

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(PUBLIC INTEREST LITIGATION)
APPELLATE SIDE**

RESERVED ON: 12.06.2023
DELIVERED ON: 13.06.2023

CORAM:

THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNAMAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

WPA (P) 250 OF 2023

SRI DIPANKAR RIT

VERSUS

STATE OF WEST BENGAL AND OTHERS

WITH

WPA (P) 286 OF 2023

ADHIR RANJAN CHOWDHURY

VERSUS

THE WEST BENGAL STATE ELECTION COMMISSION AND OTHERS

WITH

WPA (P) 287 OF 2023

SUVENDU ADHIKARI AND ANOTHER

VERSUS

THE WEST BENGAL STATE ELECTION COMMISSION AND OTHERS

Appearance:-

Mr. Subir Sanyal, Adv.

Mr. Lokenath Chatterjee, Adv.

Mr. Sukanta Ghosh, Adv.

Mr. Partha Chakraborty, Adv.

.....For the Petitioner in

WPA (P) 250 OF 2023

**Mr. Koustav Bagchi, Adv.
Mr. Debayan Ghosh, Adv.
Ms. Priti Kar, Adv.**

**.....for the Petitioner in
WPA(P)/286/2023**

**Mr. Guru Krishna Kumar, Ld. Sr. Adv.
Mr. Soumya Majumder, Adv.
Mr. Srijib Chakraborty, Adv.
Mr. Lokenath Chatterjee, Adv.
Mr. Vikas Singh, Adv.
Mr. SayakChakraborti, Adv.
Mr. Anish Kumar Mukherjee, Adv.
Mr. Suryaneel Das, Adv.
Mr. Chiranjit Pal, Adv.**

**.....For the Petitioner
In WPA (P) 287 of 2023**

**Mr. Jayanta Mitra, Sr. Adv.
Mr. JishnuSaha Ld. Sr. Adv.
Mr. Avishek Prasad, Adv.
Ms. Sanjukta Samanta, Adv.**

.....For the State Election Commission

**Mr. Kalyan Bandyopadhyay, Ld. Sr. Adv.
Mr. Anirban Ray, Ld. Government Pleader
Mr. T.M. Siddiqui, Adv.
Mr. SirsanyaBandopadhyay, Adv.
Mr. Raja Saha, Adv.
Mr. Arka Kumar Nag, Adv.
Mr. Piyush Agarwal, Adv.**

.....For the State

**Mr. Ashoke Kumar chakraborty, Ld. A.S.G.
Mr. Billwadal Bhattacharya, Ld. D.S.G.I
Mr. Ayanabha Raha, Adv.
Mr. Sujit Bhunia, Adv.**

....For the Union of India

Mr. Amajit De, Special PP, C.B.I.

**.....For the Respondent No.16
in W.P.A.(P) 250 OF 2023**

Mr. Anuran Samanta, Adv.

.....For the Election Commission of India

Mr. Sandipan Banerjee, Adv.
Mr. Ankit Sureka, Adv.
Mr. Sobhan Majumder, Adv.

**.....For the Howrah
Municipal Corporation**

Mr. Bikram Banerjee, Adv.
Mr. Sudipta Dasgupta, Adv.
Ms. Dipa Acharyya, Adv.
Mr. Sagar Dey, Adv.

**.....For Sangrami Jautha
Mancha/Intervenor/Applicants
(W.P.A.(P) 287 OF 2023)**

Mr. Ritzu Ghosal, Adv.
Mr. Mrityunjoy Chatterjee, Adv.
Mr. Sayantan Chatterjee, Adv.

.....For the Intervenor

JUDGMENT

***(Judgment of the Court was delivered by T.S. Sivagnanam, CJ. and
Hiranmay Bhattacharyya, J.)***

1. All the writ petitions concern the forth coming elections to the Panchayats in the State of West Bengal. WPA (P) 286 of 2023 has been filed as a public interest litigation by one Adhir Ranjan Chowdhury. The petitioners in WPA (P) 287 of 2023 are Mr. Suvendhu Adhikari and Mr. Tarunjyoti Tewari. The petitioner in WPA 250 of 2023 is Mr. Dipankar Rit. All the three writ petitions have been filed as public interest litigations. WPA (P) No. 286 of 2023 and 287 of 2023 were heard by this Court on 09.06.2023 and the following order was passed.

1. These writ petitions have been filed as public interest litigations concerning the forthcoming election to the Panchayats in the State of West Bengal.

2. The matter was mentioned before this Court at 10.30 a.m. today and considering the urgency, leave was granted to file

these writ petitions and the same were directed to be listed in the supplementary list today and to be taken at around 12 noon.

3. The respondents have been served and in particular, the West Bengal State Election Commission has also been served and represented by Mr. Jishnu Saha, learned Senior Advocate.

4. The prayer in WPA(P) 286 of 2023 is for issuance of Writ of Mandamus to set aside the notification issued by the State Election Commission notifying the elections for the Panchayats and issue the same afresh after implementation of the demands made by the writ petitioner vide his representation dated 24th April, 2023. The petitioner also seeks for deployment of central forces from the date of filing nomination till the declaration of results; for a direction upon the Election Commissioner, West Bengal State Election Commission to ensure that the candidates are permitted to file their nominations before the State Election Commissioner and/or concerned District Magistrate of the concerned district and for certain other interim reliefs.

5. In WPA(P) 287 of 2023 the petitioners seek for issuance of Writ of Certiorari to quash the decision arrived at by the respondent authorities in allowing only five days to submit nomination papers for the upcoming Gram Panchayat elections to be held on 8th July, 2023; to appoint an Hon'ble retired Judge of this Court as Special Officer/Observer to ensure the conduct of a free, fair, transparent and peaceful election to the three-tier Gram Panchayats in the State of West Bengal; to allow the prospective candidates to file their nominations in the head office of the West Bengal State Election Commission or in the alternative allow the filing of their nominations online; provide adequate number of Central Para Military Forces immediately for the conduct of free and fair election; to extend the time for filing of nomination papers by at least 12 days from the date of notification of election to complete the process of filing such nomination papers and to comply with the directions issued by this Court issued in WPA(P) 611 of 2022 dated 28th March, 2023; to install CCTV Cameras at all polling stations; to ensure simultaneous counting of the votes for the Gram Panchayats, Panchayat Samities as well as Zilla Parishads under the superintendence of a Special Officer; to prohibit the Election Commission from using any contractual workers and/or civic volunteers and/or teachers and non-teaching staff whose issue is subjudice by not giving any election duty; to direct the Election Commission to ensure imposition of prohibitory orders under Section 144 of the Cr.P.C. within one kilometer

radius of the various counting stations and other interim reliefs.

