

**IN THE HIGH COURT OF UTTARAKHAND**  
**AT NAINITAL**

HON'BLE THE CHIEF JUSTICE SRI G. NARENDAR  
AND  
HON'BLE SRI JUSTICE ALOK MAHRA

**16<sup>TH</sup> JULY, 2025**

**WRIT PETITION (MB) No. 532 OF 2025**

Seeta .....Petitioner

Versus

State Election Commissioner and another. ...Respondents

Counsel for the petitioner. : Mr. Abhijay Negi, Ms. Snigdha Tiwari,  
and Mr. Ayush Pokhriyal, learned  
counsel.  
Counsel for the respondent : Mr. Sanjay Bhatt, learned counsel.

**ORDER :**

Heard learned counsels for the petitioner, and  
learned Standing Counsel for the respondent.

2. The calendar of events of the subject election is as  
under:

| Election Cycle | Nomination Details                             | Dates for Scrutiny of nomination papers                   | Date for withdrawal of Nomination                | Date of election symbol allotment           | Voting Dates                      | Counting of votes and declaration of results |
|----------------|------------------------------------------------|-----------------------------------------------------------|--------------------------------------------------|---------------------------------------------|-----------------------------------|----------------------------------------------|
| 1              | 2                                              | 3                                                         | 4                                                | 5                                           | 6                                 | 7                                            |
| First Cycle    | 02.07.2025 to 05.07.2025 08:00 AM to 04:00 PM) | 07.07.2025 to 09.07.2025 (from 08:00 AM till end of work) | 10.07.2025 and 11.07.2025 (08:00 AM to 03:00 Pm) | 14.07.2025 (from 08:00 AM till end of work) | 24.07.2025 (04:00 AM to 5:00 PM)  | 31.07.2025 (08:00 AM to end of work)         |
| Second Cycle   | -then-                                         | -then-                                                    | -then-                                           | 18.07.2025 (from 08:00 AM till end of work) | 28.07.2025 (08:00 AM to 05:00 PM) | -then-                                       |

3. As there is ample time, we have taken up the writ petition.

4. We have come across another shocking case of sheer abuse of power, whereby, on the mere say of the competing candidate that the 'No Dues Certificate' "seems" to be a fake, the Returning Officer, during scrutiny, has rejected the nomination of the petitioner. It is admitted that initially, on the basis of the complaint the Returning Officer, raised an objection that it is not issued by the Secretary of the Bank and, hence, he would not be accepting the Certificate, though neither any Rules, Regulations or instructions are placed before the Court to demonstrate the same. It is also an indisputable fact that upon receiving notice and upon coming to know the opinion of the Returning Officer, the Petitioner, has approached the Bank and the Bank has issued one more Certificate stating that there is no loan granted to the petitioner and hence, there are no amounts due from the petitioner and the said Certificate has been issued by the Secretary himself. Despite and after producing the said Certificate, the nomination came to be rejected. As a result, the objector remains the sole candidate.

5. Prima facie, it appears that the Returning Officer has acted in an patently illegal manner, probably to influence the

election of the other candidate. Despite the availability of the said Certificate and despite the production of a second Certificate, even without an inquiry with the Co-operative Bank, or any expert opinion, the Returning Officer has blatantly and arbitrarily concluded that the Certificate is a fake one. It is also further clarified by the learned counsel for the petitioner that in fact, no order of rejection has been passed, but merely the name of the petitioner has been placed in the list of rejected candidates. To state that this is a clear case of endangering democracy could be going little soft on the Returning Officer. It appears that the Returning Officer has apparently misused the authority vested in him to ensure the election of the candidate.

6. In that *prima facie* view, we are of the opinion that it is a fit case which requires to be investigated.

7. Be that as it may, it would be appropriate to afford an opportunity to the Returning Officer and, thereafter for this Court to give any further direction, but in the meanwhile to prevent the apparent arbitrary action and illegality, it is just and necessary that an interim order directing the Returning Officer to allot the symbol to the petitioner and print the name of the petitioner in the ballot paper is required to be issued.

