

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on: 01.12.2022

Pronounced on: 05.12.2022

WP(C) No.26542022

CM No.6684/2022

ABIDA AFZAL

... PETITIONER(S)

*Through: - Mr. Muzaffar Ahmad Khan, Advocate &
Mr. Khursheed Ahmad, Advocate.*

Vs.

STATE ELECTION COMMISSION & ORS.

...RESPONDENT(S)

Through: - Mr. Hilal Ahmad Wani, AAG

CORAM:HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner has challenged Notification/order No.SEC/PYT/2022/24 dated 16.11.2022 as also order No.22/SEC/DDC/2022 dated 16.11.2022, issued by respondent No.2, whereby re-poll of DDC constituency Hajin-A has been scheduled for 5th December, 2022. A further direction has been sought commanding the respondents to hold the counting of votes polled in favour of the candidates to the exclusion of respondent No.4. A direction has also been sought upon the respondents to declare the result of DDC constituency Hajin-A on the basis of already held polling to the exclusion of respondent No.4.

2) The facts emanating from the pleadings of the parties reveal that respondent No.1 had issued a notification on 29th October, 2020, for conduct of General Elections to the District Development

Councils, including for the District Development Constituency Hajin-A. While the results of the elections relating to 13 District Development Constituencies out of 14 Constituencies of District Bandipora, were declared, the result of DDC Constituency Hajin-A was withheld. This was done for the reason that the nomination form of one of the candidates of the said constituency, Mst. Shazia, respondent No.4 herein was found to have been improperly accepted, as it was revealed that she is not a citizen of India.

3) It appears that as per order No.06/SEC/DDC/2021 dated 05.03.2021, issued by respondent No.1, polling held to the DDC Constituency Hajin-A was declared as void and the candidature of respondent No.4 was declared as void *ab initio*. It was also provided in the said order that re-poll in the DDC Constituency Hajin-A shall be conducting after redrawing the list of contesting candidates after dropping the name of respondent No.4 herein. The said order came to be challenged by the petitioner by way of a writ petition bearing WP(C) No.83/2021 before this Court. Notice of the writ petition was issued to the respondents but no interim order has been passed in the said writ petition, which is stated to be pending before the Court. In the meantime, respondent No.1 has issued the impugned Notification ordering re-polling in DDC Constituency Hajin-A, on 5th December, 2022. It is this Notification which is under challenge in the present writ petition.

4) It has been contended by the petitioner that improper acceptance of nomination paper of one of the candidates and her disqualification cannot vitiate the whole election and the order of re-poll in the entire DDC constituency is not in accordance with law. It has been further contended that respondent No.1 does not have any authority to direct re-poll in a DDC constituency and, as such, the impugned action is without jurisdiction. It is also contended that re-poll can be directed only on the grounds mentioned in Rule 108-ZI of the Jammu and Kashmir Panchayati Raj Rules (hereinafter referred to as the Rules) and on no other ground. It is further contended that before declaring the polling held pursuant to earlier Notification dated 23.11.2020 as void, it was incumbent upon the official respondents to first hold counting of votes for arriving at a conclusion that improper acceptance of nomination of respondent No.4 would have materially affected the result of the election. Since the said exercise has not been undertaken, as such, the order of declaring election as void and undertaking re-poll is legally unsustainable.

5) I have heard learned counsel for the parties and perused the pleadings of the parties.

6) Learned counsel appearing for the petitioner has vehemently contended that respondent No.1 did not have jurisdiction and authority to direct re-polling as there is no provision for the same either under the Jammu and Kashmir Panchayati Raj Act or the

Rules framed thereunder. He has also contended that without undertaking exercise of counting of votes, it was not possible for the Election Authority to come to a conclusion that improper acceptance of nomination of respondent No.4 would have materially altered the result of the poll. In support of his contention, learned counsel for the petitioner has relied upon the judgments of the Supreme Court in the case of **Santosh Yadav vs. Narender Singh**, (2002) 1 SCC 160, and the judgment of Allahabad High Court in the case of **Subash vs. State of U. P**, 2007 (3) AWC 2562.

