

21.04.2026
Court No. 12
Item No. 01
Sandip/gc/CP

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

M.A.T. 719 of 2026
IA No : CAN 1 of 2026
CAN 2 of 2026

The Election Commission of India & Ors.
-Versus-

Rupa Banerjee Nee Samjpati

Mr. Jishnu Chowdhury, Sr. Adv.,
Ms. Anamika Pandey,
Ms. Sanskriti Agarwal,
Ms. Rishika Pandey,
Mr. Ghanshyam Pandey
...for the Appellants.

Mr. Biswaroop Bhattacharyya,
Mr. Arkaprava Sen,
Mr. Sayantan Kar,
Ms. Deboleena Mukherjee
.....for the applicant in CAN 2 of 2026

Mr. Abhratosh Majumder, Sr. Adv.,
Mr. Subhasis Chakraborty,
Mr. Aditya Mondal,
Mr. S. Chakraborty,
Ms. Sushmita Singh
....for the Respondents.

1. The appeal has been filed by the Election Commission of India, the Chief Election Commissioner and the Chief Electoral Officer, West Bengal, being aggrieved by a judgment and order dated April 17, 2026 passed in W.P.A. 9020 of 2026.

2. By the order impugned the learned Court disposed of the writ petition, inter alia, holding that the Election Commission of India was free to pass an order for appointing the writ

petitioners as per their rank, salary and in conformity with the Circular dated 16/17th February, 2010.

3. It is important to note here that the writ petitioner was the President of the West Bengal Government College Teachers' Association, who had moved the writ petition on the ground that its members were aggrieved by their requisition in the election duty and appointment as presiding officers in the polling stations. The members of the Association did not raise any individual grievance. Prima facie, it appears that His Lordship at various places of the order, proceeded on the basis that the college teachers who had been appointed as polling officers had approached the writ court. His Lordship came to a finding that the Election Commission failed to produce any document to show unavoidable circumstances which required appointment of the petitioners as presiding officers in the polling station.

4. It is also a matter of record that some of the members of the said Association had already accepted the appointment and had undertaken training. His Lordship had taken

note of such fact and directed that those members would not be affected by the order.

5. The allegations in the writ petition were that, the Election Commission of India failed to record reasons for engaging teachers of colleges as presiding officers and had acted de hors its own Circular dated February 16, 2010. The relevant portion of which is quoted below:-

“In this connection the Commission further desires that Group A equivalent Senior Officers including teaching staff of universities, colleges at should not be drafted for “Polling duties” in polling station premises who specific reasons to be recorded in writing by the District Election Officer, where such appointments become unavoidable.

This may be brought to the notice of all concerned.”

6. Further contention of the writ petitioner was that the members had raised objections, that they wanted to be placed as observers, micro observers, etc. They had approached the Commission by filing representations. Instead of giving an audience to those members, the Commission issued show cause notices.

7. The sum and substance of the allegations in the writ petition were that:-

a. Group-A or Senior Officers including teaching staff of universities and colleges should not be drafted for polling duties without specific reasons to be recorded in writing.

b. The Election Commission had not undergone the above exercise before requisitioning teachers from the various colleges and universities and appointing them as presiding officers.

c. Unless there was acute shortage of man power in discharging polling duty, teachers should not ordinarily be requisitioned.

d. The college and university teachers enjoyed the same UGC approved pay scale, which was equivalent to Class-I/Group-A scale of Central Government employees and as such, the engagement of sector officers/observers, who were less qualified than the members of the said association or who enjoyed lesser pay, was contrary to the instructions of the Commission.

e. The power conferred upon the Election Commission under Article 324 of the

Constitution read with the Representation of the People Act, 1951 (hereinafter referred to as the "1951 Act") could not be exercised without following the instructions issued by the Commission itself from time to time.

8. In view of the provision of Section 19 of the West Bengal Societies Registration Act, 1961, the writ petitioner being a person aggrieved with the action of the appellants, had preferred the writ petition on the allegation that the fundamental rights of the members of the society had been violated.

9. Mr. Chowdhury, learned Senior Advocate for the appellants submits that the Election Commission exercises powers of superintendence and control over all elections. This power has been vested upon the Commission by the Constitution of India. The Election Commission has the authority to pass directions and pass orders as to the conduct of elections. As no staff or personnel or work force or human resource has been made available to the Election Commission, the Constitution permits the Election Commission to request the Governor or the President, as the

case may be, to make available to the Election Commission or to the Regional Commissioner, such staff as may be necessary for the discharge of the functions conferred on the Election Commission under of Article 324.

10. Reference has been made to the provision Section 159 of the 1951 Act in support of the contention that the Commission can requisition staff from government colleges and universities. Reference was further made to the Hand Book for Presiding Officers and for Observers.

