

[2023 LiveLaw \(SC\) 659](#)

**IN THE SUPREME COURT OF INDIA**  
**EXTRA-ORDINARY JURISDICTION**  
**B.V. NAGARATHNA; J., UJJAL BHUYAN; J.**

AUGUST 11, 2023

PETITION FOR SPECIAL LEAVE TO APPEAL (C) NO. 16053 OF 2023

**NATIONAL HUMAN RIGHTS COMMISSION & ORS.**

*versus*

**THE WEST BENGAL STATE ELECTION COMMISSION & ORS.**

**Protection of Human Rights Act, 1993 - Conduct of election is the sole responsibility of the Election Commission. Human Rights Commission cannot encroach on the autonomy, independence and function of another constitutional authority such as Election Commission. (Para 9 - 18)**

*For Petitioner(s) Mr. Maninder Singh, Sr. Adv. Ms. Vanshaja Shukla, AOR Ms. Ankeeta Appanna, Adv.*

*For Respondent(s) Mr. Jaideep Gupta, Sr. Adv. Ms. Meenakshi Arora, Sr. Adv. Mr. Kunal Chatterji, AOR Ms. Maitrayee Banerjee, Adv. Mr. Rohit Bansal, Adv. Ms. Kshitij Singh, Adv. Mr. Siddharth Agarwal, Sr. Adv. Ms. Astha Sharma, AOR Mr. Srisatya Mohanty, Adv. Mr. Sanjeev Kaushik, Adv. Ms. Anju Thomas, Adv. Ms. Mantika Haryani, Adv. Mr. Shreyas Awasthi, Adv. Mr. Himanshu Chakravarty, Adv. Ms. Ripul Swati Kumari, Adv. Mr. Bhanu Mishra, Adv. Ms. Muskan Surana, Adv. Mr. Saransh Bhardwaj, Adv. Ms. Arshiya Ghose, Adv.*

**ORDER**

The order of the Division Bench of the High Court of Calcutta dated 05.07.2023, passed in an intra-Court appeal filed by the petitioner(s) herein, namely, National Human Rights Commission (NHRC), which considered the correctness of the order of the learned Single Judge dated 23.06.2023 in WPA No.14119 of 2023, filed by the West Bengal State Election Commission (hereinafter referred to as `SEC' for the sake of brevity) is assailed in this Special Leave Petition.

2. We have heard Shri Maninder Singh, learned senior counsel appearing. on behalf of the petitioner (s) herein-NHRC, at length. He has drawn our attention to various paragraphs of the impugned order as well as the Order passed by the learned Single Judge and also the order dated 12.06.2023 passed by the petitioner(s) herein, which was assailed by the SEC before the High Court. For the sake of convenience, the relevant portion of order dated 12.06.2023 is extracted as under -

“The Commission, therefore, while taking *suo-motu* cognizance into the matter has decided to depute the Director General (Investigation) of the Commission, as Special Human Rights Observer, to apprise first hand information of recent incidents and to conduct an on the spot survey of the State of West Bengal in consultation with the SEC to identify the sensitive constituencies where such violence is likely to occur relating to panchayat polls. Once the sensitive areas are identified, DG (Investigation) to submit a comprehensive report to the Commission for deployment of Micro Human Rights Observers in all the sensitive constituencies in the State during and after the panchayat polls either by engaging the Special Rapporteurs or Special monitors of the Commission, etc., with a solo objective to protect basic human rights of the people by ensuring no violence takes place in Panchayat Election in the State of West Bengal. DG (Investigation) of the Commission to submit the report at the earliest considering the impending panchayat polls in West Bengal.

Apart from the direction noted above, the Commission issues notices to the Chief Secretary and the Director General of Police, West Bengal to provide assistance to Director General of NHRC and also ensure that the law and order is maintained within the State during the entire process of

Panchayat polls starting from filing nomination papers till the time result is declared and also subsequent days. An action taken report be submitted to the NHRC within 2 weeks.

A further notice also be issued to the Secretary, West Bengal State Election Commission for taking effective steps so as to ensure no human rights violations pre and post panchayat polls which includes modalities to facilitate Director General (Investigation) NHRC in identifying sensitive districts/areas of the State in West Bengal where there may be the need to deploy micro human rights observers of the Commission and an action taken report to be submitted to the Commission within two weeks.

Notice is also issued to the Secretary, Ministry of Home Affairs, Government of India, New Delhi to inform measures proposed by it to prevent any kind of human rights violations within the State of West Bengal during and after the Panchayat Elections and action taken report is expected, within 2 weeks.

NOW THEREFORE TAKE NOTICE that you are required to submit the requisite information/ Report within 2 weeks from the date of receipt of this notice.

Given under my hand and seal of the Commission, this the day of 12/06/2023.”

Such an order was passed by the NHRC by taking *suo-moto* cognizance of certain media reports in relation to the violence that accompanied the conduct of elections to the local bodies in the State of West Bengal, from the time of issuance of the calendar of events, till the time the poll was concluded and possibly, subsequent thereto. However, the impugned communication dated 12.06.2023 was issued during the period when the process of the election was underway.

