

**IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Krishna Rao

WPA No. 9958 of 2026

With

CAN No. 1 of 2026

Ritankar Das

Versus

The State of West Bengal and Others

Mr. Bikas Ranjan Bhattacharyya, Sr. Adv.

Mr. Siddhartha Mandal

Mr. Soumya Dasgupta

Mr. Sattwik Majumder

.....For the petitioner.

Mr. Kishore Datta, Ld. AG

Mr. Swapan Banerjee, Ld. AGP

Ms. Sumita Shaw

Mr. Soumen Chatterjee

.....For the State.

Mr. Ashok Kumar Chakraborti, Ld. ASGI

Mr. Nilanjan Bhattacharjee

Mr. Guddu Singh

.....Union of India.

Mr. D.S. Naidu, Sr. Adv.

Mr. Jishnu Chowdhury

Ms. Anamika Pandey

Ms. Sanskriti Agarwal

Ms. Rishika Pandey

.....for the Election Commission of India.

Mr. Samim Ahammed

Mr. Arka Maiti

Ms. Ambiya Khatun

Mr. Arka Ranjan Bhattacharya

Md. Nasirul Haque

Ms. Reshma Khatun

Ms. Huma Shakil

.....for the intervenor.

Hearing Concluded On : 24.04.2026

Judgment On : 24.04.2026

Krishna Rao, J.:

1. The petitioner has filed the present writ petition challenging the order dated 20th April, 2026 wherein the Chief Electoral Officer has issued an order by imposing restriction on motorcycle riding /rally on polling day-2 and on polling day for conduct of free, fair, peaceful and violence free Election-2026. The petitioner submits that the respondent no. 3 has issued the said order without any authority. He submits that by issuing the said impugned order infringed the fundamental right of the petitioner.

2. Mr. Bikas Ranjan Bhattacharyya, Learned Senior Advocate, appearing for the petitioner submits that it is settled law that if a statute described a thing to be done in a particular manner, it has to be done in the same manner and other methods are forbidden.
3. Learned Counsel appearing for the petitioner submits that the respondent no. 3 has issued blanket prohibition orders bears no rational nexus with the object sought to be achieved. He submits that after issuance of the impugned order, the petitioner has made representation to the respondent no. 3 and on receipt of the representation of the petitioner, the respondent no. 3 has modified the impugned order by an order dated 21st April, 2026 by giving exemption to service providers like Ola/Uber/ Zomato/Swiggy and similar home delivery agency, exemption also given to the office going riders with carrying proper identity card.
4. Learned Counsel appearing for the petitioners submits that even in the modification, the restriction mentioned in the impugned order with regard to the motorcycle has not been exempted. He submits that the impugned order issued by the respondent no. 3 does not support any statutory law by giving any authorization to the respondent no. 3 to pass the same.
5. The petitioner in support of his case, has relied upon the judgment in the case of ***Bhagyoday Janparishad vs. State of Gujarat*** reported in ***AIR 2013 GUJ 2014*** and submits that the Hon'ble Division Bench

of the Gujarat High Court clarified that the powers vested in the Election Commission under Article 324(1) of the Constitution of India, are wide in nature. The exercise of powers is, however, not without a check. The power has to be exercised with legal circumspection.

6. He has further relied upon the judgment in the case of **R. Rajangam Secretary, Communist Party of India (Marxists), Puducherry vs. Union Territory of Puducherry** reported in **AIR OnLine 2021 Mad 265** and submits that prohibition should not be regarded as a blanket prohibition of movement of motorcycle.

7. Learned Advocate General appearing for the State submits that the order passed by the respondent no. 3 without any conformity of statutory law. He submits that there is a distinction between exercise of good faith and misuse in bad faith. The misuse in bad faith arises when the power is exercised for an improper motive say to satisfy a private and personal grudge. He further submits that the Court always acted to restrain to misuse of statutory power and more readily when improper motives underline it. In support of his submissions, he has relied upon the judgment in the case of **Express Newspapers Pvt. Ltd. & Ors. vs. Union of India & Ors.** He further submits that the general power of superintendence, direction and control of the election vested in the Commission under Article 324(1) of the Constitution of India but are subject to any law made either under Article 327 or under Article 328 of the Constitution of India. He submits that while issuing the impugned order by imposition of restriction on

motorcycles, the respondent authorities failed to explain under which provisions of law, the said restrictions imposed upon the general public.