7) *Per contra*, learned counsel appearing for the official respondents has submitted that the writ petition is premature in nature, inasmuch as the election process is yet to be concluded and if at all the petitioner has any grievance with regard to the manner in which the election process has been conducted, it is open to her to challenge the result of the election before the competent authority after the conclusion of the process. Learned counsel for the official respondents has further contended that in view of the provisions contained in Article 243-O of the Constitution of India, this Court does not have power to interfere into the process of the election which is under way. It has also been contended that the order whereby polling to the DDC Constituency Hajin-A has been declared void has not been stayed by this Court in the earlier writ petition filed by the petitioner, as such, respondent No.1 was well within its authority to direct re-polling.

8) The first contention raised by the petitioner is that respondent No.1-State Election Commission, does not have jurisdiction either to declare the polling as void or to direct re-polling. According to learned counsel, Section 36 of the Panchayati Raj Act does not empower respondent No.1 to do so.

9) In order to test the merits of the contention raised by learned counsel for the petitioner, it would be apt to notice the provisions contained in Section 36 of the Panchayati Raj Act. Section 36(1) of the Act, which is relevant to the context, is reproduced as under:

36. State Election Commission

(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections under this Act shall vest in an Election Authority to be known as the State Election Commission

Provided that for purposes of holding general elections under the Act in the year 2011, the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections under this Act shall continue to vest in the Chief Electoral Officer of the State as heretofore.

10) From a perusal of the aforesaid provision, it is clear that the power of superintendence, direction and control of the preparation of electoral rolls for and the conduct of all elections under the Act vests with the State Election Commission. The aforesaid provision is in *pari materia* with Article 324(1) of the Constitution of India, which relates to powers of Election Commission of India. The language used in the two provisions is similar.

11) The scope of Article 324 of the Constitution of India came up for consideration before the Constitution Bench of the Supreme

Court in the case of **Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others**, (1978) 1 SCC 405.

The Court went on to conclude that Article 324 is wide enough to supplement the powers under the Act. It would be apt to reproduce the following observations of the Supreme Court in this regard:

“Even so, situations may arise which enacted law has not provided for. Legislators are not prophets but pragmatists. So it is that the Constitution has made comprehensive provision in Article 324 to take care of surprise situations. That power itself has to be exercised, not mindlessly nor mala fide, nor arbitrarily nor with partiality but in keeping with the guidelines of the rule of law and not stultifying the Presidential notification nor existing legislation. More is not necessary to specify; less is insufficient to leave unsaid. Article 324, in our view, operates in areas left unoccupied by legislation and the words 'superintendence, direction and control' as well as 'conduct of all elections' are the broadest terms. Myriad maybes, too mystic to be precisely presaged, may call for prompt action to reach the goal of free and fair election.....”

12) The scope of powers under Article 324 of the Constitution of India again came up for consideration before the Supreme Court in the case of **Election Commission of India v. Ashok Kumar and others**, (2000) 8 SCC 216. The Supreme Court, after noting the provisions contained in Article 324 of the Constitution, interpreted the words “superintendence, direction and control” and held that these expressions have a wide connotation so as to include therein such powers which though not specifically provided but are necessary to be exercised for effectively accomplishing the task of holding the election to their completion.

13) Since the provisions contained in Section 36(1) of the Panchayati Raj Act are akin to the provisions contained in Article 324 of the Constitution of India, as such, the interpretation given by the Supreme Court to the provisions contained in Article 324 in the aforesaid cases can be conveniently made applicable while tracing the scope and power of State Election Commission in terms of Section 36 of the Panchayati Raj Act. Thus, the State Election Commission is vested with the power to issue all such directions as are necessary for the conduct of elections in a fair and transparent manner. This would certainly include the power to declare a poll void and the power to order re-polling. In fact, Rule 108-ZM of the Jammu and Kashmir Panchayati Raj Rules, as amended vide Notification S.O.316 dated 17th October, 2020, provides that the Election Authority shall wherever it considers just and necessary give clarification and additional instructions on the matters not covered by these rules for the smooth conduct of the elections. Therefore, to say that the Election Authority does not have jurisdiction to order re-poll cannot be countenanced in law. The wide and sweeping powers vested with the Election Authority in terms of Section 36 of the Panchayati Raj Act, as clarified by Rule 108-ZM of the Rules, clearly gives jurisdiction to the Election Authority to pass all such orders as may be necessary for smooth conduct of the elections, which may definitely include ordering of re-poll on a ground other than the one contemplated in Rule 108 ZI of the Rules.

