

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17396 of 2025

Sweta Suman wife of Sri Vinod Kumar, resident of village- Savath, P.O. and P.S. Durgawati District - Kaimur at Bhabhua.

... .. Petitioner/s

Versus

1. The Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi through the Chief Election Commissioner.
2. The Chief Election Commissioner, Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi.
3. The Chief Electoral Officer, Bihar, 7, Mangles Road, Patna.
4. The District Election Officer, Kaimur at Bhabhua, District - Kaimur at Bhabhua.
5. The Observer (General), 204, Mohania (Schedule Caste) Assembly Constituency, Bihar, District - Kaimur at Bhabhua.
6. The Returning Officer, 204, Mohania (Schedule Caste) Assembly Constituency, Bihar, District - Kaimur at Bhabhua.
7. The Circle Officer, Durgawati, District - Kaimur at Bhabhua.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 17397 of 2025

Rakesh Kumar Singh son of Late Tripurari Prasad, resident of 14, Electricity Board Colony, Lal Bahadur Shastri (LBS) Nagar, P.O. Lal Bahadur Shastri (LBS) Nagar, P.S. Shastri Nagar, Patna Sadar, District - Patna, presently residing at village and P.O. Sonwa, P.S. Ghosi, District Jehanabad.

... .. Petitioner/s

Versus

1. The Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi through the Chief Election Commissioner.
2. The Chief Election Commissioner, Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi.
3. The Chief Electoral Officer, Bihar, 7, Mangles Road, Patna.
4. The District Election Officer, Jehanabad, District- Jehanabad.
5. The Observer (General), 217, Ghosi Assembly Constituency, Bihar, District- Jehanabad.
6. The Returning Officer, 217, Ghosi Assembly Constituency, Bihar, District- Jehanabad.

... .. Respondent/s

Appearance :



(In Civil Writ Jurisdiction Case No. 17396 of 2025)

For the Petitioner/s : Mr. SBK Mangalam, Sr. Adv.
: Mr. Awnish Kumar, Adv.
: Mr. Vikash Kumar Singh, Adv.
For ECI : Mr. Siddhartha Prasad, Adv.
For State : Mr. PK Shahi, Advocate General
: Mr. Sanjiv Kumar, Adv.
: Mr. Bindhyachal Rai, Adv.

(In Civil Writ Jurisdiction Case No. 17397 of 2025)

For the Petitioner/s : Mr. SBK Manglam, Sr. Adv.
: Mr. Awnish Kumar, Adv.
For the Respondent/s : Mr. Siddhartha Prasad, Adv.

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

3 03-11-2025 As common questions of law are involved in both the present cases, the same are tagged and disposed of by this common order.

2. The brief facts in CWJC No. 17396 of 2025 are that the petitioner has filed her nomination paper for contesting as an MLA candidate in the Legislative Assembly Elections to be held on 11.11.2025 for the assembly constituency No. 204 Mohania reserved for Scheduled Caste. That the petitioner belongs to Scheduled Caste and she has filed her nomination duly enclosing the requisite documents including the Caste Certificate. The Election Officer at the time of scrutiny has rejected the nomination of the petitioner on the ground that the Caste Certificate filed by the petitioner may not be genuine as per the report of the Circle Officer, Durgawati. Aggrieved thereof, the petitioner has preferred the present CWJC No. 17396 of 2025.



3. The CWJC No. 17397 of 2025 is filed by one Rakesh Kumar Singh who has filed his nomination paper to contest as MLA for the Legislative Assembly elections to be held on 11.11.2025 for the assembly constituency No. 217 Ghosi. The nomination paper of the petitioner has been rejected by the Election Officer on a whimsical and non-existent ground and the copy of the rejection order has also not been served on the petitioner. Aggrieved thereof, the petitioner has filed the present CWJC i.e., 17397 of 2025.

