

(2023) 07 CAL CK 0021

In the Calcutta High Court

Case No : MAT No. 1202/2023, IA NO. CAN 1 Of 2023

National Human Rights Commission And Others

APPELLANT

Vs

West Bengal State Election Commission And Others

RESPONDENT

Date of Decision : 05-07-2023

Acts Referred:

Constitution Of India, 1950 — Article 21, 226, 243K, 243O, 243O(b), 324, 324(1)
Protection of Human Rights Act, 1993 — Section 2(1)(d), 2(d), 2(j), 12, 12(a), 12(b),
12(c), 12(d), 12(e), 12(j), 14, 17, 18, 36, 36(2)
West Bengal Panchayat Election Act, 2003 — Section 4(1), 134, 134(1), 134(2), 134(3)
National Human Rights Commission (procedure) Regulations, 1994 — Section 9

Citation : (2023) 07 CAL CK 0021

Hon'ble Judges : T.S. Sivagnanam, CJ;Hiranmay Bhattacharyya, J

Bench : Division Bench

Advocate : Aman Lekhi, Ranajit Chatterjee, Dipak Rankan Mukherjee, Ujjwal Sinha, Aniruddha Mitra, S. Sonam, S.N. Mookherjee, Sirsanya Bandopadhyay, Arka Kumar Nag, Jayanta Mitra, Kishore Datta, Sonal Sinha, Sumita Shaw, Suman Sengupta, Tarun Kumar Chatterjee, Sujit Gupta, Soumen Chatterjee

Final Decision : Dismissed

Judgement

1. This intra court appeal filed by the National Human Rights Commission (NHRC) is directed against the order dated 23.06.2023 in WPA No. 14119 of 2023 filed by the West Bengal State Election Commission (SEC). The State Election Commission had impugned an order passed by the NHRC dated 12.06.2023 whereby the NHRC deputed its Director General (Investigation), the second appellant herein as a Special Human Rights Observer to apprise firsthand information of recent incidents and to conduct and on the spot survey of the State of West Bengal in consultation with SEC to identify the sensitive constituencies where such violation is likely to occur relating to Panchayat polls. The order further stated that once the sensitive areas are identified the second appellant will submit a comprehensive report to the Commission for deployment of Micro Human Rights Observers in all sensitive constituencies in the State during and after the Panchayat polls either by engaging special rapporteurs or

special monitors of NHRC with a sole objective to protect basic human rights of the people by ensuring no violence takes place in Panchayat election in the State of West Bengal. The NHRC issued notices to the Chief Secretary, Government of West Bengal and Director General of Police, West Bengal to provide assistance to the second appellant 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 the result is declared and also on subsequent days and action taken report was called for within two weeks. Further the order states that notices is also issued to the Secretary of the State Election Commission for taking effective steps so as to ensure no human rights violation pre and post panchayat polls which includes modalities to facilitate the second appellant in identifying the sensitive districts/areas of the State of West Bengal where there may be the need to deploy Micro Human Rights Observers of the Commission and action taken report to be submitted within two weeks. Notice was also issued to the Secretary, Ministry of Home Affairs, Government of India to inform measures proposed by it to prevent any kind of human rights violation within the State of West Bengal during and after the Panchayat elections and action taken report was called for within two weeks.

2. The State Election Commission challenged the said order passed by the NHRC dated 12.06.2023 by contending that NHRC had no jurisdiction to pass such an order and in this regard, referred to Section 12 of the Protection of Human Rights Act, 1993 (the 1993 Act). Further it was contended that the Election Commission is a Constitutional Authority and the NHRC being a Statutory Authority has no jurisdiction to interfere with the plenary powers of SEC. Reference was made to Article 243K of the Constitution of India and also Article 243O of the Constitution of India and contended that there is a bar to interference by Courts in electoral matters.

It was contended that NHRC being a statutory body is an authority sui juris and not sui generis.

3. The NHRC contended that the order passed was within the powers conferred under Section 12 of the 1993 Act more particularly under clauses (d) and (e) of Section 12 wherein the NHRC has the power to review the safeguards provided by or under the Constitution or any law for the protection of Human Rights, recommend measures for their effective implementation and/or to review the factors which inhibit the enjoyment of human rights and recommending appropriate remedial measures. Therefore, it was contended that there is power for NHRC for taking preemptive measures. The NHRC referred to the definition of Human Rights as defined under Section 2(1)(d) of the 1993 Act and submitted that the Human Rights have been defined as rights relating to life, liberty, equality and dignity of the individual guarantee by the Constitution or embodied in international cognizance and enforceable by court of India. Thus, it was contended that NHRC merely seeks to work in tandem with other authorities including the State Government and the SEC for the purpose of affording ample

protection against violation of human rights of the people residing in the State of West Bengal. The orders passed by this Court in WPA No. 250 of 2023 etc. dated 13.06.2023 and the order passed in WPA No. 301 of 2023 dated 15.06.2023 were also referred to wherein direction was issued for deployment of central forces in all districts in the State of West Bengal stipulating strict time lines.

4. The State of West Bengal referred to the orders passed by the Division Bench in WPA (P) No. 250 of 2023 dated 13.06.2023 and submitted that in the said decision the question wherein one of the prayers was to appoint an independent observer for the elections was considered by the Division Bench and after taking note of Section 134 (1) of the West Bengal Panchayat Election Act, 2003 (the Elections Act) such a prayer was not granted.

