

A WEST BENGAL STATE ELECTION COMMISSION AND ORS.

v.

COMMUNIST PARTY OF INDIA (MARXIST) AND ORS.

(Civil Appeal No. 8515 of 2018)

B AUGUST 24, 2018

**[DIPAK MISRA, CJI, A. M. KHANWILKAR AND
DR. D.Y. CHANDRACHUD, JJ.]**

C *West Bengal Panchayat Elections Act, 2003 – Panchayat
elections – Electoral process – Filing of nominations electronically
– As regards, panchayat elections in the State of West Bengal,
issuance of directions by the Division Bench of the High Court to
accept nominations submitted in the electronic form – Names of
those candidates to be published in the list of candidates contesting
the panchayat elections – Challenge to – Held: High Court erred in
D issuing directions for the acceptance of nominations in the electronic
form – 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
E would have to be carried out by a legislative amendment – Moreover,
the election process had already been initiated and the last date for
the filing of nominations was over – Also the said directions issued
by the High Court contrary to the principle of self-restraint which
governs the exercise of the jurisdiction u/Art. 226 once the election
process commences as also the direction contrary to the provisions
of Art. 243 O – In view thereof, order of the High Court directing
F the acceptance of nominations in the electronic form set aside –
Constitution of India – Arts. 226 and 243-O – Election Laws.*

**Pursuant to the notification issued by the State Government
for holding panchayat elections in West Bengal, the election
process commenced. The election notification led to various
G litigations. Before the Division Bench of the High Court, issue
arose as regards acceptance of nomination already filed in the
electronic form by the State Election Commission. The Division
Bench directed the State Election Commission to accept
nominations in the electronic form of those candidates who had
filed and submitted them electronically to the panchayat returning
H**

officers by the specified time. The names of such candidates were directed to be published in the list of candidates contesting the panchayat elections. Hence the present appeal. A

Allowing the appeals, the Court

HELD: 1.1 While the Division Bench of the High Court may have been guided by a desire to ensure a free and fair election, the direction to accept nominations in the election form has clearly transgressed the permissible area within which the jurisdiction under Article 226 could have been exercised. The jurisdiction under Article 226 has to be exercised in a manner consistent with law. The Panchayat Elections Act contains detailed provisions in Part VI for the conduct of elections. Chapter VII contains provisions for the nomination of candidates. Sub sections 1 and 2 of Section 46 require that nominations have to be delivered in person by the candidate or through the proposer. Chapter I of Part IV of the West Bengal Panchayat Elections Rules, 2006 contains supplementary provisions *inter alia* for the nomination of candidates. [Para 16, 17] [113-H; 114-A-B; 115-E] B C D

1.2 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. Moreover, the election process had already been initiated. The last date for the filing of nominations was over. The directions issued by the High Court are in the teeth of the settled principle of self-restraint which governs the exercise of the jurisdiction under Article 226 once the election process commences. Moreover, such a direction would be contrary to the provisions of Article 243 O of the Constitution. In this view of the matter, the High Court was in error in issuing directions for the acceptance of nominations in the electronic form. [Paras 18, 19] [115-F-H; 116-A-B] E F G

H

A **1.3 While issuing notice in these proceedings, this Court directed that the election which was scheduled to take place on 14th May 2018 shall proceed in accordance with law and upon its conclusion, the results would be notified. However, the State Election Commission was directed not to notify the results in respect of constituencies where there was no contest, without the leave of the Court. An affidavit has been filed setting out the data in relation to uncontested seats, on behalf of the State Election Commission. The data placed on the record indicates that out of a total of 58,692 seats combined for Gram Panchayats, Panchayat Samiti and Zila Parishads, 20,159 seats have been uncontested. 3,096 seats out of the 16,860 seats representing 36.1 per cent of the total seats for Gram Panchayats have been uncontested. In the case of the Panchayat Samitis, 33.5 percent of seats were uncontested while 24.6 percent seats for Zilla Parishads were uncontested. [Para 20] [116-B-F]**

D **1.4 Any dispute regarding the election has to be pursued in the manner which is provided in Part VII of the Panchayat Election Act. The Panchayat Elections Act is a complete code in regard to the 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. [Paras 25-27] [118-B, F-G; 119-A-B]**

G *Boddula Krishnaiah v State Election Commissioner, A.P. (1996) 3 SCC 416 : [1996] 3 SCR 687 ; NP Ponnuswami v Returning Officer, Namakkal Constituency [1952] SCR 218 ; Lakshmi Charan Sen v AKM Hassan Uzzaman (1985) 4 SCC 689 : [1985] 1 Suppl. SCR 493 – referred to.*