6. *We have elaborately heard Mr. Guru Krishna Kumar, learned senior advocate appearing for the petitioners in WPA(P) 287 of 2023, Mr. Koustav Bagchi, learned advocate appearing for the petitioner in WPA(P) 286 of 2023, Mr. Jishnu Saha, learned senior advocate appearing for the West Bengal State Election Commission, Mr. Kalyan Bandopadhyay, learned senior advocate appearing for the State of West Bengal and other learned advocates who are present in Court.*

7. *From the varied prayers sought for in both the writ petitions the Court is able to decipher that the object of the writ petitions is not to stall the elections nor interdict the election process. This is presumably because the petitioners are aware of the legal position in this regard. The endeavour of the petitioners appears to be to ensure free and fair election. Therefore, the Court is required to consider as to how best the same can be ensured so that not only the nominations are filed in a peaceful manner, the election is also conducted and results are declared in a fair and peaceful manner. We are informed that the nominations have to be filed in physical format.*

8. *It is submitted by Mr. Kalyan Bandopadhyay, learned senior advocate that there is a decision of the Hon'ble Supreme Court which has set aside the order passed by this Court in the election conducted during 2018 directing the filing of nominations electronically.*

9. *Be that as it may, the endeavour of the State Election Commission should be that there should be fair and free elections and the electorate should have confidence in the Election Commission that all will be done well so that they can exercise their franchise in a peaceful manner and elect their desired representative.*

10. *Prima facie, we are of the view that the time limit fixed in the notification is inadequate. The notification has been uploaded/published today i.e. on 9th June, 2023 and filing of nominations would start from 11 AM today.*

11. *This, in our view, would appear to be hurrying up the process which needs to be reconsidered by the State Election Commission. We are also informed that the term of office of the present elected bodies of all the Panchayats at the three-levels is to come to an end in August, 2023.*

12. *Bearing this in mind, the State Election Commission can fix a reasonable time for the prospective candidates to file their nominations because it is insisted that nominations have to be filed in physical form.*

13. *The other concern expressed is with regard to the safety of the candidates who seeks to file their nominations. It is the uniform representation of the petitioners that they seek for directions to file their nominations before the District Magistrate of the concerned district or the State Election Commission. It is not clear as to what is the apprehension in the minds of the prospective candidates or that of the petitioners. It is said that past instances do not give them confidence to file their nominations before the concerned Block Development Officer of the Panchayat. This issue can also be examined by the State Election Commission.*

14. *So far as ensuring free and fair polls, it goes without saying that right from the stage of filing of nomination till the counting of votes and publishing results the entire process should be videographed and the said video footages have to be protected and preserved and the duty lies with the State Election Commission in this regard.*

15. *With regard to the deployment of Central Forces, if in the opinion of the State Election Commission it would augur well to seek for deployment of Central Forces so that the State Police Force can work along with the Central Forces so as to preserve and maintain law and order situation, it is for the State Election Commission to take a decision in that regard. We, therefore, call for the response from the State Election Commission on such issue.*

16. *The other concerns expressed in the writ petitions shall also be taken note of by the State Election Commission and their response to such issues shall be filed in the form of a report before this Court on 12th June, 2023.*

17. *The petitioners have also sought for appropriate direction not to deploy contractual employees and badli workers as election officers or to take part in the election process and in this regard we note that a writ petition has been filed as a public interest litigation wherein certain instructions given by the Chief Election Commissioner have been referred to wherein there appears to be an embargo for deploying contractual staff in the election process. This aspect also shall be considered by the State Election Commission and be addressed in the report to be submitted on the next date.*

18. *Mr. Bandopadhyay, learned senior advocate appearing for the State of West Bengal submits that the State is*

questioning the maintainability of the writ petitions. This issue will be considered at an appropriate stage.

19. We find that the State Election Commissioner has been impleaded by name as the 9th respondent in WPA(P) 287 of 2023 which, in our opinion, uncalled for.

20. Mr. Guru Krishna Kumar, learned senior advocate appearing for the petitioner in WPA(P) 287 of 2023, on instructions, submits that the 9th respondent is given up and leave may be granted to correct the cause-title.

21. The learned advocate-on-record for the writ petitioner in WPA(P) 287 of 2023 is permitted to delete the 9th respondent from the array of respondents and the cause-title be corrected.

22. Let the matter appear on 12th June, 2023.

2. In WPA No. 287 of 2023 an organization called Sangrami Joutha Mancha and its convenor Mr. Baskar Bose sought for impleadment in the writ petition and for certain other reliefs. Three other petitioners namely Sikshanuragi United Association Balichak and its Secretary Mr. Abu Hasan Kan Chowdhury and Mr. Sayan Banerjee Advocate appearing in person sought leave to file the petitions. Since the relief sought for in those petitions were more or less identical to that of the varied prayers sought for in the three writ petitions, we permitted them to intervene in the proceedings without granting leave to file separate petitions/applications.

3. As noted in the order dated 09.06.2023, the petitioner in WPA (P) No. 286 of 2023 sought for issuance of writ of mandamus to set aside the notification issued by the State Election Commission notifying the elections for panchayats and issue the same afresh after complying with the demands made the writ petitioners in the representation dated 24.04.2023. The petitioner also seeks for deployment of central forces from the date of filing

of the nominations till the declaration of results; to direct the State Election Commissioner to ensure that the candidates are permitted to file the nominations before the State Election Commissioner and /or concerned District Magistrates of the concerned districts. In WPA (P) no 287 of 2023 the petitioners have prayed for issuance of writ of certiorari to quash a decision arrived at by the respondent authorities in allowing only five days to submit nomination papers for the upcoming panchayat elections to be held on 08.07.2023; to appoint a Hon'ble Retired Judge of this court as special officer/observer to ensure the conduct of a free, fair, transparent and peaceful election to allow the prospective candidates to file their nominations in the head office of the State Election Commissioner in the alternative allowing the filing of the nominations online; provide adequate number of central para military forces for the conduct of free and fair election; to extend the time for filing of nomination papers by at least 12 days from the date of notification of election to complete the process of filing such nomination papers and to comply with the direction issued in WPA (P) no. 611 of 2022 dated 28.03.2022; to install CCTV cameras at all polling stations; to ensure simultaneous counting of votes for the gram panchayats, panchayat samities as well as zilla parishads under the superintendence of a special officer; to prohibit the election Commission from using any contractual workers and/or civic volunteers and/or teachers and non teaching staff whose issue is subjudice by not giving any election duty; to direct the election Commission to ensure requisition of prohibitory orders under Section 144 CrPC within one kilometer radius of the various counting stations. In WPA (P) 250 of 2023, the petitioner seeks for issuance of a writ

of mandamus to command the respondents not to engage or deploy any contractual/casual workers in the departments of the State Government local bodies, public sector undertakings, anganwadi workers working under the ICDS project, para teachers or any other categories of contractual and casual workers as polling officers; commanding the respondents disclose the details of the contractual /casual workers, civic volunteers etc. who were deployed as polling officers in the last panchayat election held in the year 2017, parliamentary election held in the year 2018 and the state assembly election held in the year 2021 and upon such disclosure direct investigation of CBI in regard to the engagement of such casual workers. The petitioner has also sought for transfer of Deputy Commissioner of Howrah Municipality and Secretary of Howrah Municipality and to direct them to disclose by way of affidavits their assets both movable and immovable accumulated so far.

