

22.04.2026
Item No. 34
PG/RP/KS
Ct. No.1

W.P.A. (P) 192 of 2026

**Md. Danish Farooqui
Versus
Election Commission of India & Ors.**

Mr. Kalyan Bandyopadhyay, Sr. Adv.
Mr. Rahul Kumar Singh
Mr. Ratikanta Pal
Ms. Deshma Ghosh.....For the Petitioner

Mr. Dama. Sheshadri Naidu, Sr. Adv.
Ms. Anamika Pandey
Mr. Abhinabha Thakur
Mr. Ghanashyam Pandey
.....For the Election Commission of India

Mr. Kishore Datta, Ld. Adv. General
Mr. Swapan Banerjee, Ld. A.G.P.
Ms. Sumita Shaw
Mr. Diptendu Narayan Baneerjee
Mr. Soumen ChatterjeeFor the State

Mr. Joydip Kar, Sr. Adv.
Mr. Biswaroop Bhattacharya
Mr. Sandip Dasgupta
Mr. Saaqib Siddiqui
.....For the Respondent Nos.5 & 6

Dictated by Sujoy Paul, CJ.:

1. Parties are represented through their respective learned counsels.
2. Heard on admission and interim relief.
3. Mr. Bandyopdhyay, learned senior counsel appearing for the petitioner by drawing our

attention to the order of Police Observer in the office of the Chief Electoral Officer (CEO), West Bengal bearing no.5607-Home (Elec.) dated 21.4.2026 (annexure P1) filed with supplementary affidavit submits that in the said memo it is mentioned that *“It has been observed from various quarters that persons, whose names are mentioned in the enclosed list (Annexure -A) 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”*. It is submitted that the list enclosed contains the names of about 800 persons and many of these persons are elected representatives such as Councilors, Members of Panchayat Bodies and Municipalities, M.L.A.s and M.P.s. It is submitted that while recording a finding in first paragraph of the impugned order dated 21.04.2026 directions are given to take action against those persons. By placing reliance on Article 21 of the Constitution of India, he contends that no citizen can be

deprived of his right of personal liberty except according to the procedure established by law. By placing reliance on various provisions of Chapter – IX of **B.N.S.** and certain provisions of **B.N.S.S.**, it is submitted that for offences related to Election, specific statutory procedure is prescribed. The authorities under the said statutory procedure are required to apply their independent mind and discretion. Similarly, Section 129 to 134 of the **Representation of Peoples Act, 1951** (in short, R.P. Act, 1951) offences relating to election are prescribed. The statutory authorities under the said provisions can apply their independent mind and in the event of any offence, take appropriate action. For the same purpose, Section 35 of **B.N.S.S.** was relied upon.

4. By referring to Article 324 of the Constitution, it is urged that Election Commission does not have any unbridled powers. It can exercise its power provided the area is not covered by any other legislation or enactment. In support of his submission, Mr. Bandyopadhyaya places

reliance on **1986 (1) SCC 133 (Express Newspapers Pvt. Ltd. & Ors. Vs. Union of India & Ors.)** to contend that if exercise of power is alien/foreign to the purpose of the enactment, it amounts to malicious exercise of power. He submits that ECI does not have any such power to issue the impugned general direction. He has taken pains to contend that the expression “trouble-maker” is a creation of ECI and is not defined in any statute. ECI has no authority, jurisdiction or power to call certain persons “trouble-makers” and issue direction to the police authorities to take steps against them.

5. Lastly, by placing reliance on **2026 SCC Online SC 162 (Satender Kumar Antil vs. Central Bureau of Investigation)** it is urged that arrest by a police officer is based on his discretion which facilitates only him to conduct proper investigation, collect evidence and take action in accordance with law. Thus, the police authority must ask the question as to whether arrest is necessary or not before undertaking

the said exercise. The said judgment is highlighted to canvas that the police authorities are free to take action against persons committing offences by identifying such persons. Therefore, the impugned blanket direction is not sustainable.

6. Mr. Bandyopadhyay submits that he has no objection if police authorities take action in accordance with law against the persons, who are committing offences. The blanket direction dated 21.04.2026 is without any basis and is bad in law.

7. Mr. Dutta, learned Advocate General while supporting the case of the petitioner borrowed the same argument that “trouble-maker” is not defined in any penal law and, therefore, by treating certain citizens as “trouble-maker” no blanket direction can be issued. He also relied on various provisions of RP Act of 1951 to contend that the offences are described in various sections of the said Act. The allegations mentioned in the impugned memo do not attract any of such penal provisions.

8. By placing reliance on Articles 21 and 22 of the Constitution alongwith Entry 9 of List I and Entry 3 of List III of Seventh Schedule of Constitution of India Mr. Datta, learned Advocate General submits that preventive action/detention which curtail the freedom of a citizen can be taken only in accordance with law and also to the extent law permits. He also places reliance on various sections of BNS and RP Act of 1951 to bolster the same submission that law prescribes the method to take cognizance of offence and such cognizance can be taken only by the concerned statutory authorities. The discretion of police authorities is clearly traceable from Section 135A of RP Act of 1951. It is strenuously contended that criminal law is set to motion by Election Commission in a manner unknown to law. By placing reliance on **1985(4) SCC 628 (Kanhiyalal Omar vs. R.K. Trivedi & Ors.)** (paragraphs 9 and 10), it is urged that the general power of superintendence, direction and control of elections is vested in the Election

Commission under Article 324(1) of Constitution but the same are subject to any law made either under Article 327 or under Article 328 of Constitution. Thus, the impugned memo could not have been passed directing the authorities to act in a particular manner against listed persons in a blanket way.