5. The learned single bench held that the NHRC attempts to take a pre-emptive step by citing a media report referred to certain other news reports and the judgment of this court and also referring certain reports of violent incidents in the State during the Panchayat elections held in the year 2018 and Assembly Elections held in the year 2021 has passed the order dated 12.06.2023, that assumption of jurisdiction by NHRC was palpably based on conjectures and surmises. Further the learned single bench held that there is not a single observation as to the incompetency of the SEC for the NHRC to assume jurisdiction. With regard to the incidents said to have occurred in the year 2018 and 2021, the learned single bench held that in terms of Section 36(2) of the 1993 Act, there is a bar for the Human Rights Commission from making any inquiry into any alleged violation of human rights which took place prior to one year. Further the court held that the power vested in the NHRC under the 1993 Act are in addition to and not in derogation of, specific constitutional and legal powers vested in particular authorities and any other interpretation of the 1993 Act would run the risk of conferring unchartered and blanket authority on a recommendatory body which could, in turn, lead to such bodies to be used as a tool to satisfy political vendetta. Therefore, the court held that the scope of operation of NHRC has to be tested on the anvil of constitutionality and conscionably justice. The court accepted the submission of the SEC that the provisions of the Constitution of India pertaining to SEC puts in on pari materia pedestal as the Election Commission of India, not only is the removal of SEC members on a similar footing as the constitutional court judges, which lends additional protection to the said members, penal powers have also been conferred constitutionally on the Election Commission as held by the Hon'ble Supreme Court time and again. Further by referring to Article 324 of the Constitution of India, it was held that the entire process of election was included within the word "election"; the terms "superintendence"; "direction" and "control" are not found not only in the Constitution of India including Article 243K and Article 324 but are also found in conferment of authorities on the Election Commission under the West Bengal State Election Commission Act, 1994 and in Section 4(1) of the West Bengal Panchayat Elections Act, 2003. Further the court held that even if NHRC feels that there may be a law and order situation during

elections, it does not have a power to interdict authority of the SEC and pass independent direction on SEC as well as other authorities of the State with regard to the conduct of elections which would be directly detrimental to the powers of the SEC under the Constitution of India. Further it was held that the order impugned in the writ petition is a clear interference into exclusive domain of SEC, since SEC wields absolute power regarding the election process. Thus, on the above grounds the writ petition was allowed and the order passed by NHRC dated 12.06.2023 was set aside and any action taken pursuant to such order was revoked and reversed with immediate effect. Aggrieved by the orders passed in the writ petition, the NHRC has filed the present appeal.

6. Mr. Aman Lekhi, learned senior advocate appearing for the appellant NHRC submitted that the earlier decision passed by this court was pertaining to interpretation of Section 134 of the Election Act where the observer is an officer of the State Government under the control of the SEC and the mandate which was conferred in under Sub Section (1) of Section 134 was restricted by Sub Section (2) of Section 134 and the said decision is entirely on a different aspect and the powers exercised by the NHRC is under the 1993 Act. Referring to Section 12(a),(d),(j), it is submitted that NHRC need not wait for the breach of human rights to initiate action as the object of the Act is to protect violation of human rights and there is absolutely no political agenda behind the orders passed by the NHRC. It is submitted that in terms of clause (a) of Section 12 the NHRC has suo motu powers, in terms of clause (d) it can review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation and in terms of clause (j) of Section 12, it can perform such other functions as it may consider necessary for promotion of human rights.

The learned senior counsel referred to Section 14 of the Act which deals with investigation and Section 17 which deals with inquiry into complaint. Reliance was placed on the decision of the Hon'ble Supreme Court in Ram Deo Chauhan Versus Buntty Kanta Das and Others (2010) 14 SCC 209 and paragraph 45 of the judgment was referred to. Reliance was also placed on the decision of the Hon'ble Supreme Court in Extra Judicial Execution Victim Families Association and Another Versus Union of India and Others (2017) 8 SCC 417 and by referring to paragraph 32 the role of the NHRC was explained. It is submitted that the learned single bench has observed that the action of the NHRC is based on conjectures and surmises which is wholly incorrect as a conjecture would be assuming a jurisdiction which is not existing. However NHRC has referred to the acts of violence which took place in the year 2018 and 2021 and submitted that human rights are not like edicts inscribed on rocks, they are made and unmade on the crucible of experience and through irreversible process of human struggle for freedom. Further it is submitted that vulnerability for a cause is not a conjecture and in terms of Section 2(j) of the 1993 Act, the NHRC has ample powers to perform such other functions as it may consider necessary for the promotion of human rights. Further by elaborately referring to the order

impugned in the writ petition passed by the NHRC it was submitted that the order intended to see as to whether any recommendation has to be made to the NHRC and the stage of the matter as contemplated under Section 18 of the 1993 Act is yet to occur.

