

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble The Chief Justice Sujoy Paul

And

The Hon'ble Justice Partha Sarathi Sen

WPA (P) 141 of 2026

Arka Kumar Nag

vs.

Election Commission of India and others

For the Petitioner : Mr. Kalyan Bandopadhyay, Sr. Adv.
Mr. Rahul Kumar Singh, Adv.
Ms. Shrobana Sengupta, Adv.
Mr. Kaushik Bandyopadhyay, Adv.

For the ECI : Mr. DamaSeshadri Naidu, Sr. Adv.
Mr. Soumya Mazumdar, Sr. Adv.
Ms. Anamika Pandey
Mr. Abhinav Thakur
Mr. Surjaneel Das
Mr. Kumar Utsav
Mr. Ghanshyam Pandey

For the State : Mr. Kishore Datta, AG
Mr. Swapan Banerjee
Ms. Sumita Shaw
Mr. Diptendu Narayan Banerjee
Mr. Soumen Chatterjee

Hearing concluded on : 27.03.2026

Judgment on : 31.03.2026

PER, SUJOY PAUL, CJ.:

1. In this Public Interest Litigation (PIL), the petitioner an advocate by profession has prayed that impugned transfer orders issued by the ECI without assigning justifiable reasons and attaching a stigma be set aside and quashed.
2. Admittedly, the petitioner is a counsel representing the State Government before this Court.

Contention of Petitioner:

3. It is contended that on 15.03.2026 at 3 p.m. the Election Commission of India (ECI) issued a notification declaring elections in five States of the country. After issuing the notification, the Chief Secretary, Home Secretary, Director General of Police (DGP), certain District Magistrates and Superintendents of Police were transferred. The Principal Secretary of certain departments who were taking care of development activities of the State were also transferred. One officer Shri Jagdish Prasad was transferred as observer

to Tamil Nadu. The party in power in State of West Bengal has sent an impeachment notice for removal of respondent no. 9. The mass transfer of officers who were working for the welfare of people in the State will have cascading effect on the functioning of the State.

4. Shri Kalyan Bandopadhyay, learned Senior Counsel appearing for the petitioner submits that the above action has an impact as if emergency is imposed by invoking Article 356 of the Constitution. Learned counsel for the petitioner urged that under Article 324 of the Constitution, the ECI certainly has power to make necessary arrangement for conduct of free, fair and smooth election. However, the said Article does not give any unfettered power to the ECI. The ECI cannot act in an arbitrary or *mala fide* manner. The ECI, a constitutional body needs to act in tune with rule of law. The impugned action of transferring officers in sizable numbers disturbs the federal structure and amounts to interference in the activity of an elected Government. The ECI has only supervisory power and cannot act in the manner it has acted presently. By placing reliance on the

communication dated 15.03.2026 Annexure 'P3', it is contended that while posting the officers elsewhere, it was directed that they be not engaged in election duties. However, Shri Jagdish Prasad an officer of State of West Bengal has been transferred as 'observer' to the State of Tamil Nadu relating to the election to be held in that State. Thus, stand of the ECI is mutually inconsistent and cannot be appreciated.

5. The next submission of learned Senior Counsel is that during SIR process, the ECI did not invoke Article 324 of the Constitution and did not transfer the officers. When SIR process was going smoothly, there was no occasion for picking the officers for transfer/shifting after election process began. 63 police officers and 16 IAS officers have been transferred. Thereafter, a sizable number of subordinate officers have been transferred by the ECI. This fact has been brought by filing supplementary affidavits. 16 officers are sent out of West Bengal. The Chief Secretary represents the State Government. During the hearing of a pending matter ***WP (C) No. 1089 of 2025 (Mostari Banu vs. The Election***

Commission of India & Ors.) before the Apex Court, the Chief Secretary represented the State before the Supreme Court. In order to deprive the State from the benefit of service of experienced officers, the officers have been transferred in large numbers which is bad in law and *mala fide* exercise of power.

6. Shri Bandopadhyay vehemently contended that in view of Constitution Bench judgment of Supreme Court in ***Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner, New Delhi & Ors.***, reported in **(1978) 1 SCC 405**, the ECI is required to act in consonance with the laws made by the parliament. Only when there is a vacuum, it can exercise all supervision and control. By placing reliance on Section 13CC of Representation of People Act 1950 (RP Act, 1950) and Section 20A of Representation of People Act, 1951 (RP Act, 1951) it is canvassed that the transfer/deputation of officers can take place only inconsonance with the statutory provisions and ECI does not have any unbridled power.
7. Section 20B of RP Act of 1951 is relied upon and it is contended that 'observer' has to be from the same State.

