

S/L 7  
13.04.2026  
Court. No. 25  
*Swayan*

WPA 8861 of 2026

Jahangir Fakir  
Vs.  
The Union of India & Ors.

*Mr. Debapriya Majumder*  
*...for the petitioner.*

*Mr. Asok Kumar Chakraborty, Ld. A.S.G.I.*  
*Mr. Arijit Majumdar*  
*Ms Shreyashi Sarkar*  
*...for the U.O.I.*

*Mr. Jahar Lal De, Ld. A.G.P.*  
*Mr. Shamim-Ul-Bari*  
*Mr. Sabyasachi Mondal*  
*...for the State.*

*Mr. Soumya Majumder, Sr. Adv.*  
*Ms. Anamika Pandey*  
*...for E.C.I.*

*Mr. Sumit Kumar Roy*  
*Mr. Sannidhya Datta*  
*Ms. Tuhin Shabnam*  
*...for the respondent no. 10.*

1. The affidavit-of-service filed by the learned counsel for the petitioner be kept with the record.
2. The petitioner has filed the present writ application challenging the order passed by the Returning Officer 63 No., Raninagar Assembly Constituency dated April 7, 2026 wherein the objection raised by the petitioner was rejected and the affidavit submitted by the private respondent along with his nomination paper for contesting the Assembly Election was accepted.
3. Learned counsel appearing for the private respondent raised the question of maintainability of the writ application. He submits that the petitioner has filed the present writ application challenging the order passed by

the Returning Officer wherein the objection raised by the petitioner was rejected for acceptance of the nomination paper along with the affidavit submitted by the private respondent. He submits that once the Returning Officer has passed an order, the same cannot be challenged in the writ jurisdiction. The petitioner has only remedy to challenge the same in the election petition. He has relied upon the judgment in the case of ***N.P. Ponnuswami vs. Returning Officer, Namakkal Constituency and Others*** reported in ***(1952) 1 SCC 94*** and submits that the Hon'ble Supreme Court has held that the language was used in Article 329(b) and in Section 80 of the Act is almost identical, with this difference only that the article is preceded by the word "notwithstanding anything in this constitution". Those words are quite apt to exclude the consideration of the High Court to deal with any matter which may arise while the elections are in progress.

4. He submits that in the present case the petitioner has challenged the order passed by the Returning Officer wherein the Returning Officer accepted the nomination paper along with the affidavit of the private respondent which can be challenged in the election petition. He further relied upon the judgment in the case of ***Sanjay Mondal & Ors. vs. Boothnath Mondal & Ors.*** reported in ***(2023) 2 High Court Cases (Cal) 314*** and submits that the Hon'ble Division Bench of this Court recently held that if a person's right to offer himself or herself as a candidate in an election is

infringed in any manner, what is the person's remedy? Can that person approach the civil court or the writ court for relief? The answer, it is fairly well established by now, is in the negative. Once the process of election starts with the declaration of the dates on which election will be held, and till the election ends with the declaration of result the Court will not intervene. No order will be passed which even remotely may tend to interfere with the process of election in any manner. He submits that Article 329 of the Constitution of India bars the interference by Court in the electoral matters. Accordingly, he prays for dismissal of the writ application on the ground of maintainability.

5. Mr. Soumya Majumder, learned Senior Advocate appearing for the Election Commission of India also raised the point of maintainability by adopting the submission made by the learned counsel for the private respondent had relied upon the judgment in the case of ***Kisan Shankar Kathore vs. Arun Dattatray Sawant & Ors.*** reported in **(2014) 14 SCC 162** and submits that in the said case the Hon'ble Supreme had relied upon the case of ***N.P. Ponnuswami (supra)*** and held that once it is found that it was a case of improper acceptance, as there was misinformation or suppression of material information, one can state that question of rejection in such a case was only deferred to a later date. When the Court gives such a finding, which would have resulted in rejection, the effect would be same, namely, such a candidate was not entitled to

contest and the election is void. Otherwise, it would be an anomalous situation that even when criminal proceedings under Section 125A of the Act can be initiated and the selected candidate is criminally prosecuted and convicted, but the result of his election cannot be question in writ jurisdiction.

6. Learned counsel for the petitioner submits that the judgment relied by the parties are not applicable in the facts and circumstances of the present case. He submits that when the petitioner being the election agent of the independent candidate found that the affidavit submitted by the private respondent is having several discrepancies and have affirmed the said affidavit falsely and has also not declared in the status of the cases pending against him. Learned counsel for the petitioner submits that the petitioner has made a detailed counter affidavit to the Returning Officer on April 7, 2026 informing about the discrepancies in the affidavit submitted by the private respondent but the Returning Officer without considering the objection raised by the petitioner has passed the impugned order which is required to be set aside and the Returning Officer may directed to re-verify the affidavit submitted by the private respondent along with the nomination paper and to pass appropriate order for rejecting the candidature of the private respondent.
7. Heard the learned counsel for the respective parties perused the materials on record.
8. Article 329 of the Constitution of India reads as follows:

**“329. Bar to interference by courts in electoral matters:-** Notwithstanding anything in this Constitution

(a) *the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328, shall not be called in question in any court;*

(b) *no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may provided for by or under any law made by the appropriate Legislature.”*