4. By order dated 09.06.2023, while taking up of WPA (P) 287 of 2023 as the lead case, we noted that though the prayers sought for in the two writ petitions were varied in nature what emerged was that the petitioners had no intention to stall the election nor interdict the election process. We noted that this is presumably because that the petitioners are aware of the legal position in this regard. Further we noted that the endeavor of the petitioners appears to ensure free and fair election and therefore the task assigned to the court was to consider as to how best the same can be ensured so that not only the nominations are filed in a peaceful manner, the election are also conducted and the results declared in a free and peaceful manner.

When we passed the order dated 09.06.2023 we were of the prima facie view that the time limit fixed in the election scheduled is inadequate as the notification fixing the schedule was uploaded/published on 09.06.2023 and filing of nominations was to commence from 11:00 AM on 09.06.2023. Therefore we were of the prima facie view that there appears to be a hurrying up of process which needs to be considered by State Election Commission. We also took note of the fact the term of office of the present elected body of all the panchayats at the three levels is to come to an end in August 2023. The court noted the apprehension in the minds of the prospective candidates or that of the petitioners with regard to the filing of the nominations before the block development officer or the sub divisional officers largely due to the past instances. After noting the submissions made on either side, we called for a response from the State Election Commission on the prayer/issues which were highlighted in the writ petitions. WPA (P) 250 of 2023 was filed much earlier and at the request of the learned advocates for the State Election Commission when the matter came up for admission on 06.06.2023 the matter was directed to be listed on 13.06.2023 to enable the learned advocate for the State Election Commission to get appropriate instruction on the prayer sought for in the writ petition. As mentioned above, the sum and substance of the relief sought for in the said writ petition is not to deploy any contractual staff, casual workers, civic volunteers etc. for election duty.

5. We have elaborately heard the learned Advocates for the parties.

6. In terms of the direction issued on 09.06.2023 an unsigned report along with annexure was filed by the State Election Commissioner. The report is under the following heads 1) regarding extension for the date of nomination 2) regarding appointment of observers 3) regarding online nomination 4) regarding deployment of central para military forces 5) regarding CCTV cameras at all polling stations 6) regarding videography of important events 7) regarding simultaneous counting 8) regarding filing of nominations before District Magistrate of the district concerned or the State Election Commissioner.
7. With regard to the prayer sought for in WPA no. 250 of 2023 to prohibit deployment of contractual/temporary workers for election duty the State Election Commission has filed an unsigned report along with annexures. In the said report reference has been made to Section 6 of the West Bengal State Election Commission Act, 1994 and Section 28(1) of the West Bengal Panchayat Election Act, 2003. There is also reference to the Handbook for Returning Officer (Panchayat Election) and the various provisions contained therein.
8. The first aspect to be dealt with is with regard to the extension of the dates of filing the nomination or extending the schedule as notified by the State Election Commission dated 09.06.2023.
9. It has been uniformly contended by the aforesaid writ petitioners that the period fixed in the Notification issued under Section 43 of the West Bengal Panchayat Elections Act 2003, (for short the "2003 Act") should be directed to be extended considering the large number of Constituencies/

seats for which the three Tier Panchayat Elections for the year 2023 is to be held.

10. Mr. Guru Krishna Kumar, learned senior advocate appearing in support of the writ petition would contend that this Court should direct the Commission to extend the period for filing nomination as such power of extension lies with the Commission under Section 43(1) of the 2003 Act.
11. In reply to such submission, Mr. Mitra, learned Senior Counsel representing the Commission drew the attention of the Court to the Report filed by the Commission and contended that there is a provision for extension of date for making nomination by one day as would be evident from the dates fixed for various stages of election and the Commission may increase the period for filing nominations by one day after assessing the ground realities.
12. For the purpose of deciding the issue whether the Court can issue a Mandamus directing the Commission to extend the period for filing nominations, it will be profitable to take note of some of the provisions of the 2003 Act relating to nomination of candidates for conduct of elections.
13. Section 42 of the 2003 Act empowers the State Government to appoint the date or dates and hour or hours of poll for any election or bye-election by issuing a notification and such power is to be exercised by the State Government in consultation with the Commission.
14. After the State Government issues the notification under Section 42, the 2003 Act mandates the Commission to issue a notification under

Section 43 appointing the dates for various stages of election. Proviso to section 43 empowers the Commission to extend, by notification, the date for completion of any election for reasons which the Commission considers to be sufficient.

15. Mr. Kumar, learned Senior Counsel would contend that such power of extension is very wide and is not subject to any limitation. In order to decide such contention, it would be profitable to refer to the proviso to Section 43(1) and subsection 2 of Section 43 for which the same are extracted hereinafter.

“43. [(1) After the issue of the notification under section 42, the Commission shall, by notification, appoint the dates for various stages of election in the manner as follows:-

(a) the last date for making nomination which shall be not later than twenty-one days but earlier than thirty-five days before the date fixed for the poll;

(b) the date for the scrutiny of nominations, which shall be the second day immediately following the last date for making nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(c) the last date for withdrawal of candidature, which shall be the third day immediately following the date for scrutiny of nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(d) the date on which a poll shall, if necessary, be taken; and

(e) the date before which the election shall be completed:

Provided that the Commission may, for reasons which it considers sufficient, extend, by notification, the date for completion of any election.]

[(2) Where the Commission, at any time after the issue, of the notification under section 42, is of the opinion that it is

not possible to hold election on the date or dates so notified by the State Government under the said section for reasons which it considers sufficient and justified, the Commission shall refer the matter to the State Government, and the State Government shall, on being satisfied with the reasons shown by the Commission, revoke the earlier notification and the commission shall consequently revoke the notification, if any, issued by it under sub-section

(1).]”

16. The proviso to Section 43(1) empowers the Commission to extend the date for completion of any election by issuing a notification for sufficient reasons. The extension of the date for completion of any election may or may not require alteration of the date or dates for holding election fixed by the State Government under Section 42. In the event, the Commission is of the opinion that there is sufficient and just reasons for which the elections cannot be held on the date fixed in the Notification issued by the State Government under Section 42, then the Commission has to take recourse to the provisions laid down under subsection 2 of Section 43 i.e., a reference is to be made to the State Government in that regard and if the State Government upon being satisfied with the reasons shown by the Commission revokes the earlier notification the Commission shall consequently revoke the notification issued under 43(1).

17. This Court is, therefore, of the considered view that alteration of the date fixed for election cannot be done by the Commission in exercise of its powers under proviso to subsection 1 of Section 43. However, if the Commission, for sufficient reasons, considers to extend the date of completion of any election without interfering with the date fixed for holding elections under Section 42, such power of extension of various stages of

election other than interfering with the date of election can be exercised by the Commission under the said proviso.

18. Now the question arises whether a writ of Mandamus can be issued to direct the Commission to exercise its power of extension under Section 43 of the 2003 Act.
19. Mr. Bandyopadhyay learned Senior Counsel appearing for the State raised an objection against the maintainability of the writ petitions. He contended that it is well settled that after commencement of election process by issuance of the election notification, the jurisdiction of the writ court is barred.
20. Record reveals that notification under Section 42 of the 2003 Act fixing the date and hours of poll has been issued on 08.06.2023. It further reveals therefrom that notification under Section 43 of the 2003 Act was issued on 9th June 2023. It is not in dispute that WPA (P) No. 286 of 2023 and WPA(P) 287 of 2003 were filed after issuance of the election notification.
21. Article 243-O of the Constitution of India commences with the non-obstante clause. Clause (b) of Article 243-O states that no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as provided for by or under any law made by the legislature of a State.
22. Section 79 of the 2003 Act provides that disputes as to elections can be raised by filing a petition before the forum and within the time and in the manner laid down under such provision.