4. Learned Senior Counsel Shri SBK Mangalam assisted by Mr. Awnish Kumar, Advocate appearing on behalf of the petitioner in CWJC No. 17396 of 2025 has submitted that the petitioner has filed her nomination paper along with the requisite documents on 20.10.2025. The scrutiny of the said application was sought to be done by the Election Officer on 21.10.2025. However, on 21.10.2025 it was stated that an objection was received by the Election Officer and therefore, the scrutiny of the nomination papers will be taken up on 22.10.2025. Learned counsel has submitted that an objection has been filed by another contestant by the name of Shri Indarjeet Ram stating that the Caste Certificate produced by the petitioner along with her nomination paper was not a genuine one. The



Election Officer in turn had called for a report from the Circle Officer, Durgawati, District-Kaimur at Bhabhua. That on 22.10.2025 based on the report given by the Circle Officer, the Election Officer has passed the impugned order dated 22.10.2025 (Annexure-P/7) whereby, the nomination of the petitioner was not accepted. Learned counsel submits that the authority without providing the petitioner the copy of the objection filed by Shri Indrajeet Ram or giving the petitioner an opportunity to file a show cause to the said objection has passed the impugned order dated 22.10.2025. Further, it is submitted that the copy of the report submitted by the Circle Officer, Durgawati has also not been provided to the petitioner before passing the order dated 22.10.2025. Learned counsel submits that though the objection has been filed by Shri Indrajeet Ram and a report was called for from the Circle Officer, Durgawati, a perusal of the impugned order dated 22.10.2025 passed by the Election Officer reveals that he has also taken cognizance of a complaint made by one Smt. Sangita Kumari and the nomination of the petitioner was not accepted. Learned counsel submits that the arbitrary, illegal and malafide manner in which the authority has passed the impugned order dated 22.10.2025 has to be necessarily interfered by this Hon'ble Court as the



same is contrary to the provisions of Representation of the People Act, 1951 and the principles of natural justice and equity. That the nomination paper of the petitioner has to be scrutinized in a fair manner and in consonance with the provisions of the RP Act, 1951 which is missing in this case. Further, it is submitted that the authority has failed to take into consideration that the Caste Certificate issued by the Circle Officer is still subsisting as on date and the same has not been cancelled, that merely because the Circle Officer, Durgawati in his report has expressed an opinion that the Caste Certificate produced by the petitioner has not been obtained in a proper manner and has to be cancelled, the same cannot be a ground for not accepting the nomination paper of the petitioner. Further, learned counsel has submitted that as per the provisions of Representation of the People Act, 1951, the authority can either reject or accept the nomination but cannot say that he is not accepting the nomination. It is further submitted by the counsel that the respondent authority has acted in a biased manner and not accepted the application/ nomination of the petitioner solely on the basis of her affiliation to a particular political party. Though the counsel has assailed the order of rejection dated 22.10.2025 passed by the Election Officer and raised many other points, the



same are not reproduced here, as they are not germane for deciding the issue involved in the present case.

5. Learned counsel has relied on the following judgments in support of his case.

“(i) In the case of *Rama Ballabh Singh Kesari Vs. State of Bihar & Ors.* reported in 2001 (2) PLJR 267.

(ii) In the case of *N.S. Madhavan S/o Shri Ambody Shree Daramenon, Chief Election Officer, Bihar State Election Authority, Barrach No. 11 Old Secretariat, Patna (Respondent No. 2) vs. Shaymdeo Prasad S/o Shri Shivbharat Prasad, R/o Vill- Lodipur, P.S.- Khizersarai, Dist- Gaya & Ors.* reported in 2010 (3) PLJR 578.

(iii) In the case of *Prafful Chandra Sudhanshu Vs. State Election Commission (Municipality)* reported in 2013 (2) PLJR 114.

(iv) In the case of *Manik Lal Prasad Vs. State of Bihar* reported in 2025 (1) PLJR 129.

(v) In the case of *Digvijay Mote Vs. Union of India and Ors.* reported in 1993 (4) SCC 175.

(vi) In the case of *Election Commission of India Vs. Ashok*

Kumar And Ors. reported in 2000 (8) SCC 216.

(vii) In the case of *Union Territory of Ladakh and Ors. Vs. Jammu and Kashmir National Conference and Ors.* reported in Manu/SC/0988/2023.

(viii) In the case of *Kranti Associates Private Limited and Anr. Vs. Masood Ahmed Khan and Ors.* reported in 2010 (9) SCC 496.

