

(2024) 03 CAL CK 0006
In the Calcutta High Court
Case No : MAT. No. 411 Of 2023

West Bengal Pharmacy Council And Another APPELLANT
Vs
Rusha Podder And Others RESPONDENT

Date of Decision : 05-03-2024

Acts Referred:

Constitution Of India, 1950 — Article 226, 227, 243O, 243O(b), 329
Conduct Of Election Rules, 1961 — Rule 2(5)(c), 2(5)(d), 2(5)(e), 5, 5(1), 6, 7, 8, 23, 24
Customs Act, 1962 — Section 27

Citation : (2024) 03 CAL CK 0006

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Joydeep Kar, Avik Ghatak, Parashar Baidya, Soham Banerjee, Aniruddha Chatterjee, Rahul Karmakar, Gargi Goswami

Judgement

Sabyasachi Bhattacharyya, J

1. The appeal appears before this Court on reference for resolution of a difference of opinion between the two Hon'ble Judges of the Division Bench which decided the appeal. By the Order dated February 7, 2024, two points of reference were formulated as follows:

- i. Whether the challenge to an improper rejection of nomination in connection with an election process can be the subject-matter of challenge in a writ petition;
- ii. Whether the writ court can embark upon an enquiry into the reasons for rejection of nomination papers as in the present case, as the objection does not fall within the parameters of Rule 5(1).

2. The appeal arises from an Order passed by the learned Single Judge in WPA No. 509 of 2023 whereby the learned Single Judge upheld the challenge to the refusal to entertain the writ petitioners' objection to the cancellation of their nominations by the appellant no. 2, the Registrar of the West Bengal Pharmacy

Council (for short, "the Council"). While allowing the writ petition, the learned Single judge was pleased to direct the Registrar of the Council, that is, appellant no. 2 herein to reconsider the nominations filed by the four writ petitioners (who are respondents in the appeal) in accordance with the Pharmacy Act, 1948 and the Rules framed under the said Act for the election of members including the President and the Vice-President of the Council and of the members of the Executive Committee of the said Council, including Rule 5(1), within a period of three weeks from the delivery of the judgment. Consequential orders were also passed.

3. The Presiding Judge of the Division Bench, that is, the Hon"ble the Chief Justice dismissed the appeal by scrapping the entire election process thus far conducted and restoring the same to the stage where the scrutiny of nominations was conducted. While affirming the order of the learned Single Judge, the Hon"ble the Chief Justice also directed the Observer to be nominated by the Government to ensure that the entire election process is conducted in a free and fair manner without any irregularity or complaints. It was directed further that not only the correctness of the rejection of the nominations of the writ petitioners should be considered but also that such of those 21 nominations which were rejected, whoever files objection, is required to be considered by the Committee in terms of Rule 5(1) of the Election Rules. Further consequential directions were also passed.

4. The learned junior member of the Division Bench, however, allowed the appeal, directing the Returning Officer (RO) to conclude the election process and publish the result as expeditiously as possible but positively within four weeks from the receipt of the server copy of the order. While doing so, the learned Judge observed in paragraph 53 of the judgment that in his considered view, the writ court should not have embarked upon an enquiry into the reasons for rejection of nomination papers as the objections do not fall within the parameters of Rule 5(1) in view of the observations made by him.

5. Secondly, it was held that the improper rejection of nomination cannot be assailed by filing an application under Article 226 of the Constitution of India and the learned Single Judge was not justified in allowing the objection against rejection of nomination while the election was in progress.

6. Learned senior counsel appearing for the appellants, that is, the Council and its Registrar argues that Rule 5(1) of the Election Rules provides that if there is any objection by any candidate to the decision of the RO while scrutinizing the nominations, it must be made forthwith, and the objection shall be heard by the RO and two members of the Council, not being candidates for the election, appointed by the President and their decision thereon shall be final.

Thus, thrust is laid on the expression "forthwith". Since no specific time has been stipulated to qualify the expression "forthwith", learned senior counsel argues that the parameters of Rules 6 and 7 are to be looked into in that regard.

7. Rule 6 provides that duly nominated persons may, at any time before the scrutiny or within three days thereafter, withdraw their candidature.