11. We find that Part-IV of the Representation of the People Act, 1951 deals with the administrative machinery for the conduct of elections. The power to nominate observers has been vested in the Election Commission under Section 20B of the 1951 Act. It provides that the Election Commission may nominate an observer, who shall be an officer of the Government, to watch the conduct of election or elections in a constituency or a group of constituencies and to perform such other functions as may be entrusted in them by the Commission.

12. The observers nominated under subsection (1) have the power to direct the

returning officer for the constituency or for any of the constituencies for which he has been nominated, to stop the counting of votes at any time before the declaration of the result or direct not to declare the result, if in the opinion of the observer, booth capturing had taken place at a large number of polling stations. Such direction can also be passed if papers used at a polling station or at a place fixed for the poll are unlawfully taken out of the custody of the returning officer or are accidentally or intentionally destroyed or lost or damaged or tampered with to such an extent that the result of the poll at that polling station or place cannot be ascertained. When such decision or direction is given to the returning officer by the observer, the observer is also required by law to make a report forthwith for the Election Commission to take steps. As per the explanation for the purpose of sub-section (2) and (3), observer includes a Regional Commissioner or any such officer of the Election Commission as has been assigned under the said section, the duty of watching the conduct of election or elections in a

constituency or group of constituencies by the Commission.

13. Section 26 of the 1951 Act, deals with appointment of presiding officer. The first proviso to Section 26 clarifies that, in the event a polling officer appointed by the District Election Officer is absent from the polling station, the presiding officer may appoint any person who is present at the polling station, other than the person who has been employed by or on behalf of, or has been otherwise working for a candidate in the election, to be the polling officer.

14. Thus, the first proviso to Section 26 clearly indicates that the presiding officer is higher in rank than the polling officer so much so that the presiding officer has the legal authority to appoint a polling officer if the polling officer appointed by the District Election Officer is absent. Thus, the presiding officer presides over the polling station on the day of the poll. Section 27 deals with the general duty of the presiding officer, i.e. to keep order in the polling station and to see that the poll is taken fairly.

15. Whereas, from the Hand Book on Observers, we find that the Election Commission can only nominate observers who are officers of the Government. The contention of the writ petitioner in Paragraph 8 of the writ petition and in the prayer is that, they should be appointed as observers, micro observers, etc. Such contention is not tenable in law, as the observer has to be an officer of the government.

16. Paragraph 8 of the writ petition is quoted below:-

“8. The petitioner states that Government College Teachers, WBES/WBGS cadres, which is being represented by the petitioner before this Hon'ble Court, on several occasion have expressed their grievance before the respondent authorities but the respondent authorities despite being aware of the government circulars and orders are sitting tight over the matter without taking any steps, due to which the petitioner was constrained to submit a representation dated 06.04.2026 before the respondent authorities inter alia seeking that to conduct the West Bengal Legislative Assembly Election 2026,-the College and University teachers including teachers of Government Colleges (WBES/WBGS) may be allotted different duties under the, Election Commission of India namely, Observer, Additional Observer, Micro Observer, Additional Micro Observer, Assembly level Master Trainers, Counting Officials with appropriate designation, etc. or other duties commensurate with the rank and pay matrix in congruence with the orders issued by the Election Commission of India, State Election Commission and

different judgments of the Honourable Court, but unfortunately till date the respondent authorities have failed to take any steps in regard to such representation filed by the petitioner.”

17. The prayers in the writ petition are set out hereunder:-

“a) Dispense with Rule 26 of the Writ Rules;

b) A writ of and/or in the nature of Certiorari directing the respondents and their men, agents and servants to certify and transmit the records pertaining to the instant case before this Hon'ble Court SO that conscionable justice may therein be administered;

c) A writ of and/or in the nature of Mandamus directing the respondent authorities that the College and University teachers including teachers of Government Colleges (WBES/WBGS) may be allotted different duties by modifying the current assignment of duties which has already been issued by the Election Commission of India namely, Observer, Additional Observer, Micro Observer, Additional Micro Observer, Assembly level Master Trainers, Counting Officials with appropriate designations etc. or other duties commensurate with our rank and pay matrix in congruence with the orders issued by the Election Commission of India, State Election Commission and different judgments of the Hon'ble Court;

d) A writ of and/or in the nature of Prohibition restraining the Respondents, its men, employees and subordinates from engaging and allotting duties the members of the Society being represented by the petitioner that is the Principals, Teachers and Librarians of Government Colleges in West Bengal in the ensuing West Bengal Legislative Assembly Election, 2026 upon due and expeditious consideration of the written request submitted;

e) Rule NISI be issued in terms of prayer (b) to (d) as above;

f) An interim order be passed restraining the Respondents, its men, employees and subordinates from members of the Society being represented by the petitioner that is the Principals, Teachers including Librarians of Government Colleges in West Bengal in the ensuing West Bengal Legislative Assembly Election, 2026 upon due and expeditious consideration of the written request submitted;

g) Ad- interim order in terms of prayers above;

h) Costs and incidentals;

i) Such further or other order or orders as Your Lordships may seem fit and proper for the ends of justice.”