14) Before dealing with the other grounds urged by learned counsel for the petitioner, it would be apt to deal with the preliminary objection raised by learned counsel for the official respondents regarding maintainability of the writ petition on the ground that the same is premature and that the Court does not have power to interfere in the electoral matters. In this regard, it would be apt to notice the provisions contained in Article 243-O of the Constitution of India. It reads as under:

“243-O. Bar to interference by courts in electoral matters.—Notwithstanding anything in this Constitution,—

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243-K, shall not be called in question in any court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.”

15) From a perusal of clause (b) of Article 243-O, it is clear that the election to any Panchayat can be called into question by an election petition presented to the prescribed authority. In terms of Section 43 of the Panchayati Raj Act, election of a person to District Development Council is to be challenged before an Authority prescribed under the said Act.

16) Article 329 of the Constitution of India, which is in *pari materia* with Article 243-O of the Constitution, has come up for discussion before the Supreme Court in a number of cases. In **N. P.**

Ponnuswami vs. Returning Officer, Namakkal Constituency and others, (1952) 1 SCC 94. A six Judge Bench of the Supreme Court considered the provisions contained in Article 329 of the Constitution and observed as under:

"24. It may be pointed out that article 329(b) must be read as complimentary to clause (a) of that article. Clause (a) bars the jurisdiction of the courts with regard to such law as may be made under articles 327 and 328 relating to the delimitation of constituencies or the allotment of seats to such constituencies. It was conceded before us that article 329(b) ousts the jurisdiction of the courts with regard to matters arising between the commencement of the polling and the final selection. The question which has to be asked is what conceivable reason the legislature could have had to leave only matters connected with nominations subject to the jurisdiction of the High Court under article 226 of the Constitution. If part XV of the constitution is a code by itself, i.e. it creates rights and provides for their enforcement by a special tribunal to the exclusion of all courts including the High Court, there can be no reason for assuming that the Constitution left one small part of the election process to be made the subject matter of contest before the High Courts and thereby upset the time schedule of the elections. The more reasonable view seems to be that article 329 covers all "electoral matters".

25. The conclusions which I have arrived at may be summed up briefly as follows:-

(1) Having regard to the important functions which the legislature have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

(2) In conformity with this principle, the scheme of the election law in this country as well as in England is that no significance should be attached to anything which does not affect the "election :'" and if any irregularities are committed while it is in progress

and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the "election " and enable the person affected to call it in question, they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before any court while the election is in progress."

17) Again, in **Mohinder Singh Gill's** case (supra), the Supreme Court, while discussing the issue, formulated three questions which are reproduced as under:

1. Is Article 329(b) a blanket ban on all manner of questions which may have impact on the ultimate result of the election, arising between two temporal termini viz., the notification by the President calling for the election and the declaration of the result by the returning officer? Is Article 226 also covered by this embargo and, if so, is Section 100 broad enough to accommodate every kind of objection, constitutional, legal or factual, which may have the result of invalidation of an election and the declaration of the petitioner as the returned candidate and direct the organisation of any steps necessary to give full relief ?

2.Can the Election Commission, clothed with the comprehensive functions under Article 324 of the Constitution, cancel the whole poll of a constituency after it has been held, but before the formal declaration of the result has been made, and direct a fresh poll without reference to the guidelines under Sections 58 and 64(a) of the Act, or other legal prescription or legislative backing. If such plenary power exists, is it exercisable on the basis of his inscrutable 'subjective satisfaction' or only on a reviewable objective assessment reached on the basis of circumstances vitiating a free and fair election and warranting the stoppage of declaration of the result and directions of a fresh poll not merely of particular polling stations but of the total constituency?