8. Rule 7 provides that on the expiry of three days after the completion of the scrutiny, if the number of duly nominated candidates is greater than the number of seats, the RO shall proceed to obtain the votes of the constituency in the manner laid down in Rule 8.

9. Rule 8 provides for the names of the duly nominated candidates to be published in the Kolkata Gazette and in such other manner as the RO thinks fit.

10. Thus, according to the scheme of the Rules, the procedure for the elections has been laid down chronologically. The first step is scrutiny of the nominations under Rule 5(1), the second, objection and thereafter withdrawal within three days and thereafter publication of the names. Hence, it would be an absurd proposition, it is argued by the appellants, that an objection to rejection of nomination can be taken after three days from completion of scrutiny, since the same would militate against the intention of the Rules. It is argued that the steps of withdrawal of nomination and subsequent publication of the names have been contemplated chronologically in the Rules, which cannot be violated by taking an objection inordinately late even after the publication of names of the nominated candidates.

11. In the present case, the scrutiny took place on December 19, 2022. On the same date, the petitioners sought the reasons of the rejections of their nominations. On the very next day that is on December 20, 2022, a notice was published on the website disclosing the fate of all the nominations and the reasons for cancellation. However, the appellants chose to wait till January 1, 2023 to send their objections by e-mail.

12. In the meantime, on December 23, 2022, a notification was published, thereby disclosing the names of the nominated candidates. The ballot papers were accordingly published and sent for printing.

13. Thus, the petitioners waited till publication of the nominated candidates' names and put in their objections after the prolonged period of ten days subsequent to the scrutiny. It is argued that, under no stretch of imagination, the said delay could come within the purview of "forthwith" as contemplated in Rule 5(1).

14. Learned senior counsel places reliance on the meaning of the expression "forthwith" as found in the ninth edition of Black's Law Dictionary, which defines the term to be "immediately, without delay, directly, promptly, within a reasonable time under the circumstances".

15. Since the learned junior member of the Division Bench opined that the objections of the petitioners did not come within the purview of Rule 5(1) on the ground of delay, learned senior counsel for the appellants submits that the said view was justified in the light of Rule 5 itself.

16. Insofar as the interpretation of the writ court is concerned, it is argued that the learned Single Judge proceeded on the premise that the process of objection was initiated by seeking for reasons on December 19, 2022 which according to learned senior counsel was erroneous, since the mere act of asking for reasons cannot be taken as an objection. It is submitted that the petitioners may very well seek to know the reasons of the rejection of their nominations but yet choose not to prefer any objection. Thus, the request for reasons was not an objection. In any event, it is argued that the reasons were disclosed as long back as on December 20, 2022, that is, the day immediately after the scrutiny. However, the petitioners chose to wait about eleven days till January 1, 2023 without disclosing any rhyme or reason for the inordinate delay.

17. As regards the argument of the respondents in the appeal (writ petitioners) that they had attempted to file their objections but the Registrar refused to take the same, it is contended that such averment was made for the first time in a supplementary affidavit and goes against the grain of the averments of the writ petition itself. Nowhere in the writ petition was such allegation levelled. Rather, the writ petitioners had stated that they had immediately raised objection. Even the objections sent by e-mail on January 1, 2023 did not have any whisper of prior attempts by the writ petitioners to place such objections or refusal by the Registrar to accept the same. Hence, the said averment is an afterthought and cannot justify the writ petitioners' stand that they had raised objection in time.

18. Learned senior counsel cites *Ramnath and Company. v. Commissioner of Income Tax*, reported at (2021) 12 SCC 217 and *Commissioner of Wealth Tax, Andhra Pradesh v. Officer-in-charge (Court of Wards), Paigah*, reported at (1976) 3 SCC 864 on the proposition that when a word is not defined in statute or Rule, the external aid of the dictionary meaning can be resorted to.

19. Learned senior counsel next cites *Shaji K. Joseph v. Viswanath &Ors.*, reported at (2016) 4 SCC 429 in support of the argument that a writ petition challenging the process of election is not maintainable. To bolster such argument, learned senior counsel also cites *Karma Veer Tulshiram Autade and ors. v. State Election Commission, Mumbai and ors.*, reported at AIR 2021 Bom 90 as well as *Election commission of India through Secretary v. Ashok Kumar and others*, reported at (2000) 8 SCC 216 apart from *Avtar Singh Hit v. Delhi Sikh Gurdwara Management Committee and ors.*, reported at (2006) 8 SCC 487 and *Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakary Dugdha Utpadak Sanstha v. State of Maharashtra*, reported at (2001) 8 SCC 509.