7. The learned senior counsel then referred to the decision of the Hon'ble Supreme Court in Lakshmi Charan Sen and Others Versus A.K.M Hassan Uzzaman and Others (1985) 4 SCC 689 which was referred to by the respondent writ petitioner when the writ petition was being heard. It is submitted that the said decision can have no application to the facts of the case as the NHRC does not interfere or violate the process of election. In any event, the election cannot be a cover for violation of human rights. Similarly, the decision relied on by the respondent writ petitioner in the case of Election Commission of India Versus State of Tamil Nadu and Others 1995 Supp (3) SCC 379 was sought to be distinguished on facts. Similarly the decision in the case of Gujarat Assembly Elections (2002) 8 SCC 237 was sought to be distinguished on the ground that the question which fell for consideration in the said matter was entirely different and cannot be made applicable to the case on hand. Further it is submitted that all that NHRC seeks to do is to review the safeguards provided by or under the constitution and all that the NHRC has said in the order is to maintain law and order and the appellant is at a loss to understand as why the SEC is reluctant. The learner senior advocate referred to the several paragraphs of the order impugned in this appeal and submitted that the order calls for interference.

8. Mr Jayanta Mitra, learned senior advocate appearing for the Section submitted that the preliminary objection raised by SEC is that there is no basis for the suo moto action taken by NHRC and a reading of the order impugned in the writ petition will show that it was based on "Frontline" which was not placed before the court and it mentions about certain political leaders of which the SEC is not concerned and SEC is not aware as to what is the kind of complaint which the NHRC seeks to refer to. Further it is submitted that the SEC is a Constitutional Authority whereas NHRC is a Statutory Authority and in terms of Section 36 of 1993 Act once SEC is appointed, he is sole authority and there can be no interference.

9. The learned senior advocate referred to Regulation 9 of the National Human Rights Commission (Procedure Regulations, 1994, (Regulations) and submitted that the alleged complaint was not entertainable as it is a suo moto in nature, there is a clear bar under Section 36(2) of the 1993 Act, the allegation is not against any public servant, the allegation do not make out any specific violation of human rights, the matter being sub judiced before this court, matter having being covered by judicial verdict passed by this Court as affirmed by the Hon'ble Supreme Court the NHRC has no jurisdiction. Further it is submitted that no specific complaint has been recorded and this court in the earlier orders has been advancing the cause of election and the matter is now subjudice. Further it is submitted that His Excellency, The Governor of West Bengal is also looking into

the matter and the State Government is also looking into the matter and the interference by the NHRC is strongly objected and opposed by SEC. Further it is submitted that before the NHRC assumes jurisdiction it should have pin pointed the allegations against any public servant and in the absence of any such allegation, the learned Single Bench rightly set aside the order passed by the NHRC. Reliance was placed on the decision in the case of Lakshmi Charan Sen (supra) and in the case of Kanhiya Lal Omar Versus R.K. Trivedi and Others (1985) 4 SCC 628.

10. Mr Kishore Dutta, learned senior advocate appearing for SEC while supplementing the submissions Mr Mitra submitted that the question would be whether the affairs of constitutional body can be interfered by a statutory body, the NHRC being a statutory body is sui juris and can only do which the statute permits. Reference was made to Article 243O of the Constitution of India stating that the order impugned in the writ petition clearly interferes with that the power of SEC. Further it is submitted that the 1993 Act nowhere empowers NHRC to take pre-emptive steps and in this regard reference was made to Section 2(d), 12(a), 12(b), 12(c) and 12(d) and it is submitted that on a combined reading of all these provisions will show that NHRC cannot take any pre-emptive steps. Further by referring to Section 13(1) of the Act, it is submitted that a complaint is a pre-requisite for NHRC to initiate any action. Referring to the decision in the case of Gujarat Assembly Election matter, it is submitted that the plenary powers of SEC is of utmost importance and the same cannot be interfered.

11. The learned Advocate General appearing for the State after referring to Section 12(b)(d) and (j) submitted that the statute only provides for an inquiry of allegation of violation of human rights whereas the order which was impugned in the writ petition passed by NHRC pertained to conduct of elections. Further in terms of Section 12(d) the NHRC can make recommendation and has no power to issue any direction. Referring to the decision in Ram Deo Chuhan it is submitted that the Hon'ble Supreme Court has clearly explained the scope of Section 12(j) and such a power can be exercised only if there has been a denial of human rights. Reliance was also placed on the decision in the case of Extra Judicial Execution Victim Families and it was submitted that the order impugned in the writ petition does not fulfil the precondition for Section 12(j) of the 1993 Act to apply. Thus, it is submitted that while the NHRC is highly respected, the order which was passed by NHRC impugned in the writ petition was a clear over rich.

12. Mr Aman Lekhi, learned senior advocate in reply submitted that none of the submissions made by him have been dealt with or controverted by the learned advocates appearing for the respondents. It is submitted that the NHRC is to be placed on a higher pedestal, it is a body of importance, when wrong is done to the society, the NHRC will excise jurisdiction and for exercising such jurisdiction, it is not necessary for the victim to approach the Commission in person but any person can approach NHRC and the Commission has also power to take suo moto

action. It is submitted that all that NHRC seeks to do for is to direct its officer to inquire and submit a report and to consider issuing recommendations and SEC was to assist the officer of the NHRC and the order passed by NHRC was wholly within its power and jurisdiction as provided for in the 1993 Act.

13. We have elaborately heard the learned senior advocates appearing for the parties and carefully perused the materials placed on record.

