

**IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE**

**PRESENT:  
THE HON'BLE JUSTICE BIVAS PATTANAYAK**

**W.P.A. 15785 of 2023**

**Ruksana Khatun  
versus  
The State of West Bengal & Ors.**

|                                   |                                                                                              |
|-----------------------------------|----------------------------------------------------------------------------------------------|
| For the Petitioner                | : Mr. Samim Ahammed, Advocate<br>Mr. Arka Maiti, Advocate<br>Ms. Gulsanwara Pervin, Advocate |
| For the State                     | : Mr. Lalit Mohan Mahata, Ld. AGP<br>Mr. Rudranil De, Advocate                               |
| For the State Election Commission | : Ms. Sonal Sinha, Advocate<br>Ms. Shabnam Farooqi, Advocate                                 |
| Heard on                          | : 18.03.2025, 22.04.2025, 13.05.2025,<br>22.05.2025, 30.06.2025, 07.07.2025                  |
| Judgment on                       | : 07.04.2026                                                                                 |

**Bivas Pattanayak, J.:-**

1. In the present writ petition, the petitioner has sought for following orders.
  - (i) Issue direction upon the State Election Commission to upload the declaration of the candidate concerned as well as nomination forms on its official website; and
  - (ii) For quashing the candidature of Anil Barnwal, a General category candidate, elected in the constituency reserved for Other Backward Class (*in short*, 'OBC')
  - (iii) For setting aside the OBC certificate of Anil Barnwal;

(iv) Issue direction for an independent and impartial investigation into the State Election Commission's failure to take appropriate steps despite receiving complaints of a General category candidate contesting in a Reserved constituency as well as sudden change of the candidate's category from General to OBC.

2. The petitioner contends as follows. The petitioner is an elector in the Ukhra/XI-11 constituency under Ukhra Gram Panchayat, Andal Block, Paschim Bardhaman. The aforementioned constituency is reserved for OBC as per the delimitation order. On 17<sup>th</sup> June 2023, the petitioner noticed in the official website of the West Bengal State Election Commission (*in short WBSEC*) that a candidate belonging to a General category namely private respondent no.7, Anil Barnwal was listed as a contestant in the Reserved constituency. The State Election Commission failed to upload the scanned copies of the candidates' declarations and nomination forms as required. As a result of which, the petitioner had no means to verify the actual reservation papers of the candidates. The subject candidate namely, Anil Barnwal does not belong to OBC category since the surname '*Barnwal*' is not listed in the list of OBCs for the State of West Bengal. The petitioner made complaints against the said candidate namely Anil Barnwal raising concerns that a candidate belonging to General category is contesting in the constituency reserved for OBC candidate. However, no action was taken to cancel or quash the candidature of Anil Barnwal. On 30<sup>th</sup> June 2023, the category of Anil Barnwal was changed to OBC in the official website which is a manipulative action purposefully made

in favour the ruling political dispensation in the State. Being aggrieved by and dissatisfied with the action of the respondent authorities concerned, the petitioner has preferred the present writ petition seeking for aforementioned reliefs.

3. The State-respondents filed an affidavit furnished by Sub-Divisional Officer, Asansol (Sadar), Paschim Bardhaman in respect of issuance of OBC Certificate to Anil Barnwal. It is stated therein that, as per the available office records, an application was received through online portal of Backward Classes Welfare Department. Subsequently, the Caste Certificate Section of the office also received the hardcopy of the application along with necessary documents. The said Anil Barnwal did not submit his Electors Photo Identity Card (*in short, 'EPIC'*), however, that is not a mandatory document for issuance of OBC Certificate. Moreover, a person may register his/her name as elector in any assembly constituency where he/she ordinarily resides. For the purpose of issuance of OBC Certificate, the permanent residential address of the concerned person is taken into consideration as per memorandum issued by Backward Classes Welfare Department. The said Anil Barnwal has made self-declaration by way of an affidavit stating that his family members are permanent residents of Rajpara, Ranigunj since the year 1993. On the basis of the above documents, the OBC Certificate was issued in favour of the said person. The application for issuance of OBC Certificate was made on 1<sup>st</sup> July, 2022 before the notification of Panchayat General Election. Thus, the application for issuance of OBC Certificate was not processed for the

purpose of election. Further no complaint is received challenging the OBC Certificate issued to said Anil Barnwal.