23. The question therefore crops up is whether the writ Court can entertain a petition after commencement of the election process and that too at the intermediate stage.

24. Three Hon'ble judges of the Hon'ble Supreme Court of India in the case of ***Election Commission of India through Secretary vs. Ashok Kumar and others*** reported at (2000) 8 SCC 216 took into consideration the decision of the Constitution Bench of the Hon'ble Supreme Court of India in the case of ***N.P.Ponnuswami vs. Returning Officer, Namakhal Constituency, Namakhar Salen District*** reported at (1952) 1 SCC 94 and another constitution bench decision of the Hon'ble Supreme Court in the case of ***Mohinder Singh Gill vs. Chief Election Commissioner*** reported at (1978) 1 SCC 405 and summed up the conclusions in paragraph 32 of the said reports. The Hon'ble Supreme Court in ***Ashok Kumar (supra)*** held thus-

“32. For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove:-

1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

2) Any decision sought and rendered will not amount to “calling in question an election” if it subserves the

progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the court.

5) The court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the courts indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the court would act with reluctance and shall not act, except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material.”

25. From the propositions of law laid down in the aforesaid reports, this court is of the considered view that any action taken or orders passed by authorities vested with the power to conduct election can be made the

subject matter of judicial review on the ground of mala fide or arbitrary exercise of power of such authorities if such an approach does not amount to calling in question an election. However, the invocation of judicial remedy has to be postponed till after the conclusion of election if the subject matter of challenge amounts to calling in question an election.

26. In WPA (P) 286 of 2023, the writ petitioner seeks a mandamus to quash and set aside the notification issued on 9th June 2023 under Section 43 of the Act. An attempt made to set aside the said notification would amount to calling in question the election. In view of the aforesaid well settled proposition of law, this Court is not inclined to entertain such prayer made in the writ petition.

27. For the reasons as aforesaid this Court holds that a Mandamus cannot be issued at the intermediate stage directing the Commission to extend the period for filing nominations.

28. It is, however, observed that the discretion to extend the time for completion of election under proviso to Section 43(1) lies entirely upon the Commission and this Court leaves such matter to be decided by the Commission in accordance with law and in the light of the observations made hereinbefore and also taking note of the submission of Mr. Mitra, learned Senior Advocate appearing for the Commissioner that the date can be postpone by one day without disturbing the schedule notified under Section 42 of the Act.

29. However, in course of argument, the learned advocate appearing for the said writ petitioner drew the attention of the Court to the other reliefs claimed in the said writ petition. One of such relief claimed is to direct filing of nominations before the Commissioner and/or the District Magistrate of the concerned district.
30. The learned advocates for the writ petitioners uniformly submitted that there are instances of prevention of and obstruction to the intending candidates from making nominations at the specified place.
31. Though the Writ Court may not entertain an approach made to it if it amounts to calling in question the election, however, a window has been provided, as would be evident from the aforesaid discussion, to an aggrieved party to approach the writ court if it is to facilitate the election.
32. The learned advocates for the writ petitioners would contend that such prayer as well as various other reliefs claimed is to facilitate the election.
33. The issue as to whether there has been prevention of or obstruction to the intending candidates from making nominations at the specified place is a disputed question of fact which cannot be decided by way of exchange of affidavits. Therefore, this Court was not inclined to invite the parties to deal with such allegations by filing objections thereto. If there is any reasonable apprehension of prevention of or obstruction to making of nominations, or there has been any alleged obstruction, the aggrieved party has to take recourse to the provisions laid down under Subsection 2 of Section 46 of the 2003 Act in the manner specifically provided therein.

34. Section 46(2) provides that if the Commission, on receipt of complaints from the intending candidates or the recognized political parties is satisfied that there is reasonable apprehension of prevention of or obstruction to, the intending candidates from making any nominations at the place and before the authority specified under Section 44, the Commission may, by order, issue a direction to the Panchayat Returning Officer to depute one Assistant Panchayat Returning Officer at the office of the concerned Sub-Divisional officer to receive nomination papers within the specified date and hour.
35. The West Bengal State Election Commission is a statutory authority appointed under Section 3(1) of the West Bengal State Election Commission Act, 1994 (for short the “1994 Act”).
36. It is well settled that a statutory authority can do only what the statute permits it to do. Such authority can act only in a manner specified in the relevant statute. Section 46 of the 2003 Act does not empower the Commission to direct nominations to be filed before the Commission, the concerned District Magistrate or before any authority other than what has been specified under Section 46 of the 2003 Act.
37. Section 44 of 2003 Act states that on the issue of the notification under Section 43 the District Panchayat Election Officer shall in such manner as may be prescribed give public notice of the intended election inviting the nomination of candidates of such election specifying the place where the nominations papers are to be delivered. Thus the public notice of the election which is required to be issued under Section 44 of the Act has to specify the place at which the nomination papers are to be delivered. Sub

section (1) of Section 46 states that on or before the date appointed under clause (a) of Section 43 each candidate shall either in person or by his proposer between the hours as may be prescribed, deliver to the Panchayat Returning Officer, at the place specified in this behalf in the notice issued under Section 44, the nomination paper completed in the prescribed form and signed by the candidate and by a voter of the constituency as proposed. The proviso to Section 46 (1) states that no nomination papers shall be delivered to the Panchayat Returning Officer on a day which is a public holiday. The Panchayat Returning Officer in respect of Gram Panchayat and Panchayat Samity is the Block Development Officer (BDO) and in respect of Zilla parishad it is the Sub Divisional officer (SDO). Thus the statute mandates the notification specifying the place at which the nomination papers are to be delivered. The statute also mandates that the nomination papers to be delivered in person to the Panchayat Returning Officer at the place specified in this behalf in the notice issued under Section 44. Therefore a direction in derogation of the scheme of the Act cannot be issued and if done it may tantamount to interdicting the election process. Therefore the prayer sought for by the petitioners to permit filing of nomination before the District Magistrate of the district concerned or the State Election Commission is not feasible of consideration.

38. It is also well settled that a Mandamus cannot be issued to compel a statutory authority to act de hors the provisions of the relevant statute. Therefore, this Court cannot direct acceptance of nomination papers either

by the Commission or permit filing of nominations before the concerned District Magistrate as prayed for by the writ petitioners.