18. An overview of the observer's duty is under clause 3 of the Hand Book which provides that by dint of seniority and long

experience in administrative services, the observers are expected to be in a position to assist the Commission in the conduct of free and fair polls. Thus, the first requirement for an observer is to have longstanding administrative experience. The observers are to oversee efficient and effective management of the electoral process at the field level. The electoral process commences with the notification and ends with the declaration of the result. The observers are to perform duties all through the election process. They are to act as the eyes and ears of Election Commission during the period of election and provide direct inputs to the Commission from the field as an interface with the election machinery, the candidates, political parties and the electors, in order to ensure that the Act, Rule, provisions, instructions, guidelines are being followed. We do not find that the observers are playing a superior role over the presiding officers. Rather, they are the interface between the Commission and the election machinery, involving candidates, political parties, electors, etc. The observer is also an interface with the R.O., D.E.O and

A.R.Os. The role of observers which is quoted below, does not indicate that they have any controlling function over the presiding officers, or that the presiding officers are inferior to the observers in any way. The fields of operation are different for each category. Role of observers from the Handbook is set out hereunder :-

1. Section 20B of the Representation of Peoples Act, 1951 has vested the Observers with some statutory powers. They are empowered to direct RO to stop counting or not to declare for the reasons specified in Section 208.

Besides the above-mentioned statutory powers, they have got certain very important roles to play which include: -

a) Observing the processes of scrutiny of nominations and withdrawal of candidature by the RO, and Report back to the Commission promptly in case of any irregularity,

b) Examination of the video clipping of the nomination process as well as making proper investigation on the complaints received in connection with the process of nomination. Also, to examine the unresolved grievances by the candidate/ political parties about the allotment of symbols;

c) *Effective monitoring of implementation of MCC and detecting cases of violation of the model code of conduct by watching the video clippings of various meetings and, if needed, even by visiting important rallies to get first hand input, enforcement of the defacement of property act, training of Micro-Observers and such other things;*

d) *Though checking the account of expenditure of the candidates is entrusted to Expenditure Observers, however, General Observer are also required to do so, in case of exigencies, if directed by the Commission.*

e) *Tracking dispatch of postal ballot papers to the service voters, ensuring the setting up of the facilitation counters for polling officials, police, and security personnel etc., in accordance with the recent guidelines of the Commission and sending specific report in this regard to the Commission.*

f) *Checking randomization software, reviewing the process of randomization of the polling personnel, obtaining report from the DEO regarding first level randomization; and*

g) *Observing and regulating the counting process. Observer has to sign the round wise counting sheets as proof of his/her satisfaction. She/he can direct the Returning Officer to stop counting of votes or declaration of result, if she/he notices*

any irregularities and bring the matter to the notice of the Commission for further directions.

2. *Apart from the direct executive role of the observer, as enlisted above, Observers are expected to observe and report on all the steps involved in election management. An illustrative list is as below:*

A. Nominations, Scrutiny, Withdrawal and Symbol allotment

I. *The General Observers are directed to reach the constituency one day before the last day of nomination and thus does not observe the process of nomination in person, however, during the first visit they should get the video recording of the nomination process from the RO and see the recordings to get an overview of compliance of ECI Instructions and report major violations, if any, with specific reference to Commission's instructions regarding number of people allowed to be present during Nominations.*

II. *Scrutiny is a quasi-judicial process and should be conducted by the RO without any outside influence. However, Observer can ensure that RO is aware of the latest instructions; he has the latest list of disqualified candidates and the latest symbol order.*

The Observer should observe the scrutiny process and report glaring error to the Commission. The observer should send tabular information of all rejected cases with reasons thereof. Observers should, however, abstain from directing or advising the RO. Observer may remind RO that the scrutiny proceedings can be adjourned in case an opportunity is to be provided or if any legal provision needs to be examined that requires time.

III. Allotment of symbol is a process that is very technical and requires due care. It should be ensured that RO is aware of the provision of issue of reserved symbols and free symbols. He should have the latest list of political parties and election symbols. Another important aspect to be kept in mind is the symbol concession orders issued by Commission. After allotment of symbols, the list of contesting candidates should be prepared in Form 7A.

B. Electoral Roll Related

I. It should be ensured the EPICs prepared during the last days are properly distributed to the electors and are not left with some intermediary.

II. Although no deletions can be made from the roll, absentee and

dead and duplicate voters should still continue to be tracked and a separate list of such voters should be prepared Polling Station-wise that can be used on the day of Poll.

III. The last supplement is prepared after the date of withdrawal by manually marking the mother roll and previous supplement based on the last supplement. This activity has to be closely observed and ensured that efforts have been made to avoid any mistakes at this stage.