4. The petitioner filed an affidavit-in-reply with the contention that the signature of the candidate namely Anil Barnwal is forged one. Further the affidavit before the Magistrate is obtained by fraud. The Aadhar Card annexed to the report is a manufactured document. The Voters Identity Card annexed to the report cannot be the EPIC card of his father who died in the year 1994. The electoral roll of Ukhra Gram Panchayat, Block Andal shows that at least from the year 2016 the said candidate is a permanent resident of said Gram Panchayat. The report does not demonstrate as to how the authority was satisfied with the family tree. There is discrepancy in the name of the grandfather of the said candidate. Moreover, the ration card and other records would show that the candidate is a resident of village-Ukhra within Sub-Division-Durgapur. Therefore, the authority of Asansol Sub-Division did not have the jurisdiction to issue OBC Certificate in his favour. The other members, which have been shown in the family tree, are absolutely incorrect as those persons do not have any connection with the family of Anil Barnwal. Accordingly, the entire conspiracy needs to be revealed in order to ensure transparency in the process and restore trust in the action of public authority.
5. Mr. Samim Ahammed, learned advocate for the petitioner submitted that the writ petition has been filed with the allegation of fraudulent procurement of OBC certificate by the concerned candidate, inconsistency in the respondent's age and residence details as well as

administrative negligence in issuing the OBC Certificate. The private respondent no.7 has procured an OBC Certificate on the basis of materially inconsistent and contradictory records. The Aadhaar Card records the date of birth of the concerned candidate as 7<sup>th</sup> May, 1990, but inexplicably states the age band as 40-50 years. The Voter Card verification shows the respondent's age as 53 years, which is inconsistent with the declared date of birth. The other official records exhibit ages, namely 32, 45, 46, 48, and 53 years, clearly demonstrating falsification of age-related documents. As regards the residence details, there are also inconsistencies. While the OBC certificate application claims residence at Raniganj under Asansol Sadar, other records, including Voter Card and Ration Card, indicate residence at Ukhra. The grandfather's name is alternately recorded as Ganesh Mudi and Birendra Barnwal in official records, suggesting a deliberate attempt to mislead authorities regarding caste and family background. The respondent has also failed to comply with Clause 8 of Memo dated 27<sup>th</sup> July, 2015, which mandates that the applicant must be an ordinary resident of the area concerned. The contradictory residence records demonstrate non-compliance with this requirement. The Sub-Divisional Officer (SDO), Asansol Sadar, issued OBC certificate to the respondent candidate without verifying essential records such as proof of citizenship namely Voter's Card or Ration Card and inconsistent lineage details. This failure amounts to gross administrative negligence and undermines the integrity of the reservation policy. The election to the Ukhra/XI-11 constituency is

reserved for the OBC candidates as per the delimitation order on record. The private respondent no.7, belonging to General category, has unlawfully procured an OBC certificate and contested the election in violation of the reservation mandate. This act deprives genuinely eligible candidates of their rightful opportunity, permitting ineligible candidates to contest elections for reserved seats, directly subverting the constitutional purpose of the reservation system, which seeks to ensure equitable representation for marginalized communities. Despite repeated complaints, neither the Block Development Officer (BDO) nor the Sub-Divisional Officer (SDO) undertook any meaningful investigation or corrective action. This administrative inaction constitutes a clear dereliction of duty that warrants judicial intervention. Further the respondent candidate claims to have contested election in the year 1998. However, given the declared date of birth of 7<sup>th</sup> May, 1990, the respondent would be only 8 years old at that time. This claim is manifestly false. Additionally, the councillor's certificate relied upon by the respondent is jurisdictionally defective and fails to disclose the certifying councillor's identity, casting serious doubt upon its authenticity. Documents produced in the supplementary affidavit indicate that, in fact, the said certificate is a fake and/or forged document. This Hon'ble Court has a constitutional duty to protect the integrity of elections by ensuring that only duly qualified candidates contest reserved seats. Judicial precedence supports the annulment of fraudulent candidatures and mandates inquiry into administrative lapses where misrepresentation is

established. In light of his aforesaid submissions, he prayed for appropriate orders for cancellation of the candidature of the concerned candidate namely Anil Barnwal, respondent no.7 and for issuance of directions for inquiry by independent authority.