H

1.5 It would be inappropriate for this Court to exercise its jurisdiction to interdict the declaration of results of the uncontested seats. First and foremost, it is necessary for the Court to notice that no specific relief was claimed before the High Court in regard to those seats where there was no contest. Neither were there adequate pleadings nor indeed were specific prayers set up before the High Court when its jurisdiction under Article 226 was invoked. The proceedings before the High Court were brought by several political parties, each of whom would have been well aware of the situation on the ground and the need to formulate an adequate basis in fact to invoke the jurisdiction of the High Court. Absent such a factual foundation, the High Court dealt with the only issue which had been addressed, which was the plea that nominations should be allowed to be filed in the electronic form. No other plea was raised. The second important consideration which must weigh with the Court is that if the above submission is accepted, election results to over 20,000 seats will be set at naught in the absence of the affected parties before the Court. Thirdly, once the election process has commenced, it is trite law that it should not be interdicted mid stage. The electoral process is afforded sanctity in a democracy. That is the reason why in a consistent line of precedent, this Court has insisted upon the discipline of the law being followed so that any challenge to the validity of an election has to be addressed by adopting the remedy of an election petition provided under the governing statute. For this Court to set aside elections to over 20,000 seats would be to prejudge the basic issue as to whether in each of those constituencies, the election stands vitiated by obstruction having been caused to candidates from filing their nominations. A general assumption of this nature cannot be made. Ultimately whether this is correct would depend upon the evidence adduced in the facts of individual cases where such a grievance has been made in an election petition. The Court has been apprised that approximately 1,700 complaints were filed and about 168 election petitions have been instituted. Any challenge to the election must take place in a manner which is known to law. [Para 29] [120-D-H; 121-A-B]

1.6 Under Section 79(1) a period of 30 days is prescribed for instituting an election petition, where a dispute arises as to

A the validity of an election. The period of 30 days commences
after the date of the declaration of the results of the election.
The pendency of these proceedings may have dissuaded
aggrieved individuals from seeking recourse to the remedy of an
election petition, particularly after the interim order of this Court
B restraining the State Election Commission from notifying the
results of the constituencies where there was no contest. While
the validity of the elections must be tested in election petitions
under Section 79(1), the question as to whether there was a large
scale obstruction from filing nominations is a serious matter which
needs to be resolved. This is particularly because even the
C Election Commission, had proceeded to take notice of the grim
situation while extending the date for the filing of nominations.
Having regard to the seriousness of the allegations and bearing
in mind the fact that these proceedings were pending, it would
be necessary to exercise the power under Article 142 of the
D Constitution to extend the period of 30 days for the filing of
election petitions in respect of the uncontested seats.
[Para 30] [121-C-E]

1.7 The challenges in regard to the validity of the elections
to the uncontested seats in the panchayats, panchayat samitis
and zilla parishads must also be pursued in election petitions
E under Section 79(1) of the Panchayat Elections Act. It is left open
to any person aggrieved to raise a dispute in the form of an
election petition in accordance with the provisions contained in
the Panchayat Elections Act. In exercise of the power conferred
by Article 142, it is directed that the period of 30 days for filing
F election petitions in respect of the uncontested seats shall
commence from the date of the publication of the results in the
Official Gazette. Thus, the judgment and order of the High Court
directing the acceptance of nominations in the electronic form is
set aside. [Para 31, 32] [121-F-H; 122-A-B]

G *Mohinder Singh Gill v The Chief Election Commissioner,*
New Delhi (1998) 1 SCC 405 – referred to.

Case Law Reference

H

WEST BENGAL STATE ELECTION COMMISSION v. COMMUNIST PARTY OF INDIA (MARXIST) [DR. D.Y. CHANDRACHUD, J.] 105

[1996] 3 SCR 687 referred to Para 27 A

[1952] SCR 218 referred to Para 27

[1985] 1 Suppl. SCR 493 referred to Para 27

(1998) 1 SCC 405 referred to Para 28

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8515 of 2018. B

From the Judgment and Order dated 08.05.2018 of the High Court at Calcutta in MAT No. 371 of 2018