- 8.** Mr. D.S. Naidu, Learned Senior Advocate, appearing for the Election Commission of India submits that it is the specific case of the petitioner that balance of convenience lies in favour of granting limited exemption to Advocate and no produced cause to the respondents as appropriate safeguard (ID verifications etc.) can be imposed. By referring the said paragraph, he submits that the respondent no. 3 has, accordingly, modified the impugned order dated 20th April, 2026, thus there is no further grievance remain in the present writ application.
- 9.** Mr. Naidu submits that as per SOP for last 72 hours issued by the Election Commission of India in Clause 4, law and order has been defined wherein It is categorically mentioned that the order issued by the District Magistrate or any other competent authority effective from P-2 day to P+1 day within the constituency. He further submits that role of police for maintenance role of State and maintains general law and order in the attachment areas and inside and outside of the polling premises.
- 10.** Mr. Naidu submits that the impugned order is issued by taking into consideration of previous incidents and to conduct free and fair poll without any violence in any of the constituencies. He relied upon

Section 126 of the Representative of the People Act, 1951 and submits that Section 126 of the said Act provides prohibition of public meeting during the period of 48 hours ending with poll fixed or conclusion of poll, accordingly, the respondent no. 3 has passed the impugned order. He further submits that Section 130 of the said Act also prohibit on any conveyancing in or near polling station. He has relied upon clause 5.5.5 of the SOP for last 72 hours and submits that the checking of vehicles and persons, particularly those coming from outside of constituency should be stressed upon through NAKAS, spread conspicuously at entry point of the constituency area.

- 11.** Mr. Naidu submits that there is no intention on the part of the commission to put a complete ban on vehicle or traffic on the polling day or thereby create difficulties or cause harassment to the public. He submits that it has been experienced that during the period of earlier election, private vehicles are used by the candidates, their agents and party leaders and supporters for cutting the supporters of a candidate within the constituency and on many occasions, anti-social ailments with muscle powers are openly parded to instill a sense of fear in the mind of electorate, so that they either vote in favour of the particular party of the candidate or to absent from voting altogether. He submits that in order to corrupt such undesired illegal activities, the Commission directs the district administration shall keep a close watch on the vehicle used by the persons accompanied

with contesting candidate and their party leader for any mischief including activities like illegal arms or vehicles.

12. Mr. Naidu has relied upon in the case of ***Mohindhr Singh Gill & Anr. vs. Chief Election Commissioner, New Delhi & Ors.*** reported in **1978 1 SCC 405** and submits that Article 324(1) based on the Election Commission, the superintendence, direction and control of the preparation of electoral roles for and the conduct of all elections to Parliament and to the Legislature of every State and the election to the officers of the President and the Vice-President are held under the constitution. He submits that Article 324(1) is couched in wide terms. Power of any democratic set up and is the party policy to be exercised in accordance with law. He submits that the framers of the Constitution to care to living scope for exercise residuary power by the commission, in its own rights, as a creature of the constitution, in the infinite variety of situation that may emerge from time to time, in such a large democracy of our country.
13. He has relied upon the judgment in the case of ***Election Commission of India vs. State of Tamil Nadu & Ors.*** reported in **1995 Supp (3) SCC 379** and submits that the Election Commission of India is a high constitutional authority charged with the function and the duty of ensuring free and fair election and of purity of electoral process. It has all the incidental and ancillary powers to effectuate to constitutional objective and purposes.

- 14.** He submits that the impugned order is passed only for the purpose of conducting fair and free polls without any violence.
- 15.** Heard the Learned Counsel for the respective parties, perused the materials on record and the judgments relied by the parties. The objection regarding maintainability of the writ application, this Court finds that the petitioner has not challenged any election process. The petitioner has challenged the impugned order dated 20 April, 2026 wherein the restriction on motorcycle riders has been imposed. As per Article 329 of the Constitution of India, there is a bar to interfere by the court in electoral matters. Article 329(b) provides that no election to either House of Parliament or to the house or either House of Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as any be provided for by under any law made by the appropriate legislature. In the present case, the petitioner has prayed for quashing of the communication No. dated 5492-Home(Elec.) dated 20th April, 2026. The petitioner has not prayed for any relief with regard to election process. The only question raised by the petitioner that the impugned order dated 20 April, 2026, is without any jurisdiction. Thus, this Court finds that the writ petition is maintainable.
- 16.** By a communication dated 20th April , 2026, the following restrictions have been imposed:

1. Polling day-2 onward: No motor Bike rally shall be allowed.

2. *Polling day-2 onward: No Motor Bike riding from 6:00 PM to 6:00 AM except in case of emergency like medical or family function etc.*