3.Assuming a constitutionally vested capacity under Article 324 to direct re-poll, is it exercisable only in conformity with natural justice and geared to the sole goal of a free, popular verdict if frustrated on the first occasion? Or, is the Election Commission immune to the observance of the doctrine of natural justice on account of any recognised exceptions to the

application of the said principle and unaccountable for his action even before the Election Court?

18) The Supreme Court made a distinction between the two types of challenges, one which interferes with the progress of the election and the second which accelerates the completion of election. In this regard, observations of the Supreme Court in paras 28 to 31 of the judgment in **Mohinder Singh Gill's** case (supra), are relevant and the same are reproduced as under:

"28.What emerges from this perspicacious reasoning, if we may say so with great respect, is that 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. 'Ale should not slur over the quite essential observation "-Anything done towards the completion of the election proceeding can by no stretch of reasoning be described as questioning the election. Likewise, it is fallacious to treat 'a single step taken in furtherance of an election as equivalent to election'.

29.Thus, there are two types of decisions, two types of challenges. The first relates to proceedings which interfere with the progress of the election. The second accelerates the completion of the election and acts in furtherance of an election. So, the short question before us, in the light of the illumination derived from Ponnuswami, is as to whether the order for re-poll of the Chief Election Commissioner is "anything done towards the completion of the election proceeding' and whether the proceedings before the High Court facilitated the election process or halted its progress. The question immediately arises as to whether the relief sought in, the writ petition by the present appellant amounted to calling in question the election. This, in turn, revolves round the point as to whether the cancellation of the poll and the reordering of fresh poll is 'part of election' and challenging it is 'calling it in question.

30.The plenary bar of Article 329 (b) rests on two principles: (1) The peremptory urgency of prompt engineering of the whole election process without

intermediate interruptions by way of legal proceedings challenging the steps and stages in between the commencement and the conclusion. (2) The provision of a special jurisdiction which can be invoked by an aggrieved party at the end of the election excludes other form, the right and remedy being creatures of statutes and controlled by the Constitution. Durga Shankar Mehta has affirmed this position and supplemented it by holding that, once the Election Tribunal has decided, the prohibition is extinguished and the Supreme Court's over-all power to interfere under Art. 136 springs into, action. In Hari Vishnu this Court upheld the rule in Ponnuswami excluding any proceeding, including one under Article 226, during the on- going process of election, understood in the comprehensive sense of notification down to declaration. Beyond the declaration comes the election petition, but beyond the decision of the Tribunal the ban of Article 329(b) does not bind.

31.If 'election' bears the larger connotation, if calling in question' possesses a semantic sweep in plain English, if policy and principle are tools for interpretation of statutes, language permitting the conclusion is irresistible' even though the argument contra may have emotional impact and ingenious appeal, that the catch-all jurisdiction under Article 226 cannot consider the correctness, legality or otherwise of the direction for cancellation integrated with re-poll. For, the prima facie purpose of such a re-poll was to restore a detailed Poll process and to, complete it through the salvatory effort of a re-poll. Whether in fact or law, the order is validly made within his powers or violative of natural justice can be examined later by the appointed instrumentality, viz., the Election Tribunal. That aspect will be explained presently. We proceed on the footing that re-poll in one polling station or it many polling stations for good reasons, is lawful. This shows that re-poll in many or all segments, all- pervasive or isolated, can be lawful. We are not considering whether the act was bad for other reasons. We are concerned only to say that if the regular poll, for some reasons, has failed to reach the goal of choosing by plurality the returned candidate and to achieve this object a fresh poll (not a new election) is needed, it may still be a step in the election.- The deliverance of Dunkirk is part of the strategy of counter-attack. Wise or valid, is another matter."

19) The Court after dealing with the arguments and the contentions raised by learned counsel for the parties and after noticing the case law on the subject, set down the following principles:

(1)(a) Article 329(b) is a blanket ban on litigative challenges to electoral steps taken by the Election Commission and its officers for carrying forward the process of election to its culmination in the formal declaration of the result.