WITH

Civil Appeal No. 8516 of 2018. C

Amarendar Sharan, Shyam Divan, Bikas Ranjan Bhattacharya, P.S. Patwalia, Vikas Singh, Sidharth Luthra, Kalyan Bandopadhyay, Sanjay Singhvi, Sr. Advs., Kunal Chatterji, Subhasish Bhowmick, Shamim Ahmed, Ms.Divya Sejwar, A.K.Mishra, Ms. Aishwarya Bhati, Kabir Bose, Ms. Natasha Dalmia, Ms.Sukanya Bose, Nachiketa Joshi, Ujjaval Kumar, Suhaan Mukerji, Ms.Astha Sharma, Harsh Gursahani, Abhishek M., Ms. Kajal Dalal (for M/s PLR Chambers and Co.), Chanchal Kr. Ganguli, Ms. Aparna Bhat, Santi Ranjan Das, Anindo Mukherjee, Ms. Sarla Chandra, Bijan Kumar Ghosh, Advs. for the appearing parties. D E

Ms. Maitrayee Banerjee, Petitioner-in-person.

The Judgment of the Court was delivered by

DR. DHANANJAYA Y. CHANDRACHUD, J. 1. Leave granted. F

2. After the process commenced in the State of West Bengal for elections to the panchayats, a Division Bench of the Calcutta High Court issued directions on 8 May 2018 to the State Election Commission to accept nominations submitted in the electronic form. The names of those candidates were directed to be published in the list of candidates contesting the panchayat elections of 2018. In issuing these directions, the High Court was conscious of the fact that the provisions of the Information Technology Act 2000 did not apply to the West Bengal State G

H

A Election Commission, which is a constitutional authority. Nonetheless, the High Court held that the provisions of the Information Technology Act 2000 shall be deemed to be read into the provisions of the West Bengal Elections Act 2003. Holding that such a construction would further the democratic process and facilitate a fair and free election, the High Court issued directions for the acceptance of nominations in the electronic form. The judgment of the High Court has been challenged in these proceedings by the West Bengal State Election Commission.

3. Notice was issued by this Court on 10 May 2018 and the following interim directions were issued:

C “(i) There shall be a stay of the impugned judgment and order dated 8.5.2018 passed by the Division Bench of the High Court;
(ii) The Panchayat election scheduled to be held on 14.5.2018, shall proceed as per law;
(iii) The petitioners i.e. the West Bengal State Election Commission and its functionaries shall see to it that the election which is scheduled for 14.5.2018 is held in absolute fairness, keeping in view the concept of purity of an election in a democracy;
(iv) The election process in respect of the constituencies shall be completed in all aspects and the results of the election can be notified as per law; and
(v) The petitioners shall not notify the result in respect of the constituencies where there has been no contest, without the leave of this Court.”

F 4. Arrayed as respondents to these proceedings are the Communist Party of India (Marxist), the State of West Bengal through the Secretary, Department of Home, the Secretary in the Department of Panchayat and Rural Development, the All India Trinamool Congress, Ananda Bazar Patrika, Times of India and the Bharatiya Janata Party, West Bengal through its Vice President. We have heard learned counsel for the parties.
G We have also heard a large number of intervenors in these proceedings.

H 5. A reference to the salient events will facilitate an understanding of the controversy. On 31 March 2018, the State government issued a notification for holding panchayat elections in West Bengal on 1, 3 and 5 May 2018. The State Election Commission announced a schedule for

the ensuing panchayat elections, exercising power under Sections 42 and 43 of the West Bengal Panchayat Elections Act 2003 (“Panchayat Elections Act”). The first notification issued by the State Election Commission in respect of twelve districts stipulated the election schedule for gram panchayats, panchayat samitis and zilla parishads governed by the West Bengal Panchayat Act 1973. The last date for making nominations was 9 April 2018; scrutiny of nominations was to take place on 11 April 2018; the last date for withdrawal of candidatures was 16 April 2018; and the poll, if necessary, was to be concluded on 1 May 2018. By two other notifications also of 2 April 2018, the election schedule was announced respectively for two districts and six districts. The election programme was the same, save and except for the dates of polling which were 3 and 5 May 2018.

