counsel for the parties, fairly admitted that so far ECI's letter dated 10th June, 2023 Annexure 'P-1' is concerned, facilities mentioned therein need to be provided to the voters. Thus, there is no quarrel between the parties regarding necessity to provide AMF/EMF facility to the voters in forthcoming assembly election of West Bengal Legislative Assembly.
- 6.**After respondent no. 5 expressed its inability to undertake the said work, the State Government appointed the Education Department as its Nodal Agency to undertake the work about AMF/EMF facility. The stand of the State Government is that

School Education Department is declared as Nodal Department for undertaking such exercise. The decision was taken because majority of polling booths are in the schools and, therefore, upgradation of facility will ultimately benefit the said schools even in post election scenario. It was pointed out that initially a fund of Rs. 50 crore was released to District Magistrates and District Election Officers (DEOs) as advance to take up this work which was followed by released of another 118.6552 crores. It is also pointed out that by the communication dated 3rd November, 2023 Annexure 'R-3' filed with reply of State shows that in the general elections to house of people in 2024, the Education Department for the same purpose was the nodal department in State of West Bengal.

7. The Chief Electoral Officer (CEO), West Bengal by note-sheet dated 18th February, 2026 requested the State Government to provide concurrence to the proposal for engagement of NBCC (India) Ltd. for execution of AMF/EMF work. The State Government in response sent communication dated 19th February, 2023 Annexure 'R-3' and informed that the said work has already been entrusted to the School Education Department.

School Education Department has proper expertise to complete the said work. The CEO, in turn, sent communication dated 5th March, 2026 and informed that upon review of certain districts conducted by Senior Deputy Election Commissioner, certain shortcomings were found in relation to AMF/EMF in North 24-Parganas. By highlighting the shortcomings in the communication dated 5th March, 2026, the State was directed to do the needful on priority basis. The stand of learned Advocate General is that the judgment of Supreme Court right from ***Mohinder Singh Gill & Anr. vs. Chief Election Commissioner, New Delhi & Ors.*** reported in **(1978) 1 SCC 405** are on the point that no doubt that ECI is entrusted with the task of conducting free and fair election, however, it does not have any power to breach any existing law. The reliance is placed on Section 20A of Representation of People Act, 1951. He placed reliance on ***A.C. Jose vs. Sivan Pillai & Ors.*** reported in **(1984) 2 SCC 656** and ***Union of India vs. Association For Democratic Reforms & Anr.*** reported in **(2002) 5 SCC 294** to bolster the submission referred hereinabove.

8. Learned counsel for the ECI placed reliance on the Constitution Bench judgment of the Supreme Court in ***Mohinder Singh Gill (supra)*** and urged that the ECI has plenary powers of superintendence, direction and control which must be read in broadest term. For the same purpose, reliance is placed on ***Kanhiya Lal Omar vs. R.K. Trivedi & Ors.*** reported in **(1985) 4 SCC 628** and ***T.N. Seshan , Chief Election Commissioner of India vs. Union of India & Ors.*** reported in **(1995) 4 SCC 611**. In the light of these judgments, it is submitted that no fault can be found in the direction of the ECI to appoint NBCC to undertake the said work.

9. In rejoinder submission, learned Advocate General submitted that it is noteworthy that ECI had sent the note-sheet for appointment of NBCC on 18.02.2026. Thereafter, the State informed the Election Commission that funds have been allotted and nodal department has been nominated.

10. Mr. Ashok Chakraborty, learned ASG supported the ECI and urged that the election in a democracy is its basic structure. When Respondent No.5 was appointed to undertake the EMF/AMF work, the State Government did not take any

objection. Thus, State is 'estopped' from taking any objection at a latter point of time. This objection relates to appointment of NBCC as an agency to complete the said work. Putting it differently, learned ASG submits that merely because State had appointed its education department as Nodal Agency, it cannot decline the request of ECI to appoint NBCC for the simple reason that State did not take any objection when Respondent No.5 was appointed for the said purpose.

- 11.** During the course of hearing, he placed reliance on Sections 20 and 20A of Representation of People Act, 1951 to bolster the submission that Article 324 of the Constitution and aforesaid statutory provisions of RP Act equips the ECI to issue necessary direction for appointment of Nodal Agency to ensure availability of said facilities during the voting. In support of the submissions he placed reliance on **(2002) 8 SCC 237** in the matter of **Special Reference No.1 of 2022 (Gujarat Assembly Election Matter)**.

Findings:

- 12.**As noticed above, the present PIL has been filed in order to ensure that the ECI's letter dated 10th June, 2023 (Annexure P1)

is translated into reality for the upcoming election. The concern of the petitioner of this PIL must be in relation to availability of Assured Minimum Facilities (AMF) and Extended Minimum Facilities (EMF). Which agency should undertake, carry out and complete this work is none of the concern of the petitioner. Admittedly, there is no such prayer in the PIL.

- 13.** As noticed above, the State Government and Election Commission of India have taken diametrically opposite stand as to which agency should complete the said work.
- 14.** Learned Advocate General has taken pains to contend that when an agency i.e. the respondent no.5 appointed by the Election Commission of India expressed its inability to undertake the work, a nodal department, namely, the School Education Department has been appointed. The funds have been released work has been started and this practice is not unknown to the election process in the State of West Bengal. In previous parliamentary election also, the School Education Department was appointed as Nodal Department, which had undertaken similar exercise. He further submitted that this time when such nodal agency was appointed, Election Commission of

India had undertaken a review in district North 24 Parganas and pointed out certain deficiencies about the said facilities and in the same letter dated 05.03.2026 requested the State Government to cure the shortcomings on top most priority. Thus, it is canvassed that appointment of nodal agency by State in election process is not a practice unknown to Election Commission of India and State Government undertakes to ensure that if there exists any deficiency in facilities, it will be cured during preparation of next election.

- 15.** Sounding a *contra*-note to the stand of the State Government, the Election Commission of India's stand is that under Article 324 of the Constitution of India, full powers to conduct free and fair election are in the hands of the Election Commission of India. This power not only includes the aspect of voting and preparation in this regard, it covers the entire election process including the administrative work to be undertaken to ensure smooth conduct of elections.
- 16.** Thus, it is clear that the Election Commission of India and the State are at loggerhead as to which agency should complete the work. In this PIL, the only concern of the petitioner is to ensure

that Assured Minimum Facilities and Extended Minimum Facilities are made available at the ground level. The petitioner has no locus to ask that a particular agency i.e. as desired by Election Commission of India or the State Government should undertake the said exercise. Accordingly, in this PIL we are not inclined to decide whether the agency nominated by the Election Commission of India or the State Government is best suited to complete the said exercise. In other words, this is not the *lis* before us. Thus, we are not inclined to deal with the question as to which agency, namely, NBCC or the Nodal Agency appointed by the State Government, should undertake the said exercise. Hence we find no reason to deal with the judgements cited by the parties.

- 17.** In our view, the Election Commission of India and State should work in tandem and leave no stone unturned to ensure availability of said facilities during upcoming assembly elections. We hope and trust that ECI and State will ensure that the AMF/EMF facilities are made available to the citizen in the next election.

18. With the aforesaid observations, this petition is **disposed of**.

I Agree.

(Sujoy Paul, CJ.)

(Partha Sarathi Sen, J.)