(b) Election, in this context, has a very wide connotation commencing from the Presidential notification calling upon the electorate to elect and culminating in the final declaration of the returned candidate.

(2)(a) The Constitution, contemplates a free and fair election and vests comprehensive responsibilities of superintendence, direction and control of the conduct of elections in the Election Commission. This responsibility may cover powers, duties and functions of many sorts, administrative or other, depending on the circumstances.

(b) Two limitations at least are laid on its plenary character in the exercise thereof. Firstly, when Parliament or any State Legislature has made valid law, relating to or in connection with elections, the Commission shall act in conformity with, not in violation of such provisions but where such law is silent Article 324 is a reservoir of power to, act for the avowed purpose of, not divorced from pushing forward a free and fair election with expedition. Secondly, the Commission shall be responsible to the rule of law, act bona fide and be amenable to the norms of natural justice in so-far as conformance to such canons can reasonably and realistically be required of it as fair play-in-action in a most important area of the constitutional order, viz., elections. Fairness does import an obligation to see that no wrongdoer candidate benefits by his own-wrong. To put the matter beyond doubt, natural justice enlivens and applies to the specific case of order for total re-poll, although. not in full panoply but in full panoply but in flexible practicability.

Whether it has been compiled with is left open for the Tribunal's adjudication.

(3). The conspectus of provisions bearing on the subject of elections clearly expresses the rule that there is a remedy for every wrong done during the election in progress although it is postponed to the post-election stage and procedure as predicated in Article 329(b) and the 1951 Act. The Election Tribunal has, under the various provisions of the Act, large enough powers to give relief to an injured candidates if he makes out a case and such processual amplitude of power extends to directions to the Election Commission or other appropriate agency to hold a poll, to bring up the ballots or do other thing necessary for fulfilment of the jurisdiction to undo illegality and injustice and do complete justice within the parameters set by the existing law.”

20) In **Ashok Kumar’s** case (supra), the Supreme Court after considering the ratio laid down by it in **N. P. Ponnuswami** and **Mohinder Singh Gill’s** case (supra), summed up the conclusions as under:

(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."

21) In **Harnek Singh vs. Charanjit Singh and others**, (2005) 8 SCC 383, the Supreme Court was seized of a matter relating to Panchayat elections in the State of Punjab and the provisions contained in Article 243-O of the Constitution came up for consideration. The Court held that the said provision mandates that all election disputes must be determined only by way of an election petition. It was further observed that this may itself not be a bar to judicial review but ordinarily such jurisdiction should not be

exercised. In the said case, the Punjab State Election Commission had, after adjourning the election of Chairman, Block Samiti, fixed a date for re-election. The said order came to be challenged in a writ petition before the High Court and the Supreme Court, while setting aside the order of the High Court, held that in view of the provisions contained in Article 243-O of the Constitution, it was not a fit case where the High Court should have exercised its writ jurisdiction.

22) From the foregoing enunciation of law on the subject, it is clear that even though there is no blanket bar to the judicial review of decisions made by an Election Authority but it is only those decisions which have the effect of retarding, interrupting, protracting or stalling the completion of election process that can be challenged in the writ jurisdiction. Challenge is also maintainable in a matter where a clear case of *mala fides* on the part of Election Authority is made out. Thus, anything done towards completion of election process cannot be challenged before the High Court and it is only if it is shown that the Election Authority has exercised its power arbitrarily and such action has the effect of stalling the election process, the same can be challenged by way of a writ petition.