39. It would be relevant at this stage to take note of the proviso to Section 46 of the 2003 Act which empowers the Commission to extend the last date for making nomination for one day under the contingencies mentioned in Section 46(2). This Court is of the considered view that an aggrieved person takes reverse to Section 46 (2) , the Commission shall take a decision in accordance with law.
40. The discretion to extend the time under the proviso to Section 46(2) lies entirely with the Commission and the Commission being an expert and independent body is competent to take a decision is that regard. This Court, therefore, leaves such matter to the discretion of the Commission.
41. The next issue is with regard to the appointment of Observers. The State Election Commission has submitted that it appoints observers from senior officers of WBCS (Executives) and IAS cadres and the appointment is made following the stipulation in Section 134 (1) of the West Bengal Panchayat Election Act 2003 hereinafter referred to as the 2003 Act. This response is to the prayer sought for by the writ petitioner in WPA (P) No. 287 of 2023 to appoint a retired judge of this Court as an observer to ensure conduct of free, fair, transparent and peaceful election to the three tier gram panchayats in the state of West Bengal. Section 134 falls in Chapter XVI of the 2003 Act. Sub section 1 of section 134 states that the Commission may nominate an observer who shall be an officer of the State Government to watch the conduct of election or elections in the constituency or group of

constituencies and to perform such other functions as may be entrusted to him by the Commission. Sub section 2 states that the observer nominated under sub section 1 of section 134 shall have the power to direct the Panchayat Returning Officer for the constituency or for any other constituencies for which he has been nominated, to stop the counting of votes at any time before the declaration of the result or not to declare the same if in the opinion of the observer booth capturing has taken place or at a large number of polling stations or at places fixed for counting of votes of many ballot papers used at a polling stations are unlawfully taken out of the custody of the Panchayat Returning Officer or are accidentally or intentionally destroyed or lost or damaged or tampered with to such an extent that the result of the polling at the polling station cannot be ascertained. Sub section 3 of Section 134 states that where an observer has directed the Panchayat Returning Officer to stop counting of votes or not to declare the result, the observer shall forthwith report the matter to the Commission and thereupon the Commission shall after taking all material circumstances into account issue appropriate direction. Thus the statutory provision clearly provides for nominating an observer by the Commission who shall be an officer of the state government to watch the conduct of the Elections. The State Election Commission in its report has stated that the Commission appoints observers from the cadre of the senior officers of the West Bengal Civil Services and IAS cadres. In our opinion the exercise to be done by the State Commission being in accordance with the statutory provision, the court will not be justified in interdicting the same as the senior officers of the West Bengal Civil Services as well as the officers in the

IAS cadres are bound to act with due diligence bearing in mind the purpose for which they have been nominated as observers. As held by the Hon'ble Supreme Court, the jurisdiction of the High Court under Article 226 of the Constitution to entertain a writ petition challenging the election is not completely barred. The Bar under Article 243-O (b) of the Constitution, is not absolute and in such cases where there is gross violation of the fundamental principles to an election process under the scheme of the Constitution, the High Court would be competent to exercise the jurisdiction under Article 226 of the Constitution and pass direction to ensure free and fair election (***K. Venkatachalam Versus A. Swamickan and Anr.***¹). Thus, it is not for this court to issue a directions contrary to the statute and in particular Section 134 of 2003 Act, if done, would be a step amounting to "calling in question an election" which has been specifically barred by the decision of the Constitution Bench of the Hon'ble Supreme Court (***N.P. Ponnuswami versus The Returning Officer***²) It has been further held that mandate of the election Commission is to have free and fair election maintain its purity Subjective satisfaction arrived at by the Election Commission on the basis of expert opinion, cannot in a routine manner be interfered by the courts. Therefore we are of the view that the appointment of observers from the senior officers of the West Bengal Civil Services (Executives) and IAS cadres is in consonance with section 134 of the 2003 Act and the same would be sufficient safeguard to achieve the object for having free and fair elections maintaining its purity. Therefore we see no

¹ (1999) 4 SCC 526

² (1952) 1 SCR 218

reason to accede to the prayer sought for by the writ petitioner to appoint a retired judge of this court as observer for the ensuring election.

42. The next issue is with regard to the prayer to filing nominations online.
43. Mr. Ritzu Ghoshal learned advocate appearing on behalf of Mr. Abu Hassan Khan Chowdhury sought for leave of this court to intervene in the pending public interest litigations filed in connection with conduct of Panchayat Elections 2023. This court allowed such prayer of Mr. Ghoshal and he was called upon to advance his arguments on the issues which Mr. Khan Chowdhury sought to canvas before this Court. After going through the reliefs claimed by Mr. Khan Chowdhury, it appears that excepting the issue with regard to filing of online nominations, other issues are similar and identical to the issues raised in the other public interest litigations. Therefore, this court shall now decide the issue as to online filing of nominations in connection with the Panchayat Elections, 2023.
44. Mr. Ghoshal would contend that in order to ensure free and fair elections and to avoid and/or minimize allegations against prevention of or obstruction to filing of physical nominations, this court should direct the Commission to accept online filing of nominations.
45. After hearing the submission of Mr. Ghoshal it appears to this court that he seeks to take advantage of the advancement in the field of information and technology and apply the same with regard to filing of nominations in Panchayat election. The issue as to whether a mandamus

can be issued directing the Commission to accept nominations in the electronic form is no longer res integra.

46. A similar issue fell for consideration before the Hon'ble Supreme Court in the case of West Bengal State Election Commission and others vs. Communist Party of India (Marxist) and others and three Hon'ble judges of the Supreme Court of India decided such issue in its decision reported at (2018)18 SCC 141.

47. The Hon'ble Supreme Court after noticing the provisions laid down under Section 6 of the Information and Technology Act, 2000 observed that the Division Bench of the Calcutta High Court noticed the correct position of law. The observation of the Division Bench of the Calcutta High Court in the case of Communist Party of India (Marxist) State of West Bengal reported at (2018) SCC online Cal 1944 is extracted below.

“The State Election Commission has been constituted under Section 3 of the West Bengal State Election Commission Act, 1994 (hereinafter referred to as the Act of 1994) with Constitutional sanction. It therefore does not strictly come within the ambit of Section 6(1)(a) of the Act of 2000 to be a body or agency owned or controlled by the appropriate Government. Similarly, the State Government is not called upon to make rules in terms of section 90 of the Act of 2000 in respect of filing of nomination forms through e-mail.”

46. After approving the aforesaid finding of the Division Bench of this Court, the Hon'ble Supreme Court noticed the provisions of Section 46, 47 as well as various other provisions of the Panchayat Elections Act and the Rules framed thereunder and held thus-

“20. The provisions contained in the Panchayat Elections Act and rules constitute a complete code in regard to the conduct of the election, including in the matter of filing of nominations. Neither the Panchayat Elections Act nor the Rules contemplate the filing of nominations in the electronic form. Any reform of the electoral process to permit the filing of nominations electronically would have to be carried out by a legislative amendment. The High Court ought not to have issued a mandatory direction of this nature in the face of the specific provisions contained in the Panchayat Elections Act and Rules.”

47. Therefore, by applying the ratio decided by the Hon’ble Supreme Court in the aforesaid reports, this court is of the considered view that a writ of mandamus cannot be issued directing the Commission to accept nominations in the electronic form.