Much emphasis is laid on the word 'Government' used in Section 20B. By taking this court to the dictionary meaning of the 'Government' from Black's Law Dictionary and Article 20 of the Constitution, he submits that the word 'Government' means the concern State which in the present case is State of West Bengal. Article 367 of Constitution and Section 3 (23) of General Clauses Act were relied upon to submit that the word 'Government' used in Section 20B must be read as State Government i.e. Government of West Bengal in the present case.

8. Shri Bandopadhyay submits that the ECI may place reliance on certain 'hand books' and 'manuals' issued by it but no such guideline can prevail over the constitution and the statutory provisions ingrained in Representation of People Act, 1950 and 1951.
9. Heavy reliance is placed on **(2023) 9 SCC 1 (Government of NCT of Delhi vs. Union of India)** to bolster the submission that without civil servants, the existence of Government itself is impossible. Government's development plans cannot take place in absence of an efficient bureaucracy. The constituent

assembly debate mentioned in para 111 of this judgment were referred to show that civil service officers are part of the 'triple chain'. The returning officers can be deputed as per Section 21 of the Representation of People Act, 1951 in consultation with the State Government. This has been the practice till previous election but ECI in this election has given complete go by to this established practice. He relied upon ***A.C. Jose v. Sivan Pillai &Ors., (1984) 2 SCC 656; State of West Bengal &Ors. v. Dipak Mishra, (2022) 13 SCC 250; All India Matua Mahasangha & Ors. v. State of West Bengal &Ors., 2025 SCC OnLine Cal 7213; Dipak Mishra v. State of West Bengal & Ors., 2025 SCC OnLine Cal 1281; Janak N. Vyas v. State of Maharashtra with Girish Dattatraya Mahajan v. State of Maharashtra, PIL(L) No.5741 of 2022 with PIL(L) No.6549 of 2022.***

10. Shri Kalyan Bandopadhyay, learned senior counsel, placed reliance on the expression 'designated for the time being by the State Government' used in section 28A of R.P. Act of 1951. He also placed reliance on sections 21, 22 and 26 to show the

difference in the language employed therein. To elaborate, it is submitted that in section 21, the words 'consultation with Government' are there whereas in Section 22 the said words are absent. Thus, the legislative intent is clear as to when the 'consultation' is must.

11. By placing reliance on Election Commission's Manuals on which Shri Naidu, learned senior counsel, placed reliance, the next submission is that clause-1.2.1 shows that Director General of Police needs to initiate certain works six months before the time of tentative elections. Thus, D.G. needs to remain there at the Headquarter and gains experience. New D.G. cannot fulfil this requirement. It is further submitted that for Inter-State co-ordination, Chief Secretary is responsible under Clause-11.3 of the Manual. By placing reliance on ***B.S. Minhas vs. Indian Statistical Institute and others*** reported in ***1983(4) SCC 582***, ***M.C. Mehta vs. Union of India*** reported in ***2007(1) SCC 110*** and Constitution Bench judgment in ***Lalita Kumari vs. Government of Uttar Pradesh and Others*** reported in ***2014(2) SCC 1***, it is urged that the Manuals are executive

instructions but at the same time, these guidelines are binding on Election Commission. ***M/s. Kranti Associates Pvt. Ltd. and Another vs. Sh. Masood Ahmed Khan and Others*** reported in **2010 (9) SCC 496** is referred to highlight that the ECI was obliged to assign reasons for such transfer.

12. Shri Bandopadhyay, learned senior counsel, tried to distinguish the judgments on which Shri Naidu, learned senior counsel, placed reliance. It is submitted that in the judgments of ***Nutan Thakur (PIL) and Election Commission of India & Ors.*** reported in **2014 SCC OnLine All 15680** and ***Lalji Shukla &Anr. Vs. Election Commission of India &Ors.*** reported in **2002 SCC OnLine All 39** the violation was of All India Services Rules and not of any provision of the R.P. Act of 1950 or 1951.

13. To sum up, learned senior counsel for petitioner submits that under Article 324, the ECI can exercise such powers which are not otherwise therein other laws including the R.P. Acts of 1950 and 1951. In the instant case, the transfer orders of officers are issued in violation of section 28A of R.P.