3. *Polling day-2 onward: From 06:00 AM to 06:00 PM no pillion riding on Motor Cycles shall be allowed except in case of medical emergency, family function or other essential requirements like dropping picking of school children etc.*

4. *Polling day: Family pillion riding on Motor Cycles shall be allowed from 06:00 AM to 06:00 PM for voting purpose and for other essential requirements like medical emergency, family function etc.*

Note : *In case anybody needs exception from the above restrictions, written permission from the local police station may be taken.”*

17. By an order dated 21st April, 2026, the respondent no. 3 has modified the impugned order order 20 April, 2026 by giving an exception to service providers like OLA/Uber/Zomato/Swiggy and similar home delivery agencies, exception is also given to office going riders with carrying proper identity card.

18. Article 324(1) of the Constitution of India provides the superintendence/ direction and control of preparation of the electoral roles for, and the conduct of all elections to Parliament and to the Legislature of every State and the elections to the offices of the President and Vice President held under the Constitution shall be vested upon the petitioner. There is no dispute with regard to the superintendence power of the Election Commission of India. Here only question whether the respondent no. 3 can imposed blanket

restriction on motorcycle riding during poll day-2 onwards and on polling day.

- 19.** It is the specific case of the respondents that the impugned order is issued only for the purpose of conduct free, fair, peaceful and violence free Election in the State of West Bengal. The petitioner is not aggrieved with the condition no. 1 i.e. *“no motor bike rally shall be allowed”*. The petitioner has aggrieved with the conditions nos. 2, 3 and 4. Section 126 of the Representation of Peoples Act, 1951, provides prohibition of public meeting during the period of 48 hours ending with hour fixed for conclusion of court, the said provision does not provides any restriction on motorbike riding. Section 130 of the said Act provides only prohibition of canvassing in or near polling station.
- 20.** Clause 5.5 of SOP for the last 72 hours provides Static Surveillance Teams and Clause 5.5.5 provides that *“the checking of vehicles and persons, particularly those coming from outside the constituency should be stressed upon through NAKAS, spread conspicuously at entry points of the constituency area. Care should be taken to move these NAKAs around so that the elements of surprise is not lost. The DEO shall issue necessary instruction to the treasury units to receive the seized cash beyond office hours and holidays also, in case, it is required”*.
- 21.** Neither in the representation of the Peoples Act, 1951 nor SOP last 72 hours, there is any provision for imposition of restriction on

motorcycle riding during poll day-2 onwards. In the case of **Mohindhr**

Singh Gill (supra), the Hon'ble Supreme Court held as follows :

“113. *Article 324(1) vests in the Election Commission the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the legislature of every State and of elections to the offices of the President and Vice-President held under the Constitution. Article 324(1) is thus couched in wide terms. Power in any democratic set-up, as is the pattern of our polity, is to be exercised in accordance with law. That is why Articles 327 and 328 provide for making of provisions with respect to all matters relating to or in connection with elections for the Union Legislatures and for the State Legislatures respectively. When appropriate laws are made under Article 327 by Parliament as well as under Article 328 by the State Legislatures, the Commission has to act in conformity with those laws and the other legal provisions made thereunder. Even so, both Articles 327 and 328 are “subject to the provisions” of the Constitution which include Article 324 and Article 329. Since the conduct of all elections to the various legislative bodies and to the offices of the President and the Vice-President is vested under Article 324(1) in the Election Commission, the framers of the Constitution took care to leaving scope for exercise of residuary power by the Commission, in its own right, as a creature of the Constitution, in the infinite variety of situations that may emerge from time to time in such a large democracy as ours. Every contingency could not be foreseen, or anticipated with precision. That is why there is no hedging in Article 324. The Commission may be required to cope with some situation which may not be provided for in the enacted laws and the rules. That seems to be the raison d'etre for the opening clause in Articles 327 and 328 which leaves the exercise of powers under Article 324 operative and effective when it is reasonably called for in a vacuous area. There is, however, no doubt whatsoever that the Election Commission will have to conform to the existing laws and rules in exercising its powers and performing its manifold duties for the conduct of*

free and fair elections. The Election Commission is a high-powered and independent body which is irremovable from office except in accordance with the provisions of the Constitution relating to the removal of Judges of the Supreme Court and is intended by the framers of the Constitution to be kept completely free from any pulls and pressures that may be brought through political influence in a democracy run on party system. Once the appointment is made by the President, the Election Commission remains insulated from extraneous influences, and that cannot be achieved unless it has an amplitude of powers in the conduct of elections — of course in accordance with the existing laws. But where these are absent, and yet a situation has to be tackled, the Chief Election Commissioner has not to fold his hands and pray to God for divine inspiration to enable him to exercise his functions and to perform his duties or to look to any external authority for the grant of powers to deal with the situation. He must lawfully exercise his power independently, in all matters relating to the conduct of elections, and see that the election process is completed properly, in a free and fair manner. “An express statutory grant of power or the imposition of a definite duty carries with it by implication, in the absence of a limitation, authority to employ all the means that are usually employed and that are necessary to the exercise of the power or the performance of the duty That which is clearly implied is as much a part of a law as that which is expressed.”

