

ADSL 1
30.04.2026
Court. No. 25
*Suwayan/
S. Gayen/
Sourav*

WPA 10488 of 2026

All India Trinamool Congress
Vs.
Election Commission of India & Ors.

*Mr. Kalyan Bandhopadhyay, Sr. Adv.
Mr. Dhruv Chadha
Mr. Shivam Pathak*

...for the petitioner.

*Mr. Dama Seshadri Naidu, Sr. Adv.
Mr. Abhinav Thakur
Mr. Pradeep Kumar
Mr. Kumar Utsov
Mr. Ghanshyam Pandey*

...for the respondent no. 1.

*Mr. Jishnu Chowdhury, Sr. Adv.
Ms. Anamika Pandey
Ms. Sanskriti Agarwal
Ms. Rishika Pandey*

...for the respondent no. 2 & 3.

1. The petitioner has filed the present writ application challenging the communication dated April 30, 2026 issued by the Additional Chief Electoral Officer, West Bengal only with regard to Clause no. 1 wherein it is mentioned that “at least one among the counting supervisor and counting assistant at each counting table shall be a Central Government/Central PSU employee”.
2. Mr. Kalyan Bandhopadhyay, learned Senior Advocate appearing for the petitioner submits that the Additional Chief Electoral Officer, West Bengal had issued the impugned communication without any jurisdiction. He further submits that the said communication is issued only on the apprehension. He has relied upon the Handbook for the counting agent Section A, Clause 1.13

wherein the following persons can be allowed inside the counting hall:

- i) Counting supervisors, counting assistants and micro observers;
 - ii) Persons authorized by the ECI (possessing authority letter duly issued by ECI) and observers;
 - iii) Public servants on duty in connection with the election; and
 - iv) Candidates, their election agents and counting agents.
3. By referring the said provision, Mr. Bandhopadhyay submits that the said provision does not allow that the counting supervisors or counting assistants shall be the Central Government/Central PSU employees. He further relied upon Clause 9.11 and submits that as per the said provision apart from one counting supervisor and one micro observer for each table, one micro observer would be seated in each of the 14 counting tables. The micro observer will invariably be a Central Government/Central Government PSU employee but in the present case the respondents/authorities have appointed counting supervisors and counting assistants as Central Government/Central Government PSU employee instead of micro observer.
4. Mr. Badhopadhyay, further submits that on May 4, 2026 the Election Commission of India has fixed the counting of votes of State Assembly Election of Assam, Kerala, Puducherry as well as in the State of West Bengal but the

other places the Election Commission has not appointed any Central Government or Central PSU employees as counting supervisors or counting assistants but only in the State of West Bengal the ECI has appointed the counting supervisors and counting assistants from Central Government/Central PSU employees.

5. Mr. Bandhopadhyay, further relied upon Article 324(2) of the Constitution of India and submits that as per the said Article, the Election Commission shall consist of Chief Election Commission and such number of other Election Commissioners if any as the precedent may time to time fix an appoint the Chief Election Commissioner or other Election Commissioner subject to the provisions of any law made by that behalf by the Parliament, be made by the President. But in the present case, the impugned order is being issued by the Chief Electoral Officer, West Bengal who is not coming under the purview of Section 324 of the Constitution of India.
6. Mr. Bandopadhyay in support of his submission relied upon the judgment in the case of ***Union Territory of Ladakh & Ors. vs. Jammu & Kashmir National Conference*** reported in **(2024) 18 SCC 643** and submits that in election matters to the extent that one a notification is issued and the election process start, Constitutional Courts, under normal circumstances are loath to interfere, is not a contentious issue. But where issues crops up, indicating unjust executive action or an attempt to disturb a level-playing field between candidates and/or political parties with no justifiable or

intelligible basis, the Constitutional Courts are required and they are duty-bound, to step in. He further relied upon the unreported judgment passed by the Hon'ble Division Bench of this Court in the case of ***Md. Daanish Farooqui vs. Election Commission of India & Ors.*** passed in ***WPA(P) 192 of 2026*** dated April 22, 2026 and submits that in the said case, the Election Commission of India and its subordinates have passed an order observing that the names mentioned in the list are actively involved in intimidating voters and creating disturbances in the electoral process in the respective assembly constituencies/ police station areas indicating against their names but the Hon'ble Division Bench has stayed the portion of the said order in the above matter.

7. Mr. Chowdhury, learned Senior Advocate appearing for the Additional Chief Electoral Officer submits that the petitioner has filed the present application only on apprehension. The petitioner has not disclosed any document or produced any evidence to establish that if the Central Government/Central PSU employees are appointed as a counting supervisors/counting assistants, the petitioner will be prejudiced in any way. He further submits that the petitioner has filed the present writ application without any legal basis. He further submits that if the averments made in the writ petition, is read as whole it reveals that the petitioner intending to say that the Election Commissioner has directed the Central Government/Central PSU employee to commit the

illegality in the electoral process which is beyond the imagination. He submits that the Additional Chief Electoral Officer, West Bengal had issued the said communication only for the purpose of ensuring, transparency, integrity and orderly conduct of counting proceedings. He relied upon Article 329 of the Constitution of India and submits that no election either the House of Parliament or the House of Legislature of the State can be called in question except by an election petition but the petitioner has filed the present writ application which is not maintainable as the election process is still going on.