Act, 1951 and for this reason alone, the orders are bad in law.

14. Lastly, learned senior counsel for petitioner urged that the *locus standi* in a case of this nature is not of much importance because matter involves a public interest.
15. Shri Bandyopadhyay, learned Senior Counsel appearing for the petitioner relied on Article 324(6) and urged that the Governor can provide “such staff” to the E.C.I. provided their exists the recommendation of Cabinet as required under Article 163 of the Constitution.

Contention of Advocate General:

16. Shri Kishore Datta, learned Advocate General at the outset submits that he is supporting the petitioner. By criticizing the impugned action of ECI, he submits that the attempt of ECI is to ‘Numb’ the Government for the benefit of the present dispensation in the Central Government. Election jurisprudence is governed by part-XV, Article 324 of the Constitution and by statutory provision of Representation of People Act, 1950 and 1951. Article 324 gives power to the

ECI for preparation of Electoral Role and for conduct of elections. However, in view of order of Supreme Court in ***Mostari Banu (supra)***, presently, the task of adjudication of objections regarding inclusion/exclusion in the voter list is entrusted to the judicial officers and appellate tribunals are also constituted pursuant to the order of Supreme Court.

17. Article 324 (6) is referred to submit that the words used therein are 'such staff'. This does not mean that the entire staff of a State comes within the control and supervision of ECI during election. Article 327 of Constitution and Entry 72 of list 1 is also referred to bolster the submission that the ECI does not have power to do the things as it likes. Instead, ECI is controlled by Sections 13A, 13AA and 13B of Representation of People Act, 1950 in relation to certain category of officers. Section 28A of Representation of People Act, 1950 makes it clear that only 'such officers' involved in election duties as proposed by State Government can be sent on deputation.

18. Shri Kishore Datta, learned Advocate General also placed reliance on the Constitution Bench judgment of Supreme

Court in ***Mohinder Singh Gill (supra)*** and ***A.C. Jose vs. Sivan Pillai & Ors.*** reported in ***(1984) 2 SCC 656.***

19. Two Single Bench Judgments of Kerala High Court ***T.V. Madhusoodanan v. The Chief Election Commissioner & Anr., 1994 SCC OnLine Ker 22*** and ***T.V. Madhusoodanan v. Chief Election Commission & Anr., 1994 SCC Online Ker 579*** were relied upon to submit that transfer of officers is bad in law and impermissible. The said judgments of Kerala High Court were recently referred by Jharkhand High Court in ***Manjunath Bhajantri vs. Election Commission of India & Ors.***, reported in ***2024 SCC OnLine Jhar 2378.***
20. By placing reliance on Constitution Bench judgment reported in ***(1974) 4 SCC 1 (E.P. Royappa v. State of Tamil Nadu & Anr.)*** it is urged that the post of Chief Secretary is very important post and the Chief Secretary could not have been shifted from the said post. ECI has started functioning as political opponent which action deserves to be deprecated. He also placed reliance on ***PonParamaguru, Director General of Police (Retd.), No.12, Balaji Avenue, Thirumalai Road, T. Nagar, Chennai-600017 & Ors. v.***

State of Tamil Nadu, rep. by its Chief Secretary, Fort St. George, Chennai-600009 & Ors., 2006 (2) CTC 241.

- 21.** Learned Advocate General placed a short note of submission and raised almost same point which was lastly raised by Shri Bandyopadhyay. By placing reliance on **1997(2) SCC 745 (Bhuri Nath & Ors. Etc. The Sewa Committee vs. The State of Jammu & Kashmir & Ors.)**. It is urged that the staff can be provided to the E.C.I. by the Governor upon recommendation of the State Cabinet.
- 22.** Heavy reliance is placed on the Constitution Bench (7 Judges) judgment of Supreme Court in the case of **S. P. Gupta vs. Union of India** reported in **AIR 1982 SC 149**. It is submitted that since the present matter involves a public interest, anybody from the public can raise the issue involved in the said matter. The 'locus' is not of much significance.

Contention of ECI:

- 23.** Shri D.S. Naidu, learned Senior Counsel representing the ECI placed reliance on Constituent Assembly debates and

urged that our forefathers conceptualized an independent impartial constitutional body which will undertake the exercise of conducting free, fair and smooth elections. The ECI is a neutral constitutional body and all allegations made against the ECI are without any basis.

