

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 2269 of 2025 (M/S)

Rajendra Singh Chauhan

.....Petitioner

Versus

State Election Commission and Others

.....Respondents

Present:-

Mr. Sagar Kothari, Advocate for the petitioner.

Mr. M.S. Bisht, Brief Holder for the State.

Mr. Sanjay Bhatt, Advocate for the respondent no.1.

Mr. Bhuwan Bhatt, Advocate for the respondent no.7.

JUDGMENT

Hon'ble Ravindra Maithani, J. (Oral)

By means of the instant petition, the petitioner seeks the following reliefs:-

- (i) Issue a writ, order or direction in the nature of certiorari, calling for records, and quashing the votes casted in Polling Centre No.75, Junior High School, Datnu (Erstwhile Badnu), Block and Tehsil Kalsi, District Dehradun, at Polling Booth No.82, Junior High School, Datnu (Erstwhile Badnu), Block Tehsil, Kalsi, District Dehradun in the elections of Member of Kshetra Panchayat, Kshetra Joshi Gothan, Block and Tehsil Kalsi, District Dehradun.
- (ii) Issue a writ, order or direction in the nature of mandamus directing an independent agency to conduct an independent inquiry against the erring officials involved in corrupt practice of getting fake votes casted in the elections of Kshetra Panchayat, Kshetra Joshi Gothan, Block and Tehsil, Kalsi, District Dehradun.
- (iii) Issue any other suitable writ, order or direction of any nature in favour of petitioner, which this Hon'ble Court may deem fit and proper in the present circumstances of the case.
- (iv) Award the cost of writ petition in favour of the petitioner.

2. Heard learned counsel for the parties and perused the record.

3. Learned counsel for the petitioner submits that the petitioner contested the election of Membership of Kshetra Panchayat

from Kshetra Joshi Gothan, Block and Tehsil Kalsi, District Dehradun. During elections, fake votes were casted. In Para 7 of the petition, the petitioner claims that 38 votes were fake. Therefore, those votes may be quashed and a high level enquiry may be conducted.

4. Learned counsel for the respondent no.7 submits that the relief, which the petitioner seeks, may be sought by him by way of presenting an election petition under Section 131-H of the Uttarakhand Panchayati Raj Act, 2016 ("the Act"). At this stage, the petition may not be entertained because the election is almost over. Tomorrow is the day for counting of votes.

5. Learned counsel for the respondent no.1/State Election Commission submits that it is an election dispute. It requires a trial. It may not be decided in the writ petition in view of the bar created under Article 234-O of the Constitution of India and Section 131-H of the Act.

6. Learned counsel for the petitioner also submits that some voters have also complained that they did not cast vote and some fake voters have casted their votes; the writ petition is maintainable.

7. Before proceeding further, it would be apt to reproduce the statutory provisions on the subject. Section 131-H of the Act reads as follows:-

“ (1) The election of a person, Chairman or as members of a Panchayat including the election of a person appointed as a Panch shall not be called in question except by an application presented to such authority within such time and in such manner as may be prescribed on the ground;

That this election has not been a free election by reason that the corrupt practice of bribery or undue influence has extensively prevailed at the election,

.....

(2) that the result of the election has been materially affected-

- (i) by the improper acceptance or rejection of any nomination; or
- (ii) by gross failure to comply with the provisions of this Act or the rules framed thereunder.”

8. There is another provision under Article 243-O of the Constitution of India, which reads as follows:-

“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.”

9. The remedy under Article 226 of the Constitution of India may not be curtailed by the statutory provisions. But then, there are self imposed limitations as to under what circumstances this jurisdiction should be exercised.

10. This Court has adverted to the principles of law on this subject while deciding Writ Petition (M/S) No. 2234 of 2025, Sri Ram Singh Vs. State Election Commission, Uttarakhand and Others, on 25.07.2025. This Court then observed as follows:-

“10. In the case of West Bengal State Election Commission and others Vs. Communist Party of India (MARXIST) and others, (2018)18 SCC 141, the Hon’ble Supreme Court discussed the scope of Panchayat Elections and Article 343-O of the Constitution of India. In para 28 and 29, the Hon’ble Supreme Court observed as follows:-

“28. 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 243-K 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:

“243-O. Bar to interference by courts in electoral matters.—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.”