6. On 6 April 2018, a public interest litigation was moved before the Calcutta High Court by a person - Adhir Ranjan Chowdhury of the Indian National Congress for challenging the election notification. Simultaneously a writ petition¹ under Article 32 of the Constitution was instituted before this Court by the Bharatiya Janta Party (BJP) in which *inter alia* there was a specific prayer (extracted below) for a direction to accept nomination papers through e-mail:

“b. issue an appropriate writ, order or direction in the nature of mandamus directing the Respondent No 6 to take immediate steps to make arrangements for submission of nomination papers for the West Bengal State Panchayat Elections 2018 through email:”

The writ petition was disposed by a two Judge bench of this Court on 9 April 2018. A grievance was made before this Court, based on newspaper reports, that candidates who wished to contest the panchayat elections were not being allowed to collect and submit their nomination forms as a result of the violent actions of the supporters of the ruling party in the State. This submission was recorded by the Court:

“Relying upon the newspaper reports which appeared in the Times of India, Kolkata edition dated 03.04.2018 and 04.04.2018, the Statesman, Kolkata edition dated 04.04.2018 and the Telegraph e-paper preview, the learned senior counsels for the petitioner submitted that the petitioner’s candidates who want to contest election for the panchayat which is to be held in the State of West

¹ W P (C) No 302 of 2018

A Bengal are not allowed to collect the nominations forms and to submit the same on account of violent resistance being put by the supporters of the ruling party.”

This Court declined to interfere, since the election process had commenced and relied on the judgment in **Boddula Krishnaiah v State Election Commissioner, A.P.**². The Court however took notice of the grievance that candidates had been prevented from submitting their nominations:

C “However, the fact remains that according to the newspaper reports filed along with writ petition which has been referred to by the learned senior counsel for the petitioner incidence of violence has taken place when the candidates have gone to obtain and file their nomination papers. This also stands fortified with the notification dated 05.04.2018 issued by the West Bengal State Election Commission where the State Election Commission had provided additional venue for filing the nomination papers.”

D This grievance, in the view of the Court, was for the State Election Commission to consider at the behest of any political party or a candidate who desired to contest the election. Liberty was accordingly granted to them to approach the State Election Commissioner who was directed to ensure the disposal of the grievances in accordance with law, forthwith.

E This Court expressed the hope that in order to ensure free and fair elections to the panchayats, the State Election Commission shall take appropriate steps to remove the apprehensions of intending candidates. The petitions were accordingly disposed of.

F 7. The State Election Commission issued directions on 9 April 2018, in exercise of its power under Section 46(2) of the Panchayat Elections Act, extending the last date for submitting nominations by one day, that is until 10 April 2018. In issuing this direction, the State Election Commission indicated the following reasons:

G “Whereas, information has been received through complaints, deputation etc. that intending candidates and proposers are being obstructed or prevented from making nomination; and

Whereas, many intending candidates could not file their nomination

H ²(1996) 3 SCC 416

papers due to the above disruption; and A

Whereas, along with complaints made by the Political Parties some nomination papers that they allegedly could not submit before the Panchayat Returning Officers, have been annexed.”

8. The order of the State Election Commission extending the period for filing of nominations was recalled immediately on the next day – 10 April 2018. The BJP filed a writ petition³ before the Calcutta High Court *inter alia* seeking directions for the acceptance of nominations and police assistance. By a supplementary affidavit, the validity of the order dated 10 April 2018 was questioned. The Calcutta High Court issued an interim direction suspending the operation of the notification of the State Election Commission dated 10 April 2018. On 11 April 2018 this Court was also moved in a Miscellaneous Application by the BJP. This Court granted liberty to move the Calcutta High Court where proceedings were pending. On 12 April 2018, the High Court directed the State Election Commission that before proceeding further with the electoral exercise, it shall inform the Court on affidavit of the steps taken in terms of its direction of 10 April 2018 and the order of this Court dated 9 April 2018. An intra-court appeal against the order was dismissed on 16 April 2018, though with a request to the learned Single Judge to dispose of the pending proceedings. B
C
D

9. The learned single Judge of the High Court delivered judgment on 20 April 2018 in which the following directions were issued: E

“I) The order cancelling the extension of the day/date for filing nominations as issued by the Commission dated 10th April, 2018 stands quashed;

II) The Commission is directed, upon consultation with the State and the major collective stake holders, to issue a fresh Notification extending the day/date for filing nominations; F

III) The Commission shall then reschedule the further dates in the election process as per statutory framework; G

IV) The Commission shall then carry forward the electoral process from the extended day/date of filing nominations as directed by (II) above;

³AST 9 of 2018

A V) The cost of Rs.5,00,000/- (Rupees five lakhs only) as directed to be deposited by the petitioners in AST 9 of 2018 by order of 12th April, 2018 and, so deposited shall be forwarded by the learned Registrar General, High Court at Calcutta to the account of the Commission towards part of its secretariat costs.”