- 24.** By referring to the credential of the petitioner, it is submitted that the petition has not approached the court with clean hands, clean mind, clean heart and clear objective. Reference is made to the judgment in ***State of Jharkhand v. Shiv Shankar Sharma & Ors.*** reported in ***(2022) 19 SCC 626.*** It is argued in the PIL that the petitioner has suppressed the fact that he is a government pleader representing the present dispensation in State of West Bengal.
- 25.** Rule 56 of the Rules of High Court at Calcutta relating to Applications under Article 226 of the Constitution of India was referred to show that the present petition does not fall within the ambit of this Rule.
- 26.** The documents filed by petitioner were internal correspondence between the ECI and the State Government. Shri Naidu, Senior Counsel urged that how petitioner could

lay his hands on these confidential documents is a big question. This shows the petitioner has filed this petition to canvass political interest and this PIL cannot be said to be filed in public interest.

- 27.** The document dated 17.03.2026 is produced to show that a sizeable number of all India service officers have been transferred/shifted by ECI in various States. The number of officers so shifted in other States were highlighted to establish that the argument of Shri Bandopadhyay that ECI has adopted a vindictive approach against the State of West Bengal is not correct. In administrative exigency and in order to conduct free and fair elections, the decision to transfer/shift officer has been taken nationwide. The number of officers shifted in other States is much higher than the number of officers shifted in West Bengal.
- 28.** Shri Naidu, learned Senior Counsel urged that Chief Secretary of West Bengal who had been shifted, recently occupied the post of Chief Secretary. She is replaced by an officer who is one year senior to her. Similarly, Home Secretary is substituted by another officer who is 7 years

senior to the present one. Thus, the prospects of people are not going to be affected for want of experienced officers.

29. Placing reliance on certain paragraphs of writ petition wherein allegations are made against senior political functionaries and their connivance etc. is pleaded with respondent no. 9, it is urged that no such person has been impleaded *Eo nomine*. Thus, petition suffers from non-joinder of parties. The political allegations are made to settle political scores.

30. Shri Naidu, learned Senior Counsel for ECI also placed reliance on Article 324 (1) and (6) of constitution and by taking this court to entire legal journey right from the judgment of ***Mohinder Singh Gill (supra)*** till date, contended that the ECI has taken the action inconsonance with the powers vested in it under Article 324 of the Constitution. Articles 324 to 329 of Constitution are self-contained code which permitted the ECI to function as a neutral umpire, the function which it is carrying out.

31. From the book '*How India Votes*' (5th Edition) authored by S.K. Mendiratta former legal adviser, ECI, it is urged that the

similar challenge to transfers of officers before various High Courts failed. Reliance is placed on Division Bench Judgment of Allahabad High Court in ***Lalji Shukla & Anr. Vs. Election Commission of India & Ors.*** reported in **2002 SCC OnLine All 39**. For the same purpose, an order of Supreme Court in ***Ravi Bhusan vs. Election Commission of India WP (C) 697 of 2015*** was referred by contending that when such transfers were challenged before the Supreme Court, interference was declined and accordingly, petitioner withdrew the petition with liberty to approach the ECI. In support of both contentions, Shri Naidu placed reliance on the number of orders/judgments which are filed in two volumes namely; ***Mostari Banu v. The Election Commission of India & Ors., WP(C) No.1089 of 2025, Supreme Court of India; K. Jayaram & Ors. v. Bangalore Development Authority & Ors., (2022) 12 SCC 815; Ashok Kumar Pandey v. State of West Bengal, (2004) 3 SCC 349; Election Commission of India & Anr. v. State of Karnataka & Ors., 2013 SCC OnLine Kar 3830; State of Andhra Pradesh v. Election Commission of India & Anr.,***

Writ Petition No. 4376 of 2019, High Court of Andhra Pradesh; Rameshwar Oraon v. State of Bihar & Ors., 1995 SCC OnLine Pat 105; Moti Lal v. Mangla Prasad & Ors., 1958 SCC OnLine All 288; Union of India v. Association for Democratic Reforms & Anr., (2002) 5 SCC 294; Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors., (1978) 1 SCC 405; Hari Bansh Lal v. Sahodar Prasad Mahto & Ors., (2010) 9 SCC 655; Sanjoy Das v. Registrar General, Hon'ble High Court at Calcutta & Anr., 2024 SCC OnLine Cal 7949; Ashok Shankarrao Chavan v. Madhavrao Kinhalkar & Ors., (2014) 7 SCC 99; Sadiq Ali & Anr. v. Election Commission of India & Ors., (1972) 4 SCC 664; In the Matter of Special Reference No.1 of 2002 (Gujarat Assembly Election Matter), (2002) 8 SCC 237; State of Jharkhand v. Shiv Shankar Sharma & Ors., (2022) 19 SCC 626; Nutan Thakur (PIL) and Election Commission of India & Ors., 2014 SCC OnLine All 15680; Anurag Gupta v. Election Commission of India & Ors., 2019 SCC OnLine Jhar 474.