8. A short while ago, we had also dealt with one more classic case of gross abuse of power by the authority, wherein

despite, the presence of a toilet, absence of which is a disqualification under sub-section (3) of Section 8, the Returning Officer proceeded to contrive a reason by stating that as it is 150 meters away, it does not comply with the provisions of sub-section (3) of Section 8 and rejected the nomination. The Court cannot turn a blind eye to these apparent patent illegalities, which appear to be pre-meditated and motivated and in utter disregard of the Law of the Land. The observations of this Bench in paragraphs 10 to 15 of the earlier writ petition (Writ Petition No. 527 of 2025) is squarely applicable to the facts of this case also. The same reads as under:

“10. The learned Standing Counsel for the Commission would place reliance on the provisions of Clause (b) of Article 243-O of the Constitution of India. Clause (b) reads as under :

*“(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.”*

11. What is questioned in the present Writ Petition is not the election of any candidate, but the *per se* illegal rejection of the nomination of the petitioner, for which there is no efficacious remedy. The relief claimed is in furtherance of the elections and not in detriment of the election. That apart, the law as laid down by the Hon'ble Apex Court in ***Election Commission of India (through Secretary) v. Ashok Kumar and others; (2000) 8 SCC 216***, which stipulates the “dual test” principle, stipulating the extent of interference by the Constitutional

Courts (Para 34,32 & 29, 20), is a clear answer to the above objection. A plain reading of Clause (b) of Article 243-O of the Constitution of India makes it apparent that the same is related to the questioning of a Panchayat Election, in other words, where the relief prayed, if granted would result in postponement, putting off the elections or would derail the election. The challenge being to the rejection of the nomination of the petitioner, we are of the, *prima facie*, view that the said bar does not appear to operate in a case of instant nature.

12. It is further submitted by the learned counsel for the Commission that there is a bar under the provisions of Section 131H(1)(b) of the Uttarakhand Panchayati Raj Act, 2016, which reads as under :

***“131H. Application regarding election and their revision – (1) ....***

*(a) ....*

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

*(i) by the acceptance or rejection of any nomination in improper manner; or*

*(ii) by gross failure to comply with the provisions of this Act or the rules framed there under.”*

13. As noted *supra*, if it was a case of improper rejection, this Court would have certainly applied the above provision. *Prima facie*, the rejection appears to be illegal. Material on record, more particularly the inquiry ordered by the Returning Officer himself, discloses the presence of a toilet. Despite the same, the Returning Officer has contrived to make out a case, which is not even the case of the complainant.

14. In this regard we also place reliance on the ruling of a Division Bench of the Karnataka High Court, reported in ILR 1991 KAR 4421, wherein the Division Bench has appreciated the distinction between maintainability & entertainability of writ petition u/A 226. Proceeding the Division Bench has held that the relief of Election Petition is not an “Efficacious Relief” as the candidate would have lost the statutorily vested right to participate in what is popularly known as “the dance of democracy”, and

at most would only have the vicarious pleasure of unseating the elected candidate. That apart, it would also mean sheer waste of public resources including money, man-power, etc,. Reliance is placed on paragraphs 11, 13, 14,16, 17 & 20.

15. Hence, there shall be a stay of the operation of the order impugned in the Writ Petition. The Returning Officer shall assign a symbol to the petitioner, and print the name of the petitioner in the ballot paper and permit the petitioner to participate in the election process for electing the Gram Pradhan for the Udvakhanda Gram Panchayat."

9. In that view, we are constrained to seek the intervention of the State Election Commissioner with immediate effect and to ensure that appropriate instructions are issued to the Returning Officer to preempt any such illegalities.

10. With regard to the objections of the Standing Counsel to the jurisdiction of this Court to entertain such petitions and to prevent the illegalities in the matter of rejection of nomination, the same has been addressed by this Court in the above connected petition.

11. As already held that if it was an improper rejection, there would have been some substance in the objections raised by the Standing Counsel. In the instant case, it is a blatant illegality and an official act has been performed in patently illegal manner.