(ix) In the case of *Rameshwar Prasad Yadav Vs. Awadesh Kumar Singh* reported in 2007 (3) PLJR 427.”

6. *Per contra*, the learned counsel Sri Siddhartha Prasad, Advocate appearing on behalf of the respondent- Election Commission of India has vehemently opposed the very



maintainability of the present writ petition. Learned counsel has stated that the CWJC is liable to be rejected at the threshold as the petitioner has an alternative and efficacious remedy of filing an election petition before this Hon'ble Court. That this Hon'ble Court adjudicating under Article 226 of the Constitution of India cannot entertain the present writ petition in view of the specific bar contained in Article 329(b) of the Constitution of India. Learned counsel has submitted that the allegation made by the petitioner that the Election Commission of India (ECI) is acting in a biased and partisan manner is wholly without any basis and the same is made to prejudice this Court and cannot be taken into consideration. Further, learned counsel has stated that this Court as well as the Hon'ble Supreme Court in a catena of cases has time and again held that once the election notification is issued, the election process cannot be interfered with and the High Court should refrain itself from entertaining any writ petitions challenging the election process and interfere with the said process. Further, learned counsel has submitted that as per Section 80 and Section 100(c) of Representation of the People Act, 1951, (RP Act), the petitioner has an alternative and efficacious remedy of filing an election petition even where the nomination of a candidate has been rejected. Further, learned



counsel has stated that the election process has already begun, the ballot papers/ EVMs have already been readied and dispatched to various polling booths and therefore, any entertainment of the present writ petition or granting any interim orders will deride the entire election process which has been depreciated by the Hon'ble Supreme Court of India. Learned counsel has relied on the judgments passed by this Hon'ble Court in CWJC No. 1745 of 2021 dated 20.07.2021, CWJC No. 4305 of 2023 dated 24.03.2023 & CWJC No. 9127 of 2019 dated 24.04.2019. Learned counsel has also relied on the judgment of the Hon'ble Supreme Court in the case of ***Mohinder Singh Gill and Anr. vs. Chief Election Commissioner, New Delhi and Ors.*** reported in ***(1978) 1 SCC 405***. Learned counsel has therefore, prayed this Hon'ble Court to dismiss the present writ petition.

7. The learned Advocate General, Shri P.K. Shahi assisted by Mr. Sanjiv Kumar, Advocate appearing on behalf of the respondent-State in CWJC No. 17396 of 2025 has also vehemently opposed the very maintainability of the present writ petition and drawn the attention of this Court to the various provisions of Representation of the People of Act, 1951, more specifically, Section 80 and Section 100(c) and also Article



329(b) of the Constitution of India. Learned Advocate General has stated that in case the petitioner has any grievance his only remedy is to file an election petition and not a writ petition. Learned AG has stated that this Court as well as the Hon'ble Supreme Court in a catena of cases has time and again held that wherever a statutory remedy is available, this Court sitting under Article 226 of the Constitution of India should seldomly entertain a writ petition, more so, in election matter and where election process has already begun. Learned counsel has stated that once the election notification is issued, the election process is deemed to have commenced and the same will end only after the declaration of the results. That in view of the specific bar contained in Article 329(b) of the Constitution of India, this Court should dismiss the present writ petition and relegate the petitioner to file an election petition. Learned Advocate General has further stated that the judgments relied by the petitioner are not applicable to the facts of these cases as is none of the above cited judgments, the provisions of Article 329(b) have been discussed and, therefore, the reliance placed by the counsel for the petitioner is misplaced and ought to be rejected. Learned Advocate General has therefore, prayed this Hon'ble Court to dismiss the present writ petition.



8. Admittedly, in CWJC No. 17396 of 2025, the petitioner has filed her nomination to contest as an MLA for the Mohania constituency. In CWJC No. 17397 of 2025, the petitioner has filed his nomination to the Assembly Constituency No. 217 Ghosi. For both the above constituencies the elections are slated to be held on 11.11.2025.

9. The only issue involved in both the cases is as to whether, the present CWJCs can be entertained by this Court under Article 226 of the Constitution of India in view of the specific bar enumerated in Article 329(b) of the Constitution of India and the statutory remedies available to the petitioners under Representation of the People Act, 1951.