14. The gist of the order impugned in the writ petition was referred to by us in the preceding paragraphs, more particularly the directions which was issued by NHRC to SEC and the other authorities. To examine as to what prompted the NHRC to issue the order dated 12.06.2023 in Case number 171/25/0/2023 can be culled out from the first paragraph of the said order which reads as follows: "Whereas the complaint/ intimation dated 19.05.2023 received from suo moto, frontline in respect of political leaders in West Bengal shall place before the Commission on 12.06.2023". Though the order uses the word "complaint" on a reading of the entire order shows that there is no written complaint received by the NHRC which becomes clearer by the use of the word "suo moto". Conspicuously, the word "Frontline" has also been used which is a magazine and thus it is evidently clear that the case has been registered by NHRC in case number 1711/25/03/2023 based upon certain information which it had culled out from the "Frontline". Further it states that information in Frontline is in respect of political leaders in West Bengal. Thus, the preamble portion of the order dated 12.06.2023 passed by NHRC does not specifically refer to the ensuing Panchayat elections. The second and third paragraph are certain general observations with regard to social and economic freedom etc. The third paragraph states about declaration published for conduct of Panchayat elections to be held on 08.07.2023. The other paragraphs refer to the orders passed by this court in an earlier writ petition. In page 3 of the order once again there is a reference to media report by Frontline stating that in the report it has been mentioned that incidents of violence have recently taken place wherein people connected with the political parties have been targeted.

15. Further by referring to the same media report, the incident which occurred in Purba Medinipur district was referred to and another incident in which an activist was reportedly forcefully taken to an undisclosed location where he was severely beaten up by the rival party workers on 29.04.2023 and a political leader from Asansol was shot dead on a national highway. Thereafter there is a reference to Article 21 of the Constitution of India and the decision of the Hon'ble Supreme Court in *National Human Rights Commission Versus State of Arunachal Pradesh* (1996) 1 SCC 742. After mentioning the above, NHRC states that it finds it extremely necessary that the sensitive areas within the State of West Bengal could be identified in advance and necessary steps/precautions to be taken by the authority under the law to save innocent people from violent attacks likely to be perpetrated by the miscreants as a pre-emptive measure. It is further stated that this is necessary to ensure that human rights of the innocent people in the

state are not violated by any untoward incident through unruly elements. That the Commission intends to ensure that precious human life or not lost and the elections are being conducted in peaceful atmosphere. With these observations the following directions have been given:-

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 week

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

16. The legal issue involved in this case is whether the above direction issued by the NHRC is within its jurisdiction and powers conferred under the 1993 Act. Section 2 (d) defines "human right" to mean the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied

in the International Convention and enforceable by the courts in India. Section 12 of the 1993 Act deals with the functions of the Commission which is as follows:-

FUNCTIONS AND POWERS OF THE COMMISSION

12. Functions of the Commission.-The Commission shall perform all any of the following functions, namely:-

(a) inquire, suo-motu or on a petition presented to it by a victim or any person on his behalf '[or on a direction or order of any court], into complaint of-

(i) violation of human rights or abetment thereof; or

(ii) negligence in the prevention of such violation, by a public servant;

(b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;

(c) visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations thereon to the Government;]

(d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;

(e) review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;

(f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;

(g) undertake and promote research in the field of human rights;

(h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;

(i) encourage the efforts of non-governmental organisation and institutions working in the field of human rights;

(j) such other functions as it may consider necessary for the promotion of human rights.

17. Thus the NHRC, has to bring its action within any one of the contingencies or/ functions which are adumbrated in clauses (a) to (j) of Section 12. It is the submission of the learned senior advocate for the NHRC that the exercise of power which resulted in passing the order dated 12.6.2023 is traceable to clauses (a), (d) and (j) of Section 12. Section 12(a) states that the commission shall inquire, suo moto or on a petition presented to it by a victim or any person

on his behalf or on a direction or order of any Court into the complaint of (i) violation of human rights or abetment thereof; or (ii) negligence in prevention of such violation by a public servant. It is undoubtedly true that the NHRC has got suo moto powers to inquire and such inquiry will be as to whether there is a violation of human rights or abatement thereof or negligence in prevention of such violation by a public servant. Therefore, it pre-supposes that the suo moto inquiry can be commenced, if the NHRC is satisfied that there has been violation of human rights or there has been negligence in prevention of such human rights by a public servant. As noted above, the order dated 12.06.2023 though uses the word "complaint", it also uses the word "suo moto" and the basis of suo moto action is the media report.

18. The question would be as to whether the NHRC without any verification process can commence the inquiry by exercising its powers under Section 12(a) of the 1993 Act solely based upon the media report. In our prima facie view the same would not be possible without an exercise being conducted by the NHRC. On a reading of the order dated 12.06.2023, it is evidently clear that there is no reference to any independent exercise conducted by NHRC upon going through the media report. Therefore, the powers exercised by NHRC cannot be traced to Section 12(a). Powers under clause (d) of Section 12 is to review the safeguards provided by or under the constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation. In order to review the safeguard provided by the Constitution or any other law for the purpose of protection of human rights and making recommendation for its effective implementation substantive material is a prerequisite. The review of an action or an order cannot be done in the vacuum as the word "review" pre supposes that an order or the safeguard has been provided and the Commission would be empowered to review the same to examine as to whether it is sufficient safeguard as provided under the Constitution or under any other law for the protection of human rights and recommending measures for its effective implementation. To our mind, the order dated 12.06.2023 is not traceable to the powers conferred under Section 12 (d) of the 1993 Act. Section 12(j) is a residuary power given to the NHRC to perform such other functions as it may consider necessary for the promotion of human rights. Unfortunately the order dated 12.06.2023 passed by the NHRC does not trace its power to Section 12(j) nor there is any other observation as to how it seeks to promote the human right. Therefore, we are of the view that the order impugned in the writ petition is not traceable to any of the functions which the NHRC is empowered to do under section 12 of the Act.