20. Learned senior counsel next cites *Union of India &Anr. V. Kirloskar Pneumatic Co. Ltd.*, reported at (1996) 5 SCC 453 and *Union of India &Anr. V. Concord Fortune Minerals India Private Limited*, reported at (2018) 12 SCC 279 for the proposition that no writ of Mandamus can be issued contrary to law.

21. Learned senior counsel argues that both the learned Single Judge and the Hon'ble the Chief Justice has relied on *Maharashtra Chess Association v. Union of*

India, reported at (2020) 13 SCC 285, which reliance is misplaced, since the said matter did not pertain to an election dispute.

22. Learned senior counsel for the appellants thus contends that the view taken by the Learned Junior Judge of the Division Bench was justified inasmuch as no challenge under Article 226 of the Constitution is maintainable in respect of an election dispute, for which only an election petition can be filed after the election is over.

23. It is argued that the same has been the consistent view of the Supreme Court in the cited judgments. Furthermore, it has been the opinion of the Supreme Court that only challenges to facilitate the election process can be entertained under Article 226 of the Constitution of India and not to deter the said process. Particular reliance in this regard is placed on Ashok Kumar's case.

24. Learned counsel for the respondents/writ petitioners, on the other hand, argues that the learned Single Judge and the Hon'ble the Chief Justice were justified in taking the view that objection was duly taken by the writ petitioners under Rule 5(1). It is argued that even as per the dictionary meaning of the term "forthwith", the expression may mean "within a reasonable time under the circumstances".

25. In the present case, the writ petitioners sought the reasons for the rejections, thereby raising the rudiments of an objection, which fructified ultimately in the specific objection taken on January 1, 2023. It is contended that the writ petitioners have specifically averred in the supplementary affidavit filed in connection with the writ petition that they had approached the Registrar to file a written objection in the meantime, who refused to take it saying that he will not accept unless the candidates file a case before a court. Such contentions, counsel submits, were not controverted by any rejoinder.

26. Thus, there was not delay on the part of the writ petitioners/respondents in taking the objections.

27. It is argued that the term "forthwith" has to be construed in proper perspective and not in the light of Rules 6 and 7. In Rules 6 and 7, a stipulation of three days after scrutiny has been provided for withdrawal and declaration of names of candidates whereas such specific time-period is absent in Rule 5(1) regarding the filing of objection. Thus, the time stipulated in Rules 6 and 7 cannot be imported to Rule 5(1) as argued by the appellants. In such context, learned counsel cites *Nathi Devi v. Radha Devi Gupta*, reported at (2005) 2 SCC 271, where it was held by the Supreme Court that in interpreting a statute the court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning irrespective of the consequences.

28. Learned counsel cites *Titaghur Paper Mills Co. Ltd. and another v. State of Orissa and others*, reported at (1983) 2 SCC 433 for the proposition that where a

right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. Thus, since a specific provision of objection to rejection of nominations has been carved out in Rule 5(1) at the inception of the election process, the writ petitioners could not be relegated to await the outcome of the election for preferring a challenge under Rules 23 or 24 of the Election Rules. It is argued that the present challenge is against refusal to entertain the objections of the petitioners under Rule 5(1), which is a specific provision provided in the Rules, and not a challenge to the election as a whole, coming within the purview of "election disputes".

29. Learned counsel cites *Cherukuri Mani v. State of Andhra Pradesh and others*, reported at (2015) 13 SCC 722, where it was observed that where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure. Here, it is argued that the prescribed procedure was Rule 5(1) and the petitioners cannot be relegated unduly to Rules 23 and 24 of the Election Rules.

30. Learned counsel relies on *Dr. Utpal Sharma v. Akshay Pant and others*, reported at (2019) 1 CHN 328, where a Division Bench of this Court held that while deciding Intra-Court Mandamus appeals, nitty-gritties of findings and niceties of law – let alone fact – are generally not looked into. Interference is usually warranted only in such cases where the order of the learned Single Judge suffered from gross infirmities or was palpably perverse or patently without jurisdiction. In the present case, interference was not warranted with the order of the learned Single Judge.