B 10. On 21 April 2018, the State Election Commission issued a notification extending the date for the filing of nominations to 23 April 2018; fixed 25 April 2018 as the date for scrutiny and 28 April 2018 as the last date for the withdrawal of candidature. On 23 April 2018, the High Court, upon being moved by some of the intending candidates, directed the State Election Commission to ensure the acceptance of nomination forms. Three writ petitions were moved before the High Court. By a judgment dated 24 April 2018, the learned Single Judge declined to interfere with the election process observing that:

D “This Court cannot be further unmindful of the fact that the order of 20th April, 2018 has been accepted and acted upon. The participation of the major stake holders, including the INC, as reflected from the documents filed by the Commission in Court today, disclose that each of their views have been noticed prior to the Commission exercising its prerogative in consultation with the State Government to re-extend the nomination date.

E In view of the above movement of events this Court does not find the argument of Mr Ghosal to the effect that the Commission acted in *hot haste* to be acceptable.

F Accordingly, this Court does not intend to interrupt the electoral exercise further and does not intervene by passing any direction in this petition.”

Writ Petition 4887 (W) of 2018 filed by the BJP and Writ Petition 4886 (W) of 2018 filed by the Party for Democratic Socialism were also disposed of.

G 11. On 25 April 2018, the CPI (M) moved a writ petition⁴ under Article 226 seeking *inter alia*, directions for (i) setting aside the entire election process; (ii) removal of the State Election Commissioner; (iii) permission to file nominations in the electronic form; (iv) deployment of security personnel other than those under the control of the state

H ⁴AST 11 of 2018

government; (v) appointment of special officers responsible to the Court; and (vi) recording video footage of the entire process. During the course of the hearing before the learned Single Judge on 25 April 2018, the only relief which was pressed on behalf of CPI (M) was that the State Election Commission must accept nominations already filed, in the electronic form. The learned Single Judge of the High Court declined to entertain the writ petition. A B

12. On 26 April 2018, polling dates were announced for 14 May 2018 by the State Election Commission. On 1 May 2018, fresh writ petitions were moved before the learned Single Judge of the Calcutta High Court. The High Court declined to issue any further directions having regard to its earlier orders. The CPI (M) filed an appeal before the Division Bench against the orders of the learned Single Judge. The Division Bench, while disposing of the appeal, directed the State Election Commission to accept nominations in the electronic form of those candidates who had filed and submitted them electronically to the panchayat returning officers by 3.00pm on 23 April 2018. The names of such candidates were directed to be published in the list of candidates contesting the Panchayat elections of 2018. C D

13. Appearing on behalf of the State Election Commission, Mr Amarendra Sharan, learned senior counsel submitted that (i) the directions issued by the High Court, after the last date of nominations and scrutiny, to accept nominations submitted electronically is contrary to the clear mandate of Section 46(1) of the Panchayat Elections Act; (ii) though this relief had been specifically sought in proceedings under Article 32 before this Court in Writ Petition (C) 302 of 2018, it had been declined; (iii) the directions issued by the High Court are contrary to the mandate of Article 243 K of the Constitution since the provisions contained in the Panchayat Elections Act constitute a complete code regarding the filing of nominations; (iv) the High Court was manifestly in error in holding that the Information Technology Act 2000 shall be deemed to be a part of the Panchayat Elections Act 2003. E F

14. On the other hand, it has been urged on behalf of the first respondent that the High Court had been constrained to issue a direction for the acceptance of nominations in the electronic form after sufficient material was placed before it indicating that candidates had been prevented from filing their nominations. It was urged that as a result of G H

A the violent activities of the supporters of the ruling party in the state, a situation had arisen where it was not possible to file nominations personally and hence the directions which were issued by the High Court subserve the cause of a free and fair election.

B Section 6 of the Information Technology Act 2000 provides as follows:

“6. Use of electronic records and [electronic signatures] in Government and its agencies. - (1) Where any law provides for-

C (a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;

(b) the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner;

D (c) the receipt or payment of money in a particular manner, then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.

E (2) The appropriate Government may, for the purpose of subsection (1), by rules, prescribe -

(a) the manner and format in which such electronic records shall be filed, created or issued;

F (b) the manner or method of payment of any fee or charges for filing, creation or issue any electronic record under clause (a).”

Article 243K provides thus:

G **243K.** (1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

(2) Subject to the provisions of any law made by the Legislature of a State, the conditions of service and tenure of office of the

H

State Election Commissioner shall be such as the Governor may by rule determine: A

Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment. B

(3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1). C

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats.”

