

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

Present:

The Hon'ble Justice Krishna Rao

W.P.A. No. 27488 of 2026

West Bengal Pradesh Congress Committee & Anr.

Vs.

Election Committee of India & Ors.

Mr. Ritzu Ghosal, Sr. Adv.

Mr. Sanjay Banerjee

Mr. Sohaib Rauf

Mr. Ajitesh Pandey

Ms. Sreeparna Das

Mr. Anish Mukherjee

Mr. Tathagata Majumder

Mr. Sayantan Chatterjee

Ms. Ledia Dasgupta

Mr. Shamik Roy

Mr. Abid Ali

Mr. Abhijit Raha

Mr. Manojit Bhattacharyya

Mr. Arka Chakraborty

Mr. Anwar Ali

Ms. Sarbani Mukhopadhyay

Mr. Ranjit Mondal

Mr. Sayan Datta
Mr. Asfak Ahammad
Mr. Samirul Sardar
Mr. Manish Ojha

....For the petitioners.

Mr. Dama Seshadri Naidu, Sr. Adv.
Mr. Prateek Kumar
Mr. Deepak Sharma

....For the respondent no. 1.

Ms. Sarda Sha

....For the respondent no. 2.

Mr. Jishnu Chowdhury, Sr. Adv.
Ms. Sanskriti Agarwal
Ms. Anamika Pandey
Mr. Deep Basak

....For the respondent no. 3.

Mr. Joydip Kar, Sr. Adv.
Mr. Pijush Biswas
Mr. Tamoghna Pramanick

....For the respondent no. 5.

Hearing Concluded On : 25.09.2026

Judgment Delivered On : 29.09.2026

Judgment Uploaded On : 29.09.2026

Krishna Rao, J.:

1. The petitioners have filed the present writ petition praying for the following reliefs:

***a.** hold and declare that permitting Respondent No. 5's candidature to proceed to the poll without verification of the apparent and facially impossible discrepancy between her declared age and her declared year of passing Class X, as disclosed in her Form 26 affidavit dated 15.09.2026, would constitute a grave and continuing violation of the fundamental right to know of the electorate under Article 19(1)(a) of the Constitution of India;*

***b.** issue a writ in the nature of Mandamus, or a writ, order or direction of like nature, commanding the Respondent Nos. 1, 3 and 4 to forthwith examine and verify the apparent and facially impossible discrepancy between the declared age and the declared year of passing Class X contained in the Form 26 affidavit dated 15.09.2026 filed by the Respondent No. 5, as being a live violation of the fundamental right to know of the electorate under Article 19(1)(a) of the Constitution of India;*

***c.** direct the Respondent Nos. 1, 3 and 4 to call for, examine and verify the relevant contemporaneous educational records of the Respondent No. 5, including the admission register, examination records and mark-sheet/certificate of Chowkhali Ganga Pada Milan Kanya Vidyapith (H.S.), relating to her stated completion of Class X in the year 1965;*

***d.** direct the Respondent Nos. 1 and/or 3 to examine and determine whether the discrepancy set out above attracts any consequence under the Representation of the People Act, 1951, including but not limited to Section 36 and Section 125A thereof, or under any applicable instruction of the Election Commission of India, and to pass a reasoned and speaking order thereon within a time-bound period and before the date of poll, after*

affording an opportunity of hearing to the Respondent No. 5 and the Petitioner;

e. direct the Respondent authorities to preserve the nomination paper, the Form 26 affidavit and all connected scrutiny records of the Respondent No. 5, and to produce the same before this Hon'ble Court if and when called upon to do so; pending hearing and final disposal of this writ petition, direct the Respondent authorities to preserve, and not to destroy, part with, or alter, all original records relating to the educational qualification and the nomination of the Respondent No. 5."

