

S/L 17
22.04.2026
Court. No. 25
*Suwayan/
sourav*

WPA 9346 of 2026

**Arindam Ghosh
Vs.
The Union of India & Ors.**

*Mr. Kumarjyoti Tewari, Sr. Adv.
Mr. Ujjal Roy
Ms. Sreyanshi Majumder
Mr. Bikramjit Dutta
Mr. Arka Chakraborty
Mr. Binit Kumar
Mr. Amrit Sinha
Mr. Aniruddha Tewari
Ms. Kausiki Bose*

...for the petitioner.

*Mr. Asok Kumar Chakrabarti, Ld. ASGI
Mr. Nilanjan Bhattacharjee
Mr. Guddu Singh*

...for the respondent no. 1.

*Mr. Kishore Dutta, Ld. AG
Mr. Jayanta Samanta
Mr. Tapas Ballav Mondal*

...for the State.

*Ms. Anamika Pandey
Mr. Ghanshyam Pandey
Ms. Rishika Pandey*

...for the respondent nos. 2 to 9.

*Mr. Joydeep Kar, Sr. Adv.
Mr. Jyoti Prakash Chatterjee
Mr. Ashis Dutta*

...for the respondent no. 10.

*Mr. Biswaroop Bhattacharya
Ms. Snehaa Sanyal*

...for the respondent no. 11.

1. The grievance of the petitioner in the present writ application that the petitioner is contesting election from 117-Rajarhat Gopalpur Assembly Constituency as an independent candidate has submitted his complaint against the private respondent no. 10 set up by the All India Trinamool Congress but without considering the objection/counter affidavit filed by the petitioner accepted the nomination of the private respondent no. 10.

The petitioner has filed the counter objection by way of an affidavit by alleging that in the affidavit portion there is no signature of the respondent no. 10 and in the affidavit the date is mentioned as April 8, 2026 but in the seal of Notary Public the date appearing as April 7, 2026. It is the further contention of the petitioner that with regard to the other candidates, the Returning Officer already uploaded the affidavit and the counter affidavit time to time received from the candidate but in the case of the private respondent no. 10 only one affidavit was uploaded on April 9, 2026 but the counter affidavit filed by the petitioner raising objection on the affidavit of the private respondent no. 10 was not uploaded.

2. The petitioner has relied upon the Clause 6.6 of the handbook of the Returning Officer and submits that if any objection is raised, Returning Officer shall have to hold a summary inquiry to decide the same and to treat the nomination paper to be either valid or invalid but in the present case though the petitioner has filed the counter affidavit raising objection of the affidavit filed by the private respondent no. 10 indicating discrepancies in the affidavit of the respondent no. 10 but the Returning Officer has not passed any reasoned order either by accepting the same or the rejecting the affidavit. Even the Returning Officer has not rejected the counter affidavit filed by the petitioner. The petitioner has further relied upon Clauses 5.20.3 and 5.20.4 and submits that the affidavits filed by the candidates and counter affidavits are to be uploaded in the website but in the present case

the Returning Officer has violated the provisions of Clauses 5.20.3 and 5.20.4 by not uploading the counter affidavit filed by the petitioner and deleting the affidavit filed by the private respondent no. 10 in which the petitioner has pointed out the discrepancies.

3. The petitioner has further relied upon Clause 6.10 of the handbook of the Returning Officer and submits that under the said provisions it is categorically mentioned that the Returning Officer must reject the nomination paper if the nomination paper has not been signed by the candidate or by the required number of proposers.
4. Learned counsel appearing for the petitioner has relied upon the judgment in the case of ***Resurgence India vs. Election Commission of India & Anr.*** reported in ***(2014) 14 SCC 189*** and submits that it is the duty of the Returning Officer to check whether information required is fully furnished at the time of filing of affidavit with the nomination paper since such information is very vital for giving effect to the right to know of the citizens. By relying upon the said judgment the petitioner submits that in the present case the affidavit filed by the petitioner is not signed by the petitioner and date of verification is mentioned as April 8, 2024 but Notary Public signed on April 7, 2026 thus it cannot be said that the affidavit filed by the private respondent no. 10 is an affidavit in accordance with law.
5. Learned advocate appearing for the ECI has submitted report and submits that during the scrutiny of the nomination paper of the private respondent no. 10, her

