

28.04.2026
Item No. 01
S.De
Ct. No.08
266190

W.P.A. (P) 209 of 2026

**Md. Danish Farooqui
Versus
Election Commission of India & Ors.**

Mr. Kalyan Bandyopadhyay, Sr. Adv.
Mr. Rahul Kumar Singh,
Mr. Niket Ojha,
Mr. Ratikanta Pal,
Ms. Deshma GhoshFor the Petitioner

Mr. Jishnu Chowdhury, Sr. Adv.,
Ms. Anamika Pandey,
Ms. Sanskriti Agarwal,
Mr. Arjun Kumar Ray,
.....For the Election Commission of India

Mr. Kishore Datta, Ld. Adv. General,
Mr. Lalit Mohan Mahata,
Mr. Swapan Banerjee, Ld. A.G.P.
Ms. Sumita Shaw,
Mr. Diptendu Narayan Banerjee,
Mr. Soumen ChatterjeeFor the State

Dictated by Arijit Banerjee, J.:

1. This writ petition by way of Public Interest Litigation has been filed challenging a Memo dated April 27, 2026, issued by the office of the Chief Electoral Officer, West Bengal, addressed to the Director General of Police, West Bengal. The Memo has been signed by the Police Observer of the office of the Chief Electoral

Officer. The Memo is captioned: *“Preventive actions against persons involved in voter intimidation-Immediate directions to all field functionaries in light of Hon’ble Calcutta High Court order and ECI guidelines”*. The Memo reads as follows:

“Please refer to this office earlier letter No.5607-Home (Elec.) dated 21.04.2026 on the above subject. There are hundreds of instances of intimidation to voters received in CEO, West Bengal’s control room in 1st phase of election and instances of intimidation to voters in hundreds are being received in CEO, West Bengal’s control room. Yesterday, even intimidators attacked and bombed a party’s candidate in Bhatpara where even CISF jawan was injured in firing by intimidators. In first phase of elections, intimidators chased and assaulted a party’s candidate in Kumarganj, Dakshin Dinajpur.

In view of above, it has come to notice from various quarters that certain persons (names mentioned in Annexure-A & Annexure-B enclosed herewith) may attempt or may

conspire to intimidate voters and may disturb the electoral process in their respective Assembly Constituencies /Police Station jurisdictions.

*Clarification by Hon'ble High Court
The Hon'ble Calcutta High Court in its order dated 22.04.2026 in WPA (P) No.192 of 2026 has, in Paragraphs 19 & 20, categorically clarified as under:*

“19. However, it is made clear that this order will not come in the way of the civil/police authorities to proceed against any person, who commits an offence under the BNS, RP Act, 1951 or any penal law. Putting it differently, even if the persons, whose names find place in Annexure-A of letter dated 21.04.2026, commit an offence, this interim order will not come in the way of the authorities to proceed against them in accordance with law as per their own independent discretion.

20. We also direct that for exercising power of “preventive detention/action”, the authorities can proceed strictly in accordance with relevant detention law”.

The Court has thus made it abundantly clear that nothing in the interim order shall prevent the police from taking lawful action against any person committing offences under the Bharatiya Nyaya Sanhita (BNS), Representation of the People Act, 1951 or any other penal law.

ECI's Mandate – Last 72 Hours SOP & Vulnerability Mapping In terms of the Election Commission of India's Standard Operating Procedure for the last 72 hours before polling and the Manual on vulnerability Mapping, the following actions are mandatory:

- *Identification and preventive detention of potential intimidators and anti-social elements on P-1 (afternoon/evening).*
- *Heightened patrolling and close monitoring in vulnerable and critical polling stations.*
- *Strict enforcement of the Silence Period (last 48 hours).*
- *Immediate booking of notorious trouble makers under appropriate sections of law.*

- *Zero tolerance towards voter intimidation, cash/muscle power and inducement.*

In view of the above, you are requested to kindly issue immediate, clear and unequivocal directions to all officers (from Commissioners of Police/Superintendents of Police down to SDPOs and Officers in Charge of Police Stations) that:

1. The persons listed in Annexure-A and Annexure-B (and any other identified trouble mongers/intimidators) shall not be allowed to indulge in any form of intimidation, threat, interference with voters or disturbance to the electoral process as per Law.