3. Learned senior counsel for the petitioner(s)-NHRC submitted that the SEC had no authority or power to initiate a challenge to the said communication inasmuch as, in exercise of powers under Section 12 of the Protection of Human Rights Act, 1993 ('1993 Act'), the *suo-moto* powers were being exercised by the NHRC. He submitted that the High Court has failed to appreciate the salutary nature of Section 12 of the said Act and the good intentions of the NHRC in taking *suo-moto* cognizance of the incidents that accompanied the elections recently concluded in the State of West Bengal. He submitted that Division Bench of the High Court, while affirming the order of the learned Single Judge allowing the petition filed by the SEC, has done so on a total mis-appreciation of facts and, therefore, the impugned order of the High Court would call for interference at the hands of this Court, by exercising jurisdiction under Article 136 of the Constitution of India.

4. *Per contra*, learned senior counsel appearing for the respondents supported the impugned order and submitted that having regard to Article 324 and particularly Article 243-K of the Constitution of India, where the superintendence, direction and control of the election is to be exercised either by the Central Election Commission or the State Election Commission, as the case may be, there cannot be a parallel supervision of the conduct of election in exercise of *suo-moto* powers under Section 12 of the 1993 Act. In other words, the contention was that the High Court has rightly appreciated the provisions of the Constitution of India in light of Section 12 of the 1993 Act and has set aside the said Notification issued by the NHRC.

5. We have considered the rival contentions in light of communication dated 12.06.2023, the relevant portion of which is extracted hereinabove and in light of the impugned Orders of the High Court.

6. What the NHRC sought to do, was to take *suo-moto* cognizance of the violence that accompanied the process of elections to the Panchayat Raj Institutions in the State of West Bengal on the basis of certain media reports. Further, the Commission decided to depute the Director General (Investigation) of the Commission as Special Human Rights

Observer to seek a first-hand appraisal of the incidents and conduct an on the spot survey of the elections that were taking place in the State of West Bengal, in consultation with the SEC by identifying the sensitive constituencies, where the violence was likely to occur and also to seek a comprehensive report for deployment of Micro Human Right Observers in the sensitive constituencies during and after the panchayat polls. In addition, Special Rapporteurs or Special Monitors of the Commission were sought to be engaged with the object of protection of human rights of the people in the ensuing elections. Apart from that, the Commission issued notices to the Chief Secretary and Director General of Police, West Bengal to provide assistance to the Director General of NHRC and also ensure that law and order was maintained during the entire process of the elections, starting from the filing of nomination papers, till the time the results were declared and for subsequent days and to submit a report to NHRC, within a period of two weeks thereafter.

7. Further, notice was issued to the Secretary, West Bengal State Election Commission for taking effective steps to ensure that there would be no human rights violations pre and post Panchayat polls. Such steps were to include modalities to facilitate the Director General (Investigation), NHRC in identifying sensitive districts or areas of the State in West Bengal, where there may be need to deploy Micro Human Rights Observers of the NHRC and an Action Taken Report was to be submitted to the NHRC within two weeks.

8. Moreover, notice was also issued to the Secretary, Ministry of Home Affairs, Government of India, New Delhi to appraise the NHRC of the measures proposed by it to prevent any kind of human right violation within the State of West Bengal during and after the panchayat election and an Action Taken Report was to be submitted, within two weeks' time.

9. We find that the NHRC may have had good intentions insofar as exercising its jurisdiction under Section 12 of the 1993 Act is concerned, but the manner in which the said powers or jurisdiction were sought to be exercised, in our view, is totally in contravention and in violation of the salutary provisions of Article 243K of the Constitution of India, in so far as the conduct of elections for the Panchayat Raj institution in the State is concerned. What the impugned communication sought to do was to parallelly supervise the elections to be conducted in the State, when that is the responsibility solely of the State Election Commission (SEC). The issuance of the notices, not only to the SEC but to the State Government as well as the Central Government for the purpose of seeking reports on the conduct of the poll, was nothing but superintendence of the elections, which took place in the months of May-June in the State of West Bengal. If there were any complaints made by individuals and aggrieved persons, the NHRC could have considered those complaints independently of issuance of any kind of directions, as has been done and referred to above, not only to the SEC but to the Chief Secretary and Director General of Police, West Bengal and to the Secretary, Ministry of Home Affairs, Government of India, for the purpose of placing the Human Rights Observers in sensitive constituencies, seeking reports and, thereafter seeking Action Taken Reports on the directions that were issued by the NHRC.

10. We find that such *suo-moto* action taken by the NHRC, being contrary to the object and provisions of Article 243-K, which is *in pari materia* with Article 324 of the Constitution of India, could not have been so exercised.