15. The State Election Commission has been constituted pursuant to Article 243 K. It is entrusted *inter alia* with superintendence, direction and control over the electoral process. The State Election Commission has been established pursuant to the above constitutional dispensation under the provisions of Section 3 of the West Bengal State Election Commission Act 1994. The High Court was cognizant of the fact that the State Election Commission does not fall within the ambit of Section 6(1)(a) of the IT Act 2000. Indeed, the High Court noticed this position in its following observations: D

“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 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.” E F G

16. Despite having noticed the above position in law, in our view correctly, the High Court proceeded to issue a mandamus directing the State Election Commission to accept nominations in the electronic form. While the Division Bench of the High Court may have been guided by a H

A desire to ensure a free and fair election, the direction to accept nominations in the election form has clearly transgressed the permissible area within which the jurisdiction under Article 226 could have been exercised. The jurisdiction under Article 226 has to be exercised in a manner consistent with law. The Panchayat Elections Act contains detailed provisions in Part VI for the conduct of elections. Chapter VII contains provisions for the nomination of candidates. Sub sections 1 and 2 of Section 46 require that nominations have to be delivered in person by the candidate or through the proposer:

C “46. (1) 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, a nomination paper completed in the prescribed form and signed by the candidate and by a voter of the constituency as proposer:

D Provided that no nomination paper shall be delivered to the Panchayat Returning Officer on a day which is a public holiday.

E (2) Without prejudice to the generality of the provisions contained in sub-section (1), if the Commission, on receipt of complaints from the intending candidates or the recognize/ed political parties, either from or through the District Panchayat Election Officer or its own machinery or any other agency, is satisfied that there is reasonable apprehension of prevention of, or obstruction to, the intending candidates from making nominations at the place or before the authority for the Gram Panchayat and Panchayat Samiti constituencies specified in the notice under section 44, the Commission may, by order, issue a direction to the Panchayat Returning Officer appointed for any Block, to depute one Assistant Panchayat Returning Officer at the office of the Sub-Divisional Officer having jurisdiction, for receiving nomination papers within the specified date and hour from the intending candidates for one or more Gram Panchayat or Panchayat Samiti constituencies, as the case may be:

G Provided that the Commission may also, by the said order, extend the last date for making nomination for one day and also direct

H

that all the nomination papers received under sub-sections (1) and (2) for any Gram Panchayat or Panchayat Samiti constituency, as the case may be, shall be taken up by the Panchayat Returning Officer for scrutiny of all such nomination papers, at one sitting, one after another, in terms of the notice under section 44: A

Provided further that on receipt of such order of the Commission, the Panchayat Returning Officer shall arrange to display a notice accordingly in his office and in the office of the subdivisional officer and District Panchayat Election Officer and shall also arrange for wide publicity within the polling area.” B

17. Section 47 stipulates that in order to be declared nominated for election from a constituency, a candidate must deposit or cause to be deposited in cash with the Panchayat returning officer, the amounts as stipulated in the provision. Under Section 48, the Panchayat returning officer, on receiving a nomination paper under Section 46(1), is required to inform the person delivering the nomination of the date, time and place fixed for scrutiny. Thereafter, a scrutiny takes place under Section 49. Section 50 provides for withdrawal of nominations and Section 51 for the preparation of a list of contesting candidates and the allotment of symbols. Section 52, thereafter provides for the publication of a list of contesting candidates. Chapter I of Part IV of the West Bengal Panchayat Elections Rules 2006 contains supplementary provisions *inter alia* for the nomination of candidates. C
D
E

18. 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. F
G

19. Moreover, the election process had already been initiated. The last date for the filing of nominations was over. The directions issued by the High Court are in the teeth of the settled principle of self-restraint which governs the exercise of the jurisdiction under Article 226 once the

H

A election process commences. Moreover, such a direction would be
contrary to the provisions of Article 243 O of the Constitution. In this
view of the matter, we are of the view that the High Court was in error
in issuing directions for the acceptance of nominations in the electronic
form. The judgement of the High Court would accordingly have to be
set aside.