12. The maintainability of such petitions was considered by a Division Bench of the High Court of Karnataka reported in **L. Ramakrishnappa vs. Presiding Officer** reported in **ILR 1991 KAR 4421**, and the Bench of the Karnataka High Court has been pleased to hold that 'intervention of the High Court is sustainable in the event the violation is so blatant and in order to prevent the abuse of power and waste of public time and money', and has further held that the alternative remedy by way of elections petitions after the elections is not an efficacious remedy. Paragraphs 11, 13, 14, 15 and 20 of the judgment read as under:-

11. This position in law, is laid down by the Supreme Court in HARI VISHNU KAMATH v. AHMED ISHAQUE, . In the said case, the question that arose before the Supreme Court was, as to whether the High Court had the jurisdiction to entertain a Writ Petition for the issue of a Writ of Certiorari against the order of Election Tribunal constituted under the Representation of People's Act, 1951, as it stood in 1955, deciding an election dispute. Placing reliance on Article 329 of the Constitution, it was contended before the Supreme Court that as an election to the Parliament or State Legislature could be challenged only by means of an Election Petition, petition under Article 226 of the Constitution would not lie before the High Court for the issue of a Writ of Certiorari against the decision of the Election Tribunal also. The Supreme Court negated the contention. In doing so, the Supreme Court pointed out that the bar created under Article 329 of the Constitution was against interfering in election matters and the said Article did not curtail the power of the High Court under Article 226 of the Constitution to issue Writ of Certiorari to any

Tribunal and the Election Tribunal was no exception. The relevant portion of the Judgment reads:

"6. The first question that arises for decision in this appeal is whether High Courts have jurisdiction under Article 226 to issue Writs against decisions of Election Tribunals. That Article confers on High Courts power to issue appropriate writs to any person or authority within their territorial jurisdiction, in terms absolute and unqualified, and Election Tribunals functioning within the territorial jurisdiction of the High Courts would fall within the sweep of that power. If we are to recognise or admit any limitation on this power, that must be founded on some provision in the Constitution itself."

(Underlining by us)

In the above paragraph, the Supreme Court has emphatically laid down that any restriction on the power of the High Court under Article 226 of the Constitution, can be recognised only if it is incorporated in any of the provisions of the Constitution itself. In view of the above Decision of the Constitution Bench of the Supreme Court, it is clear that unless the jurisdiction of this Court under Article 226 of the Constitution stands curtailed by any other provision of the Constitution, it cannot be said that a Petition under Article 226 of the Constitution does not lie or this Court has no jurisdiction to interfere in election matters.

13. A reading of both the observations together make it clear that the Supreme Court had made a distinction between the maintainability and entertainability of Writ Petition in election matters. The principle laid down by the Supreme Court is that in respect of election matters, unless an extraordinary case is made out in a given case, a Petition under Article 226 of the Constitution should not be entertained. This clearly means that a Petition under Article 226 of the Constitution challenging the legality of actions taken or orders made in the course of an election to a local authority or any other body on the ground of violation of law, is maintainable but should not be entertained by the High Court unless the violation of law made out is such as would justify the interference under Article 226 of the Constitution immediately to prevent

abuse of power and waste of public time and money and the alternative remedy by way of Election Petition after the elections is not an efficacious remedy.

14. Another Decision of the Supreme Court, on which reliance is placed is, in the case of S.T. Muthuswami. That was a case in which the allotment of symbol for an election to Panchayat was challenged in a Writ Petition and the High Court had interfered with it. The Supreme Court reversed the Judgment of the High Court. Strong reliance has been placed on this Judgment to say that a Petition under Article 226 of the Constitution is not maintainable in matters relating to election to local authority or any other body even if the election to such body is governed by statutory provisions and there has been flagrant violation of law. The relevant portion of the Judgment reads:

"13. In the ultimate analysis, the Full Bench laid down:

"12. There is no constitutional bar to the exercise of Writ Jurisdiction in respect of elections to Local Bodies such as. Municipalities. Panchayats and the like. However, as it is desirable to resolve election disputes speedily through the machinery of election petitions, the Court in the exercise of its discretion should always decline to invoke its Writ Jurisdiction in an election dispute, if the alternative remedy of an election petition is available. So, their Lordships of the Supreme Court in Sangram Singh v. Election Tribunal, Kotah stated:

"....though no legislature can impose limitations on these constitutional powers, it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be. Therefore, Writ Petition should not be lightly entertained in this class of cases."