19. The Hon'ble Supreme Court in the case of Ram Deo Chauhan vs. Bani Kanta and ors. reported at (2010) 14 SCC 209 after noticing the definition of Human rights in the 1993 Act held that if a person has been guaranteed certain rights either under the Constitution or under an International Covenant or under a law, he is denied access to such a right, then it amounts to a clear violation of human rights. Therefore, the precondition for the NHRC to exercise its jurisdiction to

protect the human rights is that a person has been denied access to a right guaranteed either under the Constitution or under an international covenant which is enforceable by courts in India.

20. The order dated 12.06.2023 issued by the NHRC does not speak of any specific complaint of violation of human rights. The said order is also silent as to which right has been denied and to whom for which the NHRC had to intervene and pass the order dated 12.06.2023. Though the Commission can make an enquiry even suo motu but such inquiry has to be into a specific complaint of violation of human rights or abetment thereof or negligence in the prevention of such violation by a public servant.

21. Mr. Lekhi learned senior counsel would submit that clause (j) of Section 12 has been widely worded and therefore the appointment of Special Human Rights Observer shall fall within the said residuary clause. The Hon'ble Supreme Court in the case of Ram Deo Chauhan (supra) observed that categories of human rights being of infinite variety are never really closed and for such purpose the residuary clause in Section 12 has been so widely worded to take care of situations not covered by clauses (a) to (i) of Section 12 of the 1993 Act. The said decision, however, with greatest of respect to Mr. Lekhi, do not lay down a proposition that NHRC can appoint Special Human Rights Observer to identify sensitive constituencies on an apprehension that violence is likely to occur in an election process. It goes without saying that the NHRC has the jurisdiction to intervene for the purpose of protecting the human rights if there is a clear violation of human rights. Therefore, in the absence of any material disclosing violation of human rights the order of the NHRC dated 12.06.2023 cannot be fitted even within the widely worded residuary clause (j) of Section 12.

22. The next aspect is whether the directions issued by the Commission in page 4 of its order (extracted above) was within its jurisdiction/power. The NHRC states it has taken suo moto cognizance of the media report and as decided to depute the second appellant as a Special Human Rights Observer. This is to conduct a survey in the State of West Bengal in consultation with SEC to identify sensitive constituencies where violence is likely to occur during the panchayat election. The first hurdle which the NHRC has to cross is the embargo placed under Section 36 of the 1993. Section 36 deals with matters not subject to jurisdiction of the Commission. Sub Section (1) states that Commission shall not inquire into any matter which is pending before the State Commission or any other Commission duly constituted under the law for the time being in force. Sub Section 2 states that the Commission or the State Commission shall not inquire into any matter after expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed. It cannot be disputed that the SEC is constituted under the Constitution of India, it is a constitutional body and in the scheme of the Election Law such constitutional body has been entrusted with the constitutional function of conducting Panchayat elections in the state of West Bengal and any interference by NHRC into any of

the powers of the SEC being conferred by the constitution is wholly out of the realm of NHRC.

23. The endeavour of the learned senior advocate appearing for the appellant is to submit that NHRC seeks to aid and assist the SEC. Though such is the submission, the order passed by the Commission says otherwise. Further on a reading of the order dated 12.06.2023, it is clear that the decision has already been taken by NHRC to appoint a Special Human Rights Observer and also a decision has been taken to appoint Micro Human Rights Observer upon receiving the report of the second appellant. Further it is evidently clear that the entire matter has been pre decided and prejudged by NHRC giving no scope for any other interpretation and the plea that the order intends to assist SEC has to be necessarily rejected.

24. Next, it has to be seen as to whether the order that 12.06.2023 makes an in road into the powers of SEC or is it an attempt to indirectly take over of the state election process or to become part of the election process and would it tantamount to interference of the powers of SEC.

25. The Hon'ble Supreme Court in the case of Lakshmi Charan Sen held that it is the duty of the courts to protect and preserve the integrity of all constitutional institutions which are devised to foster democracy and when the method of their functioning is questioned, which it is open to the citizen to do, the court must examine the allegation with more than ordinary care. Further it was held that the presumption is always the existence of bonafides in the discharge of constitutional and statutory functions and unless that presumption is displaced, it is not just or proper to act on pre-conceived notions and to prevent public authorities from discharging functions which are clothed upon them.