29 Ed. : Para 29 corrected vide Official Corrigendum No. F.3/Ed.B.J./57/2018 dated 29-10-2018. 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, Boddula Krishnaiah v. State Election Commr., A.P.*, (1996) 3 SCC 416, a three-Judge Bench adverted to the decisions of the Constitution Bench in *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency* [*N.P. Ponnuswami v. Returning Officer, Namakkal Constituency*, (1952) 1 SCC 94 : 1952 SCR 218 : AIR 1952 SC 64 and in *Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman*, (1985) 4 SCC 689. After referring to *Ponnuswami* [*N.P. Ponnuswami v. Returning Officer, Namakkal Constituency*, (1952) 1 SCC 94 : 1952 SCR 218 : AIR 1952 SC 64, it was observed : (*Boddula Krishnaiah case, Boddula Krishnaiah v. State Election Commr., A.P.*, (1996) 3 SCC 416, SCC pp. 419-20, para 8)

“8. In *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency, N.P. Ponnuswami v. Returning Officer, Namakkal Constituency*, (1952) 1 SCC 94 : 1952 SCR 218 : AIR 1952 SC 64, 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.”

11. Further having considered the law on the field, the Hon’ble Supreme Court in the case of West Bengal State Election Commission (*supra*) observed that, **“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.”** This principle of law, as laid down in the case of West Bengal State Election Commission (*supra*) has further been followed by the Hon’ble Supreme Court in the case of State of Goa and another Vs. Fouziya Imtiaz Shaikh and another, (2021)8 SCC 401.

12. In the case of State of Goa (*supra*), the Hon’ble Supreme Court has discussed the provisions of Municipality Elections and the provisions of Section 243-ZG(b), which reads as follows:-

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

(a)

(b) no election to any Municipality 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.”

13. A bare reading of Article 243-ZG(b) and Article 243-O(b) of the Constitution of India makes it abundantly clear that they are similarly worded except interchanging the word ‘Panchayat’ and ‘Municipality’. In the case of State of Goa (*supra*), the Hon’ble Supreme Court in para 68.1 of the judgment observed that from the date of notification of the election till the date of the declaration of result a judicial hands-off is mandated by the non obstante clause contained in Article 243-ZG(B). It reads as follows:-

“68.1. Under Article 243-ZG(b), no election to any municipality can be called in question except by an election petition presented to a Tribunal as is provided by or under any law made by the legislature of a State. This would mean that from the date of notification of the election till the date of the declaration of result a judicial hands-off is mandated by the non obstante clause contained in Article 243-ZG debarring the writ court under Articles 226 and 227 from interfering once the election process has begun until it is over. The constitutional bar operates only during this period. It is therefore a matter of discretion exercisable by a writ court as to whether an interference is called for when the electoral process is “imminent” i.e the notification for elections is yet to be announced.”

14. In the case of State of Goa (*supra*), the Hon’ble Supreme Court has further held as under:-

“68.5. Judicial review of a State Election Commission's order is available on grounds of review of administrative orders. Here again, the writ court must adopt a hands-off policy while the election process is on and interfere either before the process commences or after such process is completed unless interfering with such order subserves and facilitates the progress of the election.”

11. Election is already underway. The voting has been done and it is admitted that tomorrow is the day for counting. At this stage, in view of the settled principles of law, this Court should adopt a hands-off approach. Moreover, whether the votes were genuine or fake, it is a question of fact, which requires full-fledged trial. Otherwise also definitely if occasion arises, such dispute may only be decided in an election petition.

12. Therefore, at this stage, this Court is of the view that this petition may not be entertained. Accordingly, the petition deserves to be dismissed at the stage of admission itself.

13. The writ petition is dismissed *in limine*.

(Ravindra Maithani, J)
30.07.2025