2. At the time of hearing, Learned Counsel for the petitioners submits that the petitioners are not challenging the election process. He submits that the petitioners are only aggrieved with the action of the Returning Officer who has not acted in terms of Section 36 and Section 125A of the Representation of the People Act, 1951 and the applicable instructions of the Election Commission of India without examining and determining the discrepancy in Form-26 (affidavit) dated 15th September, 2026, submitted by the private respondent with regard to her age and declared year of passing Class 10th examination.
3. Mr. Ritzu Ghosal, Learned Senior Advocate, representing the petitioners submits that the private respondent while submitting her nomination paper before the Returning Officer for Bye-Election to the West Bengal Legislative Assembly from 210 - Nandigram Assembly Constituency on 15th September, 2026, has submitted an Affidavit in FORM 26 wherein the private respondent has declared her age as "60+ Years" but at PART-A, page 10, Clause 10, she has declared her educational

qualification is - Class X from Chowkhali Ganga Pada Milan Kanya Vidyapith (H.S.), 1965.

- 4.** Mr. Ghosal submits that in PART-B of the Affidavit at Clause 11, the private respondent has declared her highest educational qualification is – Class-X, Chowkhali Ganga Pada Milan Kanya Vidyapith (H.S.), 1965. By referring the said portions of affidavit, he submits that if the age of the private respondent is 60 years on the date of filing of her nomination form then how it is possible that the private respondent qualified Class-X in the year 1965.
- 5.** Mr. Ghosal submits that as per Sub-Section (2) of Section 36 of the Representation of People Act, 1951 (hereinafter referred to as “Act of 1951”), the Returning Officer on his own motion after such summary inquiry, he thinks necessary, reject any nomination. He submits that in the face of affidavit in Form-26 submitted by the private respondent, it is clear that the either date of birth or her educational certificate is not correct but the Returning Officer without considering false declaration, accepted the nomination form of the private respondent.
- 6.** Mr. Ghosal submits that it is the duty of the Returning Officer to verify that the candidate who has submitted nomination form to contest election has complied with the provisions of Sections 33A and 33B of the Act of 1951 but in the present case, the Returning Officer failed to comply with the said provisions.

7. Mr. Ghosal submits that the defect appearing in the affidavit submitted by the private respondent in FORM-26 is of a substantial character but the respondent no.3 has not considered the same and failed to perform his constitutional duty assigned to him by allowing the nomination of the private respondent.
8. Mr. Ghosal submits that when the respondent no. 3 has not performed his constitutional duty, on 21st September, 2026, a detailed representation was made to the respondent no. 4 with regard to the defects in the affidavit submitted by the private respondent under FORM-26 with regard to her affidavit, the respondent no.3 failed to consider the same till date.
9. Mr. Ghosal in support of his submissions, has relied upon the judgement in the case of ***Ritzu Ghosal Vs. West Bengal State Election Commission and Others*** reported in ***2018 SCC OnLine Cal 1747*** and submits that the Hon'ble Division Bench of this Court held that any illegality, whether palpable or otherwise, on the part of the State Election Commission, can be interfered by the Court sitting in its Constitutional writ Jurisdiction or in an appeal therefrom especially when such illegality manifests itself in an action which is arbitrary or wrongful or is *mala fide* in nature.
10. Mr. Ghosal has relied upon the judgment in the case of ***Adhir Ranjan Chowdhury Vs. West Bengal State Election Commission and***

Others reported in **2018 SCC OnLine Cal 2135** and submits that the Hon'ble Division Bench of this Court held that if there is an error committed in the course of the election process, the Election Commission had the authority to set it right by virtue of the power vested in it under Article 324 of the Constitution and to see that the election process was completed in a fair manner.

11. Mr. Ghosal has relied upon the judgment in the case of **Kisan Shankar Kathore Vs. Arun Dattatray Sawant and Others** reported in **(2014) 14 SCC 162** and submits that the grounds stated in Section 36(2) are those which can be examined there and then and on that basis the Returning Officer would be in a position to reject the nomination.
12. Mr. Ghosal has relied upon the judgment in the case of **Resurgence India Vs. Election Commission of India and Another** reported in **(2014) 14 SCC 189** and submits that the ultimate purpose of filing of affidavit along with nomination paper is to effectuate the fundamental right of the citizens under Article 19(1)(a) of the Constitution of India. The Citizens are supposed to have the necessary information at the time of filing of nomination paper and for that purpose, the Returning Officer can very well compel a candidate to furnish the relevant information.