26. The power of the Election Commission of India was explained in the following terms in the decision reported in Election Commission of India Versus State of Tamil Nadu and Others 1995 Supp (3) SCC 379 The question assumes significance from the constitutional position of the plenitude of the powers of the Election Commission; whether they include the power to assess, prescribe and impose security standards in accordance with its own exclusive perception of the law and order situation. What should happen if the Central Government is unable to accept the Commission's perception of the law and order situation? Or the Commission's assessment of the requisites of security arrangements? Who shall resolve the dispute if the Central Government expresses its own constraints as to the availability or affordability of the Commission's demands? The stand of the Commission seems to suggest that under the constitutional dispensation, it alone is the exclusive constitutional authority in this behalf. These then, indeed, are some of the questions which arise in the substantive independent Writ Petition No. 616 of 1993 brought up by the Election Commission of India before this Court.

5. The Election Commission of India is a high constitutional authority charged

with the function and the duty of ensuring free and fair elections and of the purity of the electoral process. It has all the incidental and ancillary powers to effectuate the constitutional objective and purpose. The plenitude of the Commission's powers corresponds to the high constitutional functions it has to discharge. In an exercise of the magnitude involved in ensuring free and fair elections in the vastness of our country, there are bound to be differences of perception as to the law and order situation in any particular constituency at any given time and as to the remedial requirements. Then again, there may be intrinsic limitations on the resources of the Central Government to meet in full the demands of the Election Commission. There may again be honest differences of opinion in the assessment of the magnitude of the security machinery. There must, in the very nature of the complexities and d imponderables inherent in such situations, be a harmonious functioning of the Election Commission and the Governments, both State and Central. If there are mutually irreconcilable viewpoints, there must be a mechanism to resolve them. The assessment of the Election Commission as to the state of law and order and the nature and adequacy of the machinery to deal with situations so as to ensure free and fair elections must, prima facie, prevail. But, there may be limitations of resources. Situation of this kind should be resolved by mutual discussion and should not be blown up into public confrontations. This is not good for a healthy democracy. The Election Commission of India and the Union Government should find a mutually acceptable coordinating machinery for resolution of these differences.

27. In Gujarat Assembly Elections matter it was held as follows:-

In this view of the matter, the general power of superintendence, direction, control and conduct of election although vested in the Election Commission under Article 324(1), yet it is subject to any law elther made by Parliament or State Legislature, as the case may be, which is also subject to the provisions of the Constitution. The word "election" has been interpreted to include all the steps necessary for holding election. In *Mohinder Singh Gill v. Chief Election Commr.*³⁰, *A.C. Jose v. Sivan Pilla* and *Kanhiya Lal Omar v. R.K. Trivedi*, it has been consistently held that Article 324 operates in the area left unoccupied by legislation and the words "superintendence", "control", "direction" as well as "conduct of all elections" are the broadest of the terms. Therefore, it is no more in doubt that the power of superintendence, direction and control are subject to law made by either Parliament or by the State Legislature, as the case may be provided b the same does not encroach upon the plenary powers of the Election Commission under Article 324.

28. In terms of the above decisions, the word "election" has been interpreted to include all the steps necessary for holding election and powers of superintendence, directions and control are subject to law made by either Parliament or by the State legislature as the case maybe provided the same does not encroach upon the plenary powers of the Election Commission under Article 324 of the Constitution. Article 243K of the Constitution deals with the election of

the panchayat in terms of Sub Article (1), superintendence, direction and control of the preparation of electoral rolls for and the conduct of all elections to panchayat shall be vested in the State Election Commission consisting of the State Election Commissioner to be appointed by the Governor. Thus, after the State Election Commissioner is appointed by the Governor, the entire election process falls within the domain of the State Election Commission and any interference has been frowned upon in several decisions. However certain rare exceptions are undoubtedly there. Thus, we are of the view that appointing an observer by NHRC would clearly make an in road into the election process and would tantamount to interfere with the powers of the SEC which is not permissible. However in case of any specific complaint the NHRC is well within its power under the 1993 Act to exercise any of the functions exercisable in terms of Section 12 of the Act read with Section 9 of the National Human Rights Commission (procedure) Regulations, 1994.

29. The learned senior advocate appearing for the SEC would submit (to which we agree) that the action initiated based on a news report ought not to have been done as it has to be treated as being pseudonymous and would be hit by Regulation 9(ii) apart from the allegations being vague. The complaint is not entertainable on account of the statutory prohibition under Section 36(1) of the 1993 Act. The NHRC cannot inquire into certain incidents which occurred in the year 2008 and in the year 2021 in view of Section 36(2) of the 1993 Act. If the complaint is not against a public servant in terms of Regulation 9 (vi) a complaint is not an ordinarily entertainable. In the absence of any specific violation of human rights being not made out the complaint is not ordinary entertainable in terms of Regulation 9(x) and if the matter is covered by the judicial verdict or the decision of the Commission in terms of Regulation 9(xii) a complaint is not ordinarily entertainable.

30. Though the writ petitions filed earlier were disposed of by orders dated 13.06.2023 and 15.06.2023 and affirmed by the Hon'ble Supreme Court the issues are yet to attain finality as contempt applications have been filed wherein further directions have been issued and those have been held to be supplemental and incidental to the orders passed in the writ petitions dated 13.06.2023 and 15.6.2023 and the matter is still subjudice. In such circumstances, such directions making appointment of observer by the NHRC will be clearly barred.