IV. It should be ensured that the copies given to the candidates are exactly the same as that which would be used on the poll day by the polling party. Observer should see the latest instructions of the Election Commission, dated 11.12.2013 on this matter.

C. Campaign Period

I. During the campaign period, General Observers should monitor the implementation of Model Code of Conduct (MCC) and measures to prevent occurrence of electoral offenses. In this regard, the Observers should bring lapse to the notice of DEO, CEO and report to the Commission, if required but abstain from any executive action on their part.

II. Meeting with candidates to explain the provisions of Model Code of Conduct and the instructions of Commission thereunder.

III. Observe various events like political meets, visits of star campaigners etc.

IV. Monitor the work done by teams constituted for enforcement of MCC.

V. Monitor dummy candidates, surrogate advertisements, and paid news.

VI. Review video recordings of activities of those candidates for whom video trailing has been resorted to.

D. Pre-Poll Election Management

I. Monitor preparation of dispatch of postal ballot papers to service voters immediately after the preparation of list of contesting candidates i.e. Form 7-A.

II. The first randomization of the election staff is done before the Observers arrive. The second and third randomization is, however, done in the presence of Observers.

III. First level of EVMs/VVPATs randomization is done before the arrival of the Observer but the second level randomization is done in the presence of Observers.

IV. Training is an activity on which special emphasis should be

provided. Observers should monitor that proper training is arranged for the election staff, especially with regard to recent instructions of EC and related to operation of EVMs/VVPATS.

V. Intermediate Storage and Movement of Reserve EVMs and VVPATS (P-2/P-3 dispatch and P+1 arrival of polling parties)

1. *Ensure that a Govt, building has been earmarked at the cluster point for polling parties and EVMs & VVPATS.*

2. *Ensure that locations of intermediate strong room have been informed to the all the contesting candidate in writing.*

3. *Ensure that the contesting candidates/their agents have been informed about the date and time of opening of strong room in writing.*

4. *Ensure that proper security arrangement has been made to guard the strong room and all EVMs & VVPATs provided to polling parties or Sector Officer/Zonal Magistrate are under cover of armed police at all times.*

5. *Ensure that arrangement for videography has been made there.*

VI. Monitor adherence to the instructions of the Commission

regarding issue of postal ballot papers to the polling staff and voting through them.

VII. Visit polling stations and monitor that all polling stations are visited by election official for verification from fitness angle. Verify whether the list of polling stations is approved by the Commission and the assured minimum basic facilities have been provided.

VIII. Go through the exercise of Vulnerability mapping and identification of critical booths and critical clusters done by the DEO/SP and finalize and list of critical polling stations and critical clusters.

IX. Discuss and approve the District Security Plan with the DEO and the SP and review the law-and-order issue in general. Review the availability of CPF, SAF and District Police. Review the preventive measures taken by the law-and-order implementation machinery.

X. Review the Communication Plan and confirm dry runs.

XI. Review Control Room arrangement and complaint monitoring system.

XII. Training and placement of Micro Observers

XIII. Ensure that proper arrangements for dispatch have been

made. The dispatch should normally be on the day before the poll and any exception should have prior approval of the Commission.

XIV. Review counting arrangements.

E. Poll Day Management...

- I. Monitor placement of Sector Officers and Micro Observers.*
- II. Monitor conduct of mock polls and receipt of mock poll certificate in prescribed format signed by PO. Review the polling stations with no or only one polling agent.*
- III. Review the pace of poll and percentage of polling at regular intervals.*
- IV. Keep track of occurrence of any special events during the poll day.*
- V. Keep track of any delays or temporary suspension of poll.*
- VI. Report anything exceptional to the CEO and the Commission.*
- VII. Ensure that proper arrangements for receipt of polling staff and polling material are made. Every receiving team should be well equipped with a checklist of items to be received. Ensure that the non-statutory documents are not locked with the EVMs/VVPATs in that strong room.*

- VIII. *Ensure that a "special counter" is setup for receipt of polling parties from those polling stations where any special events has been reported and on receipt, proper documentation, along with the statement/report of the Presiding Officer, if required, is done.*
- IX. *Ensure that proper arrangements for receipt of reserve EVM/VVPATs and non-functional mock poll replaced EVM/VVPATs from Sector Officers immediately after completion of poll as per ECI instructions.*

F. Post Poll

- I. *Scrutiny of documents relating to poll is an important analytical tool to analyze proper conduct of elections and taking re-poll decision. Scrutiny is done for those polling stations that fall within the criteria as per Commission's instructions in the presence of Observer on the next day of the poll.*
- II. *Report to the Commission about the conduct of poll and requirement of re-poll, if any.*