13. Mr. Ghosal has relied upon the judgment in the case of ***Mairembam Prithviraj Vs. Pukhrem Sharatchandra Singh*** reported in ***(2017) 2 SCC 487*** and submits that providing incomplete information or suppression of material information is to be treated as defect of substantial character.
14. Mr. Dama Seshadri Naidu, Learned Senior Advocate, representing the respondent no.1/ Election Commission of India submits that date of Scrutiny of nominations was fixed on 17th September, 2026 and the last date for the withdrawal of the candidatures was fixed on 19th September, 2026. The respondent no.5 has submitted her nomination form on 15th September, 2026. No one has raised any objection to the nomination submitted by the respondent no. 5. Only on 21st September, 2026, a complaint was submitted by one Subrata Mahapatra but by the time scrutiny of nominations was completed and nominate documents of the private respondent was accepted.
15. Mr. Naidu submits that the objection raised by the petitioners in the present writ petition is covered under Section 100(1)(d)(i) of the Representation of People Act, 1951, thus the writ petition is not maintainable. He submits that in the Affidavit, the respondent no.5 has declared that her age is 60+ years and she passed Class X in the year 1965 which cannot be said to be substantial character.
16. Mr. Naidu has relied upon the judgment in the case of ***Mairembam Prithviraj (supra)*** and submits that mere finding that there has been

an improper acceptance of the nomination is not sufficient for a declaration that the election is void under Section 100(1)(d). There has to be further pleading and proof that the result of the election of the returned candidate was materially affected.

17. Mr. Naidu further relied upon the judgment passed by this Court in the case of ***Arindam Ghosh Vs. Union of India & Others*** reported in ***2026 SCC OnLine Cal 5889*** wherein this Court held that if any order is passed on the allegation of acceptance of defective affidavit, the same would amount to interfere with the election process.

18. Mr. Jishnu Chowdhury, Learned Senior Advocate, representing the respondent no. 3/ the Chief Electoral Officer submits that the writ petition is not coming under the provision of Section 36(1) of the Representation of People Act, 1951. He submits that the writ petitioner no.1 is the West Bengal Pradesh Congress Committee, State wing of the Indian National Congress and the petitioner no.2 is one Mita Chakravarty. There is no documents submitted by the petitioners that the petitioner no.2 was the election agent or the proposer or duly authorized person of the contesting candidate attended the office of the Returning Officer and examined the nomination papers of the respondent no.5 or raised any objection before the Returning Officer on or before 17th September, 2026.

- 19.** Mr. Chowdhury submits that the petitioners have disclosed a representation dated 21st September, 2026 of one Subrata Mahapatra addressed to the Returning Officer after the scrutiny of the nomination was completed and the said person is not the writ petitioner before this Court. Mr. Chowdhury has relied upon the Hand Book for Returning Officer 2023 and relied upon Clause 6.9.1 and submits that as per the said clause, nomination paper cannot be rejected which is not substantial character and any mistake or error of a technical or clerical nature should be ignored by the Returning Officer.
- 20.** Mr. Chowdhury further relied upon Clause 6.10.1 (iv) and submits that as per the said clause, the Returning Officer must reject the nomination papers if prescribed affidavit is not filed by the candidate but if the prescribed affidavit is filed and alleged or found to be containing false information, the nomination should not be rejected on this ground.
- 21.** Mr. Chowdhury submits that mere on the allegation that the respondent no. 5 has submitted affidavit by disclosing her age as 60+ years and Class-X certificate of 1965, cannot disqualify the respondent no. 5 to be member of the Legislative Assembly under Section 5 of the Act of the 1951. He further referred Article 191 of the Constitution of India and submits that the allegation of the petitioner against the respondent no.5 is not coming any of the ground of disqualification of the membership.