31. The issue as to whether an independent observer is required to be appointed was considered in the order dated 13.06.2023 in WPA 250 of 2023 etc. In the said writ petition prayer was made to appoint an independent observer for the ensuing Panchayat election. Such a prayer was negatived with the following reasons:-

The next issue is with regard to the appointment of Observers. The State Election Commission has submitted that it appoints observers from senior officers of WBCS (Executives) and IAS cadres and the appointment is made following the stipulation in Section 134 (1) of the West Bengal Panchayat Election Act 2003

hereinafter referred to as the 2003 Act. This response is to the prayer sought for by the writ petitioner in WPA (P) No. 287 of 2023 to appoint a retired judge of this Court as an observer to ensure conduct of free, fair, transparent and peaceful election to the three tier gram panchayats in the state of West Bengal. Section 134 falls in Chapter XVI of the 2003 Act. Sub section (1) of section 134 states that the Commission may nominate an observer who shall be an officer of the State Government to watch the conduct of election or elections in the constituency or group of constituencies and to perform such other functions as may be entrusted to him by the Commission. Sub section (2) states that the observer nominated under Sub section (1) of section 134 shall have the power to direct the Panchayat Returning Officer for the constituency or for any other constituencies for which he has been nominated, to stop the counting of votes at any time before the declaration of the result or not to declare the same if in the opinion of the observer booth capturing has taken place or at a large number of polling stations or at places fixed for counting of votes of many ballot papers used at a polling stations are unlawfully taken out of the custody of the Panchayat Returning Officer or are accidentally or intentionally destroyed or lost or damaged or tampered with to such an extent that the result of the polling at the polling station cannot be ascertained. Sub section (3) of Section 134 states that where an observer has directed the Panchayat Returning Officer to stop counting of votes or not to declare the result, the observer shall forthwith report the matter to the Commission and thereupon the Commission shall after taking all material circumstances into account issue appropriate direction. Thus the statutory provision clearly provides for nominating an observer by the Commission who shall be an officer of the state government to watch the conduct of the Elections. The State Election Commission in its report has stated that the Commission appoints observers from the cadre of the senior officers of the West Bengal Civil Services and IAS cadres. In our opinion the exercise to be done by the State Commission being in accordance with the statutory provision, the court will not be justified in interdicting the same as the senior officers of the West Bengal Civil Services as well as the officers in the IAS cadres are bound to act with due diligence bearing in mind the purpose for which they have been nominated as observers. As held by the Hon'ble Supreme Court, the jurisdiction of the High Court under Article 226 of the Constitution to entertain a writ petition challenging the election is not completely barred. The Bar under Article 243-O (b) of the Constitution, is not absolute and in such cases where there is gross violation of the fundamental principles to an election process under the scheme of the Constitution, the High Court would be competent to exercise the jurisdiction under Article 226 of the Constitution and pass direction to ensure free and fair election (K. Venkatachalam Versus A. Swamickan and Anr. (1999) 4 SCC 526). Thus, it is not for this court to issue a directions contrary to the statute and in particular Section 134 of 2003 Act, if done, would be a step amounting to "calling in question an election" which has been specifically barred by the decision of the Constitution Bench of the Hon'ble Supreme Court (N.P. Ponnuswami versus The Returning Officer (1952) 1 SCR 218) It has been further

held that mandate of the election Commission is to have free and fair election maintain its purity Subjective satisfaction arrived at by the Election Commission on the basis of expert opinion, cannot in a routine manner be interfered by the courts. Therefore we are of the view that the appointment of observers from the senior officers of the West Bengal Civil Services (Executives) and IAS cadres is in consonance with section 134 of the 2003 Act and the same would be sufficient safeguard to achieve the object for having free and fair elections maintaining its purity. Therefore we see no reason to accede to the prayer sought for by the writ petitioner to appoint a retired judge of this court as observer for the ensuring election.

32. The above order has become final. The reasons assigned in the said order will apply with the full force to the case on hand since the election to the panchayat has to be conducted in terms of provisions of West Bengal Panchayat Elections Act, 2003 and Section 134 of the said Act gives power to the Commission to appoint/nominate observer. In the said writ petitions, sought for independent observer which was considered and after taking note of Section 134 of the said Act it was held that a direction in derogation of such statutory provision cannot be granted. The same reasoning will equally apply to the case on hand where the NHRC seeks to appoint the observer which will not be in accordance with Section 134 of the said Act.

33. The Hon'ble Supreme Court in the case of Mahinder Singh Gill and anr. Vs. The Chief Election Commissioner, New Delhi reported at (1978) 1 SCC 405 highlighted the fact that free and fair election is the substratum of democracy. The Hon'ble Supreme Court held thus-

"12. A free and fair election based on universal adult franchise is the basic, the regulatory procedures vis-a-vis the repositories of functions and the distribution of legislative, executive and judicative roles in the total scheme, directed towards the holding of free elections, are the specifics..... The super authority is the Election Commission, the kingpin is the Returning Officer, the minions are the presiding officers in the polling stations and the electoral engineering is in conformity with the elaborate legislative provisions."