G. Counting

- I. *Review the arrangements for counting made by the DEO.*
- II. *The randomization of counting staff is done in the presence of Observer.*
- III. *Monitor that the counting of postal ballot taken up before the EVMs but the EVM counting is not held up till the completion of postal ballot counting.*
- IV. *The Observer has to ensure that the results as tabulated by the counting staff and the additional counting staff, drawn from the central government establishment, tally.*
- V. *Conduct random test for two EVMs in every round and take corrective action as per the directions of ECI, in case any mistakes are found.*
- VI. *Ensure that during the counting, round-wise results are announced as and when they are finalized.*
- VII. *Certify proper completion of counting process and allow RO to declare results, if satisfied with the counting process.*
- VIII. *Report cases of recount to the Commission.*

19. The duties of presiding officer, have been broadly outlined in paragraph 12 of the Hand Book on Presiding Officers, which is quoted below:-

**“12. PRESIDING OFFICER'S
DUTY-BROAD OUTLINE**

As Presiding Officer, you are over all in-charge of the Polling Station. Your duties are to:

- (i) Not miss any of the training classes.*
- (ii) Keep in ready possession all relevant instructions of the Commission.*
- (iii) Fully acquaint yourself with the latest rules and procedures prescribed for the conduct of poll by EVM with VVPAT.*
- (iv) Familiarize yourself thoroughly with the operation of the EVM with VVPAT and the functions of various buttons and switches provided therein.*
- (v) Ensure that, while collecting election materials, all items have been handed over to you as per the list supplied along with the materials as specified in Annexure-3.*
- (vi) Set up the Polling Station as per specification. Place the BU and VVPAT in the respective Voting Compartments. You should have a clear idea of the arrangements to be*

made for setting up of the Polling Station in a proper way especially to secure secrecy of voting. regulation of voters' queue, protection of poll proceedings free from outside interference, etc. On arrival at the Dispersal centre, you should also ensure whether your Polling Station has CAPF or police arrangement. You should be aware if there is Micro-Observer and digital Camera/Web casting facility available at the Polling Station.

(vii) Under no circumstances, the Ballot Units, or the Control Units or VVPATs should be placed on the floor. They must be kept on a table; Connect the Ballot Units and VVPATs with their respective Units.

(viii) Demonstrate before the hour fixed for actual commencement of the poll to the candidates/agents present that the voting machines are clear and do not contain any votes.

(ix) Conduct mock poll for Polling Agents to ensure that the EVM with VVPAT is in perfect working condition by letting the Polling Agents record a few votes randomly for each of the contesting candidate; tally the CU result and VVPAT paper slips count. The Commission's latest guideline stipulates that at least 50 votes will be cast in mock poll and

at least one vote will be cast against each candidate including NOTA.

(x) Clear the mock poll result from CU and remove the mock poll slips from the VVPAT drop box. Prepare the Certificate of mock poll. (Part-1 of Annexure-5)

(xi) You should be clear that according to the Commission's instructions, if there is no mock poll at a Polling Station, there shall be no poll at that Polling Station.

(xii) Remember that the votes recorded at such mock poll must be cleared from the Control Unit of the voting machine so that no data relating to the mock poll remains in the memory of the machine and paper slips must be taken out from the VVPAT drop box, so that drop box of VVPAT is empty after the mock poll.

(xiii) Before the first voter signs in Form 17A (Register of Voters), the Polling Officer-I shall check with the Presiding Officer and record in INK in Form 17A that "Total in the Control Unit is checked and found to be Zero".

(xiv) Ensure that on the green paper seal fixed in the Control Unit for Lok Sabha election only the candidates for Lok Sabha Election or their Polling Agents, who are present at the Polling Station at that time, affix

their signatures, and similarly, on the green paper seal fixed in the Control Unit for Assembly Election, the candidates for assembly election or their Polling Agents alone affix their signatures.

(xv) Demonstrate to the Polling Agents and other persons present that the marked copy of the electoral roll (copy of the electoral roll to be used for "marking" the names of electors who are allowed to vote) does not contain any remarks other than those used for issuing postal ballot papers.

(xvi) See that Voting Compartments have been properly arranged with appropriate posters pasted outside to indicate clearly the election pertaining to which the Ballot Unit and VVPAT is kept inside.

(xvii) Ensure that the cables to connect the Ballot Units and VVPATs with their respective Control Units are placed in such a way that the cable is visible to everyone while also ensuring that the voters are not required to cross over them during their movements inside the Polling Station and the entire length of the connecting cable is visible to all and not hidden. It should also be ensured that the cable does not hang loose under the Voting Compartment. Tape the connecting

wires of BU and VVPAT to the leg of the table with "Transparent Adhesive Tape" of half inch width in such a manner that the wires do not hang in the air so that the load of hanging wire does not impact the connecting switch of the BU and VVPAT.

(xviii) Ensure that all the members of the Polling Party are in position well before the commencement of the poll and all the material and records are kept handy and ready to commence poll at the appointed hour.

(xix) Prevent any member of the Polling Party or any polling agent from wandering here or there inside the Polling Station and to keep them seated in their allocated seats.