6. Mr. Lalit Mohan Mahata, learned Additional Government Pleader representing the State respondents, on the contrary, submitted that, in the present writ the principle allegation is of alleged corrupt practice in acceptance of nomination of a candidate during Panchayat Election, belonging to General category against the constituency reserved for OBC candidate. The allegations precisely deal with an act relating to election matters. As per Article 243-O of the Constitution of India, there is a clear bar of interference by the Courts in electoral matters. The aforesaid Article clearly provides that no election to Panchayat shall be called in question except by way of an election petition presented to such authority and in such manner as is provided for or under any law made by the legislature of a State. Moreover, Section 80 of the West Bengal Panchayat Election Act, 2003 (*hereinafter referred to as the Act of 2003*) also provides that no election to Panchayat shall be called in question except by way of an election petition presented in accordance with the provisions of Part VI of the Act. Further Section 93 clearly provides the grounds on which the Court can declare the election to be void. Relying on the decision of Hon'ble Supreme Court passed in ***N. P. Ponnuswami versus The Returning Officer, Namakhal Constituency,***

***Namakhal, Salem Dist. and Others***<sup>1</sup>, he submitted that it is 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. Clause (a) of Article 329 of the Constitution of India bars the jurisdiction of the Courts with regard to such law as may be made under Articles 327 and 328 relating to delimitation of constituencies or the allotment of seats to such constituencies. Article 329(b) ousts the jurisdiction of the Courts with regard to the matters arising between the commencement of the polling and the final selection. Part XV of the Constitution is a Code in itself i.e. it creates rights and provides for their enforcement by a special tribunal to the exclusion of all Courts including the High Court. Article 329(b) is a blanket ban of litigative challenges to electoral steps taken by Election Commission and its officers for carrying forward the process of election to its culmination in the formal declaration of the results. It is undisputed that an election can be challenged only under the provisions of the Act. All the substantial reliefs which the petitioner has sought in the writ petition including quashing of the candidature of the candidate can be claimed in election petition. Therefore, the High Court cannot exercise the jurisdiction under Article 226 of the Constitution in case of a dispute relating to election matters. To buttress his contention, he also relied on the following decisions:

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<sup>1</sup> (1952) 1 SCC 94

- (i) ***Harnek Singh versus Charanjit Singh and Others***<sup>2</sup>
- (ii) ***West Bengal State Election Commission and Ors versus Communist Party of India (Marxist) and Ors***<sup>3</sup>.
- (iii) ***Laxmibai versus The Collector, Nanded & Ors.***<sup>4</sup>
- (iv) ***Karmaveer Tulshiram Autade and Ors. versus The State Election Commission and Ors.***<sup>5</sup>
- (v) ***The Block Development Officer & Anr. Versus Surajit Pramanik & Ors.***<sup>6</sup>
- (vi) ***State Election Commission and Another versus Nimai Ray alias Nimal Roy and Others***<sup>7</sup>

7. Ms. Sonal Sinha, learned advocate appearing for the West Bengal State Election Commission, submitted that in terms of the provisions of Article 243K of the Constitution of India, the superintendence, direction and control of the preparation of electoral rolls and the conduct of all elections to the Panchayats in West Bengal are vested in the State Election Commission. The State Legislature, in pursuance of Article 243K of the Constitution of India, has made the law and provisions with respect to all matters relating to or in connection with elections to the Panchayats. In terms of Article 243-O of the Constitution of India, no election to any Panchayat shall be called into question except by an election petition presented to such authority and in such manner as is provided for

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<sup>2</sup> (2005) 8 SCC 383

<sup>3</sup> [2018] 18 SCC 141

<sup>4</sup> (2020) 12 SCC 186

<sup>5</sup> Writ Petition (ST.) No.26 of 2021 (Decision of Bombay High Court)

<sup>6</sup> M.A.T. 1654 of 2023 (Decision of Calcutta High Court)