10. In order to appreciate the issue involved in the present writ petition, it is necessary to extract the relevant Article of the Constitution of India as well as some of the provisions of Representation of the People Act, 1951, more specifically, Article 329(b) of the Constitution of India and Sections 80 and 100(c) of the RP Act.

11. Article 329(b) of the Constitution of India reads as under;

“(a)

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such



authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.”

12. Section 80 and 100(c) of Representation of the People Act, 1951 read as under;

“80. Election petitions.—No election shall be called in question except by an election petition presented in accordance with the provisions of this Part. 7 [80A. High Court to try election petitions.—(1) The Court having jurisdiction to try an election petition shall be the High Court. (2) Such jurisdiction shall be exercised ordinarily by a single Judge of the High Court and the Chief Justice, shall, from time to time, assign one or more Judges for that purpose: Provided that where the High Court consists only of one Judge, he shall try all election petitions presented to that Court. (3) The High Court in its discretion may, in the interests of justice or convenience, try an election petition, wholly or partly, at a place other than the place of seat of the High Court.]

*100. Grounds for declaring election to be void.—4 [(1) Subject to the provisions of subsection (2) if 2 [the High court] is of opinion— (a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act 5 [or the Government of Union Territories Act, 1963 (20 of 1963)]; or (b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or (c) **that any nomination has been improperly rejected;** or (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected— (i) by the improper acceptance or any nomination, or (ii) by any corrupt practice committed in the interests of the returned candidate 6 [by an agent other than his election agent], or (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or (iv) by any non-compliance with the provisions of the Constitution*



or of this Act or of any rules or orders made under this Act,”

13. A perusal of the above provisions makes it abundantly clear that there is a bar for entertaining any writ petitions/ cases other than election petition once the election process has begun, if any person is aggrieved including rejection of the nomination, the only remedy available to the said person is to file an election petition after the election process is over.

14. Admittedly, in this case the election process has begun, as the notification has been issued and the nominations called for. The schedule for holding the said election of Bihar Legislative Assembly is as under;

“First Phase

Date of Filing of nomination : 10.10.2025 to 17.10.2025

Date of Scrutiny : 18.10.2025

Last date for withdrawal of candidature : 20.10.2025

Date of Poll : 06.11.2025

Second Phase

Date of filing of nomination : 13.10.2025 to 20.10.2025

Date of Scrutiny : 21.10.2025

Last date fir withdrawal of candidature : 23.10.2025

Date of Poll : 11.11.2025.”

15. Admittedly in this case also the nominations have been filed and the nomination of the petitioner has been rejected. Irrespective of the fact as to whether the rejection of the nomination is bad in law or has been passed in an arbitrary manner, the same cannot be questioned under Article 226 of the



Constitution of India in view of the specific bar laid down in Article 329(b) of the Constitution of India. Further, it is to be pertinent to note that Sections 80 & 100(c) of the Representation of the People Act, 1951 provide for filing an election petition even where the nomination of a person is rejected. Section 80 of Representation of the People Act, 1951 provides a remedy for filing an election petition once the results are declared and one of the grounds enumerated under Section 100(c) of Representation of the People Act, 1951 deals with rejection of nomination.

16. It is apt to extract the judgments rendered by the Hon'ble Supreme Court and this Court on this very issue;

16.1 The Hon'ble Supreme Court in the case of *N.P. Ponnuswami Vs. The Returning Officer, Namakkal Constituency, Namakkal, Salem District and Ors*; reported in *A.I.R. (39) 1952 SC* has held as under;

“9. The questions now arises whether the law of elections in this country contemplates that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under Art 226 of the Constitution (the ordinary jurisdiction of the Courts having been expressly excluded), and an other after they have been completed by means of an election petition. In my opinion, to affirm such a position would be contrary to the scheme of Part XV of the Constitution and the Representation of People Act, which as I shall point out later, seems to be that any



matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at an intermediate stage before any Court. It seems to me that under the election law, the only significance which the rejection of a nomination paper has consists in the fact that it can be used as a ground to call the election in question. Article 329(b) was apparently enacted to prescribe the manner in which and the stage at which this ground, and other grounds which may be raised under the law to call the election in question, could be urged. I think it follows by necessary implication from the language of this provision that those grounds cannot be urged in any other manner, at any other stage and before any other Court. If the grounds on which an election can be called in question could be raised at an earlier stage and errors, if any, are rectified, there will be no meaning in enacting a provision like Art. 329(b) and in setting up a special tribunal. Any other meaning ascribed to the words used in the article would lead to anomalies, which the Constitution could not have contemplated, one of them being that conflicting views may be expressed by the High Court at the pre-polling stage and by the election tribunal, which is to be an independent body, at the stage when the matter is brought up before it.”