B

20. While issuing notice in these proceedings on 10 May 2018,
this Court directed that the election which was scheduled to take place
on 14 May 2018 shall proceed in accordance with law and upon its
conclusion, the results would be notified. However, the State Election
Commission was directed not to notify the results in respect of
constituencies where there was no contest, without the leave of the
Court. On 3 July 2018, when the proceedings were taken up, this Court
was informed by Mr P S Patwalia, learned Senior Counsel appearing on
behalf of the BJP – West Bengal Unit that at the Panchayat level as
many as 16,860 seats have remained uncontested out of a total of 48,650
seats; for the Panchayat Samitis, 3,096 seats out of the 9,217 were
uncontested while in the Zila Parishads 203 out of the 825 seats were
uncontested. An affidavit has been filed setting out the data in relation to
uncontested seats, on behalf of the State Election Commission. The data
placed on the record indicates that out of a total of 58,692 seats combined
for Gram Panchayats, Panchayat Samiti and Zila Parishads, 20,159 seats
have been uncontested. 3,096 seats out of the 16,860 seats representing
36.1 per cent of the total seats for Gram Panchayats have been
uncontested. In the case of the Panchayat Samitis, 33.5 percent of seats
were uncontested while 24.6 percent seats for Zilla Parishads were
uncontested.

E

F 21. As regards the uncontested seats, the following submissions
have been urged before this Court on behalf of the State Election
Commission:

(i) The State Election Commission has been alive to the need to
conduct a free and fair election and after the election took place
on 14 May 2018, it ordered a re-poll in 572 booths where
problems had occurred;

G

(ii) The State Election Commission had received only 1770
complaints and, as such, it would be incorrect to postulate that

H

the elections of all the 20,159 uncontested seats have been vitiated. A

22. These submissions have been supplemented on behalf of the State government by Mr Vikas Singh, learned senior counsel who urged that : (i) this Court should not exercise its jurisdiction to interfere with the declaration of the results of uncontested seats, once the process has been completed; (ii) under the provisions of Section 7 of the West Bengal Panchayat Act 1973 the term of the panchayats is only five years after which no extension is permissible; (iii) if the declaration of results to the uncontested seats are not allowed to be effected, it would be impossible to constitute the panchayats, resulting in a failure of allocation of funds for constitutional purposes;(iv) in the absence of any cogent complaint of obstruction in the filing of nominations a generalised presumption cannot be made in respect of each one of the nearly 20,000 seats. It has been submitted that as many as 3,170 panchayats are non-functional as a result of the stay on the declaration of results. B C

23. Mr Kalyan Bandopadhyay, learned senior counsel appearing on behalf of the All India Trinamool Congress submitted that: (i) the uncontested seats were not the subject matter of the writ petition before the Hon'ble High Court; neither were there any pleadings, nor were there any prayers; (ii) interference of this Court in regard to the uncontested seats will result in setting the election process at naught in the absence of the affected parties; (iii) once the election process has commenced, it cannot be arrested and the only remedy is to challenge the outcome of the election by filing an election petition and (iv) under the provisions of Article 243 E, the term of every panchayat is five years and no longer. Article 243 O imposes a bar on the interference by the Court. At this stage, any interference would seriously impede the constitutional process of constituting the panchayats. D E F

24. Section 64 of the Panchayat Elections Act lays down the procedure to be followed in the case by contested and uncontested elections. If at any election of a gram panchayat, panchayat samiti or zilla parishad, the number of contesting candidates is less than the number of seats to be filled in a constituency, the panchayat returning officer shall forthwith declare all such candidates to be duly elected. Under Section 77, as soon as may be, after the result of an election has been declared, the panchayat returning officer must report the result to the G

H

A District Panchayat Election Officer; to the Director of Panchayats and Rural Development and to the Commission. The Director is under a duty to cause the declarations of the names of the elected candidates to be published in the Official Gazette.

B 25. Any dispute regarding the election has to be pursued in the manner which is provided in Part VII of the Panchayat Election Act.

Under Section 79(1):

C “79. (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 –

D (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*.”

E Section 80 stipulates that no election to a panchayat shall be called into question except by an election petition presented in accordance with Part VII. In fact, Section 84 (1) also stipulates that the Court shall dismiss an election petition which does not comply with the provisions of Section 79 or Section 80.

F 26. The Panchayat Elections Act is a complete code in regard to the 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. Clause (b) of Article 243 O stipulates thus:

G “243-O. Notwithstanding anything in this Constitution—

(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.”

H

27. There is merit in the submission that 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. This principle has been consistently adhered to in decisions of this Court. In **Boddula Krishnaiah** (supra), a three Judge bench, adverted to the decisions of the Constitution Bench in **NP Ponnuswami v Returning Officer, Namakkal Constituency**⁵ and in **Lakshmi Charan Sen v AKM Hassan Uzzaman**⁶. After referring to **Ponnuswamy**, it was observed:

“In NP Ponnuswamy v Returning Officer, Namakkal Constituency a Constitution Bench of this Court had held that 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. In conformity with the principle, the scheme of the election law 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.”

The binding principle must be followed.

