

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 28775/2024

[Arising out of impugned judgment and order dated 23-09-2024 in LPA No. 244/2024 passed by the High Court of Jharkhand at Ranchi]

MANJUNATH BHAJANTRI

Petitioner(s)

VERSUS

ELECTION COMMISSION OF INDIA & ORS.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.277434/2024-EXEMPTION FROM FILING O.T. and IA No.277433/2024-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 06-12-2024 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE PANKAJ MITHAL

For Petitioner(s) Mr. P S Patwalia, Sr. Adv.
Mr. Indrajit Sinha, Adv.
Mr. Abhishek Choudhary, Adv.
Mr. Mukesh Kumar Singh, Adv.
Mr. Alok Kumar, Adv.
Mr. Devshi Chand, Adv.
Mr. Narendra Kumar Goyal, Adv.
M/S. Mukesh Kumar Singh And Co., AOR

For Respondent(s) Mr. Maninder Singh, Sr. Adv.
Mr. Ankit Agarwal, AOR
Ms. Viyushti Rawat, Adv.

UPON hearing the counsel the Court made the following

O R D E R

1. Heard Mr. P.S. Patwalia, learned senior counsel appearing for the petitioner.

2. The counsel would firstly point out that the petitioner, who is an IAS officer, was posted as the Deputy Commissioner-cum-District Election Officer (DC-cum-DEO) at Deoghar in 2021. He supervised the bye-election of the Madhupur Assembly Constituency

until he was moved out on 26.04.2021. A few FIRs were lodged by the officer on the interference with the election process, against one Member of Parliament and others. The accused in those FIRs then moved the Election Commission of India (ECI) on 26.10.2021 whereafter the ECI through its communication dated 06.12.2021, directed the State Government to initiate disciplinary proceedings against the petitioner. Such direction was issued under Section 20-A of the Representation of People Act, 1950 and as per the ECI's order dated 07.02.2001 and also the order of the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training).

3. The above communication of the ECI dated 06.12.2021 was challenged in a Writ Petition by the petitioner. The learned Single Judge found no merit in the objection, on the maintainability of the Writ Petition and held that this was not a case where the petitioner should be relegated to the Central Administrative Tribunal (CAT).

4. However, on appeal (LPA No. 244 of 2024) filed by the ECI, the learned Division Bench on 23.09.2024 held that the Writ Petition is not maintainable and the petitioner should move the CAT.

5. The learned senior counsel would then point out that when the Disciplinary Proceeding (DP) is actually drawn up, the matter is subject to jurisdiction of the CAT. But here since DP stage is not yet reached, the Writ Petition was maintainable in the High Court. The counsel points out that the learned Single Judge relied on *Pon Paramaguru, Director General of Police (Retd.) & Ors. v.*

State of Tamil Nadu & Ors., reported in 2006 SCC Online Mad 311 and *T.V. Madhusoodanan Vs. Chief Election Commission & Anr.* reported in 1994 SCC Online Ker 579. In *Pon Paramaguru* (supra), it was held as under, as relied on by the learned Single Judge:

"65. Mr. R. Viduthalai, learned Senior Counsel appearing for Mr. A. Raja in W.P. No. 8126 of 2006, while supplementing the submissions made by the learned Senior Counsel, Mr. Shanthi Bhusan, has also raised the question of maintainability of the Writ Petitions on the anvil of the decision of the Supreme Court in *L. Chandra Kumar's* case. He has contended that the question relating to validity of transfer of a police officer belonging to Indian Police Service can be raised before the Central Administrative Tribunal and not directly before the High Court and only when the matter is decided by the Central Administrative Tribunal, a Writ Petition can be filed against such decision of the Central Administrative Tribunal and, therefore, the Writ Petitions filed either by the State Government or by the three former Directors General of Police are not maintainable.

66. In our considered opinion, there is a short, but not necessarily sweet answer to this. The question in issue in the present case is not regarding transfer of any official as such, but regarding jurisdiction of the Election Commission to issue any direction regarding transfer of an officer. What is in issue in the present case is the legality or validity of the direction issued by the Election Commission and not the legality or the validity of any transfer order as such. As a matter of fact, transfer order, if any, is to be passed by the State Government and no transfer order has been passed as yet. Moreover, the direction is being challenged by the State Government and not by the officer concerned. In such view of the matter, it cannot be said that the question could have been raised before the Central Administrative Tribunal. The observation made by Justice K.G. Balakrishnan of the Kerala High Court, as His Lordship then was, in *T.V. Madhusoodanan v. Chief Election Commission and another*, 1995 Labour IC 682, repelling a similar contention in that case is appropriate."

6. However, ignoring the said decision, the Division Bench in the LPA, by placing reliance on *L. Chandra Kumar v. Union of India & Ors.* reported in (1997) 3 SCC 261 held that the CAT at first instance, should examine the challenge to the ECI direction.

7. Issue notice, returnable in four weeks.

8. Mr. Maninder Singh, learned senior counsel appears for the ECI. Notice on behalf of ECI is accepted by Mr. Ankit Agarwal, learned AOR. Steps be taken to issue notice for the remaining respondents.

(NITIN TALREJA)
ASTT. REGISTRAR-cum-PS

(KAMLESH RAWAT)
ASSISTANT REGISTRAR