15. We are inclined to accept this view which lays down a salutary principle."

(Underlining by us) As can be seen from the above paragraphs, the Supreme Court approved the Full Bench Decision of the Madhya Pradesh High Court, in which the Full Bench had held that in respect of Municipal Elections, the petition under Article 226 of the Constitution was maintainable but it should not be entertained lightly. In Muthuswamy's case, the

allotment of symbols was challenged. It is a settled principle in Election Law that in the case of any violation of Rule regulating allotment of symbols an election of candidate could be set aside if only it is proved that the result of the election was materially affected. Therefore, it cannot be said that in such a case the illegality is such as would call for interference under Article 226. To illustrate, in the case of illegality in the allotment of symbols, it is possible that a person who says that a symbol asked for according to Rules, by him, was not given, himself might get elected, in which event the illegality does not adversely affect him at all. Similarly, in case where the petitioner says that to a contesting candidate a symbol which could not have been allotted, was allotted, it is possible that such candidate might be defeated in the election, in which event the grievance does not survive. Even in the case of defeat of such petitioner or election of such contesting candidate, unless it is proved that the result of the election was materially affected by the non-allotment or allotment of symbol in violation of the Rules, as the case may be, the election cannot be set aside. Therefore, in all such cases the High Court should decline to entertain Writ Petition, is what the Supreme Court. has laid down. As far as illegal rejection of nomination paper, which does not involve any disputed question of fact, Division Benches of this Court have consistently taken the view that if the aggrieved party approaches this Court in good time without delay, it is expedient to interfere under Article 226, in order to give the specific relief to the aggrieved candidate, that is, to quash the order rejecting the nomination paper and direct the Returning Officer to accept the nomination and to proceed with the election and also to prevent waste of public money and time and to avoid inconvenience to the public institution concerned.

15. The ratio of these Decisions were followed even during the period when Clause (3), inserted into Article 226 by the 42nd Amendment, was in existence, which took away the jurisdiction of this Court under Clause (1), in cases where there was an alternative statutory remedy. The case is that of FAKIRAPPA v. DEPUTY COMMISSIONER, 1979(1) KLJ 153. The said Writ Petition was filed challenging the legality of rejection of the nomination at an

election to Taluk Development Board constituted under the Karnataka Village Panchayat and Local Boards Act. An objection was raised to the effect that this Court had no jurisdiction to entertain the Petition as there was remedy by way of filing an Election Petition under Section 106 of that Act, in view of Clause (3) of Article 226 of the Constitution. This was decided by one of us (Rama Jois, J). On an elaborate consideration of the contention, the same was negatived holding that the relief which can be granted by this Court to a candidate; whose nomination is illegally rejected, under Article 226, could not be granted in an Election Petition and therefore Clause (3) of Article 226 also did not operate as a bar to the exercise of jurisdiction under Article 226(1). The relevant portion of the Judgment reads:

"4. I shall first take up W.P.5014/1978 in which the petitioner is aggrieved by the rejection of his nomination paper, Sri U.L Narayana Rao, learned Counsel for the petitioner submitted that the impugned order rejecting the nomination paper of the petitioner is liable to be quashed in exercise of the powers of this Court under Article 226(1)(b) of the Constitution and consequential relief should be granted. In support of this submission, he raised the following contentions:

(1) The rejection of the nomination paper of the petitioner is violative of Rule 8(3) and Rule 12(3) of the Rules and therefore is illegal; and (2) The illegal rejection of the nomination paper has resulted in substantial injury to the petitioner.

As against the above contentions, Sri B.B. Mandappa, learned High Court Government Pleader, appearing for respondent-3, submitted as follows:

The petitioner has an alternative remedy against the impugned order by way of presenting an election petition under Section 106 of the Act and, therefore, the Writ Petition under Article 226(1)(b) of the Constitution is not maintainable in view of Clause (3) of Article 226 and the Writ Petition is liable to be rejected in limine.