election agent had appeared and requested him to submit an explanation regarding the nature of the complaint. The complainant was present during the proceedings and later he expressed his satisfaction and left the nomination room. Learned advocate appearing for the ECI submits that it is admitted that the Returning Officer has not passed any reasoned order though he has accepted the affidavit filed by the private respondent no. 10 in presence of the petitioner. She submits that the affidavit of private respondent no. 10 was initially uploaded by the technical team, subsequently, certain defects were pointed out following which the respondent no. 10 corrected the affidavit and the same was uploaded and defective affidavit was deleted.

6. Learned counsel appearing for the respondent no. 10 submits that initially the private respondent no. 10 has filed affidavit but the said affidavit does not contain the signature and when the private respondent no. 10 noticed about the same, immediately the respondent no. 10 has filed another affidavit and the Returning Officer by deleting the first affidavit and accepted the second affidavit which bears the signature of the respondent no. 10. He further submits that with regard to the date appearing in affidavit the respondent no. 10 has submitted an affidavit before the Returning Officer by affirming that she has executed an affidavit on April 7, 2026 before the Notary Public at the residence of the Notary Public and as such the Returning Officer has

accepted the affidavit filed by the private respondent no. 10 by treating the date of affirmation on April 7, 2026.

7. Learned counsel for the respondent no. 10 further submits that as per Clause 6.6 of the handbook of the Returning Officer it is provided that the Returning Officer's decision could be challenged later in an election petition and hence the importance of recording a brief statement of reasons at this time. If the Returning Officer accepts the nomination paper of a candidate overruling the objection raised by an objector, he may be supplied with a certified copy of his decision upon his request but in the present case the petitioner has not made any request to the Returning Officer for supply of the reason for rejecting the counter affidavit filed by the petitioner. He further submits that the petitioner has challenged the affidavit of the private respondent which cannot be challenged in the writ jurisdiction; it is the subject matter of the election petition.
8. Learned counsel appearing for the private respondent no. 10 has relied upon the judgment in the case of *Ajmera Shyam vs. Kova Laxmi & Ors.* reported in **(2026) 3 SCC 373** and submits that non-disclosure of income in the income tax return for four financial years by the respondent is not a defect of substantial character. Therefore, the nomination could not have been rejected under Section 36(2) of the Representation of the People Act, 1951.
9. Learned counsel for the respondent no. 10 has relied upon Section 36 of the Representation of the People Act,

1951 (hereinafter referred to as the “said Act”) and submits that as per the said provision, the Returning officer shall reject any of the nomination paper on any of the defect which is not substantial in character. But in the present case, the Returning Officer did not find any reason to reject the nomination paper and thus the objection raised by the petitioner has rejected and the affidavit filed by the respondent no. 10 has been accepted. He further relied upon Section 100 of the said Act and submits that as per Section 100 of the said Act if the improper acceptance of the nomination by the Returning Officer is the grounds for declaring the election to be void and that is to be challenged in the election petition not by way of a writ application.

10. He further relied upon the judgment in the case of ***Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner, New Delhi & Ors.*** reported in ***(1978) 1 SCC 405*** and submits that no legislative enterprise in the High Court or the other Court should be allowed to hold up the ongoing electoral process because the parliamentary representative for the constituency should be chosen promptly. He submits that Article 329 of the Constitution of India covers the electoral matters and as per the provision of Article 329(b) of the Constitution of India the writ petition is not maintainable once the election process is started.
11. Mr. Bhattacharya, learned advocate appearing for the respondent no. 11 has adopted the submission made by Mr. Kar, learned Senior Advocate who is appearing for

the respondent no. 10 and submits that the report submitted by the ECI reflects that the petitioner was present during the proceeding and he has expressed the satisfaction and thereafter he left the nomination room thus the petitioner cannot challenge the act of the Returning Officer by making any allegation that the Returning Officer has illegally accepted the nomination form of the respondent no. 10. He further submits that in the writ application also the petitioner has admitted that he was present in the nomination room form till the scrutiny of the nomination form.