<sup>7</sup> 2024 SCC OnLine Cal 5410

by or under the law made by the legislature of the State. Part VII of the Act deals with disputes regarding election and in particular Section 79 of the Act of 2003 provides for the procedure to present election petition before the appropriate Judge of the district within which the elections were held. Section 79 of the Act specifically mandates that, if any dispute arises as to the validity of an election under this Act, any person entitled to vote such election may within 30 days after the date of declaration of results of such elections, file a petition calling in question such election on the grounds mentioned in sub-section (1) of Section 93 and Section 94. Thus, it is clear that the election to any seat of a Gram Panchayat may be called into question only by an election petition filed before an appropriate Judge in terms of Section 79 read with relevant Sections including Sections 93 and 94 of the Act. Although Article 226 of the Constitution of India empowers this Hon'ble Court to issue writs not only for the enforcement of fundamental rights but also for any other legal rights, there are several orders and judgments of this Court as well as Hon'ble Apex Court wherein the Hon'ble Courts have denied to interfere with the results of election and in unequivocal terms have held that filing of election petition is the only appropriate remedy in such cases. The issues raised in the instant writ petitions can be raised only by an election petition presented to such authority and in such manner as provided in the Act. In support of her contentions, she relied on the decisions of Hon'ble Supreme Court passed in *Mohinder Singh Gill (supra)*, and *Munsi Najbul Karim*

*versus The West Bengal State Election Commission & Ors (Re: MAT 1339 of 2023)* and *Nimai Roy (supra)* passed by the Hon'ble Division Bench of this Court. In light of her above submissions, she prayed for dismissal of the writ petition.

8. In reply to the contentions raised on behalf of the respective respondents, Mr. Ahmed, learned advocate for the petitioner submitted that the statutory election petition remedy provided under Sections 80 to 83 is specifically directed against returned candidates and is limited to the questions of declaring such elections void or declaring another candidate elected. The scheme clearly contemplates that the contest is *inter se* between candidates. By contrast, the present writ petition seeks to examine the fraudulent grant of an OBC Certificate by the administrative authorities and the failure of election machinery to act on objections despite documentary proof of fraud and ineligibility. The conduct of the Election Commission or its officers in failing to scrutinize objections or investigate ineligibility is not justiciable under the statutory election petition procedure. Sections 81 to 83 make no provision for impleading the State Election Commission or its officers as parties to an election petition nor for obtaining relief in the nature or directions against them. The statutory remedy is thus incomplete and inadequate to address grievances about the conduct or inaction of election officials, which are amenable to the writ jurisdiction of this Hon'ble Court. It is a well-settled principle of law that where there is no equally efficacious alternative remedy for addressing a grievance,

such as administrative fraud, inaction or violation of statutory duties by public authorities, a writ petition remains maintainable. In the present case, the petitioner has specifically alleged fraudulent procurement of an OBC Certificate, inconsistency in respondent's age and residence details and administrative negligence in issuing the OBC certificate. These matters cannot be adjudicated effectively within the narrow confines of election petition between candidates as envisaged under Sections 80 to 83. The provision of Section 80 of the West Bengal Panchayat Elections Act, 2003, which restricts challenges to the election by way of election petitions, cannot override the constitutional jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India. The Act does not provide a remedy for investigating the conduct of the Election Commission adjudicating claims of administrative fraud in certification processes. Relying on the decision of Hon'ble Supreme Court passed in ***Resurgence India versus Election Commission of India***<sup>8</sup>, he submitted that transparency and integrity in elections are not merely statutory expectations but constitutional mandates rooted in the fundamental rights of voters. A voter has a right to know full particulars of a candidate which is an essential facet of Article 19(1)(a) of the Constitution. Incomplete affidavits cannot be considered valid nominations and that the returning officer is constitutionally obligated to ensure that the information provided is

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<sup>8</sup> (2014) 14 SCC 189

complete and accurate. In ***Anup Baranwal versus Union of India***<sup>9</sup>, the Hon'ble Supreme Court has laid down the clarity that Article 324 is a plenary provision which clothes the Election Commission with entire responsibility to ensure free and fair elections. This power though plenary is not absolute and it is bound by the rule of law, fairness, and constitutional norms. Failing to apply even minimum scrutiny to the respondent's fraudulent documents while ignoring detailed objections, the returning officer has treated the parties with manifest inequality and has discriminated against other candidates and voters who relied on the integrity of the reservation policy. True independence of the Election Commission is not unilateralism or arbitrariness, but fidelity to constitutional values. Further the constitutional remedies under Articles 226 and 32 form part of the basic structure of the Constitution and cannot be ousted by statutory bars. To buttress his contention, he relied on the decision of Hon'ble Supreme Court passed in ***UT of Ladakh versus J&K National Conference***<sup>10</sup>. Thus, the writ petition is very much maintainable before this Hon'ble Court.