31. Lastly, citing *Sri Tapas Paul v. Biplab Kumar Chowdhury &Ors.*, reported at (2015) 2 Cal LJ 141, it is argued that in a reference, the Learned Third Judge can form his/her own opinion, different from the views taken by either of the differing Judges.

32. In the context of the above arguments, the first point of reference is taken up first.

33. Let us consider, in such context, the judgments cited by the appellants. In *Shaji K. Joseph's* case, the Supreme Court was considering the challenge to the election of a member of the Dental Council of India. The Supreme Court observed that in view of the provisions of the Dentists Act, 1948 and the Dental Council (Election) Regulations, 1952, the High Court should not have interfered with the process of election as it was open to respondent no. 1 therein to raise the election dispute before the Central Government after completion of the election. The premise of the said judgment was that normally courts should not interfere with the process of election for the simple reason that if the process of election is interfered with by the courts, possibly no election would be completed without the court's order.

34. The said judgment, however, is distinguishable in the facts of the present

case, since no provision akin to Rule 5(1) of the Election Rules regarding the Pharmacy Council was considered by the Supreme Court in the said judgment.

35. Rule 5(1) carves out a specific forum of challenge at the stage of rejection of the nomination during scrutiny itself, without waiting for the outcome of the election. The Election Rules in the present case contemplate two separate stages of challenge – first, at the stage of scrutiny under Rule 5(1) and secondly under Rules 23 and 24 before the State Government, being other challenges pertaining to the election itself. In the absence of such specific provision in the Dentists Act or the connected Regulations akin to Rule 5 (1) of the present Election Rules, there was no occasion for the Supreme Court to consider a case such as the present one, leading to the observation that in view of statutory remedy being available by way of referring the dispute to the Central Government as per Section 5 of the Act read with Regulation 20, no challenge could be preferred earlier.

36. Insofar as the Special Bench Judgment of the Bombay High Court in *Karma Veer Tulshiram Autade*'s is concerned, the Three-Judge Bench of the Bombay High Court was considering a challenge to the Panchayat Elections. In such context, the court observed that allowing a challenge in a writ petition to rejection of nomination form would definitely not be a step to subserve the progress of the election and/or facilitate its completion. It is to be noted that the court rendered its observation in the light of Article 243-O of the Constitution of India, Clause (b) of which clearly stipulates a bar inasmuch as no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State. Thus, the bar is ingrained in the Constitution itself, which is on a much higher footing than a subordinate legislation by way of a statute either of the Parliament or the State Legislature.

37. Again, in *Ashok Kumar*'s case it was held that if an election is to be called in question which 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 completion of proceedings in elections. Such proposition, however, was rendered in the context of elections to the Legislative Assembly of Kerala, thus squarely bringing the same within the purview of Article 329 of the Constitution which, again, is a bar embedded in the Constitution itself.

38. In *Shri Sant Sadguru Janardan Swami*'s case, the Supreme Court reiterated the same proposition in a different context. There, the High Court had issued a direction prohibiting the Customs Authorities from rejecting the assessee's application for refund on the ground of limitation. The court held that may be the High Court or a Civil Court is not bound by the provisions of Section 27 of the Customs Act but the authorities under the Act are. It was observed that there cannot be any question of the High Court clothing the authorities with its power under Article 226 or the power of a Civil Court, as no such delegation or conferment can ever be conceived. In the present case, however, the issue is as

to exercise of the jurisdiction of judicial review under Article 226 of the Constitution by the High Court itself. In fact, under Rule 5 (1) the Election Rules, the authority is already clothed with the power to decide objections to rejection of nomination and there arises no question of this Court clothing it with such power. As such, the proposition laid down in *Shri Sant Sadguru Janardan Swami's* case cannot have any relevance or bearing in the instant case.

39. In the backdrop of the above discussion, we are to look into the context of the said judgments. The Three-Judge Bench of the Supreme Court considered the bar incorporated in Article 243-O(b) of the Constitution of India which debars a challenge to any Panchayat Election except by way of an election petition. In the present case, there is no such constitutional bar which comes into play.