12. Heard the learned counsel for the respective parties perused the materials on record.
13. The only objection raised by the petitioner in present application that the Returning Officer has accepted the affidavit submitted by the private respondent no. 10 though in the affidavit there is no signature of respondent no. 10 and the date mentioned in the affidavit is April 8, 2026 but in the seal and signature of the Notary Public the date is mentioned as April 7, 2026.
14. Initially the private respondent no. 10 has filed the affidavit wherein at the verification portion there is no signature of private respondent no. 10 but in the left side down portion signature of private respondent no. 10 is appearing at the horizontal portion. The respondent no. 10 has admitted that when the respondent no. 10 came to know that there is no signature in the verification portion of affidavit, immediately the respondent no. 10 has affirmed a further affidavit with full signature and the

same was accepted by the Returning Officer by deleting the first affidavit. In the website of the ECI, disclosed by the petitioner, it is found that one affidavit of the private respondent no. 10 was uploaded on April 9, 2026 at 12:32:42. Thereafter there is nothing in the website whether the objection/counter affidavit filed by the petitioner was uploaded in the website or the second affidavit which the respondent no. 10 is now relying upon is uploaded by deleting the first affidavit submitted by the private respondent no. 10.

15. It is admitted by the ECI that though the objection raised by the petitioner was rejected but there is no reasoned order passed by the Returning Officer. Section 36 of the said Act provides scrutiny of nomination and Section 36 (2)(c) provides that the signature of the candidate or the proposer on the nomination paper is not genuine then it is to be rejected by the Returning Officer. In the present case, there are two affidavits, in one affidavit there is no signature of the private respondent no. 10 at the verification portion and signature is appearing at the left side in the below by way of horizontal and the another affidavit having signature of respondent no. 10 at the verification portion. In the report submitted by the Returning Officer, it is mentioned that during the filing of the nomination, the affidavit of the private respondent no. 10 was initially uploaded by the technical team, subsequently, certain defects were pointed out following with the candidate corrected the affidavit and the

corrected affidavit was uploaded in the portal and the defective affidavit was deleted from the system.

16. This is to be decided only during the trial not by the writ Court in the writ jurisdiction. Section 100 of the said Act also provides that the improper acceptance or any nomination is the ground for declaring the election to be void and the same can be done only by an election petition.
17. In the case of *Ajmera Shyam (Supra)*, the Hon'ble Supreme Court has held that minor procedural errors or purely technical objections of inconsequential nature should not be allowed to override the mandate of the electorate. Courts must be careful not to become tools that undermine the popular mandate in the name of technical perfection. The will of the people expressed through the election result, should be respected, unless it has been corrupted by fraudulent practices, in which case, the court should intervene without hesitation. A judicial victory based on technicalities rather than the electoral victory won in the electoral battlefield should be avoided, unless the mandate and the integrity of the electoral process are compromised by fraud or corrupt practices.
18. In the present case the only question is whether the affidavits submitted by the respondent no. 10 is valid or not. The petitioner has taken the stand that the affidavit is without the signature and the date but the seal of the notary public reflects the date of April 7, 2026. The stand taken by the Returning Officer whether the first affidavit was deleted and second affidavit was uploaded and the

Returning Officer consider the objection of the petitioner is to be proved through evidence.

19. Section 100 of the Representation of Peoples Act, 1951 provides the ground for declaring election to be void. Sub-Clause (d) (1) provides that the result of the election, in so far as it concerns a returned candidate, has been materially affected (i) by the improper acceptance or any nomination. Article 329 bar the Courts to interfere in electoral matters. The petitioner has challenged the act of the Returning Officer by accepting the defective affidavit of the respondent no. 10, this Court finds that, if any order is passed, the same will amounts to interfere with the election process. Accordingly, the writ petition is disposed of by giving liberty to the petitioner if any occasion arises, the petitioner can raise all the points before the appropriate Court at the appropriate stage.
20. It is made clear that this Court has not gone into the merit of the case if the petitioner will raise any point before the appropriate Court at the appropriate stage, it is open to the appropriate Court/Forum to decide in its own merit without being influenced with any observations made in this order.
21. **WPA 9346 of 2026** is disposed of.
22. 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.)