9. Upon hearing the learned advocates for the respective parties, the question which is to be determined at the very threshold is whether the issues raised by the petitioner disputing the candidature of a candidate in the Panchayat Election can be challenged before the

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<sup>9</sup> (2023) 6 SCC 161

<sup>10</sup> 2023 SCC OnLine SC 1140

writ court exercising jurisdiction under Article 226 of the Constitution of India?

- 10.** In order to examine the aforesaid issue regarding Panchayat elections, it would be profitable to reproduce the provisions of Article 243-O of the Constitution of India which reads as hereunder:

***“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 243K, 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.”*

- 11.** The West Bengal State Legislature in compliance with the constitutional mandate promulgated West Bengal Panchayat Elections Act, 2003. Under the Act of 2003, West Bengal Panchayat Election Rules, 2006 have also been framed. Sections 79, 80 and 93 of the Act of 2003 being relevant in the present context is reproduced hereunder:

***“79. Disputes as to elections.\_(1) If any dispute arises as to the validity of an election under this Act, any person entitled to vote at such election may, within thirty days after the date of declaration of the results of such election, file a petition, calling in question such election on one or more of the grounds specified in sub-section (1) of section 93 and section 94—***

*(a) before the Civil Judge having jurisdiction where such election is in respect of a Gram Panchayat or a Panchayat Samiti,*

*(b) before the District Judge of the district, where such election is in respect of a Zilla Parishad or the Siliguri Mahakuma Parishad.*

(2) When filing a petition under sub-section (1), the petitioner shall deposit in Court, as security for the costs likely to be incurred,—

(a) five hundred rupees, where the petition is filed before the Civil Judge,

(b) one thousand rupees, where the petition is filed before the District Judge.

(3) Every petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

(4) The District Judge may transfer any petition filed before him under sub-section (1) to any Judicial Officer subordinate to him not below the rank of a Subordinate Judge.

(5) In dealing with a petition under sub-section (1), the Civil Judge, the District Judge or the Judicial Officer to whom the petition is transferred under sub-section (4) (hereinafter referred to as the Judge) may hold such enquiry as he deems necessary.

(6) The Judges shall have all the powers of a civil Court for the purposes of receiving evidence, administering oath, enforcing the attendance of witnesses and compelling the discovery and production of documents.

(7) The decision of the Judge shall be final and shall not be called in question in any Court.

**80. Election petitions,-** No election petitions to Panchayat shall be called in question except by an election petition presented in accordance with the provision of this Part.

**93. Grounds for declaring election to be void.-** (1) Subject to the provisions of sub-section (2) if the Court is of opinion—

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under this Act;

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

*(iv) by any non-compliance with the provisions of this Act, or of any rules made under this Act, the Court shall declare the election of the returned candidate to be void.*

*(2) If in the opinion of the Court, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the Court is satisfied—*

*(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;*

*(b) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and*

*(c) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, then the Court may decide that the election of the returned candidate is not void.”*

**12.** Upon bare reading of the aforesaid provisions of the Act of 2003 it manifests as per section 79 of the Act of 2003 if any dispute arises as to the validity of an election under the Act, any person entitled to vote at such election may, within 30 days after the declaration of the results of such election, file a petition calling in question such election on one or more of the grounds specified in subsection (1) of section 93 and section 94. Thus, the aforesaid provision is an enabling one which permits a person entitled to vote in such election to challenge and dispute as to elections by way of election petition. Section 80 of the Act provides that no election to panchayat shall be called in question except by an election petition presented in accordance with the provisions of the Act. Section 93 provides the grounds for declaring election to be void. From the aforesaid provisions it is clear that provisions have been set out in

the Act of 2003 for challenging the election to the Panchayat by way of an election petition.