- 22.** Mr. Chowdhury has relied upon the judgment in the case of ***Election Commission of India Vs. Ashok Kumar and Others*** reported in ***(2000) 8 SCC 216*** and submits that the petitioners have challenged the nomination papers submitted by the petitioners but the Returning Officer already accepted the nomination of the respondent no.5 and election process has also started and if at this stage, if this Court pass any order in connection with the nomination of the respondent no.5, the same would amount to interrupting the election process.
- 23.** Mr. Joydip Kar, Learned Senior Advocate, representing the respondent no.5 submits that there was no objection at the time of scrutiny of the nomination papers of the respondent no. 5. He submits that the petitioners have disclosed one complaint in the writ petition dated 21st September, 2026, regarding objection against the affidavit of the respondent no.5 but by that time scrutiny was completed and nomination papers of the respondent no. 5 was accepted.
- 24.** Mr. Kar referred Section 100 (1)(d)(i) of the Act of 1951 and submits that the grounds on which the petitioners have filed the present writ petition is the ground for the election petition. He further submits that as per Clause (b) of Article 329 of the Constitution of India, no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition.

25. Mr. Kar submits that the declaration submitted by the respondent no.5 in the affidavit in FORM-26 is of substantial character or not, is the matter of evidence and the same cannot be decided in the writ jurisdiction. Mr. Kar has relied upon the judgement in the case of ***Meenakshi Nataranjan Vs. Election Commission of India and Another*** passed in ***Writ Petition(s) (Civil) No(s). 766 of 2026*** dated ***12th June, 2026*** and submits that the Hon'ble Supreme Court has not entertained the petition under Article 32 of the Constitution of India in view of the expressed bar contained in Article 329(b) of the Constitution of India.

26. The private respondent has submitted her nomination paper along with an affidavit under FORM-26 before the Returning Officer on 15th September, 2026. In the affidavit at Part-A, she has declared her age as 60+ years. In Clause 10 of Part-A of the Affidavit, the private respondent has stated as follows:

“(10) My educational qualification is as under:

Class-X, Chowkhali ganga pada milan Kanya Vidyapith (H.S.), 1965 (Give details of highest School/ University education mentioning the full form of the certificate/ diploma/ degree course, name of the School/College/University and the year in which the course was completed).”

27. In Part-B of the affidavit in Clause-11, the private respondent no.5 stated that:

“11. Highest education qualification: Class -X, Chowkhali Ganga Padma Milan Kanya Vidyapith (H.S.), 1965 *(Give details of highest School/ University education mentioning the full form of the certificate/ diploma/ degree course, name of the School/ College/ University and the year in which the course was completed.)”*

The case of the petitioners is that if the age of the petitioner no. 2 as on the date execution of affidavit is 60+ years how the petitioner no. 2 has passed Class-X examination in the year 1965. Either the declaration of age or the year of qualification of the petitioner no. 2 is not correct.

28. Section 36 of the Representation of Peoples Act, 1951 reads as follows:

“36. Scrutiny of nominations.— (1) *On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents, one proposer [***] of each candidate, and one other person duly authorised in writing by each candidate, but no other person, may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 33.*

(2) *The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, [reject] any nomination on any of the following grounds:—*

[(a) [that on the date fixed for the scrutiny of nominations the candidate] either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely:—

Articles 84, 102, 173 and 191, [***]

[Part II of this Act and sections 4 and 14 of the Government of Union Territories Act, 1963 (20 of 1963)] [***]; or

(b) that there has been a failure to comply with any of the provisions of section 33 or section 34; or

(c) that the signature of the candidate or the proposer on the nomination paper is not genuine.]

(3) Nothing contained in [clause (b) or clause (c)] of sub-section (2) shall be deemed to authorise the [rejection] of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has “been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

(4) The returning officer shall not reject any nomination paper on the ground of any [***] defect which is not of a substantial character.

(5) The returning officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 30 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control:

Provided that in case [an objection is raised by the returning officer or is made by any other person] the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the returning officer shall record his decision on the date to which the proceedings have been adjourned.

(6) The returning officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.

[(7) For the purposes of this section, a certified copy of an entry in the electoral roll for the time being in force of a constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to a disqualification mentioned in section 16 of the Representation of the People Act, 1950 (43 of 1950).]

[(8) Immediately after all the nomination papers have been scrutinised and decisions accepting or rejecting the same have been recorded, the returning officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it to his notice board.]”

29. Admittedly on the date of scrutiny of the nomination papers of the respondent no. 5, the petitioners have not filed any objection. The contention of the petitioners is that as per Section 36(2), the Returning Officer has the power to reject the nomination papers but in the present case, the Returning Officer has not invoked his power though the affidavit filed by the respondent no.5 is having defect of substantial character.