48. The next issue is regarding deployment of central para military forces. It has been stated by the State Election Commission that a meeting on assessment of deployment of forces was taken by the Commission on 09.06.2023 with the Chief Secretary of the state and the Director General of Police and an assessment plan by the State will be submitted in due course which will be reviewed by the Commission for taking appropriate decision. The petitioner’s contention is that to instill confidence in the electorate and to ensure fair and transparent election without any violence taking place can be achieved only by deployment of central para military forces. The petitioner in WPA (P) 287 of 2023 would state that prior to the election to the Kolkata Municipal Corporation during 2021 and the Municipal Election conducted in 2022 the State has witnessed large scale violence which has resulted in various deaths as well. In this regard, the petitioner has relied upon the various press reports which were reported in leading Dailies

during February 2022 highlighting the violence which has occurred during the said elections. It is pointed out that the State Election Commission during the elections for the Kolkata Municipal Corporation declared 1339 polling centers to be sensitive out of the total polling centers of 4949. Reference was also made to the judgment of five judges bench of this court in WPA (P) No. 142 of 2021 etc, batch dated 19.08.2021 which dealt with the post-poll violence after the assembly elections in the state in the year 2021. After taking note of the all the facts and circumstances the larger bench referred the matter to the CBI for investigation wherever allegations are about murder of a person and crime against women and various directions were issued. The petitioner had also referred to the various orders passed by this Court from August 2022 till May 2023 where the court had directed the central agencies to investigate into the acts of communal violence, explosions bomb blasts and violence during religious festivals and as many as ten such orders were referred to. The decision of the Division Bench in WPA 272 of 2021 dated 10.02.2022 was also referred to which concerned the municipal elections wherein the court observed that the Election Commission is vested with the responsibility to ensure free, fair and fearless elections and to assess the ground situation and to take the decision in respect of deployment of para military forces if the circumstances so demand. The court also noted the instances which were pointed out about the violence during the election and post poll violence on the earlier occasion during the election in Bidhannagar. In the light of the same, it was observed that the Election Commission along with the state authorities is required to be appraised of the ground situation prevailing in Bidhannagar and to take

a decision to deploy the para military forces if required. Further it was observed that in case the State Election Commission forms an opinion that deployment of the para military forces during the Bidhannagar Municipal Corporation is not necessary, then the State Election Commission will be personally liable to ensure that no violence takes place and free, fair and fearless election are held in Bidhannagar. This court also had an occasion to consider the situation which had arisen during the Hanuman Jayanti festival and after assigning reasons, directions were issued to requisition the assistance of the para military forces which order and direction was complied with by the State. It is not in dispute that a preliminary assessment has already been made by the State Election Commission and several districts having been earmarked as “sensitive districts”. It has been widely reported in the press that there have been several instances where the prospective candidates complained about non availability of nomination papers which resulted in violence being precipitated and such other incidents. Considering the fact that the total number of seats for which the election has to be conducted is more than 75000 and going by the past incidents wherein on more than 12 occasion the court had to intervene for directing deployment of central forces or transferring the cases to the National Investigating Agency, we are of the view that the State Election Commission should and shall requisition the deployment of central forces to work in tandem with the police force of the State of West Bengal to ensure free and fair elections. It is stated in the report that the assessment plan submitted by the State will be reviewed by the State Election Commission for taking appropriate decision. The ultimate decision should lie with the

State Election Commission more particularly when it has been the consistent submission of the petitioners that there is inadequate police force for being deployed throughout the state so as to cover all polling stations especially when the number of seats for which elections are to be held are more than 75000. Therefore the State Election Commission shall forthwith send requisition of the deployment for the Central forces at the first instance for all the areas / districts which in the opinion of the State Election Commission have been declared as sensitive. Thereafter the State Election Commission shall review the assessment plan submitted by the state and wherever there is inadequacy of the state police force in all such areas also the State Election Commission shall requisition the deployment of paramilitary forces. This requisition shall be done forthwith by the State Election Commission and on receipt of the same, the appropriate authority of the central government shall deploy the required strength without loss of time. Considering the facts and circumstances we are of the view that the charges towards such deployment shall be borne by the central government and no part of it shall be charged to the State of West Bengal.

49. The next issue is with regard to the installation of CCTV cameras at all polling stations. The State Election Commission in its report has stated that there are totally 61636 polling stations spread all over the rural areas of the state. In the last panchayat election, CCTV cameras had been installed in sensitive booths and during the last municipal elections pursuant to the orders passed by this Court CCTV cameras were installed in all polling stations. It is submitted that municipalities are basically urban areas with

better infrastructure and polling stations were much less in numbers. And therefore it is logistically not possible to install CCTV cameras in all polling stations. It needs to be seen as to whether the stand taken by the State Election Commission is justified. Installation of CCTV cameras has become an accepted norm for effective surveillance. Therefore to state that it is logistically not possible to install CCTV cameras in all polling stations may not be fully acceptable. The court is aware of the technical difficulties that may be involved in the matter of installations of CCTV cameras in all polling stations with particular reference to polling stations in remote rural areas and interior villages. Therefore a workable solution has to be arrived at so that no polling station escape from the surveillance of the State Election Commission. Therefore we direct the State Election Commission to install CCTV cameras in all polling stations and only such of those polling stations where it is technically not feasible to install CCTV cameras, in those stations alone the entire process commencing from the filing of the nomination papers till the declaration of the result have to be videographed. In case the State Election Commission is to requisition the CCTV facility installed by the police department then the police department should share the link with the Election Commissioner so that the video footage which have been recorded and live streamed can be viewed by the State Election Commission and such recording be saved in the data files for future reference. Further we direct that in polling stations where there are no CCTV cameras outside the polling booths such areas especially where the prospective candidates gather for filing the nominations and the places where the persons assemble for exercising their franchise, the entire proceedings has to be video graphed

and the said data be preserved by the State Election Commission. These directions shall be implemented by the State Election Commission. With regard to the videography of important events, it has been stated that the Commission has already ordered for the arrangement to be made for videography in different stages of election namely filing of nominations, scrutiny of nominations, withdrawal of candidate and the CCTV surveillance outside strong rooms after storing of ballot papers and on the date of counting the entire counting process is to be captured. In this regard the Commission has referred to the proceedings dated 09.06.2023. While the step taken by the Commissioner is appreciated, it should be ensured that the video footages have to be preserved and shall remain in the custody of State Election Commission and in the event of any eventuality the footage it is to be viewed by any authority shall be made available to the appropriate authority in the event of such requirements.

50. With regard to the simultaneous counting, it has been stated that the Commission orders a single day counting for gram panchayat, panchayat samities and zilla parishads in a centralized manner and to take up counting of votes for each tier one by one in that order. It is stated that this is done for infrastructural reasons as at a venue, number of forms, tables and number of trained personnel are limited and keeping a view to avoid overcrowding. We find the reasons given by the Commission for single day counting to be fair and reasonable and the said decision of the Commission does not require any interference.