XXX XXX XXX Article 226(1)(b) confers power on the High Courts to issue appropriate Writ or order of the redress of any injury of a substantial nature by reason of the contravention of any other provision of the Constitution or any provision of any enactment

or ordinance or any order, rule, regulation, bye-law or other instruments made thereunder. The case of the petitioner squarely falls under Article 226(1)(b) of the Constitution. Therefore, the petitioner has a right to prevent the Writ Petition praying for the quashing of the impugned order of the Returning Officer rejecting his nomination paper and also for the issue of a further direction directing the Returning Officer to accept his nomination paper and to proceed to take the poll. But the objection of the respondents to the maintainability of the Writ Petition is based on Clause (3) of Article 226. According to the said clause, no Writ Petition for the redress of an injury in Sub-clauses (b) and (c) of Clause (1) of Article 226 shall be entertained if any other remedy for such redress is provided for by or under any other law for the time being in force. The contention of respondents 1 to 3 is that the petitioner has an alternative remedy of presenting an election petition after the election is over as provided under Section 106 of the Act. Learned Counsel for the petitioner, however, submits that there is no alternative forum created under the Act in which the petitioner can seek the reliefs which he has sought for in this Writ Petition. Elaborating this point, he submitted that in the Writ Petition, the petitioner has prayed for quashing the order of the Returning Officer rejecting his nomination paper and also for further consequential direction, namely, a direction to the Returning Officer to accept his nomination paper and to proceed to take the poll including the petitioner as a candidate. He submitted that while this Court under Article 226 can grant such a relief, the election Court constituted under Section 106 of the Act has no such power.

6. Article 226(1)(b) and (c) of the Constitution provides an effective remedy to the citizens aggrieved by the orders of the Government or any authority, which results in substantial injury to them, by the violation of any law or any provisions having the force of law by seeking for the issue of prerogative writs or orders of that nature. The object of Clause (3) is to see if any other forum is provided for, in any statutory provision through which the petitioner can secure the same relief, as can be granted under Article 226, then such an

aggrieved person should not be permitted to bypass that special forum and approach the High Court directly under Article 226 of the Constitution. If the law does not provide for such an alternative forum wherein the petitioner can seek similar relief, the jurisdictional bar created under Article 226(3) does not operate and the citizen cannot be deprived of the right to seek reliefs for his grievance under Article 226(1)(b) and (c) of the Constitution. It is a settled principle of interpretation that any special provision which takes away or abridges the jurisdiction of any Court which could be exercised but for the ouster of jurisdiction by such special provision should be construed strictly. Therefore, in coming to the conclusion in a given case as to whether a particular Court or tribunal, which has got general jurisdiction, is barred by any specific statutory provision which creates a special Court or tribunal, the question required to be examined is whether the particular relief is within the jurisdiction of the special Court or tribunal so constituted. A similar question was examined by the Supreme Court in *Co-operative Central Bank Ltd. v. Industrial Tribunal, Hyderabad*. In the said case the question which came up for consideration before the Supreme Court was whether Section 61 of the Andhra Pradesh Co-operative Societies Act barred the jurisdiction of the Industrial Tribunal to decide the dispute relating to salary, scales and adjustments between a co-operative society and its employees. The Supreme Court held that having regard to the power conferred on the Registrar under Section 61 of the said Act, the Registrar could not have granted the reliefs claimed by the parties relating to salary, scales and adjustments, and, therefore, the Industrial Tribunal had the jurisdiction to decide the said issue. The relevant portion is contained in para 7 at page 251, which reads as follows:

"Applying these tests, we have no doubt at all that the dispute covered by the first issue referred to the Industrial Tribunal in the present cases could not possibly be referred for decision to the Registrar under Section 61 of the Act. The dispute related to alteration of a number of conditions of service of the workmen which relief could only be granted by an Industrial Tribunal dealing with an industrial dispute.

The Registrar, it is clear from the provisions of the Act, could not possibly have granted the reliefs claimed under this issue because of the limitations placed on his power in the Act itself."