16.2 The Hon’ble Supreme Court in the case of *Mohinder Singh Gill and Anr. vs. Chief Election Commissioner, New Delhi and Ors.* reported in (1978) 1 SCC 405 has held as under;

“126. The above being the legal position, Article 329 (b) rules out the maintainability of the writ application. Article 329 (b) provides that "notwithstanding anything in this Constitution no election to either House of Parliament shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature". It is



undisputed that an election can be challenged only under the provisions of the Act. Indeed Section 80 of the Act provides that "no election shall be called in question except by an election petition presented in accordance with the provisions of" Part VI of the Act. We find that all the substantial reliefs which the appellants seek in the writ application, including the declaration of the election to be void and the declaration of appellant 1 to be duly elected, can be claimed in the election petition. It will be within the power of the High Court, as the election Court, to give all appropriate reliefs to do complete justice between the parties. In doing so it will be open to the High Court to pass any ancillary or consequential order to enable it to grant the necessary relief provided under the Act. The writ application is therefore barred under Article 329(b) of the Constitution and the High Court rightly dismissed it on that ground.

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

128. So, in view of the scheme of Part VI of the Act, the Delhi High Court could not have embarked upon an enquiry on any part of the merits of the dispute. Thus it could not have examined the question whether the impugned order was made by



the Election Commission breach of a rule of natural justice. That is a matter relating to the merits of the controversy and it is appropriately for the election Court to try and decide it after recording any evidence that may be led at the trial. It may be that if we pronounce on the question of the applicability of the rule of natural justice, the High Court will be relieved of its duty to that extent. But it has to be remembered that even for the purpose of deciding that question, the parties may choose to produce evidence, oral or documentary, in the trial Court. We therefore refrain from expressing any opinion in this appeal on the question of the violation of any rule of natural justice by the Election Commission in passing the impugned order.”

16.3 Further, the Hon’ble Supreme Court in the above cited case has held as under;

“having regard to the important functions with the legislature have to perform in democratic countries, the election should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of election should be postponed till after the election are over so that election proceedings may not be unduly retarded or protracted and election dispute should be called in question before a Special Tribunal”.

16.4 The Hon’ble Supreme Court in the case of **N.S. Madhavan Vs. Shyamdoe Prasad** reported in **2010 (3) PLJR 578** has held as under;

“16. In Gajanan Krishnaji Bapat and Another vs. Dattaji Raghobaji Meghe and Others, (1995)5 SCC 347, the Apex Court has ruled thus:-

"12. The right to elect and the right to be elected are statutory rights. These rights do not inhere in a citizen as such and in order to exercise the right certain formalities as provided by the Act and the Rules made thereunder are required to be



strictly complied with. The statutory requirements of election law are to be strictly observed because the election contest is not an action at law or a suit in equity but it is a purely statutory proceeding unknown to the common law. The Act is a complete code in itself for challenging an election and an election must be challenged only in the manner provided for by the Act.

In K.K. Shrivastava vs. Bhupendra Kumar Jain and Others, AIR 1977 SC 1703, wherein V.R. Krishna Iyer, J., speaking for the Court, laid down as under:-