30. The Election Commission of India has fixed Schedule for Bye-Election which are as follows:

SCHEDULE FOR BYE-ELECTION

<i>Poll Events</i>	<i>Schedule</i>
<i>Date of Issue of Gazette Notification</i>	<i>09.09.2026 (Wednesday)</i>
<i>Last date of making nominations</i>	<i>16.09.2026 (Wednesday)</i>
<i>Date for the scrutiny of nominations</i>	<i>17.09.2026 (Thursday)</i>

<i>The last date for the Withdrawal of candidatures</i>	19.09.2026 (Saturday)
Date of Poll	06.10.2026 (Tuesday)
Date of Counting Votes	09.10.2026 (Friday)
<i>Date before which election shall be completed</i>	11.10.2026 (Sunday)

As per Schedule fixed by the Election Commission of India, the Scrutiny of nomination papers were completed on 17th September, 2026 and nomination papers of the respondent no.5 is accepted. In the case of **Ashok Kumar & Ors. (supra)**, the Hon'ble Supreme Court held that:

“32. *For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove:*

(1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

(2) Any decision sought and rendered will not amount to “calling in question an election” if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in

furtherance of the election proceedings cannot be described as questioning the election.

(3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

(4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the court.

(5) The court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the court would act with reluctance and shall not act, except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material."

31. Article 329 (b) of the Constitution of India provides that no election to either House of Parliament or to the House or either House of the

Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

- 32.** The defects in the affidavit submitted by the respondent no.5 are substantial character or not are the matter of evidence. Section 100 of the Act of 1951 provides as follows:

“100. Grounds for declaring election to be void.— [(1) Subject to the provisions of sub-section (2) if [the High court] is of opinion—

- (a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act [***] [or the Government of Union Territories Act, 1963 (20 of 1963)]; or
- (b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or
- (c) that any nomination has been improperly rejected; or
- (d) 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, or
 - (ii) by any corrupt practice committed in the interests of the returned candidate 6 [by an agent other than his election agent], or
 - (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(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,

[the High Court] shall declare the election of the returned candidate to be void.]

[(2)] If in the opinion of [the High Court], a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice [***] but [the High Court] is satisfied—

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and [without the consent], of the candidate or his election agent;

[***]

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt [***] practices at the election; and

(d) that in all other respects the election was free from any corrupt [***] practice on the part of the candidate or any of his agents, then [the High Court] may decide that the election of the returned candidate is not void.”

As per Sub- Section 1(d)(i) of Section 100 of the Act of 1951, if any, nomination is improper accepted, the election can be declared to be void.

33. Recently the Hon’ble Supreme Court in the case of **Meenakshi Natarajan (supra)** by considering the case **N.P. Ponnuswamy Vs. Returning Officer, Namakkal Constituency and Others** reported in **(1952) 1 SCC 94** held that :

“10. As we have seen the most important question for determination is the meaning to be given to the word “election” in Article 329(b). That word has by long usage in connection with the process of selection of proper representatives in democratic institutions, acquired both a wide and a narrow meaning. In the narrow sense, it is used to mean the final selection of a candidate which may embrace the result of the poll when there is polling or a particular candidate being returned unopposed when there is no poll. In the wide sense, the word is used to connote the entire process culminating in a candidate being declared elected.”

- 34.** Though the petitioner No. 2 has made several prayers in the present writ petition but the petitioner No. 2 has restricted her prayer only to the effect that the Returning Officer has not invoked his power by rejecting the nomination papers of the respondent no.5 of his own after verification of the affidavit submitted by the respondent no.5 wherein the respondent no.5 is alleged to have disclosed her age or education qualification wrongly or incorrectly.
- 35.** The petitioner No. 2 has not prayed for any relief with regard to the election process but if at this stage, this Court will decide the issue raised by the petitioner No. 2 with regard to the nomination papers of the respondent no. 5, the same will directly affect the present election process.
- 36.** In view of the above, the writ petition being **WPA No. 27488 of 2026** is **dismissed**. However, dismissal of writ petition will not prevent the petitioners to agitate the issue in an election petition at an appropriate stage.

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.)