51. The next issue is with regard to the prayers sought for in the writ petitions for filing of nomination before the District Magistrate of the concerned district of the State Election Commission.
52. The next aspect is with regard to deployment of contractual workers in election work
53. One Mr. Dipankar Rit filed a public interest litigation being WPA (P) NO. 250 of 2022 praying for a direction not to engage or deploy any contractual / casual worker/ persons of offices / departments of the State Government, local bodies and/ or public sector undertakings; Anganwadi workers working under the ICDS project; para teachers working in Madhyamik Schools/ Siksha Kendras and civic volunteers or any other category of contractual or casual worker/persons as polling officers in the Panchayat Elections 2023.
54. Mr. Sanyal learned counsel appearing for Mr. Rit took this court through several documents annexed to the writ petition as well as the supplementary affidavit in order to impress upon this court that in the past the contractual as well as casual workers have been engaged by the Commission for the purpose of conducting the elections. In support of his contention that contractual and casual workers cannot be engaged in any manner for conducting the elections, Mr. Sanyal placed reliance upon Sections 26 and 159 of the Representation of the People Act, 1951. He also referred to a decision of the Hon'ble Supreme Court in the case of Election Commission of India vs. State Bank of India Staff Association reported at (1995) Supp (2) SCC 13. Mr. Sanyal also referred to the principles laid

down in the Handbook for Returning Officer published by the Election Commission of India (for short “ECI”) with regard to the appointment of polling personnel. He specifically referred to the guidelines incorporated in the said Handbook falling under chapter 3 more particularly paragraphs 3.1.3,3.1.4 and 3.2.1 in order to highlight as to who can be appointed as polling personnel and the procedure for such selection.

55. The Representation of People Act 1951 (for short “the 1951 Act”) was enacted to provide for the conduct of Elections of the Houses of Parliament and to the House or Houses of the legislature of each state, the qualifications and disqualifications for memberships of those houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections.

56. Section 26 of the 1951 Act provides for appointment of Presiding Officers for polling stations. Section 159(1) thereof states that the authority specified in subsection 2 shall, when so requested by a regional commissioner appointed under clause 4 of Article 324 or the Chief Electoral Officer of the State make available to any returning officer such staff as may be necessary for the performance of any duties in connection with an election. Subsection 2 of Section 159 gives a detailed list of the authorities who are duty bound to make available their staff for election work.

57. By laying special emphasis on the word “Staff”, Mr. Sanyal would contend that only permanent and regularly appointed staff of the authorities

mentioned under subsection 2 of Section 159 can be engaged for election work. In other words, casual or contractual workers, Anganwadi workers, para teachers, civic volunteers who do not fall within the category of regular and permanent staff of such authorities cannot be engaged for election work.

58. The provisions of the 1951 Act have no manner of application to the conduct of Panchayat elections. Therefore, the guide lines contained in the Handbook published by ECI cannot be applied to the case on hand as the same has been framed in the light of the provisions contained in the 1951 Act.

59. Since the issues involved in these public interest litigations is with regard to conduct of the Panchayat Elections 2023, it would be relevant to take note of the provisions laid down under the 1994 Act and the 2003 Act for appointment of Presiding Officer and Polling Officer as the 1994 Act has been enacted for the conduct of election to the Panchayats and the Municipalities in the State.

60. Subsection 5 of Section 6 of the 1994 Act provides for appointment of the requisite numbers of Presiding Officers and Polling Officers. Subsection 5 of Section 6 of the 1994 Act is extracted hereinafter.

“(5) 2 [3 [Subject to the provisions of the West Bengal Panchayat Election Act, XXI of 2003, and the rules made thereunder,] the Panchayat Returning Officer shall appoint such number of persons to be the—

(a) Presiding Officer, and

(b) Polling Officer,

as may be necessary for holding elections or bye-elections to a Panchayat:

Provided that no person, who has been employed by or on behalf of, or has otherwise been working for, a candidate in or about the election or bye-election to a Panchayat, shall be appointed to be the Presiding Officer or Polling Officer for holding such election or bye-election, as the case may be.”

61. Upon reading the aforesaid provision it is evident that only a person who has been employed by or on behalf of, or has otherwise been working for a candidate in or about the election or bye election to a Panchayat cannot be appointed as Presiding Officer or Polling Officer for holding such election or bye election.
62. Section 28 of the 2003 Act deals with the appointment of Presiding Officers and Polling Officers. It also appears from the said provision that only a person who has been employed by or on behalf of, or has been otherwise working for, a candidate in or about the election cannot be appointed as a Presiding Officer or a Polling Officer. It therefore appears to this Court that there is no statutory bar in appointing persons who do not suffer the disqualification to be appointed as Presiding Officers or Polling Offices as laid down under Section 6 of 1994 Act read with Section 28(1) of 2003 Act to be appointed as Presiding Officers and Polling Officers.
63. With regard to appointment of Presiding Officers and Polling Officers in the ensuing Panchayat Elections 2023, the Commission has filed a report in Court wherein the relevant portions of the Handbook of the Returning Officer (Panchayat Election) with regard to selection of Polling personnel has been referred to. It has been specifically stated in the said report as follows-

“2. Again, paragraph 11 of Part I of the Handbook of the Returning Officer (Panchayat Election) stipulates the conditions as follows:

For the purpose of efficient control of polling personnel and of economy in expenditure on travelling allowances etc., each district, as far as practicable, should use its own personnel. Vigorous attempts should be made for raising the requisite number of polling personnel for Panchayat Election from among employees under the State and Central government as well as under the Local bodies, Secondary and Primary Schools and Colleges, as may be made available by the State Government. Assessment of the availability of requisite number has to be made well in advance. The Chief Secretary will be requested by the Commission to issue instructions to all Heads of Departments and Offices of the State Govt., Central Govt., and Quasi-Government Institutions to furnish to the District Panchayat Election Officer lists showing the number of officers and staff in different categories. These lists would facilitate the task of making suitable selection of polling personnel. Even then it may not be possible to meet the requirement of polling personnel from these traditional sources and the District Panchayat Election Officer may, as a last resort, deploy with contractual employees, NCC boys, and Civil Defence volunteers etc. with the approval of the State Election Commission to meet the shortage. It should be ensured that such persons are not working for any candidate or any political party involved in the Panchayat Election. At least one Government functionary should be included in each polling party.

Extract of the relevant portion of the Handbook is annexed as Annexure - II.

The Commission has issued guidelines on appointment of polling personnel for the ensuing Panchayat General Elections, 2023 vide No. 204-SEC/3P-15/2023 dated 17.03.2023 (copy enclosed). Annexure - III.

The said guideline stipulates the criteria for selecting polling personnel as follows:

The polling parties shall be formed with the available officers and employees of the State Government and the

Central Government, public undertakings under the State or Central Government, Municipalities, teaching and non-teaching staff of Government and Government aided teaching institutions like Colleges, Higher Secondary, Secondary and Primary Schools and any other employee under the rule making authority of the State or the Central Government. It may please be ensured that every polling party consists of at least one employee of the State or Central Government. No one should be appointed as a member of a polling party, who has been employed by or on behalf of or has been otherwise working for a candidate in or about the election. It should also be ensured that no member of the polling party has his official or residential address within the Block area where such election will be held.

It further stipulates that a Presiding Officer may be drafted from among the officers and employees not below the rank of an Upper Division Assistant working in the offices of the State Government and that fourth Polling Officers may be drafted from the Group-D services.

4. It is pertinent to state that, while drafting polling personnel of all categories for elections, the permanent employees of the Government are drafted first. In case there is a shortfall, contractual employees are drafted for formation of polling parties after obtaining specific approval from the Commission. When contractual employees were engaged in the past, there has been no complaint about their performance in poll duty.