- 13.** The precise allegation of the petitioner is that Ukhra/XI-11 constituency under Ukhra Gram Panchayat, Andal Block, Paschim Bardhaman is a constituency which is reserved for OBC candidate as per the delimitation order. On 17th June 2023, the petitioner noticed in the official website of the State Election Commission that a candidate belonging to a General category namely private respondent no.7, Anil Barnwal was listed as a contestant in the Reserved constituency. The petitioner made complaints against the said candidate namely Anil Barnwal raising concerns that a candidate belonging to General category is contesting in the constituency reserved for OBC candidate. However, no action was taken to cancel or quash the candidature of Anil Barnwal. On 30<sup>th</sup> June 2023, the category of Anil Barnwal was changed to OBC in the official website which is a manipulative action purposefully made in favour the ruling political dispensation in the State. In such backdrop the petitioner has prayed for cancellation of candidature of the concerned candidates, setting aside the OBC certificate of the concerned candidate and for impartial investigation. Thus the petitioner alleges of corrupt practices and manipulation in the election process. The Panchayat election of the year 2023 was declared on 9<sup>th</sup> June 2023. Admittedly, the disputes have been raised by the petitioner after such date. Now the pertinent question which arises at this juncture is whether such aspect can be

examined in writ jurisdiction under Article 226 of the Constitution after the declaration of the Panchayat Elections.

- 14.** In *N.P Ponnusawami (supra)* , which is a landmark case in election laws and deals with the scope, amplitude, rationale and limitations of Article 329(b) of the Constitution of India, the factual matrix was that the appellant's nomination for election to the Madras legislative Assembly was rejected by the Returning Officer and so he hurried to the High Court praying for a writ of *certiorari* to quash the order of rejection, without waiting for the entire elective process to run its full course and, at the end of it, when the results also were declared, to move the election Tribunal for setting aside the result of election conducted without his participation. The concerned candidate was of the view that if the election proceeded without him, irreparable damage would have been caused and therefore sought to intercept the process of election by filing a writ petition. The High Court dismissed it as unsustainable in view of Article 329(b) of the Constitution of India. Against such order appeal was preferred before the Hon'ble Supreme Court, and it would be profitable to reproduce paragraph Nos. 25 of the decision of Hon'ble Supreme Court as follows.

*"25. 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 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.*

*(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."*

- 15.** From the aforesaid proposition as laid down by the Hon'ble Supreme Court it goes without saying that in a democratic setup it is well recognised 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. The petitioner has raised disputes only after the Panchayat elections were notified. The law as laid down by the Hon'ble Apex court clearly stipulates that if any irregularities are committed while election 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. Therefore, the disputes raised by the petitioner in the present writ petition being election disputes cannot be entertained under Article 226 of the Constitution of India while election is in progress and should be brought before the forum prescribed under the Act of 2003, by means of an election petition.

- 16.** Further in *N.P Ponnusawami (supra)* the Hon'ble Supreme Court while 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 the 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", also observed in paragraph nos. 14,15, 19 and 40 as follows:

**14.** *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 of the 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.*

**15.** *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 views 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.*

**19.** *It is now well recognised 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 Waterworks**

*Co. v. Hawkesford* [Wolverhampton New Waterworks Co. v. Hawkesford, (1859) 6 CB NS 336 at p. 356 : 141 ER 486] in the following passage : [CB (NS) p. 356 : ER p. 495]

“... 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, and 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.”

The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspapers Ltd.* [*Neville v. London Express Newspapers Ltd.*, 1919 AC 368 (HL)] and has been reaffirmed by the Privy Council in *Attorney General of Trinidad v. Gordon Grant & Co. Ltd.* [*Attorney General of Trinidad v. Gordon Grant & Co. Ltd.*, 1935 AC 532 (PC)] and *Secy. of State v. Mask & Co.* [*Secy. of State v. Mask & Co.*, (1939-40) 67 IA 222 : (1940) 44 CWN 709 : 1940 SCC OnLine PC 10] ; and it has also been held to be equally applicable to enforcement of rights (see *Hurdutrai Jagadish Prasad v. Official Assignee of Calcutta* [*Hurdutrai Jagadish Prasad v. Official Assignee of Calcutta*, (1948) 52 CWN 343 at p. 349 : 1948 SCC OnLine Cal 19] ). That being