40. *Ashok Kumar's* case was rendered in the context of Article 329(b) of the Constitution of India which pertains to elections to the Parliament or to either House of the Legislature of a State which cannot 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.

41. Hence, the common refrain in both the said judgments were "constitutional bars to the exercise of jurisdiction" under Article 226.

42. It is to be kept in mind that the High Courts have been created under the Constitution, which is the Grundnorm of the Indian legal framework. A constitutional bar, thus, operates on a parallel and co-equal footing with Article 226, which is also a creature of the Constitution, vesting powers on the High Courts. Hence, the interplay between such constitutional bar and constitutional power have to be honoured while exercising jurisdiction under Article 226 not only for the intrinsic binding effect of such a constitutional bar but also since the said restrictions emanate from the same source which clothes the High Courts with the power of judicial review under Article 226 and operate in respect of each other. The doctrine of Separation of Powers between the three wings of democracy - Legislature, Judiciary and Executive - under the Constitutional scheme governs such mutual deference.

43. However, the bar imposed by a subordinate statute which operates on the strength derived from the Constitution is thus subservient to the Constitution in a legal sense, and cannot be elevated to the plane of such constitutional bars as envisaged under Articles 329 or 243-O. Under Articles 226 and 227, the High Court not only has the power of superintendence over subordinate courts and tribunals but also exercises prerogative on a co-equal footing with the Supreme Court under Article 32 to protect the fundamental rights of citizens and violation of rights akin thereto, particularly where an element of public law is involved. Hence, Article 226 operates on a higher plane of hierarchy vis-à-vis restrictions imposed by statutes deriving power from the Constitution. Seen in such perspective, the bar stipulated in Rules 23 and 24 of the Election Rules for the Pharmacy Council are not even statutory bars but restrictions imposed by Rules

framed under the concerned statute. The ratio applicable to constitutional restrictions cannot be applied mechanically in a challenge under Article 226 by citing such bar stipulated in the Rules.

44. Also, importantly, the Election Rules for the Pharmacy Council themselves envisage two stages of challenge – first, under Rule 5(1), pertaining to challenges to the outcome of the scrutiny of nominations including rejections of nominations and secondly, relating to disputes pertaining to the election as a whole and interpretation of the Rules under Rules 23 and 24. The inter-play between Rule 5 on the one hand and Rules 23 and 24 on the other can only be synthesized by holding that Rule 5 is carved out as an exception to Rules 23 and 24, providing for a biopsy in time rather than an autopsy after the election is over.

45. The proverb “a stitch in time saves nine” comes into play squarely, since if a cancellation of nomination is permitted to be challenged at a later stage despite Rule 5 being in operation, the same will be a travesty of the election process, as, if successful, a challenge under Rule 5 will facilitate a proper democratic election process whereas the same challenge, if preferred after the election and allowed, would entail a de novo election.

46. In view of the above considerations, it cannot but be held that the ratio laid down in the judgments cited by the appellants have no manner of application to the present case, which carves out a niche for a prior challenge at the stage of scrutiny to cancellation/rejection of nominations.

47. In fact, the present challenge is not an election dispute per se as contemplated in Rules 23 and 24 of the Rules but a specific challenge to the refusal of the RO to entertain the petitioners’ objection under Rule 5(1) of the Rules, which is a statutory right available to the petitioners.

48. Hence, the first point of reference is answered in the positive. In the context of the present lis, a challenge to an improper rejection of nomination in connection with an election process of the Pharmacy Council can definitely be the subject-matter of challenge in a writ petition.

49. Dealing with the second point under reference, a two-stage scheme of objection has been provided in the Election Rules. The first is any objection by a candidate to the decision of the RO at the time of scrutiny of nominations under Rule 5(1). The second stage of challenge is a petition questioning the validity of an election to the Council within two months of the date of declaration of the result of election under Rule 23, which is to be referred to the State Government under Rule 24 within three months of the said date.

50. The expression used in Rule 5(1) is “forthwith”. It is to be noted that the Legislature, in its wisdom, has desisted from stipulating any time-limit to the objection under Rule 5(1), which is in sharp contrast with Rules 6 and 7 which provide three days as the outerlimit of withdrawing candidature and thereafter

declaring nominations.