9. Mr. D.S. Naidu, learned senior advocate for the ECI appearing through virtual mode urged that so far as the question regarding competence of ECI for issuing such direction is concerned, he would like to file counter affidavit in this regard. By taking this Court to the impugned memo dated 21.04.2026, he submits that the whole endeavor of ECI is to ensure free, fair and peaceful elections. In order to do the same, concerned police authorities are reminded of their duties. The Election Commission has not directed the police authorities to do something without following due recourse of law. By placing reliance on certain paragraphs of the writ petition and affidavit, it is urged that the petitioner has stated so many factual things by

contending that it is arising out of his knowledge. In addition, he submits that from where the petitioner has received such information has not been disclosed. He places reliance on **Manual on Vulnerability Mapping, 2023** (in short, 'Manual') to contend that Clause - K talks about accountability and confidentiality. In order to maintain the said aspect, Election Commission issues certain directions to civil and police officials. Similar directions were issued in other State also where elections had taken place. The impugned direction is issued in consonance with the mandate of the said Manual.

10. Mr. Joydip Kar, learned senior counsel appearing for the police authorities i.e. respondent nos.5 and 6, urged that various provisions of B.N.S. and R.P. Act, 1951 give discretion and power to police authorities to take action in cases of commission of cognizable offences in accordance with law. He undertakes that police authorities while taking action will act strictly in accordance with law if

any offence takes place in order to ensure free and fair election.

11. In view of aforesaid stand of parties, in our opinion an important constitutional/legal question cropped up for our decision as to whether in exercise of power under Article 324 of the Constitution, Election Commission can issue such general instruction like the present one impugned herein, when the offences relating to election are statutorily covered under B.N.S. and R.P. Act, 1951, etc.

12. In this view of the matter, we deem it proper to accept the prayer of learned Senior counsel for ECI to grant him time to file counter affidavit. Resultantly, four weeks' time is granted to ECI to file their affidavit in opposition by supplying advance copy to learned counsel for the parties. In turn, the parties may file their exception/response within two weeks therefrom.

13. During the course of hearing, Sri Bandyopadhyay, learned senior counsel for the petitioner pressed his interim relief and urged

that elections are scheduled in State of West Bengal on 23.04.2026 and 29.04.2026. Thus, the matter is very urgent and if adequate protection is not granted, there is every likelihood of curtailment of fundamental rights of sizeable number of citizens.

14. This is trite that if a statute prescribes a thing to be done in a particular manner, it has to be done in the same manner and other methods are forbidden. **[See: *Dhanajaya Reddy vs. State of Karnataka* reported in 2001 (4) SCC 9].**

15. The Supreme Court in the case of ***Satender Kumar Antil vs. Central Bureau of Investigation & Anr. (MA No. 2034 of 2022 in MA No. 1849 of 2021 in SLP (Crl.) No. 5191 of 2021*** reported in **2026 SCC OnLine SC 162** held as under:

“33. *On the basis of the interpretation given by us, we conclude as follows:*

a. *An arrest by a police officer is a mere **statutory discretion** which facilitates him to conduct proper investigation, in the form of collection of evidence and, therefore, shall not be termed as mandatory.*

b. *Consequently, **the police officer shall ask himself the question as to whether an***

arrest is a necessity or not, before undertaking the said exercise.

c. For effecting an arrest, qua an offence punishable with imprisonment up to 7 years, the mandate of Section 35(1)(b)(i) of the BNSS, 2023 along with any one of the conditions mentioned in Section 35(1)(b)(ii) of the BNSS, 2023 must be in existence.

d. A notice under Section 35(3) of the BNSS, 2023 to an accused or any individual concerned, qua offences punishable with imprisonment up to 7 years, is the rule.

e. Even if the circumstances warranting an arrest of a person are available in terms of the conditions mentioned under Section 35(1)(b) of the BNSS, 2023, the arrest shall not be undertaken, unless it absolutely warranted.

f. Power of arrest under Section 35(6) read with Section 35(1)(b) of the BNSS, 2023, pursuant to a notice issued under Section 35(3) of the BNSS, 2023 is not a matter of routine, but an exception, and the police officer is expected to be circumspect and slow in exercising the said power.”

(Emphasis Supplied)

16. It goes without saying that when the election related offences are prescribed in B.N.S. and R.P. Act, 1951, the authorities entrusted therein alone are competent to take action as per their own discretion if any such offence is committed.

17. Furthermore, a conjoint reading of Articles 21, 22 of the Constitution with Entry – 9 of List – I and Entry -3 List – III of Seventh Schedule of the Constitution of India makes it clear that

freedom of a citizen can be curtailed only in accordance with the procedure prescribed under the law.

18. In ***Kanhiyalal Omar (supra)***, the Apex Court opined that the general power of superintendence and control of ECI under Article 324 of the Constitution is subject to other law. Thus, in our *prima facie* view the police observer in the office of Chief Election Officer, West Bengal has erred in issuing blanket direction by treating certain citizens as ‘trouble-makers’. Hence, as an interim measure, we deem it proper to stay the effect and operation of the impugned order dated 21.04.2026 (Annexure – P/1) till the last day of June, 2026 or till further order whichever is earlier.

19. However, it is made clear that this order will not come in the way of the civil/police authorities to proceed against any person, who commits an offence under the B.N.S., R.P. Act, 1951 or any other penal law. Putting it differently, even if the persons, whose names

find place in Annexure –A of letter dated 21.04.2026, commit an offence, this interim order will not come in the way of the authorities to proceed against them in accordance with law as per their own independent discretion.

20. We also direct that for exercising power of “preventive detention/action”, the authorities can proceed strictly in accordance with relevant detention law.

21. List after five weeks.

(SUJOY PAUL, CJ.)

(PARTHA SARATHI SEN, J.)