Therefore, in coming to the conclusion, whether this Court has jurisdiction or not to entertain the Writ Petition, the important aspect for consideration is to see as to what is the relief sought for by the petitioner, and whether the election Court or tribunal constituted under the Act has the power to grant the same or substantially the same relief. If the answer is 'yes', then this Court has no jurisdiction to entertain this Writ Petition. Coming to the present case, the Returning Officer rejecting the nomination paper of the petitioner and for issue of a direction to the Returning Officer to accept the nomination paper of the petitioner and to take the poll including the petitioner as one of the candidates along with other candidates whose nomination papers have already been accepted. It is not disputed that this Court has the power to give such reliefs under Article 226(1)(b) of the Constitution. This takes me to the question as to whether the election tribunal constituted under the Act has the power to give this relief if an election petition to the petitioner which could be presented by him after the election is over. The Section which provides for presenting of an election petition in "respect of elections to a Taluk Development Board is Section 106 of the Act. The relevant portion of the Section reads as follows:

"106. Determination of the validity of Elections: (1) At any time within fifteen days after the declaration of the result of an election, any candidate who stood for election or any person qualified to vote at that election, may apply, together with a deposit of one hundred rupees as security for costs, to the Munsiff having jurisdiction in the Taluk concerned for the determination of the validity of the election.

(2) The Munsiff shall after such enquiry as he deems necessary, pass an order confirming or amending the declared result of the election or setting aside the election. For the purposes of the said enquiry, the Munsiff may exercise any of the powers of a Civil Court. He may also awards costs in such manner as he may deem fit and such costs shall be recoverable as if they had been awarded in a suit

under the Code of Civil Procedure 1908, (Central Act V of 1908). If he sets aside an election, he shall forthwith communicate the fact to the Deputy Commissioner who shall take the necessary steps for holding a fresh election.

(3) Subject to the provisions of Sub-section (2), (A) if the Munsiff is of opinion

(a) (b).....

(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 of any nomination or,

(ii)(iii)(iv).....

the Munsiff shall declare the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected."

From the wordings of the above provision, it is plain and it is also not disputed by the learned Counsel for respondents 1 to 3 that the only relief that can be given by the election tribunal constituted under Section 106 of the Act, in the event of coming to the conclusion that any nomination paper has been improperly rejected, is to set aside the election of all the returned candidates in respect of the concerned constituency and communicate the said decision to the Deputy Commissioner, who is required to take necessary steps for holding a fresh election. Therefore, the result of the success in an election petition presented by a candidate, whose nomination paper had been illegally rejected, is the setting aside of the election and the holding of a fresh election. A fresh calendar of events has to be issued. Fresh nominations have to be called for and a fresh poll has to be taken. Under Section 106 of the Act, even after coming to the conclusion that the nomination paper of a candidate was illegally rejected, the election Court has no power to direct the Returning Officer to accept the nomination paper which was illegally rejected and to take a fresh poll only with the candidates who were already in the field. This position is also not controverted on behalf of respondents 1 to 3. Therefore, it is clear that Section 106 of the Act gives no remedy to the

petitioner to have a fresh poll on the basis of the nomination paper which is found to be illegally rejected along with the other candidates who were contesting at the election which is set aside. The right to contest on the basis of the nomination of which the candidate was deprived by the illegal rejection by the Returning Officer is lost for ever. Holding of a fresh election by the issue of a fresh calendar of events is not the same thing as the restoration of the right which the petitioner is seeking in this Writ Petition by praying for the quashing of the impugned order of the Returning Officer and for a further direction to the Returning Officer to accept the petitioner's nomination and to take the poll. If the statute had provided a pre-election remedy to challenge the illegal rejection of a nomination paper before any prescribed authority on whom the power is conferred to set aside an order illegally rejecting the nomination paper to give direction to the Returning Officer to accept the nomination paper and proceed to take the poll, it would have been the same as could be granted in a Writ Petition. Even if the pre-election remedy was not considered expedient, if at least the statute had conferred the power on the election Court that in cases where it comes to the conclusion that any nomination paper was illegally rejected, not only to pass an order setting aside an election but also to direct the Returning Officer to accept the very nomination paper which was rejected and to hold a fresh poll along with only the other candidates, who were already in the field, such a remedy would in substance be the same as could be granted under Article 226 of the Constitution, though postponed to a post-election period. In both cases, such a provision would have attracted the jurisdictional bar created by Clause (3) of Article 226 of the Constitution. In this behalf it is necessary to point out the words 'such remedy' used in Article 226(3) of the Constitution. It is only where the Court comes to the conclusion that there is an alternative forum in which the petitioner can seek such remedy which he has sought for in the Writ Petition, the jurisdiction of the High Court stands excluded by operation of Clause (3) of Article 226 of the Constitution. In the present case, as already pointed out, the election Court is not invested with