51. If the intent was to restrict the objection under Rule 5(1) to a particular time-limit, nothing prevented the subordinate legislation by way of the Rules from providing so. Thus, the time for filing objection as to rejection of nominations was kept open-ended deliberately. Hence, the widest amplitude has to be given to the time for filing such objections.

52. Even going by the ninth edition of the Black's Law Dictionary cited by the appellants, "forthwith" also means "within a reasonable time under the circumstances". The key words of the definition are "reasonable" and "circumstances". It is to be noted that the specific purpose of Rule 5(1) is to carve out an early remedy to aggrieved candidates in respect of refusal of nominations, instead of waiting for the conclusion of the elections under Rule 24. Thus, the very purpose of the said provision is to facilitate smooth conduct of the elections, since a challenge preferred to rejection of nominations after the elections, if successful, would entail a de novo conduct of the elections from scratch, which would deter the process of election instead of facilitating it.

53. Seen from such perspective, there cannot be any particular reason to construe the term "forthwith" as co-extensive with the time for withdrawal of nominations or declaration of nominations. The meat of the election process is the actual voting. All processes leading thereto are attuned to facilitate the same. Hence, the outer time limit for taking objection to rejection of nominations has to be the date of the voting, which would come within the purview of "reasonable time" as per the definition of "forthwith" in the Dictionary. Of course, the second component, "circumstances", also comes in and has to be weighed in each case. Mere withdrawal of nomination and publication of names of the candidates and/or even sending of ballot papers ought not to be a reason for the objections in that regard to be brushed aside, since the huge expenses and engagement of resources involved in holding the election afresh, if a challenge to that effect is taken out after the elections, would far exceed the expenses for repeating the process of withdrawal and declaration of names, followed by printing and sending of ballot papers.

54. Another aspect has to be taken into account while ascertaining the scope of "forthwith" in Rule 5(1). As per the said Rule, even if an objection is raised within three days, the same has to be heard by the RO and two other members of the Council, not being candidates for the election, who are to be appointed by the President. Such exercise itself would, in most cases, take the decision on the objections to a time beyond the three-day period. Thus, even if an objection is raised, for example, on the third day following scrutiny, the decision thereon after formation of the body comprised of the RO and two other members of the Council nominated by the President would go well beyond the outer limit of withdrawal of nominations and publication of nominations in most cases. Hence, the logic of confining the objection to three days is in any event defeated. Thus, the said line of reasoning is irrational.

55. The term "reasonable" which qualifies "forthwith" as per the Dictionary meaning has to vary from case to case but must be before the elections actually take place by casting of votes. Once the votes are cast, the first stage becomes irreversible (though not absolutely so, since a similar objection can then be taken under Rule 23, read with Rule 24, after the election). In such case, the first stage of objection under Rule 5(1) is closed, leaving the option before the aggrieved candidate to wait for the second stage after the conduct of the elections, since Rule 23 then sets in.

56. It is to be further considered that the fora for deciding an objection under Rule 5(1) and an objection to the validity of the election under Rule 23, read with Rule 24, are different. Whereas the first is comprised of the RO and two other members of the Council nominated by the President, the second leads to the State Government taking the final decision. Hence, the two stages cannot be equated on such count as well.

57. In the present case, the very act of the writ petitioners/respondents in seeking reasons for the rejection of their nominations acted as putting a spanner in the works. Although a query as to the reasons does not qualify as an "objection" as such, the same raises a question to the rejection, to be answered by the RO. Hence, although not a full-fledged "objection", such a query can definitely be construed to be the initiation of an objection or, in other words, an inchoate refusal to abide by the rejection or at least an expression to question the same. Hence, even without going into the question as to whether the writ petitioners had actually attempted to put in an objection which was refused by the Registrar, the very act of raising a question as to the rejection by asking for the reasons therefor initiated the first link in the chain of events in raising the objection.

58. Such question was raised on December 19, 2022, the very date of scrutiny. On the next date, that is on December 20, 2022, the reasons were uploaded by the Authorities. In the Notification dated December 12, 2022 regarding the elections, no date of declaration of the nominations was mentioned. The appellants argue that in terms of Rule 2(5), there was no necessity for the said Election Notice to contain the date of declaration of nominations. It is argued that Rule 8 separately provides for a different publication regarding such nomination, which is not within the purview of Rule 2 and, as such, there was no requirement of mentioning the date of declaration of the nominations in the initial Election Notice dated December 12, 2022.