Some such incidences of approval by the Commission in past elections are enclosed herewith and annexed together as Annexure - IV.

5. There is no statutory bar in the Acts, Rules and in the Handbook concerned in drafting

contractual employees for election duty.”

64. In view of the provisions laid down under the 1994 Act read with the 2003 Act with regard to appointment of Presiding Officers and Polling

Officers, this court is of the considered view that persons who do not suffer any disqualification for appointment as Presiding Officers and Polling Officers as specifically provided under Section 6 of the 1994 Act read with Section 28(1) of the 2003 Act can be appointed as Presiding Officers and Polling Officers.

65. This Court, therefore, directs the Commission to keep in mind the provisions laid down under the 1994 Act and the 2003 Act for appointment of Presiding Officers and Polling Officers as well as the stand taken by the Commission as indicated in its Report filed in Court.

66. With regard to deployment of contractual employees and NCC boys, the Handbook states that they will be deployed as a last resort. However, the Handbook further states that the Fourth Polling Officer may be drafted from Group D Officers. Thus, it goes without saying that if contractual employees and NCC boys are to be deployed they are to be deployed to undertake work lower than they work assigned to the Fourth Polling Officer and not assigned any duties above the Fourth Polling Officer.

67. By relying upon Section 7 of 1994 Act, Mr. Sanyal would vehemently contend that the persons employed for election work has to be regular and permanent staff.

68. Section 7 provides for appointment of staff of the Commission that may be necessary for the discharge of the functions conferred upon it by Section 4(1) and 5(1) of the 1994 Act. Section 7 has no manner of

application in case of appointment of Presiding Officers and Polling Officers for which specific provision has been laid down under Section 6(5) of the 1994 Act read with Section 28(1) of the 2003 Act.

69. In State Bank of India Staff Association (supra), the issue that fell for consideration was whether the employees of the State Bank of India can be requisitioned for election duty in the Parliamentary and Assembly Elections. The Hon'ble Supreme Court after taking into consideration the provisions of Section 159 as it then stood held that the services of the Officers of the State Bank of India cannot be requisitioned in the absence of such power under 1951 Act. The issue involved in these public interest litigation is with regard to appointment of Presiding Officer and Polling Officers for Panchayat Elections which is guided by the 1994 Act and the 2003 Act and, therefore, the said decision has no manner of application to the facts of the case on hand.

70. With regard to engagement of civic volunteers in the election work it would be relevant to take note of the circular issued vide memo no. 50/IGP Welfare dated 24.03.2023 issued by the Inspector General of Police (Welfare) wherein the duties that may be entrusted to a civic volunteer has been specifically laid down in the said circular. The relevant portion of the said circular is extracted herein below.

"WEST BENGAL POLICE DIRECTORATE

BHABANI BHAVAN, ALIPORE

KOLKATA-27

CIRCULAR

In terms of the order dated 21.03.2023 of Hon'ble High Court, Calcutta passed in connection with W.P.A. No. 25216 of 2022 in the matter of Kanchan Sharma -Vs- Union of India and Ors., you are again apprised that Civic Volunteer Force is set up to assist police for the following purposes:-

- I. They will assist Police in respective units for traffic management.*
- II. They will assist Police in major festivals.*
- III. They will assist Police regarding unauthorized parking of vehicles.*
- IV. They will assist police in ensuring public safety.*
- V. Any other duties/responsibilities relating to public assistance to be assigned by respective heads of unit.*

A Civil Volunteer can not be entrusted with any law enforcement duties.

In view of the above, you are requested to abide by the Court's Order by letter and spirit.

A copy of the order of Hon'ble High Court, Calcutta mentioned above and G.O. No. 4129-PL/PB/3P-29/11 dated 26.09.2011 regarding guidelines for eligibility, mode of induction, training, duties and termination of voluntary services e.t.c. for Civil Police Volunteer Force is enclosed herewith.

Inspector General of Police, (Welfare)

West Bengal

Memo No. 50/IGP Welfare

Dated 24/03/2023"

71. In view of the circular being issued by the competent authority of the West Bengal Police Directorate, this Court directs the Commission not to entrust to a civic volunteer any duties dehors the said circular. In case the Commission decides to engage the civic volunteers for discharging any duties with regard to the conduct of the Panchayat Elections only such duties as indicated in the said circular can be entrusted to such volunteers.

72. The next aspect which has been focused by the interveners is to ensure protection of the lives and limbs of the polling officers and polling personnel in the ensuing election. It is stated that in the panchayat election held in the year 2018 on 14.05.2018 one Raj Kumar Ray a teacher from Uttar Dinajpur was assigned the duty as Presiding Officer was found missing and on the next day his mutilated body was found with some injuries on the railway track. This led to several applications being made to the competent authorities before the general election in West Bengal conveying the grievances and demanding adequate security measure to the polling officers and polling personnel in the state of West Bengal. In this regard the Sikhshanuragi United Association Balichak represented by its Secretary has sent a representation to the Commission requesting to provide adequate security measures to the polling officers and the polling personnel in West Bengal and the grievance of the petitioner is that till date no steps have been taken in this regard. It is stated that in the year 2018 panchayat election, large scale violence took place resulting in 13 deaths, bombs being hurled, ballot boxes being burned and all these occurred due to inadequate security arrangements. In the general election 2019, 693 instances of

political violence was reported and 11 deaths. Further it is stated that state witnessed huge violence during the assembly election 2021 including 15000 cases of post-poll violence and also cases of violence during and after the West Bengal Municipal Election 2022. It is stated that the association is a registered body under the West Bengal Societies Registration Act, 1961 and it is united forum of teachers and teaching staff and they have come forward conveying their grievances and demanding adequate security measures to polling officers and polling personnel. The association apprehends violence in the ensuing election and they are more concerned about the safety and security of the polling officers and polling personnel. In the earlier part of this order at the first instance in all the district which have been classified as sensitive by the Commission, we have directed requisition of paramilitary force and on an appraisal being done in respect of the other areas and wherever violence is anticipated directions have been issued to Commission to requisition the required para military forces and coupled with the direction to provide the same at the cost of the central government Therefore we are of the view that the said direction will adequately protect the interest of the polling officer and polling personnel. It goes without saying that the State Election Commission should undertake all steps to ensure that the safety and security of the polling officers and polling personnel. All preventive measures shall be taken by the Commission and standard operating procedure can be devised to be implemented in all the polling stations throughout the state. In the event if in a particular polling station central force has not been deployed then it shall be the responsibility of the state police to ensure the safety and security of the polling officers and

polling personnel at such polling stations. Therefore there will be a direction to the Commission to ensure the safety and security of the lives of the polling personnel and polling officers and in the event of any complaint being brought to the notice of the Commission, swift action be taken and the persons who are indulging in violence should be severely dealt with. This direction be complied with in letter and spirit without giving any room for laxity.

(T.S. SIVAGNAM, C.J.)

(HIRANMAY BHATTACHARYYA, J.)

(P.A- PRAMITA/SACHIN/SANCHITA)