- 32.** The press note dated 17.03.2026 issued by ECI (supra) was referred to specifically highlight that as on 17.03.2026, in Jharkhand 40, in Madhya Pradesh 49, in West Bengal 23 all India service officers were deployed. The same press note shows that in Tamil Nadu 25, in a small State of Kerala 16 All India Service Officers were deployed. Thus, the argument of Shri Bandopadhyay that State of West Bengal is unique about shifting of all India service officers is factually incorrect.
- 33.** The 'hand book' for police and other 'hand books' for conducting election prepared by ECI were relied upon which deal with the duties of Chief Secretary and other Government functionaries during elections.
- 34.** Shri Naidu, learned Senior Counsel for the E.C.I. reiterated his stand and placed reliance on "explanation" appended under Section 20B of Representation of People Act, 1951. It is urged that this explanation negates the contention of Shri Bandyopadhyay, learned Senior Advocate that observer can be appointed in the same State to which he belongs. For this

purpose, he also placed reliance on Section 3(23) of General Clauses Act to explain that definition of “Government” includes Central and State both.

35. The parties confined their arguments to the extent indicated above.

36. We have heard the parties at length and perused the record.

Findings:

37. The contentions of learned Senior Counsel for the petitioner and learned Advocate General shows that they have raised objections about the very competence/authority of E.C.I. to transfer/shift the officers. However, in para 28 of writ petition, the petitioner categorically pleaded that power to transfer officers though vested in the E.C.I., it must exercise such power with caution and responsibility. This extraordinary power is not meant to be used indiscriminately or as a matter of routine. Para 28 of the petition reads as under:

“28. That the petitioner respectfully submits that the power to transfer officers, though vested in the Election Commission of

India to uphold the principle of a level playing field during elections, is one that must be exercised with caution and responsibility. This extraordinary power is not meant to be deployed indiscriminately or as a matter of routine; rather, it is to be invoked only in instances where there exist concrete, substantiated, and credible allegations or inputs against specific officers, pointing to conduct that could potentially undermine the fairness or impartiality of the electoral process. The intention behind vesting such a power with the Election Commission is to address situations involving particular officers whose continuance in their present posts may give rise to legitimate concerns regarding their neutrality or administrative integrity.”

(Emphasis Supplied)

- 38.** On a careful reading of the petition in general and para 28 in particular, leaves no room for any doubt that petitioner has not disputed the existence of power with E.C.I. to transfer/shift the officers after issuance of election notification to ensure free and fair election.
- 39.** In the writ petition, the petitioner needs to plead and prove his case. One cannot be permitted to argue beyond the pleadings. **[See: State of M.P. v. Narmada Bachao Andolan, (2011) 7 SCC 639:**

8. It is a settled proposition of law that a party has to plead its case and produce/adduce sufficient evidence to substantiate the averments made in the petition and in case the pleadings are not complete the court is under no obligation to entertain the pleas.

9. In *Bharat Singh v. State of Haryana* [(1988) 4 SCC 534: AIR 1988 SC 2181], this Court has observed as under:

*“13. ... In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. **If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or the counter-affidavit, as the case may be, the court will not entertain the point.** ... there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not [the] evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it.”*

(emphasis added)

A similar view has been reiterated by this Court in ***Larsen & Toubro Ltd. V. State of Gujarat* [(1998) 4 SCC 387: AIR 1998 SC 1608]**, ***Atul Castings Ltd. V. Bawa Gurvachan Singh* [(2001) 5 SCC 133: AIR 2001 SC 1684]** and ***Rajasthan Pradesh Vaidya Samiti v. Union of India* [(2010) 12 SCC 609: AIR 2010 SC 2221]**.

10. Pleadings and particulars are required to enable the court to decide the rights of the parties in the trial. Thus, the pleadings are more to help the court in narrowing the controversy involved and to inform the parties concerned to the question (s) in issue, so that the parties may adduce appropriate evidence on the said

issue. It is settled legal proposition that **“as a rule relief not founded on the pleadings should not be granted”**. Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties.

11. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. If any factual or legal issue, despite having merit, has not been raised by the parties, the court should not decide the same as the opposite counsel does not have a fair opportunity to answer the line of reasoning adopted in that regard. Such a judgment may be violative of the principles of natural justice. (Vide *Ramj Sarup Gupta v. Bishun Narain Inter College* [(1987) 2 SCC 555: AIR 1987 SC 1242] and *Kalyan Singh Chouhan v. C.P. Joshi* [(2011) 11 SCC 687: AIR 2011 SC 1127].)

12. It cannot be said that the rules of procedural law do not apply in PIL. The caution is always added that every technicality in the procedural law is not available as a defence in such proceedings when a matter of grave public importance is for consideration before the court. (Vide *Rural Litigation and Entitlement Kendra v. State of U.P.* [1989 Supp (1) SCC 504: AIR 1988 SC 2187])

13. Strict rules of pleading may not apply in PIL, however, there must be sufficient material in the petition on the basis of which the court may proceed. The PIL litigant has to lay a factual foundation for his averments on the basis of which such a person claims the reliefs. **The information furnished by him should not be vague and indefinite. Proper pleadings are**

necessary to meet the requirements of the principles of natural justice. Even in PIL, the litigant cannot approach the court to have a fishing or roving enquiry. He cannot claim to have a chance to establish his claim. However, the technicalities of the rules of pleading cannot be made applicable vigorously, Pleadings prepared by a layman must be construed generously as he lacks the standard of accuracy and precision particularly when a legal wrong is caused to a determinate class. (Vide **A. Hamsaveni v. State of T.N.** [(1994) 6 SCC 51; 1994 SCC (L&S) 1277 : (1994) 28 ATC 240], **Ashok Kumar Pandey v. State of W.B.** [(2004) 3 SCC 349; (2011) 1 SCC (Cri) 865; AIR 2004 SC 280], **Prabir Kumar Das v. State of Orissa** [(2005) 13 SCC 452] and **A. Abdul Farook v. Municipal Council, Perambalur** [(2009) 15 SCC 351].)

16. In view of the above, it is evident that there were no pleadings before the High Court on the basis of which the writ petition could be entertained/decided. Thus, **it was liable to be rejected at the threshold for the reason that the writ petition suffered for want of proper pleadings and material to substantiate the averments/allegations contained therein. Even in the case of a PIL, such a course could not be available to the writ petitioners. Delay/Laches.”]**

(Emphasis Supplied)

- 40.** In the instant case, it is clear like noon day that petitioner has raised eyebrows because sizable number of officers were transferred by ECI. In view of the aforesaid pleadings, where

existence of power of ECI to transfer/shift officers is admitted, we are not inclined to conduct any roving enquiry and analysis to examine whether the E.C.I. otherwise had any such power or not.

- 41.** This is equally settled that the petitioner must independently plead and establish its own case. It cannot solely take benefit of opposite side's weakness/strength. Thus, merely because State is supporting the petitioner, the petitioner cannot be permitted to travel beyond the scope of the pleadings. Thus, the supporting stand of State Government will not improve the case of the petitioner. Similarly, State a respondent in the matter cannot enter into the shoes of petitioner.
- 42.** It was strenuously contended by learned Senior Counsel for the petitioner and learned Advocate General that because of transfer of a sizable number of officers and staff, there is a vacuum created or if we borrow the word used by learned Advocate General, there is a "numb" like situation in the State. Upon examining the rival stands, we do not find much substance in the said contention. No doubt, bureaucracy

plays a vital role in implementing the policies and decisions taken by ministers and Government and in their absence, the policies cannot be translated into reality, in the instant case, in place of transferred officers other officers have joined. The Apex Court in ***Government of NCT (supra)*** has rightly underlined the importance of the officers in implementing the government decisions. However, in the present case, it is seen that when one officer is transferred, another has occupied his position. Thus, as such there is no vacuum created in the system or in the administrative arena. The contention of Shri Naidu, learned senior counsel for the E.C.I. that in place of Chief Secretary and Home Secretary, officers who are 1 and 7 years senior to them respectively were posted, was not disputed by petitioner and the State. Thus, it cannot be said that administrative 'numb' has been created and Government will paralyse if till election, this arrangement has been made to ensure free & fair elections.