*so, I think it will be a fair inference from the provisions of the Representation of the People Act to state that the Act provides for only one remedy, that remedy being by an election petition to be presented after the election is over, and there is no remedy provided at any intermediate stage.*

**40.** *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."*

**17.** In *Mohinder Singh Gill (supra)* the Constitution Bench of the Hon'ble Supreme court following the decision in *N.P Ponnusawami (supra)* observed as follows while dealing with the provisions of Article 329(b) of the Constitution of India.

**"126.** *The above being the legal position, Article 329(b) rules out the maintainability of the writ application. Article 329(b) provides that "notwithstanding anything in this Constitution ... no election to either House of Parliament . . . 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". It is undisputed that an election can be challenged only under the provisions of the Act. Indeed Section 80 of the Act provides that "no election shall be called in question except by an Election petition presented in accordance with the provisions of" Part VI of the Act. We find that all the substantial reliefs which the appellants seek in the writ application, including the declaration of the election to be void and the declaration of Appellant 1 to be duly elected, can be claimed in the election petition. It will be within the power of the High Court, as the election Court, to give all appropriate reliefs to do complete*

*justice between the parties. In doing so it will be open to the High Court to pass any ancillary or consequential order to enable it to grant the necessary relief provided under the Act. The writ application is therefore barred under Article 329(b) of the Constitution and the High Court rightly dismissed it on that ground.*

**127.** *In view of our conclusion that the High Court had no jurisdiction to entertain the writ application under Article 226 of the Constitution, it will not be correct for us, in an appeal against the order of the High Court in that proceeding, to enter into any other controversy, on the merits, either on law or on facts, and to pronounce finally on the same. The pre-eminent position conferred by the Constitution on this Court under Article 141 of the Constitution does not envisage that this Court should lay down the law, in an appeal like this, on any matter which is required to be decided by the Election Court on a full trial of the election petition, without the benefit of the opinion of the Punjab and Haryana High Court which has the exclusive jurisdiction under Section 80-A of the Act to try the election petition. Moreover, a statutory right to appeal to this Court has been provided under Section 116-A, on any question, whether of law or fact, from every order made by the High Court in the dispute.”*

**18.** In *Harnek Singh (supra)* the Hon’ble Supreme Court while dealing with maintainability and scope of interference under Article 226 of the Constitution of India observed as follows:

**“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* [(1998) 8 SCC 703] 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.

**18.** Yet again in *Jaspal Singh Arora* [(1998) 9 SCC 594] this Court opined: (SCC p. 595, para 3)

“3. These appeals must be allowed on a short ground. In view of the mode of challenging the election by an election petition being prescribed by the M.P. Municipalities Act, it is clear that the election could not be called in question except by an election petition as provided under that Act. The bar to interference by courts in electoral matters contained in Article 243-ZG of the Constitution was apparently overlooked by the High Court in allowing the writ petition. Apart from the bar under Article 243-ZG, on settled principles interference under Article 226 of the Constitution for the purpose of setting aside election to a municipality was not called for because of the statutory provision for election petition and also the fact that an earlier writ petition for the same purpose by a defeated candidate had been dismissed by the High Court.”

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**22.** In this view of the matter, we are of the opinion that it was not a fit case where the High Court should have exercised its writ jurisdiction.”

**19.** In *Communist Party of India (Marxist)* (*supra*) a three-judge Bench of Hon'ble Supreme Court observed that any dispute regarding election has to be pursued in the manner which is provided in Part VII of the Panchayat Election Act. The Panchayat Election Act is a complete code in regard to conduct of the poll and for the resolution of disputes concerning the validity of the election. Article 243K entrusts the superintendence,

direction and control over the conduct of all elections to the panchayats in the State Election Commission. 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. It is observed that once the election process has commenced, it is trite law that it should not be interdicted mid-stage.