the power to grant the relief which the petitioner has sought for and which can be granted in the Writ Petition.

7. Respondents 1 to 3, however, relied on some of the Decisions in support of their contention. They relied on the Decision of the Supreme Court in *Nanhoo Mal v. Hira Mal*. The said appeal arose out of a Decision rendered by the Allahabad High Court in a Writ Petition under Article 226 of the Constitution, as it stood before its amendment by the Constitution (Forty-second Amendment) Act, 1976. In that Writ Petition the calendar of events issued in connection with the election to the office of the President of a Municipal Board was challenged. As no stay order was granted by the High Court, the election took place and the appellant before the Supreme Court was declared elected. The election was set aside in the Writ Petition. The Supreme Court allowed the appeal. Referring to an alternative remedy provided under the Act and Rules for challenging the election of the President, the Supreme Court observed that the High Court was wrong in setting aside the election and should have allowed the parties to resort to the remedy by way of an election petition. The relevant observations on which respondents 1 to 3 relied are contained in para 5 of the Judgment which reads as follows:

"it follows that the right to vote or stand for election to the office of the President of the Municipal Board is a creature of the statute, that is, the U.P. Municipalities Act and it must be subject to the limitations imposed by it. Therefore, the election to the office of the President could be challenged only according to the procedure prescribed by that Act and that is by means of an election petition presented in accordance with the provisions of the Act and no other way. The Act provides only for one remedy, that remedy being an election petition to be presented after the election is over and there is no remedy provided at any intermediate stage. These conclusions follow from the decision of this Court in *Ponnuswami's case* (supra) in its application to the facts of this case. But the conclusions above stated were arrived at without taking the provisions of Article 329 into account. The provisions of Article 329 are relevant only to the extent that even the remedy under Article 226 of the Constitution is

barred as a result of the provisions, But once the legal effect above set forth of the provision of law which we are concerned with is taken into account, there is no room for the High Courts to interfere in exercise of their powers under Article 226 of the Constitution. Whether there can be any extraordinary circumstances in which the High Courts could exercise their power under Article 226 in relation to elections, it is not now necessary to consider. All the considerations applied in coming to the conclusion that elections to the legislatures should not be delayed or protracted by the interference of Courts at any intermediate stage before the results of the election are over apply with equal force to elections to local bodies."

The earlier part of the observations of the Supreme Court no doubt support the contention of respondents 1 to 3 to the effect that the High Courts should not interfere with or set aside, the elections in exercise of their power under Article 226 of the Constitution. But on a careful reading of the above para, it is clear that the said observations were made in a case where the High Court had set aside the election after it was held without directing the parties to resort to an election petition provided under the statute. As regards the bar of the High Court under Article 226 of the Constitution to entertain a Writ Petition in extraordinary circumstances, in the same para the Supreme Court has expressly left the said question open. The penultimate sentence in para 5 aforesaid read as follows:

"Whether there can be any extraordinary circumstances in which the High Courts could exercise their power under Article 226 in relation to elections it is not now necessary to consider."

This Court has consistently taken the view that once the election is over, the only proper and effective remedy for challenging the election is by means of an election petition. As regards cases of improper acceptance of nomination papers also this Court has consistently refused to entertain Writ Petitions on the ground that it causes no injury to a petitioner who complains of such illegal acceptance of nomination papers and also on the ground the remedy provided under the Act is an alternative and efficacious remedy. Further, this Court has always

treated cases of rejection of nomination papers by patently illegal orders as cases of extraordinary nature which results in irreparable injury to a person whose nomination paper has been rejected.