8. He further relied upon the judgment in the case of ***A.K.M. Hassan Uzzaman & Ors. vs. Union of India & Ors.*** reported in ***(1982) 2 SCC 218*** and submits that the Court must observe a self-imposition limitation on their power to act under Article 226 of the Constitution of India by refusing to pass orders or to give direction which will inevitably result in an indefinite postponement of elections to the legislative bodies which are very essence of the democratic foundation and functions of our Constitution.
9. Mr. Naidu, learned senior advocate appearing for the Election Commission of India submits that the similar issue raised by Arka Kumar Nag before the Hon'ble Division Bench of this Court in ***WPA (P) 141 of 2026*** and the Hon'ble Division Bench has dismissed the public interest litigation by holding that the petitioner has raised eyebrow because sizable number of officers were

transferred by ECI. In view of the aforesaid pleadings, where the existence of power of ECI to transfer/shift officers is admitted, we are not inclined to conduct any roving enquiry and analysis to examine whether the ECI otherwise had any such power or not.

10. He further submits that by challenging the said order a special leave petition was filed before the Hon'ble Supreme Court being ***SLP (C) No. 12775 of 2026*** and the Hon'ble Supreme Court has dismissed the special leave petition but the Hon'ble Supreme Court has held that the question of law is kept open. He submits that as the Hon'ble Supreme Court has kept the question law open and thus this Court cannot again decide the said issue, which is to be decided by the Hon'ble Supreme Court.
11. In support of his submission, he has relied upon the judgment in the case of ***Union of India vs. Kanwaljit Deol & Anr.*** reported in ***2024 SCC OnLine 805*** and submits that the Hon'ble Division Bench of the Delhi High Court held that when the Supreme Court records that the question law is kept open, undoubtedly it is meant to be considered in future by the Supreme Court only.
12. Mr. Naidu referred Section 19(A) of the Representation of the People Act, 1951 and submits that in the said section there is a provision of delegation of function of the ECI. It cannot be said that the impugned communication made by the Additional Chief Electoral

Officer, West Bengal has passed the order without any jurisdiction. He further relied upon the provision of Section 20A and 20B of the said Act and submits that there is a provision of delegation. Under such, the ECI has invoked the said provision and allowed the Additional Chief Electoral Officer to issue the impugned communication.

13. Mr. Naidu has relied upon Section 100 of the Representation of the People Act, 1951 and submits that as per Clause (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, shall be the ground for declaration of election to be void in an election petitioner not by way of writ petition. He further submits that the impugned order has been issued on April 13, 2026 but the petitioner has filed the present writ application on April 30, 2026 having the knowledge that the counting is fixed on May 4, 2026 and May 1, 2026 to May 3, 2026 there are holidays. The intention of the petitioner to file the present writ application is only with the intention to stall the counting on May 4, 2026. He further submits that the petitioner had the knowledge with regard to the impugned communication as the same is in public domain but instead of challenging the said order earlier has challenged the said order in the present writ application at the last stage when the counting is fixed on May 4, 2026.

14. Heard the learned counsel for the respective parties. Perused the materials on record and the judgments relied by the parties.
15. The only question in the present writ application whether the impugned notification dated April 13, 2026 wherein the Additional Chief Electoral Officer has informed that one amongst the counting supervisor and counting assistant at each table shall be the Central Government/Central PSU employee. The hand book for counting agent provides for counting supervisor, counting assistant and the micro observer but the same has not provided whether it is of the Central Government/Central PSU employee or the State Government employee.
16. Clause 15.7.9 of the hand book of returning officer reads as follows:-

“Counting staff appointments should be made in the form given in Annexure 35. Counting supervisors should preferably be Gazetted Officers (Group B or above), Counting Assistants should also be Group B or at least Group C officials of the Central or State Government or officers of comparable status from Central or State Government undertakings.”
17. In the writ petition, the petitioner has made an allegation that the main opponent of the petitioner is the Bharatiya Janata Party (BJP) and admittedly runs and controls the Central Government and as such, he is having an apprehension that if Central Government/Central PSU

employees are appointed as counting supervisors or counting assistants, they would be directly under the control of Central Government and are likely to be susceptible to the suggestions and control of persons in the BJP.

18. As per the impugned letter dated April 13, 2026, the Additional Chief Electoral Officer, West Bengal intending that the counting supervisors and counting assistants shall be the Central Government/Central PSU employees for the purpose of ensuring transparency, integrity and orderly conduct of counting proceedings. It is also admitted that all the counting stations, there are CCTV and the counting is to be done with the surveillance of CCTV. As per Clause 9.41 of the Handbook for counting agent apart from the counting supervisor and micro observer for each counting table, one micro observer would be seated in each of the counting table and the micro observer will be invariably the Central Government or Central PSU employee.
19. The petitioner has not challenged with regard to appointment of the micro observer who will be the Central Government/Central PSU employee wherein as per Clause 9.11, it is categorically provided that the micro observer will be seated in each of the 14 counting tables and micro observer will note down the details of votes exhibited by the EVMs being counted in each round in the table.
20. Thus, this Court is of the view that the allegation made by the petitioner that the main opponent of the

petitioner is the BJP and Central Government/Central PSU employee who directed under control of the Central Government and likely to be susceptible to the suggestion and control of the persons in the BJP cannot be said to be correct. Only the counting supervisor and the counting assistants will not be in the counting room. Micro observers, counting agents of the candidates who are contesting the election and counting personnel will also be in the counting room. Thus, it is impossible to believe the allegation made by the petitioner.