"It is well settled law that while Art. 226 of the Constitution confers a wide power on the High Court there are equally well settled limitations which this Court has repeatedly pointed out on the exercise of such power. One of them which is relevant for the present case is that where there is an appropriate or equally efficacious remedy the Court should keep its hands off. This is more particularly so where the dispute relates to an election. Still more so, where there is a statutorily prescribed remedy which almost reads in mandatory terms. While we need not in this case go to the extent of stating that if there are exceptional or extraordinary circumstances the Court should still refuse to entertain a writ petition it is perfectly clear that merely because the challenge is to a plurality of returns of elections, therefore, a writ petition will lie, is a fallacious argument. It is important to notice what the High Court has over-looked is that the period of limitation prescribed by the rules is 15 days and if writ petitions are to be entertained long afterwards it will stultify the statutory provision. Again in the present case an election petition covering the same subject matter is actually pending. There is no foundation whatever for thinking that where the challenge is to an 'entire election' then the writ jurisdiction springs into action. On the other hand the circumstances of this case convince us that exercise of the power under Article 226 may be described as misexercise. It is unfortunate that an election petition, which probably might have been disposed of long ago, is still pending because the writ petition was pending



in the High Court and later on special leave having been granted these appeals have been pending in this Court. How injurious sometimes writ petitioners are where they should not be is illustrated by this very case."

18. In Gujarat University vs. Shri N.U. Rajguru and Others, AIR 1988 SC 66, a two-Judges Bench of the Apex Court has held thus:-

"6. It is well settled that where a statute provides for election to an office, or an authority or institution and if it further provides a machinery or forum for determination of dispute arising out of election, the aggrieved person should pursue his remedy before the forum provided by the statute. While considering an election dispute it must be kept in mind that the right to vote, contest or dispute election is neither a fundamental or common law right in-stead it is a statutory right regulated by the statutory provisions. It is not permissible to invoke the jurisdiction of the High Court under Article 226 of the Constitution by-passing the machinery designated by the Act for determination of the election dispute. Ordinarily the remedy provided by the statute must be followed before the authority designated therein. But there may be cases where exceptional or extraordinary circumstances may exist to justify by-passing the alternative remedies. In the instant case, there existed no circumstances justifying departure from the normal rule as even the challenge to the validity of statute 10 was not pressed by the respondents before the High Court.

7. We do not consider it necessary to burden the judgment by referring to decisions of this Court laying down the principle that where a statute provides a complete machinery for obtaining relief against the orders passed by the authorities a petitioner cannot be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution. We would however refer to a decision of this Court in K.K. Shrivastava etc. vs. Bhupendra Kumar Jain and Others, AIR 1977 SC 1703 where a defeated candidate at the election to the membership of the Bar Council of Madhya Pradesh moved the High Court under Article 226 of the Constitution



challenging the validity of the election. The High Court was conscious that equally efficacious remedy was available to the petitioner under the rules but even thereafter the High Court interfered on the ground that since the entire election was challenged an election petition could not be an appropriate remedy and the same could not be considered as an equally efficacious remedy. This Court set aside the High Court's order. Krishna Iyer, J. speaking for the Court observed:-

"It is well settled law that while Art. 226 of the Constitution confers a wide power on the High Court there are equally well settled limitations which this Court has repeatedly pointed out on the exercise of such power. One of them which is relevant for the present case is that where there is an appropriate or equally efficacious remedy the Court should keep its hands off. This is more particularly so where the dispute relates to an election. Still more so where there is a statutorily prescribed remedy which almost reads in mandatory terms. While we need not in this case go to the extent of stating that if there are exceptional or extraordinary circumstances the Court should still refuse to entertain a writ petition it is perfectly clear that merely because the challenge is to a plurality of returns of elections, therefore a writ petition will lie, is a fallacious argument."

17. Similarly this Court in CWJC No. 9127 of 2019 dated 24.04.2019 has held as under;

"Ordinarily, a writ petition cannot be maintained once the election process has commenced, by reason of the bar contained in Article 329(b) of the Constitution of India. Any challenge must be raised by filing an election petition at the appropriate stage."

18. Like wise this Hon'ble Court in CWJC No. 4305 of 2023 dated 24.03.2023 and in CWJC No. 1745 of 2021 dated



20.07.2021 under similar circumstances i.e., where nomination papers have been rejected, has not entertained the CWJC and dismissed the same relegating the parties to file election petition.