9. The petitioner has filed the counter affidavit by way of in the Non-Judicial Stamp Paper alleging as follows:

*“8. That it is stated that the said Julfikar Ali has not verified the affidavit as prescribed by the law. He has made contrary and untrue statements in the affidavit at the page of “VERIFICATION”, where he himself stated that the said Affidavit is being verified at Berhampore on 04.04.2026, therefore, the question arises that if the same has been verified on 04.04.2026, then how could it be sworn and affirmed before the concerned Notary Public on 02.04.2026. Thus, it establishes the fact that serious fraud and forgery has been adopted and serious illegality has been committed by the said candidate against whom this objection is being raised and the same is an act of crime and is criminal offence punishable under the stated law of this land.*

*9. That it is stated that Julfikar Ali suppressed his criminal records and did not answer the Para 6A*

*of the prescribed affidavit i.e. Form 26. He has chosen to mention "NOT APPLICABLE" which has been committed by him with a mala fide intent and such suppression amounts has been made to mislead the authorities and the said illegal act is a criminal offence which is punishable under the law of this land.*

*17. That it is stated that Julfikar Ali suppressed PAN details of Dependent 1 and did not answer the Para 7d in PART B of the prescribed affidavit i.e. Form 26. He has chosen to mention "NIL". Where as the Dependant 1 'Zoya Siddique' has a PAN allotted under her name – "SQJPS3642K" which has been suppressed by him with a mala fide intent and such suppression amounts has been made to mislead the authorities and the said illegal act is a criminal offence which is punishable under the law of this land."*

10. The allegation of the petitioner against the private respondent is that the private respondent has not verified the affidavit as prescribed by law. He has further stated that he has suppressed the criminal cases pending against him and in paragraph 6A of the prescribed affidavit that is in Form 26 he has chosen to mention "Not Applicable". It is also the case of the petitioner that the private respondent suppressed PAN details of the deponent and did not answer the para 7 (d) of the Part (B) of the prescribed affidavit. He has made several allegations in the counter affidavit.
11. The Returning Officer has considered the counter affidavit submitted by the petitioner raising the objection of the nomination form along with the affidavit submitted by the private respondent. The Returning

Officer while considering the counter affidavit filed by the petitioner has considered the handbook of the Returning Officer Para 5.16.4 and come to the conclusion that the Returning Officer, is not to go into the substantive part of the affidavit questioning the veracity of the entries but to ensure that it is the correct format and publish it for everyone to see. The Returning Officer also considered the Para 6.10.1 of the handbook of the Returning Officer and came to the conclusion that if an affidavit is challenged for containing false information, such challenge automatically does not become ground for rejection of nomination.

12. The Returning Officer also considered the memo dated August 24, 2021 and suggested the petitioner to approach the competent Court to the allegation raised by the petitioner.
13. In the case of ***N.P. Ponnuswami (supra)*** the Hon'ble Supreme Court has categorically held that:

*“24. It may be pointed out that Article 329(b) must be read as complementary to clause (a) of that article Clause (a) bars the jurisdiction of the courts with regard to such law as may be made under Article 327 and 328 relating to the delimitation of constituencies or the allotment of seats to such constituencies. It was concerned before us that Article 329(b) ousts the jurisdiction of the courts with regard to matters arising between the commencement of the polling and the final selection. The question which has to be asked is what conceivable reason the legislature could have had to leave only matters connected with nominations subject to the jurisdiction to the*

*High Court under Article 226 of the Constitution. If Part XV of the Constitution is a code by itself i.e. it creates rights and provides for their enforcement by a Special Tribunal to the exclusion of all courts including the High Court, there can be no reason for assuming that the Constitution left one small part of the election process to be made the subject matter of contest before the High Courts and thereby upset the time schedule of the elections. The more reasonable view seems to be that Article 329 covers all "electoral matters".*

14. In the case of ***Sanjay Mondal and Others (supra)*** the Hon'ble Division of this Court has categorically held that once the process of election starts with the declaration of the dates on which election will be held, and till the election ends with the declaration of result, the Courts will not intervene. No order will be passed which even remotely may tend to interfere with the process of election in any manner.
15. In the present case, the petitioner has filed the writ application challenging the order passed by the Returning Officer wherein the counter affidavit filed by the petitioner making allegation that the affidavit submitted by the private respondent is not correct and has not disclosed several materials and has suppressed the criminal case pending before the concerned Court.
16. This Court finds that the Election Commission of India has declared the dates of election and filing of nomination paper is closed. At the time of nomination, the petitioner has pointed out to the returning officer

that the nomination submitted by the private respondent along with an affidavit is not correct and suppressed several facts. The Returning Officer has considered the objection raised by the petitioner and passed a reasoned and speaking order. Article 329 of the Constitution of India bars the Court to interfere with the electoral matters. The Hon'ble Supreme Court in the cases of ***N.P. Ponnuswami (supra)*** and ***Kisan Shankar Kathore (supra)*** and the Hon'ble Division Bench of this Court held that once the process of election starts with the declaration of the dates on which election will be held and till the election ends with the declaration of result, the Court will not interfere with the election process.

17. This Court finds that the objection raised by the petitioner before the Returning Officer, the Returning Officer already taken into consideration of the objection and passed a reasoned and speaking order on April 7, 2026.
18. The election process had already been started and the election is to be held on April 23, 2026 and April 29, 2026, thus this Court finds that the writ application filed by the writ petitioner is not maintainable.
19. However, the dismissal of the writ petition will not prevent the petitioner for taking appropriate steps before the appropriate forum at the appropriate stage.
20. WPA 8861 of 2026 is dismissed.
21. However, there shall be no order as to costs.

22. Urgent Xerox certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

**(Krishna Rao, J.)**