34. It follows therefrom that SEC is duty bound to ensure a free and fair election.

35. The Hon'ble Supreme Court in the case of Election Commission of India vs. State of Tamil Nadu and ors. reported at 1995 (Sup) 3 SCC 379 held that the Election Commission of India is a high constitutional authority charged with the function and the duty of ensuring free and fair elections and the purity of the electoral process. It has all the incidental and ancillary powers to effectuate the constitutional objective and purpose. It was also held therein that the assessment of the Election Commission as to the state of law and order and the nature of adequacy of the machinery to deal with situations so as to ensure free and fair elections must, prima facie prevail. Therefore, by applying the aforesaid proposition of law to the case on hand this court holds that after issuance of

election notification it is the duty of the SEC to make an assessment as to the state of law and order and the nature of adequacy of the machinery to ensure free and fair elections. It goes without saying that the assessment of the law and order situation includes identification of the sensitive constituencies which falls within the exclusive domain of the SEC.

37. Section 12(a) of 1993 Act empowers the NHRC to inquire into complaint of violation of human rights or abatement thereof or negligence in the prevention of such violation by a public servant. Section 13 provides for inquiring into complaints under the 1993 Act. NHRC also has the power to conduct investigation pertaining to the inquiry as provided under Section 14. Section 17 lays down the procedure which NHRC is to follow while inquiring into the complaints. Section 18 speaks of the steps during and after the inquiry. Clause (a) thereof lays down the list of recommendations which the NHRC can make in a case where the inquiry discloses Commission of violation of human rights or negligence in the prevention of violation of human rights or abatement thereof by a public servant. Subsection 2 of Section 36 provides the period of limitation for the NHRC or the State Commissions for making an inquiry into any matter. Upon a harmonious construction of the provisions of the 1993 Act and also relying upon the proposition of law laid down in Ram Deo Chauhan (*supra*) in paragraph 49 of the reports, this Court holds that NHRC has the jurisdiction to intervene for protecting human rights only if there has been violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant.

38. The order dated 12.06.2023 does not speak of any specific violation of human rights or negligence in preservation of human rights or its abetment by a public servant. That apart the SEC being a constitutional authority vested with the power to conduct panchayat elections is duty bound to ensure free and fair election and for such purpose it has to identify sensitive constituencies which is a part and parcel of assessment of the law and order situation.

39. The NHRC ought not to have issued the order dated 12.06.2023 in the garb of protecting the human rights as the said direction seeks to encroach upon the exclusive jurisdiction of the SEC to conduct free and fair Panchayat elections.

40. The prayer for appointment of a retired High Court Judge to act as an Observer to conduct the Panchayat elections was turned down by this Court by the judgment and order dated 13.06.2023 which had already attained finality. Regulation 9 empowers the NHRC to dismiss complaints in limini in respect of a matter which is covered by a judicial verdict or which is subjudice before a court. The order dated 12.06.2023 appointing an observer, by whatever name called, though passed prior to the order passed by this Court on 13.06.2023, the attempt of the appellant to set aside the impugned order passing by the learned Single Judge necessarily implies that the NHRC is trying to function as a parallel seat of justice in an indirect way to rectify or correct the order passed by this Court on the issue of appointment of Observer which has already been upheld by

the Hon'ble Supreme Court. In paragraph 55 of Ram Deo Chauhan (supra), the Hon'ble Supreme Court was pleased to hold that the NHRC cannot function as a parallel seat of justice.

41. The Hon'ble Division Bench passed several orders from time to time starting from 13.06.2023 on various issues relating to Panchayat elections 2023. From the directions passed by this Court from time to time it will be evident that the primary object behind all such orders was to ensure free, fair, violence free elections as well as to maintain the purity of elections. It goes without saying that protection of human rights was one of the considerations which weighed in the minds of the Court while passing the said orders. Therefore, this Court is of the considered view that the matters relating to protection of human rights are squarely covered by the orders passed by this Court from time to time and the Hon'ble Division Bench is in seisin of contempt petitions arising out of some of such orders.

42. NHRC being a statutory authority constituted under the 1993 Act has to act within the forecorners of the said statute and the regulations framed thereunder subject to the limitations imposed upon it by the statute and the regulations thereunder. It is the duty of the SEC, being a constitutional authority to appoint observers in accordance with the provisions of the 2003 Act. Therefore, the NHRC cannot encroach upon the jurisdiction of the SEC by appointing observers.

43. The jurisdiction of NHRC is also barred after the issuance of election notification by SEC to pass an order appointing an observer. The said order amounts to usurping the jurisdiction SEC. It also amounts to interference in the conduct of elections by of SEC. The subject matter of the said order falls within the matters covered by judicial verdict.

44. Thus of all the above reasons, we are of the view that the learned single bench rightly set aside the order passed by NHRC and we find no good grounds to interfere with the ultimate conclusion of the learned single bench. The learned senior advocate submitted that the action initiated by in NHRC was held to be based on conjectures and surmises which is incorrect. In the earlier part of this judgement, we have elaborately referred to the basis on which the order dated 12.06.2023 was passed by NHRC and we have held that based on such media report the order could not have been passed and the powers exercised by Commission to pass such order cannot be traced to any one of the clauses in Section 12 of the 1993 Act which enumerates the functions of the NHRC. We have also held that NHRC had pre-decided the matter solely based upon media report.

45. Thus for all the above reasons, we are not inclined to interfere with the order passed by the learned single bench and accordingly the appeal fails and is dismissed.