11. In fact, the whole object and purpose of placing the responsibility, either on the Central Election Commission for the conduct of polls insofar as State Legislative Assemblies and Councils as well as the Parliament is concerned and on the State Election

Commission for the conduct of polls in the State, is because they are autonomous and independent institutions created under the provisions of the Constitution and are to act in that manner.

12. It is needless to observe that the object of giving such autonomy and independence is to ensure that the Election Commissions whether, the Central Election Commission or the State Election Commissions, perform and discharge their duties independently and without being influenced by any other person or body.

13. In this context, it would be useful to refer to a five Judge Bench Judgment of this Court in *Kishansing Tomar vs. Municipal Corporation of the City of Ahmedabad, (2006) 8 SCC 352* wherein it was observed that it is necessary for all the State Governments to recognize the significance of the State Election Commission which is a constitutional body. In fact, it was observed that the powers of the State Election Commission in respect of the conduct of elections in its respective domain are no less than that of the Election Commission of India. While the extent of these powers is subject to the law made by Parliament or by State Legislatures, the plenary powers of the Election Commission of India and State Election Commissions are sacrosanct and non-derogable. It was also emphasised that in light of Article 243 K (3) of the Constitution, State Election Commissions must perform their functions in the matter of their powers of superintendence, direction and control of all elections and preparation of electoral rolls for, and the conduct of, all elections to the Panchayats and Municipalities, independent of the concerned State Governments. Accordingly, it would follow that the State Governments are obligated to provide full assistance and cooperation to the State Election Commissions and respect the latter's assessment of the needs in order to ensure that free and fair elections are conducted.

14. The word "election" has been interpreted to have reference to the entire process which consists of several stages and embraces many steps, some of which may have an important bearing on the result of the process, even if no poll is actually conducted or if a particular candidate is returned unopposed. Such being the position, NHRC could not have sought to intervene in the conduct of elections to the Panchayat Raj institutions in the State of West Bengal in the garb of discharging its duties *vis-a-vis* violation of human rights during the election by exercising its *suo-moto* jurisdiction.

15. Judicial notice could be taken of the fact that there was a spate of violence accompanying the Panchayat Raj Elections in the State of West Bengal and in fact, the High Court had to order for deployment of Central Para Military Forces with the object of assisting the State Election Commission (SEC) to conduct a free and fair poll which Order of the Division Bench of the High Court was also affirmed by this Court.

16. Section 12 of the 1993 Act deals with the functions of the Commission which includes *suo-moto* enquiry *vis-à-vis* violation of human rights or on a complaint made thereof or negligence in the prevention of such violence by a public servant or perform such other functions as it may consider necessary for promotion of human rights. In our view, the said functions would not incorporate taking *suo-moto* cognizance in the matter of conducting elections to the Panchayat Raj Institutions in any State by identifying sensitive areas so as to prevent violent acts likely to be perpetrated by the miscreants, as a pre-emptive measure or to ensure that the elections are conducted in a peaceful atmosphere. Deputation of the Director General (Investigation) of the NHRC as Special Human Rights Observer to have a first-hand appraisal of the incidents of violence during the election and to identify sensitive constituencies, in consultation with the SEC where such violence is likely to occur related to Panchayat Polls and, on the comprehensive

report of the Director General (Investigation) of the NHRC, to deploy Micro Human Rights Observers in the sensitive constituencies in the State during and after the Panchayat Polls either by engaging special rapporteurs or special monitors of the NHRC so as to ensure that no violence takes place in Panchayat Elections in the State, is nothing but superintendence of the election process by a parallel body apart from the SEC. Further, notice was issued to the Secretary, SEC of the State of West Bengal by NHRC for taking effective steps so as to ensure that no human rights violations pre and post Panchayat polls occur and to facilitate the Director General (Investigation) NHRC in identifying sensitive districts or areas in the State for deployment of Micro– Human Rights observers of the NHRC and an action taken report to be submitted to NHRC which, in our view, is an encroachment on the exclusive jurisdiction of the SEC to conduct free and fair polls.

17. The Constitution of India has envisaged independence as well as autonomy of certain institutions, such as, Central Election Commission and State Election Commissions etc. so as to enable them to discharge their functions independently and in a fair manner without there being any interference from any other organ under the Constitution or any other statutory authority, such as, NHRC.

18. Section 12 of the 1993 Act empowers NHRC to perform its functions to prevent, preempt as well as mitigate and bring to an end violation of human rights in the Country but while discharging its functions and duties, NHRC cannot encroach on the autonomy, independence and function of another constitutional authority such as the Central Election Commission or SEC.

19. In that view of the matter, we find that the NHRC was not right in assuming the power to exercise superintendence over the elections in the manner in which it has sought to do. Further, in the instant case, the actions sought to be taken by the NHRC was a duplication of the orders passed by the High Court which were affirmed by this Court regarding deployment of central paramilitary forces for assisting the SEC to conduct a free and fair poll to the Panchayat Raj institutions in the State of West Bengal.

20. In the circumstances, we find no merit in the Special Leave Petition and the same is dismissed.

Pending application(s) shall stand disposed of.

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