- 43.** The petitioner has submitted about initiation of impeachment proceedings against respondent no.9. However, we do not see

any reason to deal with this aspect at all in the present matter. More so, when no nexus between transfers and said motion could be established with accuracy and precision.

- 44.** Learned Advocate General placed heavy reliance on a Constitution Bench (Seven Judges) judgment of the Supreme Court in **S.P. Gupta (supra)**. The relevant portion read thus:

“If the State or any public authority acts beyond the scope of its power and thereby causes a specific legal injury to a person or to a determinate class or group of persons, it would be a case of private injury actionable in the manner discussed in the preceding paragraphs. So also if the duty is owed by the State or any public authority to a person or to a determinate class or group of persons, it would give rise to a corresponding right in such person or determinate class or group of persons and they would be entitled to maintain an action for judicial redress. But if no specific legal injury is caused to a person or to a determinate class or group of persons by the act or commission of the State or any public authority and the injury is caused only to public interest, the question arises as to who can maintain an action for vindicating the rule of law and setting aside the unlawful action or enforcing the performance of the public duty. If no one can maintain an action for redress of such public wrong or public injury, it would be disastrous for the rule of law, for it would be open to the State or a public authority to act with impunity beyond the scope of its power or in breach of a public duty owed by it. The courts cannot countenance such a situation where the

observance of the law is left to the sweet will of the authority bound by it, without any redress if the law is contravened. The view has therefore been taken by the courts in many decisions that whenever there is a public wrong or public injury caused by an act or omission of the State or a public authority which is contrary to the Constitution or the law, any member of the public acting bona fide and having sufficient interest can maintain an action for redressal of such public wrong or public injury.”

(Emphasis Supplied)

- 45.** A minute reading of the above paragraph makes it crystal clear that if the act of the State/public authority is without jurisdiction i.e. beyond the scope of power, which resulted into a legal injury to a person or a class of persons, it gives rise to a right to such a person or class of persons to maintain action for judicial redress. As per this judgement, if officers are aggrieved, who were subjected to transfer, they can certainly file appropriate proceeding against such transfer before an appropriate forum. However, as held in this judgement, if injury is to ‘public interest’ then only a public interest litigation can be maintained at the behest of any member of public.

46. In the instant case, as noticed above, the petitioner is a practising advocate and cannot have grievance against transfer of officers unless such transfers result into injury to public interest.
47. As analysed above, if officers are transferred for a short time i.e. till election, it cannot be said that administrative machinery in the State is paralysed and a 'numb' like situation has been created.
48. A Division Bench of Karnataka High Court in case of **ECI vs. State of Karnataka (supra)** came to hold that ECI must have confidence over a particular officer. The relevant Para reads as under:

"The Election Commission has no obligation to give reasons for opting for such officers. Similarly, they are under no obligation to give reasons why the person incumbent is not required. It is the matter of confidence the Election Commission has in a particular officer. Having regard to the number of days these persons are going to be displaced, there is no obligation cast on the Election Commission either to give reasons or point out in what circumstances these transfers are effected. It is made clear that when a Government servant is transferred on a direction issued by the Election Commission, the said direction is to be understood in the context of conducting free and fair election."

(Emphasis Supplied)

49. The Court even held that having regard to a number of days these persons are going to be displaced, there is no obligation on the ECI to either give reason or point out under what circumstances these transfers are effected. In clear terms, it was held that such transfer orders issued by ECI must be understood in the context of conducting free and fair election.
50. A Division Bench of Andhra Pradesh High Court in the case of ***State of Andhra Pradesh vs. ECI (supra)*** also opined that ECI is not required to assign reasons while transferring the officers for a limited period i.e. from the date of notification till the date of declaration of election results.
51. A Division Bench of Allhabad High Court (at Lucknow Bench) in the case of ***Nutun Thakur (supra)*** considered the judgement of Supreme Court in the case of ***Union of India vs. Association for Democratic Right*** reported in ***(2002) 5 SCC 294*** and opined that ECI has wide powers to undertake exercise of transfer to ensure free and fair election.
52. No doubt, the learned senior counsel for the petitioner and the learned Advocate General have taken pains to refer to various

Sections of Representation of Peoples Act 1950 and 1951 to bolster their submission that right from the Constitution Bench judgement of Supreme Court in the case of ***Mohinder Singh Gill (supra)*** till ***A.C. Jose (supra)*** the law is well settled that under Article 324 of the Constitution of India the ECI has wide powers but the same are subject to two limitations, namely, (i) when Parliament or any State Legislature makes a valid law relating to or in connection with election, the Election Commission shall act in conformity with and not in violation of such provisions, (ii) secondly, the Election Commission is responsible to the rule of law and must act *bona fide*.