**20.** In *Laxmibai (supra)* a three-judge Bench of the Hon'ble Supreme Court observed as follows:

*“43. Section 10-A of the 1959 Act and Section 9-A 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.”*

**21.** Similarly the Full-bench of Hon’ble Bombay High Court in *Karmaveer Tulshiram Autade (supra)* after considering various decisions of Hon’ble Supreme Court including *N.P Ponnuswami (supra)* and *Mohinder Singh Gill (supra)* has held that Article 243-O of the Constitution of India is a bar for entertaining a writ petition under Article 226 of the Constitution of India against an order of rejection passed by Returning Officer.

**22.** In *Surajit Paramanik (supra)* the Hon’ble Division Bench of this court has acceded and adopted the aforesaid observation of the Full-Bench of Hon’ble Bombay High Court and held that the rejection of nomination paper give rise to an election dispute. Such dispute can be resolved only by filing an election petition in accordance with the provisions of West Bengal Panchayat Elections Act, 2003 read with 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 High Court’s 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. Bearing in mind the aforesaid observation and reverting to the

facts of this case it is found that the acceptance of nomination of the concerned candidate after declaration of Panchayat Elections 2023, is challenged in the present proceedings by way of filing a writ petition, which is an election dispute and therefore can only be resolved by filing an election petition in accordance with the provisions of Act of 2003 read with rules framed thereunder.

**23.** Under similar circumstances the Hon'ble Division Bench of this Court in *Sanjay Mondal (supra)*, *Nimai Ray alias Nimai Roy (supra)* and *Munsi Najbul Karim (supra)* has held that writ petition under Article 226 of the Constitution of India is not maintainable in case of election disputes.

**24.** In view of the judgements referred, this court finds that the remedy of an aggrieved person regarding acceptance or rejection of nomination of a candidate, being an election dispute, lies by way of an election petition in view of the bar created under section 80 of the Act of 2003. The said Act is a complete code providing machinery for redressal of the grievances pertaining to election in the Panchayats. The High Court though exercises extraordinary jurisdiction under Article 226 of the Constitution of India but such jurisdiction is discretionary nature and may not be exercised where an efficacious alternative remedy is available and also bearing in mind the provisions of Article 243-O of the Constitution of India which pertains to Panchayat Elections putting bar to interference by courts in electoral matters. Once alternate recourse is provided by the statute, the recourse to writ jurisdiction is not appropriate. The only remedy available to aggrieved party would be to raise the disputes as per provisions of the Act of 2003. Thus, it appears that the law is well settled that any election

dispute insofar as Panchayat election in the State are concerned must be resolved by the forum prescribed under the Act of 2003 and the jurisdiction of the writ court under Article 226 of the Constitution cannot be invoked by an aggrieved party in that regard.

**25.** In *Resurgence India (supra)* the Hon'ble Supreme Court has the occasion to deal with voters right to know candidate's antecedents which is a fundamental right under Article 19 (1)(a) of the Constitution of India and provision of Section 33A of the Representation of People Act, 1951 which was enacted to effectuate the right of voters. It held that acceptance of nomination forms with blank particulars in affidavit directly violates the fundamental rights. The case addresses the enforcement of affidavit requirements for election candidates under the Representation of the People Act, 1951 (*in short RP Act*), particularly Sections 33A, 36, and 125A. Be that as it may, the said decision does not lay down any proposition that election disputes can be entertained under writ jurisdiction.

**26.** The decision in *Anoop Barnwal (supra)* which is a landmark decision by a five-judge Constitution Bench of the Hon'ble Supreme Court of India addresses the appointment process for the Chief Election Commissioner (CEC) and Election Commissioners (ECs), as essential to free and fair elections, a cornerstone of Indian democracy. Thus, the decision is distinguishable from the case at hand.

**27.** In view of the aforesaid, the writ petition being **WPA 15785 of 2023** is dismissed as not maintainable.

**28.** There shall be no order as to costs.

**29.** Interim order, if any, stand vacated.

**30.** All connected applications, if any, stand disposed of.

**31.** It is made clear that this Court has not expressed any opinion on the merits of the writ petitioner's grievance as ventilated in the writ petition. The petitioner will be at liberty to pursue the statutory remedy that is available to her, in accordance with law, if she is still entitled to do so in law.

**32.** Urgent photostat certified copy of the order if applied for be given to the parties upon compliance of all necessary legal formalities.

**(Bivas Pattanayak, J.)**