8. After considering the Judgment of the Supreme Court in the case of N.P. Ponnuswami v. The Returning Officer, which is referred to in the aforesaid Supreme Court Judgment, this Court in Muddamallappa v. Election Officer and Revenue Inspector took the view that cases of illegal rejection of nomination papers call for interference in exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution. The relevant portion is at page 325 which reads as follows:

"The principle that there should be no interruption of an election while it is in progress and that no attack should be made on the validity of any proceeding relating to such election until its completion is, as I understand it, a sound principle of election law which, ordinarily justifies the refusal of the exercise of such jurisdiction. But to say that, is not the same thing as saying that even in a case where the impugned order of an Election Officer is so plainly absurd or where the order made by him cannot but be regarded as one which it was impossible for him to make under the statutory provisions under which he was functioning, we should, nevertheless, even in such a case, decline to exercise our jurisdiction. In cases falling within that exceptional category, it is clear that it would be our plain duty to correct at the earliest stage such egregious errors, which if the election is allowed to continue unimpeded, would inevitably result in wasteful expenditure of public time and money."

On the same basis, this Court has always entertained Writ Petitions under Article 226 of the Constitution and interfered with the illegal rejection of nomination papers in connection with the elections to the local bodies. The other decisions are Lakshminarayana Rao v. Deputy Commissioner (1964-2 Mys.L.J. 438), D.R. Linge Gowda v. State of Mysore (1969-1 Mys.L.J. 94), Ramaiah v. State of Mysore (17 LR 528), Rajanna v. Election Officer. Doddaballapur (17 LR 598), and P.

Nagaraju v. Tahsildar and Returning Officer (11 LR 461). In view of the series of Division Bench Decisions of this Court in which it is held that cases of rejection of nomination papers in plain contravention of the statutory provisions are cases which fall under the category of extraordinary cases which falls for interference under Article 226 of the Constitution and this question was specifically left open by the Supreme Court in Namhoomal's case, on which respondents 1 to 3 relied; therefore I do not agree with the submission made on behalf of respondents 1 to 3 that in view of the aforesaid Supreme Court Judgment the petition cannot be entertained,"

(Underlining by us)

20. To sum up, our conclusions on the two questions of law arising for consideration, are as follows:

(1) Under Article 226 of the Constitution, this Court has the jurisdiction to interfere with the illegality committed in the course of holding election to the offices of any authority/body which is regulated by statutory provisions (other than election to the Parliament and State Legislature), notwithstanding the existence of an alternative remedy, by way of filing Election Petition, if violation of law is established. In other words, such a Writ Petition is maintainable.

(2) However, the jurisdiction of this Court under Article 226 being an extraordinary one, this Court as a general rule, will not and should not entertain a Petition in matters connected with such elections even if any illegality is shown to have been committed, if the law provides an effective alternative remedy and the illegality is such in respect of which adequate relief could be granted in an Election Petition. In other words, this Court will not and should not entertain Writ Petition lightly, as held by the Supreme Court in the case of Muthuswamy.

(3) In exceptional cases in which 'the illegality committed is patent and does not depend upon the investigation of disputed questions of fact and interference is called for to prevent, abuse of power and the taking of advantage of such illegality by its beneficiaries for some time, waste of public time and money and to avoid inconvenience to the public

institution concerned, this Court has not only the power but also under a duty to interfere provided the party aggrieved approaches this Court forthwith and in good time.”

13. Accordingly there shall be a stay of the “Cancelled-List” in so far as it relates to the Petitioner and further there shall be an interim direction, directing the Returning Officer to allot a symbol to the petitioner and print the name of the petitioner in the ballot papers and permit him to participate in the election process in respect of Ward No. 5 Bhutsi Panchayat.

---

**G. NARENDAR, C.J.**

---

**ALOK MAHRA, J.**

Dt: 16<sup>th</sup> July, 2025  
Rathour