22. In the case of **State of Tamil Nadu (supra)**, the Hon’ble Supreme Court held that :

“4. *The controversy centres around the proclaimed dissatisfaction of the Election Commission as to the responses of the Central Government to its orders and directions for deployment of adequate paramilitary and security requirements in the constituencies going to the polls. One facet of this controversy is whether the Election Commission is entitled to issue such ‘directions’ to the Government. The question assumes significance from the constitutional*

position of the plenitude of the powers of the Election Commission; whether they include the power to assess, prescribe and impose security standards in accordance with its own exclusive perception of the law and order situation. What should happen if the Central Government is unable to accept the Commission's perception of the law and order situation? Or the Commission's assessment of the requisites of security arrangements? Who shall resolve the dispute if the Central Government expresses its own constraints as to the availability or affordability of the Commission's demands? The stand of the Commission seems to suggest that under the constitutional dispensation, it alone is the exclusive constitutional authority in this behalf. These then, indeed, are some of the questions which arise in the substantive independent Writ Petition No. 616 of 1993 brought up by the Election Commission of India before this Court.

- 23.** The respondents have heavily relied upon Article 324(1) of the Constitution of India. There is no dispute that the Election Commission of India is having superintendence powers under the said provision for the purpose of election. However, the Election Commission of India will have to conform to the existing laws and rules in exercising its power and performing its manifold duties for the conduct of free and fair election. In the case of ***Kanhiya Lal Omar (supra)***, the Hon'ble Supreme Court held that the general powers of superintendence/ directions and control of the elections vested in the Commission under Article 324(1) naturally are subject to any law may either under Article 327 or under Article 328 of the Constitution of India. In the present case, there is no dispute that the impugned order is passed during the process of election. There is no provision either in the SOP or in the Representation of the People Act for imposition of

restriction in the motor cycle riding wherein on the other hand, there are specific provision under clause 5.5.5 regarding checking of vehicles and persons. The respondent no. 3 has imposed restriction on the motor cycle riding on polling day-2 onwards with certain exceptions. It is admitted by the respondent that for conducting the assembly election in the State of West Bengal, several para military forces as well as the local police have been deputed so that no untoward incident be happened during the election. The SOP also provides NAKAS for checking of the vehicles. The election is to be conducted on 29th April, 2026 but the respondent authorities imposed the restriction on motor cycle riding two days before till the date of the election.

This Court failed to appreciate why the respondent no. 3 has imposed restriction upon the riding of the motorcycle polling day-2 onwards. In the name of free and fair poll, the authorities cannot pass a blanket restriction on the motor cycle riding.

- 24.** Though the respondents have relied upon Section 324(1) of the Constitution of India wherein superintendence power have been given to the Election Commission of India but the respondents failed to justify under which circumstances and which provisions of law, the respondent no. 3 has imposed the conditions in the impugned order.
- 25.** This Court finds that with regard to motor bike rally there is some justification to avoid any violence before 48 hours of the election or on the date of election but riding the motorcycle by any person, 48 hours

before is not justifiable. Accordingly, the order dated 20th April, 2026 read with the order dated 21st April, 2026, is modified to the extent that :

(a) Polling day-2 onwards: No motor bike rally shall be allowed.

(b) 12 hours before the polling day, no pillion riding on the motor cycle shall be allowed except in the case of medical emergency/ family function or other essential requirements like dropping/picking of school children etc.

(c) Polling day: Family pillion riding on motor cycle shall be allowed from 6 a.m. to 6 p.m. for voting purpose and for other essential requirement like medical emergency/ family functions etc.

(d) Exemption is given to the service providers such as Ola/ Uber/ Zomato/ Swiggy and similar other home delivery agencies and also to the office going ridders with proper identification.

26. With the above, modification of the order dated 20th April, 2026 read with the order dated 21st April, 2026, the writ petition being **WPA 9958 of 2026** is **disposed of. CAN No. 1 of 2026** is **dismissed.**

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)