23) It is also clear that an Authority who decides the disputes relating to elections can even redress the grievance of a candidate after the result of re-poll is declared and if the prescribed Authority

comes to a conclusion that the order of re-poll was not in accordance with law, it can direct declaration of result on the basis of an earlier poll and redress the grievance of a candidate who has approached such Authority. In this regard observations of the Supreme Court in **Mohinder Singh Gill's** case (supra) in para 123 are relevant to the context and the same are reproduced as under:

“What do the appellants seek in the writ application? One of their prayers is for declaration of the result on the basis of the Poll which has been cancelled. This is nothing short of seeking to establish the validity of a very important stage in the election process, namely, the poll which has taken place, and which was countermanded by the impugned order. If the appellants succeed, the result may, if possible, be declared on the basis of that poll, or some other suitable orders may be passed. If they fail, a fresh poll will take place and the election will be declared on the basis of the fresh poll. This is, in effect, a vital issue which relates to questioning of the election since the election will be complete only after the fresh poll on the basis of which the declaration of the result will be made. In other words, there are no two elections as there is only one continuing process of election. If, therefore, during the process of election, at an intermediate or final stage, the entire poll has been wrongly cancelled and a fresh poll has been wrongly ordered, that is a matter which may be agitated after declaration of the result on the basis of the fresh poll, by questioning the election in the appropriate forum by means of an election petition in accordance with law. The appellants, then, will not be without a remedy to question every step in the electoral process and every order that has been passed in the process of the election including the countermanding of the earlier poll. In other words, when the appellants question the election after declaration of the result on the basis of the fresh poll, the election court will be able to entertain their objection with regard to the order of the Election Commission countermanding the earlier poll, and the whole

matter will be at large. If, for example, the election court comes to the conclusion that the earlier poll has been wrongly cancelled, or the impugned order of the Election Commission is otherwise invalid, it will be entitled to set aside the election on the basis of the fresh Poll and will have power to breathe life into the countermanded poll and to make appropriate directions and orders in accordance with law. There is, therefore, no foundation for a grievance that the appellants will be without any remedy if their writ application is dismissed. It has in fact been fairly conceded by counsel for the other side that the election court will be able to grant all appropriate reliefs and that the dismissal of the writ petition will not prejudice the appellants."

24) Let us now consider the facts of the instant case in the light of law discussed hereinabove. It is to be noted that the petitioner has raised the grievance that the order of the Election Authority issued on 05.03.2021, whereby polling held to DDC constituency Hajin-A was declared as void, is not in accordance with law for the reason that the said decision has been made without counting of the votes. According to the petitioner, the finding of respondent No.1 that improper acceptance of nomination of respondent No.4 has materially affected the result of the election without counting of the votes, is based upon conjectures and surmises.

25) The merits of the aforesaid contention can very well be gone into by the Authority prescribed under Section 3 of the Panchayati Raj Act when the result of the re-poll will be declared, in the event that the petitioner choses to challenge the same before the said Authority. Stalling the re-poll by interfering in the election process by this Court in exercise of its writ jurisdiction is not

permissible in view of the legal position discussed hereinbefore, as the same would amount to obstruction in the conclusion of the election process. So, without commenting on the merits of the contention raised by the petitioner as regards the validity of the order of holding of the earlier poll as void, it is left open to be decided by the prescribed authority at the appropriate time. Accordingly, the instant writ petition appears to be premature in nature

26) It has been contended by learned counsel for the petitioner that both the orders regarding declaration of earlier poll as void and announcing the re-poll are arbitrary in nature as respondent No.1 does not have authority to do so and, as such, the writ petition is maintainable. In this regard, it has already been held that respondent No.1 has vast powers under Section 36 of the Panchayati Raj Act read with Rule 108-ZM of the Rules to pass any order for smooth conduct of the election. Therefore, respondent No.1 was well within its jurisdiction to pass the order declaring the earlier poll as void and to order re-poll. The question whether this decision of respondent No.1 is legally tenable can only be determined by the prescribed Authority at the time of considering the petition challenging the election and this Court, in exercise of its writ jurisdiction, cannot go into the merits of this decision once it has been held that respondent No.1 has jurisdiction to make such a decision. Apart from this, by virtue of the impugned notification,

respondent No.1 has not stalled the election process, rather it has taken a step towards completion of the election process. Therefore, the bar contained in Article 243-O of the Constitution is attracted to the maintainability of the instant petition.

27) For the foregoing reasons, I do not find any merit in this petition. The same is, accordingly, dismissed.

(Sanjay Dhar)
Judge

Srinagar
05.12.2022
"Bhat Altaf, PS"

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No