- 53.** In our opinion, since in the entire body of the petition, the petitioner being a practicing advocate and a legally trained person has not pleaded regarding any breach of any Central/State Legislation and not pleaded that Election Commission did not have the authority or jurisdiction to shift/transfer officers, in this PIL we are not inclined to undertake any academic exercise to examine as to whether ECI otherwise has any such power or not.

- 54.** Merely because the ECI had transferred a sizable number of officers, it cannot be said that action is arbitrary, capricious or *mala fide*. More so, when similar or more number of transfers/posting of officers had taken place nationwide.
- 55.** The ECI has taken administrative decisions to transfer/shift the officers. This is trite that scope of judicial review on administrative decisions is limited. If administrative order is found to be passed without authority or shown to be palpably illegal, interference can be made. Another view is possible, is not a ground for interference. For this reason also, we find no justification in interfering with the same. **[See: 2006 (10) SCC 645 (Ganesh Bank of Kurundwad Ltd. V. Union of India); 2006 (2) SCC 1 (Rameshwar Prasad (VI) v. Union of India); 2013 (6) SCC 602 (S.R. Tewari v. Union of India); 2005 (5) SCC 181 (State of NCT of Delhi v. Sanjeev) and 2002 (3) SCC 496 (Haryana Financial Corpn. V. Jagdamba Oil Mills.)]**
- 56.** The contention of Shri Naidu, learned senior counsel for the ECI is based on the said 'press note' dated 17.03.2026 which shows that the posting/transfer of IAS officers in good

numbers is a pan India exercise. The contention of Shri Naidu, based on the said 'press note' is not disputed either by the petitioner or by the State. Thus, we find no reason to hold that while shifting/transferring officers of State of West Bengal, ECI did any step motherly treatment.

57. The transfer is an incident of service. If transfer order runs contrary to any statutory provision, the aggrieved employee/officer can assail it in appropriate proceedings.
58. In our view, the legality, validity and propriety of transfer orders which have not caused any public injury cannot be gone into in a public interest litigation.
59. In the light of judgment of Hon'ble Supreme Court in **S.P. Gupta (supra)**, only such injuries, which has an impact on public at large can form part of a PIL. In the case in hand, the petitioner could not make out any such case, which establishes with accuracy and precision that transfer order of officers will lead to any administrative collapse, deprivation to public from the fruits of beneficiary schemes.
60. The petitioner made an effort to establish a political nexus between certain senior politicians and the respondent no.9.

However, as rightly pointed out by learned counsel for the ECI, no such persons against whom allegations of connivance, pressure tactics etc. were alleged were impleaded by name. Thus, no allegation of malice can be entertained against the ECI. Apart from bald pleadings, no material could be placed to establish any such nexus.

- 61.** The petitioner and State have cited number of judgments to bolster their submission that ECI had acted contrary to statutory provisions ingrained in R.P. Act, 1950 and 1951. In absence of any foundation regarding this in the body of petition lack of authority of ECI, we do not see any reason to examine the said aspect.
- 62.** At the cost of repetition, in paragraph 28 of the PIL filed by a practicing advocate, it is averred that Election Commission has power to transfer the officers but such power cannot be used in an arbitrary manner.
- 63.** Thus, existence of power with ECI is not in dispute. It could not be established that the power is used in an arbitrary manner, which resulted into any injury to public interest. In

absence of establishing this elementary ingredient to maintain a PIL, petition cannot be entertained.

- 64.** Thus, in the tune of Constitution Bench Judgment of Supreme Court in **S.P. Gupta (supra)**, we are constrained to hold that the writ petitioner could not establish that because of transfer of officers, any public injury is caused.
- 65.** Thus, PIL *sans* substance and is accordingly **dismissed**.
- 66.** However, before parting with, we deem it proper to observe that this judgment will not come in the way of the individual aggrieved officers to challenge their transfer order in appropriate proceedings in accordance with law. It is noteworthy that two single bench cases of Kerala High Court in **T.V. Madhusoodanan (supra)**, the challenge to the transfer orders was made by the aggrieved officer.
- 67.** No costs.

I Agree.

(Sujoy Paul, CJ.)

(Partha Sarathi Sen, J.)