19. That insofar as the judgments relied by the petitioner are concerned, more specifically, the judgments in the case of *Prafful Chandra Sudhanshu Vs. State Election Commission (Municipality)* reported in *2013 (2) PLJR 114* pertains to the election of the Municipal Councilor, in the case of *N.S. Madhavan S/o Shri Ambody Shree Daramenon, Chief Election Officer, Bihar State Election Authority, Barrach No. 11 Old Secretariat, Patna (Respondent No. 2) vs. Shaymdeo Prasad S/o Shri Shivbharat Prasad, R/o Vill- Lodipur, P.S.- Khizersarai, Dist- Gaya & Ors.* reported in *2010 (3) PLJR 578* the same pertains to the election of Chairman of Panchayat, in the case of *Rama Ballabh Singh Kesari Vs. State of Bihar & Ors.* reported in *2001 (2) PLJR 267* pertains to Panchayati Raj Elections, in the case of *Manik Lal Prasad Vs. State of Bihar* reported in *2025 (1) PLJR 129* pertains to the election of Chief Councillor, and the above cases do not pertain to the Elections either for State Legislative Assembly or the Parliament Elections. Further, the said judgments have not taken into



consideration the provisions of Article 329(b) or the provisions of the Representation of the People Act, 1951 while deciding the above cases. The facts in all the above discussed cases are different from the present case and therefore, not applicable to the present cases. Any relief that may have been granted in the above cases are based on the peculiar circumstances and nature of each individual case and it cannot be said that above judgments have laid down the law to be followed by this Court in all situations.

20. Though learned counsel for the petitioner has relied on the judgment of the Hon'ble Supreme Court in the case of *Union Territory of Ladakh and Ors. Vs. Jammu and Kashmir National Conference and Ors.* reported in *Manu/SC/0988/2023*, the said case pertains to non allocation of the election symbol to one of the contesting candidates for the General Election, the Ladakh Autonomous Hill Development Council (LAHDC).

21. The Hon'ble Supreme Court in the above cited case has at Para 37 held as under;

“We would indicate that the restraint, self-imposed, by the Courts as a general principle, laid out in some detail in some of the decisions supra, in election matters to the extent that once a notification is issued and the election process starts, the Constitutional Courts, under normal circumstances are loath to Interfere, is not a



contentious issue. But where issues crop up, Indicating unjust executive action or an attempt to disturb a level-playing field between candidates and/or political parties with no justifiable or intelligible basis, the Constitutional Courts are required, nay they are duty-bound, to step in. The reason that the Courts have usually maintained a hands-off approach is with the sole salutary objective of ensuring that the elections, which are a manifestation of the will of the people, are taken to their logical conclusion, without delay or dilution thereof.”

22. It is apt to extract the judgment of the Hon’ble Supreme Court in the case of ***Election Commission of India Vs. Ashok Kumar & Ors.*** reported in **2000 (8) SCC 216** has held as under;

“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.”

23. Having regard to the same, this Court is not inclined to entertain the present writ petitions. Though the counsel for the petitioner has stated that he is not seeking any stay of the election and merely wants a direction to be given to



the Election Officer to accept the nomination of the petitioners and permit them to contest the election, in all fairness, it would amount to allowing the writ petitions without any counter-affidavit being filed and bypassing the statutory remedies provided under Representation of the People Act, 1951. Further, if any interim or final orders are passed at this stage, it would directly effect the election process and will have the effect of delaying, protracting the election process which admittedly has already commenced. The other judgments relied by the petitioner are not applicable to the facts of these cases and therefore, not referred to.

24. This Court is not inclined to entertain the present writ petitions. As rightly pointed out by the learned counsel for the respondent-Election Commission of India and also the learned Advocate General when there is an alternative and effective statutory remedy of filing an election petition, the entertainment of the present writ petition under Article 226 of the Constitution of India is not desirable more so, when there is a specific bar under Article 329(b) of the Constitution of India and also in view of the statutory remedy available under Sections 80 & Section 100(c) of Representation of the People Act, 1951.



25. Having regard to the above, this Court does not find any merit in the present writ petitions which warrants any interference by this Court and the writ petitions are accordingly, dismissed. However, it is made clear that this Court has not gone into the merits or demerits of the case and leaving all questions/ issues open to be decided by an appropriate forum in an appropriate election petition, if any such election petitions are filed.

26. The CWJCs are accordingly dismissed however, without costs.

(A. Abhishek Reddy, J)

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