59. A careful scrutiny of Rule 2(5) shows that by the said Notification containing the Election Notice, the RO is to fix a schedule of programme for the different stages according to which the election shall be held, specifying, in particular, the dates mentioned thereunder. Although there is no compulsion to mention the date of declaration of nominations in the said Notification, the expression used is "in particular" which indicates that the dates mentioned in Rule 2(5) are not exclusive but merely an indicator of the dates to be mentioned. Thus, although

the dates mentioned in the said Rule had to be mentioned in the Election Notice, there was nothing to prevent the RO from mentioning other relevant dates as well.

60. In fact, Clauses (c), (d) and (e) of Rule 2(5) contemplate dates for stages after the publication of Notification under Rule 8 regarding the declaration of the nominated candidates. In fact, in the Election Notice dated December 12, 2022 in the present case, the RO mentioned the dates of despatch of voting papers, receiving voting papers and scrutiny of voting papers and counting of votes with the prefix "in case polling is required". Nothing prevented the RO from mentioning the date of publication of the Notification as well.

61. The above consideration is not for the purpose of holding that the election notice was vitiated for non-mention of the date of declaration of nomination but merely to appreciate that there was sufficient justification in the petitioners waiting before filing their objection and weighing their options, since the next date after scrutiny as per the Election Notice was January 9, 2023, when the ballot papers were to be sent. The reasons for rejection were uploaded on December 20, 2022 and the specific objection was intimated on January 1, 2023. Although, in the interregnum, the nominated candidates' names were published on December 23, 2022, the date of despatch of ballot papers was pre-stipulated in the Election Notice dated December 12, 2022 to be January 9, 2023. Hence, the objector/writ petitioners could not be faulted for taking the date of despatch of ballot papers as the outer limit before raising their objection.

62. Hence, in the circumstances of the present case, it was reasonable for the objectors to wait till January 1, 2023 to give final shape to their objections, which exercise had already been initiated in an inchoate manner by throwing a spanner in the wheels of the nomination process by asking for the reasons behind the rejections.

63. In view of the above discussions, the expression "forthwith" has to be construed to mean the period between the date of scrutiny and the date when the election is actually held, of course, varying from case to case as to what delay is "reasonable in the circumstances". The writ petitioners/respondents coming well within the said time, it cannot but be held that the objections were well within the purview of Rule 5(1) insofar as the stipulated time-limit is concerned.

64. In view of the above discussions, the second issue which has come up for reference is also answered in the positive. The writ court can definitely embark upon an enquiry into the reasons for rejection of nomination papers, as the objection did fall within the parameters of Rule 5(1).

65. The only ground on which the learned Second Judge of the Division Bench held that the objection did not fall within the parameters of Rule 5(1) was the perceived delay in filing such objections which is, in my humble view, is a somewhat erroneous reading of Rule 5(1) in the context of the present case.

66. Hence, both the issues of reference are answered in the positive as follows:

i) A challenge to an improper rejection of nomination in connection with an election process under Rule 5(1) of the Election Rules in the present case is amenable to challenge in a writ petition under Article 226 of the Constitution of India.

ii) The objection raised by the writ petitioners/respondents regarding the rejection of their nominations falls squarely within the parameters of Rule 5(1) and as such the reasons therefor can be enquired into by the writ court.

67. Since the limited charter of this Court is to answer the two points of reference, extracted from the points of difference between the two Hon"ble Judges of the concerned Division Bench, I would desist from commenting further on the ultimate outcome of the appeal and how far the Division Bench can interfere within the limited confines of an intra-Court appeal. This Court, it is to be remembered, is not sitting in appeal over the judgment of the learned Single Judge but is merely designated to answer the limited points of reference.

68. Hence, returning the findings on the points of reference as above, the matter is sent back to the Hon"ble Division Bench taking up the appeal for taking a final call on the outcome of the appeal in the light of the answers to the reference as given above.

69. Let the file be sent immediately to the concerned Division Bench for final hearing in the light of the above answers to the reference. Liberty is given to the parties to mention the matter before the said Division Bench for enlistment.