(xx) Commence the actual poll at the stroke of the hour fixed for commencement of poll. Before commencing the poll, the candidates, or their agents, who are present at the Polling Station and the Polling Officers, should be briefed about the maintenance of secrecy of vote. The provisions of Section 128 of the Representation of the People Act, 1951 should be read out and brought to their notice.

(xxi) Read out the declaration aloud to the hearing of all persons present in Polling Station and sign on the

declaration and obtain signature of such Polling Agents as are present and willing to affix the same. If any Polling Agent declines to affix his signature, the Presiding Officer should record the names of such Polling Agent without declaration and make a declaration in a prescribed form about the demonstration of the voting machine, marked copy of the electoral roll and the Register of Voters and obtain signature of candidates or their Polling Agents (Annexure-6).

(xxii) During the progress of poll, keep a close watch on the movements of the voters and be alert and watchful so that no voter goes away without voting and go on recording the relevant events as and when they occur in the Presiding Officer's Diary [Annexure-7].

(xxiii) Ensure that during the first hour of the poll when polling is generally brisk, no member of the Polling Party shows any slackness in the duties allocated to him.

(xxiv) Check the total votes casted periodically with the Control Unit and ensure that voters have voted according to their serial numbers given on the voter's slip.

(xxv) Ensure that in simultaneous election, copies of Form 17C [Annexure-8] for parliamentary election are supplied to Polling Agents of the candidates in Parliamentary Constituency only and copies of Form 17C [Annexure-8] for the Assembly Election are given only to the agents of candidates of assembly constituency.

(xxvi) At regular intervals check the Ballot Unit(s) and VVPAT to ensure that the voters have not tampered with it in any manner. You have a right under rule 490 of the Conduct of Elections Rules, 1961 to enter the Voting Compartment in such cases and to take such steps as you may consider necessary to ensure that the Ballot Unit is not tampered with or interfered with in any way and that the poll progresses smoothly and orderly. However, be careful that, whenever you enter the Voting Compartment, do not enter the compartment alone. You should permit and take one or two or more Polling Agents present at the Polling Station to accompany you.

(xxvii) To regulate the proceedings in the Polling Station for peaceful and smooth conduct of poll, much tact is required, but at the same time you should be firm and impartial. If any

incident takes place at the Polling Station and is not reported by you, but reported from any other source, the Commission may take a serious view and initiate action against you.

(xxviii) Close the poll at the hour fixed for the purpose by the Election Commission, even if the commencement of poll was delayed for any reason. However, all voters present at the Polling Station at the closing hour of poll shall be allowed to vote even if that means continuing of poll for some more time. It should also be ensured that after the closing hour of poll nobody joins the queue of voters. For this purpose, you should distribute numbered slips, signed by you, to all the voters standing in the queue starting such distribution of slips from the last person standing in the queue. After all electors have cast their votes and no one is left, then the Polling Officer shall put a red line after entry of last sign there giving date and time. Press 'Close' button of the Control Unit after all voters in queue cast their votes. You should loudly announce about the closing hour of the poll before 15 minutes of the closing hour.

(xxix) Ensure that at the close of poll, you are required to prepare an "Account of Votes Recorded" in Part I

of Form 17C [Annexure-8) and obtain the signature of the Polling Agents in the column specified for the purpose in that Form. Authenticated copies of such account of votes recorded are required to be given to the polling agent of each candidate present at the Polling Station. You are also required to make a declaration regarding furnishing of such copies to the candidates' agents in the form prescribed by the Commission.

(xxx) After the close of poll, the voting machine with VVPAT and all election papers should be sealed and secured in the manner prescribed by the Election Commission. Candidates or their agents present at the Polling Station shall also be allowed to affix their seals, if they so desire, on the voting machine & VVPAT and the election papers, in addition to your seals. You should carefully follow the relevant instructions about the sealing and securing of voting machines & VVPAT and election papers so that no mistake is committed.

(xxxi) It is your personal responsibility to hand over the duly sealed and secured voting machine & VVPAT and all election papers to the officer responsible for the

collection thereof, under proper receipt.

(xxxii) Your duties, in brief, at various stages are given in Annexure-9 under five different heads for your ready reference and convenience.

(xxxiii) Check Memo: To ensure that you have fulfilled the various statutory requirements in connection with the election, the Election Commission has drawn up a Check Memo for you, which is given in Annexure-10. The said check memo should be properly maintained by you.

(xxxiv) You are permitted to carry your mobile phones in silent mode.

20. The presiding officer is in overall charge of the polling station. Although, allegations have been made that persons who are stenographers and clerks have been made sector officers, Clause 1.14 of the said Hand Book provides that sector officers act as an interface between the presiding officer and the returning officer and the presiding officer may take extra material for the elections from the sector officer. The position of a sector officer is not superior to the presiding officer.

21. We find that another grievance of the petitioner was that while assigning the role of presiding officer, the DEOs of different districts failed to understand the comparative structures of the pay matrix and the hierarchy of the entry level basic pay.