21. As regards the jurisdiction of the Chief Electoral Officer, West Bengal for issuance of the impugned communication, Section 19A of the Representation of the People Act, 1950 provides that the functions of the Election commission under the Constitution, the Representation of the People Act, 1950 and this Act or under the rules made thereunder may, subject to such general or special directions, if any, as may be given by the Election Commission in this behalf, be performed also by a Deputy Election Commissioner or by the Secretary to the Election Commission. Section 20A of the said Act provides the General Duties of District Election Officer wherein it provides that subject to the superintendence, direction and control of the Chief Electoral Officer, the District Election Officer shall co-ordinate and supervise all work in the district or in the area within his jurisdiction in connection with the conduct of all elections to Parliament and the Legislature of the State.

22. Considering the above, this Court finds that Section 19A of the Act of 1951 provides the delegation of the functions of the Election Commission and as such, it cannot be said that the Additional Chief Electoral Officer is not having the jurisdiction to issue such order.
23. As regards the maintainability of the present writ application, this Court finds that several orders have been passed by the authorities of the Election Commission of India during the election process and said orders have been challenged before this Court in WPA (P) 141 of 2026 wherein the Hon'ble Division Bench of this Court has dismissed the writ application and the petitioner of the said writ application has challenged the same before the Hon'ble Supreme Court by way of Special Leave Petition and the said SLP was also dismissed but the Hon'ble Supreme Court has kept the question of law open. Once the Hon'ble Supreme Court has kept the question of law open, this Court cannot adjudicate the same. It is only the Hon'ble Supreme Court whenever the occasion arises, the Hon'ble Supreme Court will decide the same.
24. In the case of ***Kanwaljit Deol & Anr. (supra)***, the Hon'ble Division Bench of the Delhi High Court has held that when a question of law is kept open by the Hon'ble Supreme Court not entertaining the SLP against the judgment of the High Court, in fact, what is done is neither to confer nor to dilute the ratio of the judgment under challenge. That, however, does not mean the High Court in future case is allowed to take a fresh view

ignoring the law of precedence. It only means the Hon'ble Supreme Court refuses to bind itself or put its seal on the ratio propounded by the High Court in the judgment under challenge. Therefore, when an identical question comes up before the same High Court and is presented for consideration before a Bench of coordinate strength by virtue of the principle of law of precedence, the Bench would be bound by the ratio of the earlier judgment of the High Court unless preceded to refer to the Larger Bench.

25. Clause 15.7.9 provides that counting staff appointments should be made in the form given in Annexure 35. Counting supervisors should preferably be Gazetted Officers (Group B or above), Counting Assistants should also be Group B or at least Group C officials of the Central or State Government or officers of comparable status from Central or State Government undertakings. In the present case, the respondent authorities have decided to appoint the counting supervisor and counting assistants from the Central Government/Central PSU employee. This is the prerogative of the authorities to either to appoint from the Central Government or the State Government, in the present case, the authorities have taken a decision for appointment of counting supervisor or counting assistant from the Central Government/Central PSU employee.
26. It is the prerogative of the office of the Election Commission of India to appoint the counting supervisor and counting assistant either from the State Government

or the Central Government. This Court does not find any illegality for appointing counting supervisor and counting assistant from the Central Government/Central PSU employee instead of State Government employee.

27. It is true, the petitioner has challenged the impugned order wherein the Additional Chief Electoral Officer has appointed the counting supervisor and counting assistants from the Central Government/Central PSU employees though an executive order but this is the continuation of the election process. The allegation of the petitioner is that the main opponent of the petitioner is the BJP which admittedly runs and controls the Central Government and there is every chance that the Central Government/Central PSU employees who directly under the control of the Central Government and are likely to be susceptible to suggestion and control of the persons in the BJP. If the petitioner proves that the Central Government/Central PSU employees appointed as counting supervisor and counting assistants, helped the opponent of the petitioner by manipulating votes while counting the same, the petitioner has the liberty to take all the points in the election petition.

28. Section 100 of the Representation of the People Act provides that by any non-compliance with the provisions of the Constitution of this Act or of any rules or orders made under this Act shall be grounds for declaring election to be void and thus, if the petitioner finds that during the counting, the Central Government employees who have been appointed as counting supervisor and

counting assistants or favoured the candidate of the BJP due to which the candidate of the petitioner defeated, the petitioner has the liberty to challenge the same in an election petition.

29. In view of the above, this Court does not find any merit in the present writ application.

30. Accordingly, **WPA 10488 of 2026** is dismissed.

31. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Krishna Rao, J.)