28. The intervention of this Court has been sought on the basis that free and fair elections are a part of the basic feature of the Constitution. Mr Patwalia urged, the entire electorate vicariously is a party to the contest. Exercise of the jurisdiction by this Court has been sought on the ground that the process of election was polluted, there

⁵ 1952 SCR 218

⁶ (1985) 4 SCC 689

A having occurred large scale obstructions to the filing of nomination papers by candidates. The submission is that as many as 20,159 seats have gone uncontested and an overwhelmingly large majority of them have been bagged by candidates supported by the ruling dispensation in the State of West Bengal. Mr Patwalia urged that there is contemporaneous material to indicate that as a result of obstruction and violence, candidates were prevented from filing their nominations. Mr Patwalia invoked the observations contained in the judgment of this Court in **Mohinder Singh Gill v The Chief Election Commissioner, New Delhi**⁷, emphasising the need to maintain the purity of the election process.

C 29. Having given our anxious consideration to the rival submissions which have been urged at the bar, we find that there are several reasons why it would be inappropriate for this Court to exercise its jurisdiction to interdict the declaration of results of the uncontested seats. First and foremost, it is necessary for the Court to notice that no specific relief was claimed before the High Court in regard to those seats where there was no contest. Neither were there adequate pleadings nor indeed were specific prayers set up before the High Court when its jurisdiction under Article 226 was invoked. The proceedings before the High Court were brought by several political parties, each of whom would have been well aware of the situation on the ground and the need to formulate an adequate basis in fact to invoke the jurisdiction of the High Court. Absent such a factual foundation, the High Court dealt with the only issue which had been addressed, which was the plea that nominations should be allowed to be filed in the electronic form. No other plea was raised. The second important consideration which must weigh with the Court is that if the above submission is accepted, election results to over 20,000 seats will be set at naught in the absence of the affected parties before the Court. Thirdly, once the election process has commenced, it is trite law that it should not be interdicted mid stage. The electoral process is afforded sanctity in a democracy. That is the reason why in a consistent line of precedent, this Court has insisted upon the discipline of the law being followed so that any challenge to the validity of an election has to be addressed by adopting the remedy of an election petition provided under the governing statute. For this Court to set aside elections to over 20,000 seats would be to prejudge the basic issue as to whether in each of those constituencies, the election stands vitiated by obstruction having

⁷(1998) 1 SCC 405

H

been caused to candidates from filing their nominations. A general assumption of this nature cannot be made. Ultimately whether this is correct would depend upon the evidence adduced in the facts of individual cases where such a grievance has been made in an election petition. The Court has been apprised that approximately 1,700 complaints were filed and about 168 election petitions have been instituted. We are emphatically of the view that any challenge to the election must take place in a manner which is known to law. A
B

30. Under Section 79(1) a period of 30 days is prescribed for instituting an election petition, where a dispute arises as to the validity of an election. The period of 30 days commences after the date of the declaration of the results of the election. The pendency of these proceedings may have dissuaded aggrieved individuals from seeking recourse to the remedy of an election petition, particularly after the interim order of this Court restraining the State Election Commission from notifying the results of the constituencies where there was no contest. While we are of the view that the validity of the elections must be tested in election petitions under Section 79(1), the question as to whether there was a large scale obstruction from filing nominations is a serious matter which needs to be resolved. This is particularly because even the Election Commission, as we have seen, had proceeded to take notice of the grim situation while extending the date for the filing of nominations. Having regard to the seriousness of the allegations and bearing in mind the fact that these proceedings were pending, we are of the view that it would be necessary to exercise the power under Article 142 of the Constitution to extend the period of 30 days for the filing of election petitions in respect of the uncontested seats. C
D
E

31. For these reasons, we are of the view that challenges in regard to the validity of the elections to the uncontested seats in the panchayats, panchayat samitis and zilla parishads must also be pursued in election petitions under Section 79(1) of the Panchayat Elections Act. We leave it open to any person aggrieved to raise a dispute in the form of an election petition in accordance with the provisions contained in the Panchayat Elections Act. In exercise of the power conferred by Article 142, we direct that the period of 30 days for filing election petitions in respect of the uncontested seats shall commence from the date of the publication of the results in the Official Gazette. F
G

H

A 32. For the reasons indicated earlier, we allow the appeals and set aside the impugned judgment and order of the Calcutta High Court directing the acceptance of nominations in the electronic form. Pending applications, if any, are also disposed of. There shall be no order as to costs.

B

Nidhi Jain

Appeals allowed.