22. According to Mr. Majumder, learned Senior Advocate who appeared for the writ petitioner, the following exercises would have to be done by the Commission before appointing college teachers:-

- a) Calculation as to the number of polling stations and the number of Presiding Officers required at such polling stations.
- b) Ascertaining whether the other departments of the Government from which such staff could be requisitioned would be adequate or not.
- c) Upon having completed the above exercise reasons be recorded as to why teachers from colleges and universities would be required to act as presiding officers at polling station.
- d) For the above exercise, a reasoned decision would have to be taken as to whether the number of other staff at its disposal were either inadequate or incompetent to discharge the duty as polling officer. If Group B level

staff were available, the question of requisitioning Group A level staff did not arise.

e) In spite of several opportunities given by the learned Single Judge, the Election Commission failed to produce records to show that the above exercises were actually undertaken.

23. According to Mr. Majumder, the Election Commission acted arbitrarily and in utter disregard and disrespect to the teachers who were requisitioned and were asked to act as presiding officers, although, persons lower in rank and having lower pay had been appointed as observers, micro observers.

24. Unfortunately, the writ petitioner failed to make a distinction between the members who had already accepted such appointment and proceeded for training and those who were aggrieved. The writ petition also did not demonstrate how each of the members who was appointed, had been placed under a person less qualified or lower in rank or having lesser income than the said member.

25. We find that the learned Judge did not deem it necessary to ask the writ petitioner, who is the president of the association, to demonstrate before the Court such aspect. A

supplementary affidavit was filed to fill up this lacuna in the pleadings. In paragraph 6 thereof, it has been stated that a document was discovered which would show that stenographer, a supervisory grade typist and workshop instructor had been appointed as a sector officer and assistant sector officer. This averment does not indicate that the members of the society who belong to Class-I/Group-A officers were placed under the sector officers or assistant sector officers. We have already discussed the role of the sector officers and we do not find that the presiding officer has been placed below any Sector Officer or assistant sector officer. The presiding officer is not required to report to them. All that the presiding officer is required to do is to obtain materials if required during the polls from the sector officers, who may be the custodian of such materials. Sector officers only act as an interface between the presiding officer and the returning officer.

26. Moreover, the role of the observer is all comprehensive and has to be undertaken at different levels. At the field, at the headquarters and all through the elections. Whereas, the

teachers who are required to discharge a more serious obligation towards education are being placed as in-charge of the polling station for a single day to ensure fair election and their functions appear to be independent and impartial.

27. We do not find any overlapping of duties. The high position that a teacher holds in society and the respect which the teacher enjoys from each and every citizen has not been compromised in any way. It is a solemn duty of all citizen to serve in national interest and this solemn duty outweighs personal preference.

28. Mr. Majumder placed reliance on the Circular of 2023 and submitted that the learned Judge had rightly observed that the said Circular of 2023 did not mention that the Circular of 2010 had been superseded. Prima facie, we are unable to accept such contention as the Circular of 2023 at paragraph 2 clearly states that the same has been issued in supersession to all previous instructions. The same is quoted below:-

“2. Conduct of elections and preparation of electoral rolls involve diverse activities at various levels which require involvement of sizeable number of officials and filed level

functionaries of various authorities, including the Governments, in such exercises. The Commission has always endeavored (sic) to ensure free and fair elections and, in this regard, has issued numerous instructions on various crucial aspects of election process including requisition of staff for election duties. Now, in supersession of all the previous instructions in the matter, a revised and consolidated instruction is being issued by the Commission for scrupulous compliance by all concerned authorities.”

29. Clause 6 of the Circular 2023 has been heavily relied upon by Mr. Majumder to substantiate that adequate care should be taken by the District Election Officer in calling for names of officers from different departments of the Central Government, State Governments, PSUs, banks and other institutions. Their scale of pay, rank and status should be mentioned in the requisition order itself.

30. It is further submitted by Mr. Majumder that the Chief Electoral Officer should set a uniform criteria for the State as a whole for requisition of staff on the basis of rank, status, scale of pay etc. and the upper bench mark set up by the Chief Electoral Officer would be most appropriate to avoid confusion and litigation. In

drawing up the seniority list of officials required for election duty, the District Level Officer must consider the pay, rank and status of the officials nominated and classify them accordingly for purposes of randomization as per the detailed instructions already available.

31. Each citizen has a duty to render service in national interest and uphold the democracy for which we stand. Requisition of staff by the Commission is permitted by the Constitution under Article 324(6) and the power has been vested in the Commission by the Constitution itself. Section 159 of the 1951 Act was incorporated by the legislature to carry forward the constitutional mandate under Article 324 (6). Article 324 and Section 159 are quoted below:-

324 (6) The President, or the Governor ¹ ~~***~~ of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1).

159. Staff of certain authorities to be made available for election work.—(1) The authorities specified in sub-section (2) shall, when so requested by a Regional Commissioner appointed under clause (4) of article 324 or the Chief Electoral Officer of the State, make available to any returning officer such staff as may be

necessary for the performance of any duties in connection with an election.

(2) The following shall be the authorities for the purposes of sub-section (1), namely:—

- (i) every local authority;
- (ii) every university established or incorporated by or under a Central, Provincial or State Act;
- (iii) a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
- (iv) any other institution, concern or undertaking which is established by or under a Central, Provincial or State Act or which is controlled, or financed wholly or substantially by funds provided, directly or indirectly, by the Central Government or a State Government.]

32. The authorities specified under Sub-Section (2) shall make available to any returning officer such staff as may be necessary for the performance of any duty in connection with an election. An authority includes every university established or incorporated by or under the central provisional or the state Act. Sub-Clause 4 of Sub-Section (2) provides that staff can be requisitioned from any other institution which is established by or under a central or state Act or which is controlled or financed wholly or substantially by funds provided directly or indirectly by the Central Government or State Government. It is an admitted position that the members of the society who are allegedly

aggrieved by their appointment as presiding officers are employees of colleges fully controlled by the State Government. Thus, prima facie, their appointment is neither illegal nor contrary to the constitutional mandate or the legislative mandate.

33. Mr. Majumder highlights the instructions of 2010 and 2023 to substantiate that a list of college teachers with their pay and rank in order of seniority had not been prepared prior to requisitioning those teachers to discharge the role of presiding officers.

34. However, we are of the, prima facie view, that this guideline operates in the nature of instructions, as to how to place the staff so as to ensure that they are not placed lower to persons having an inferior rank or lesser income. In the case in hand, we have, prima facie, found that the role of presiding officer is not subordinate to either an observer or a sector officer. Moreover, the handbook of observers clearly states that an observer has to be an officer of the Government. Moreover, the observers' duty is far greater and spreads over four months at various levels, whereas the college teachers have to discharge their duty as

presiding officers only for the polling day at the polling stations in order to ensure smooth and fair election.

35. Mr. Biswaroop Bhattacharya, learned counsel sought to intervene in the proceeding and has filed CAN 2 of 2026. The said intervener is a teacher of Basanti Devi College who is also aggrieved by the appointment as a presiding officer and is further aggrieved by the show cause notice issued because the intervener failed to attend the training. A separate writ petition has already been filed by the intervener challenging the show cause notice and we are not inclined to decide such issue prior to the writ court exercising its jurisdiction. We have permitted Mr. Bhattacharya to argue on the point of law and his arguments are similar to those of Mr. Majumder. In addition, Mr. Bhattacharya has relied upon on the decision of the Hon'ble Apex Court in the matter of ***Election Commission of India vs. State Bank of India Staff Association, Local Head Office Unit Patna and Ors.***, reported in ***1995 Suppl. (2) SCC 13***, to urge before us that a requisition from the President or the Governor should have been

made by the Election Commission for staff to man the election and conduct the election.

36. In our, prima facie, view, the decision does not help Mr. Bhattacharya, in the sense that the said decision was rendered before incorporation of the amended provision of Section 159 of the 1951 Act.

37. We have considered the 2023 Circular and we find that Clause (c) to paragraph 6 thereof provide that the polling officer should be under the presiding officer and that has been followed. The learned Single Judge observed that the commission did not indicate the unavoidable circumstances which necessitated that a huge number of teachers were required to be appointed as presiding officers for smooth and fair election. In our opinion, this issue will be decided at the final hearing of the appeal.

38. The decision in ***Kishorebhai Khamanchand Goyal vs. State of Gujarat & Anr.***, reported in **(2003) 12 SCC 274**, in our, prima facie, view will not apply in view of paragraph 2 of the 2023 Circular.

39. Moreover, the most important question is whether the writ court could have cancelled the appointment of college teachers as presiding

officers by allowing the writ petition on the basis of the pleadings and averments in the writ petition and without considering the constitutional mandate and the Act of 1951.

40. Moreover, we also find that five days prior to the scheduled date of election when the training was being imparted, the order was passed. The effect of the order impugned before us will result in a chaotic situation. The Election Commission will not be in a position to either requisition fresh persons to act as presiding officers and more importantly impart training to them.

41. His Lordship also did not conclude what exactly would be the role of college teacher, which would commensurate with their rank.

42. Under such circumstances, we stay the operation of the impugned judgment and order dated April 17, 2020, passed in WPA 9020 of 2026. The consequence of such stay will follow.

43. The connected applications being CAN 1 of 2026 and CAN 2 of 2026 are disposed of. The issues raised in CAN 2 of 2026 can be raised before the learned writ court.

44. The required number of informal paper books to be filed by the appellants within six weeks.

45. Liberty to mention the appeal after the paper books are ready.

46. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)