2. Preventive actions – including registration of FIRs, issuance of notices under relevant sections of BNS/BNSS, preventive detention (where justified), increased patrolling, and close monitoring of their movements – must be taken forthwith, with special focus on the critical last 72 hours (Actions may be done only as directed in para 19 and para 20 of above High court order, if

they commit any offence are likely to commit offence.)

3. All clubs or local organizations found to be involved in intimidating voters, booth level muscle power, or vitiating the electoral atmosphere shall be raided promptly by Police personnel in close coordination with FSTs and CAPF units. Necessary legal action, including sealing of premises if required, shall be initiated against such clubs/organizations as per Law.

4. Police officers shall apply their mind independently as per law. Such independent action is not only permitted but mandatory to ensure free, fair and peaceful elections.

5. A strong and unambiguous message must be communicated down the line that preventive arrest, raids and other lawful actions are required in the interest of free and fair polls and that the High Court order does not come in the way of such actions (as clarified in Paras 19 & 20).

Accountability will be fixed at all levels in case of any lapse resulting in voter intimidation or disturbance

caused by the listed persons or clubs/organizations in any jurisdiction. Kindly ensure that this letter reaches all concerned officers immediately (including through WhatsApp groups of CPs/SPs, SDPOs and OCs) and that strict compliance is monitored.

Daily reports on action taken against the persons in Annexure-A, other trouble makers and involved clubs shall continue to be sent by the concerned CPs/SPs to this office till completion of the election process.”

2. The prayers in the writ petition are *inter alia*, as follows:

- a. An Order do issue dispensing with compliance of Rule 26 of the Appellate Side Writ Rules of the High court at Calcutta;*
- b. A writ of and/or in the nature of Mandamus do issue directing the Respondents, their servants, agents, and assigns to forthwith withdraw, rescind, and/or cancel the impugned Memo bearing No. 91/CEO/WB/2026 dated 27th April 2026 and the “Worry List” annexed thereto;*

- c. *A writ of and/or in the nature of Certiorari do issue directing the Respondents to certify and transmit the records pertaining to the preparation of the impugned Memo dated 27th April 2026 and the “Worry List” before this Hon’ble Court so that conscionable justice may be done by quashing and setting aside the same as arbitrary, illegal, and unconstitutional; so that the same may be quashed and conscionable justice be rendered;*
- d. *A writ in the nature of prohibition, thereby prohibiting the Respondents, their servants, agents, and assigns from taking any coercive steps, including arresting or detaining the persons mentioned in Paragraphs 15 and 16 of the Writ Petition and any other person without institution of any specific criminal case and without adhering to the procedure established by law;*
- e. *A declaration do issue declaring that no person can be arrested or detained without reasonable and judicially reviewable grounds and without strict adherence to the procedure established by law under the Bharatiya Nagarik*

Suraksha Sanhita, 2023, and that any arrest or detention based on the impugned list would be a violation of Articles 14, 19 and 21 of the Constitution of India;

- f. A declaration do issue declaring the arbitrary arrest or detention of any citizen, particularly during an election, not only curtails the personal liberty of the arrestee but also unlawfully prevents them from exercising their democratic and constitutional right to vote and participate in the election process;*
- g. A writ of and/or in the nature of Mandamus do issue directing the Respondents, their servants, agents, and assigns and all the Observers appointed by the Election Commission of India, to act in accordance with law and without any political bias;*
- h. Rule NISI in terms of prayers (b) to (g) above and to make the Rule absolute if no cause and/or any insufficient cause is shown in reply thereto;*
- i. An interim order staying the operation of the impugned Memo bearing NO.91/CEO/SB/2026 dated 27th April 2026 and the “Worry List” annexed thereto, pending the final*

hearing and disposal of this writ petition;

j. An order to issue restraining the police observers from threatening voters, candidates and their workers;

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3. There is a little background to the present litigation. A Memo dated April 21, 2026, was issued by the office of the Chief Electoral Officer, West Bengal, through the police observer of that office, to the Director General of Police, West Bengal. The subject matter of the Memo reads thus:

“Preventive action against persons involved in voter intimidation –List of trouble-makers enclosed – Immediate directions to all field functionaries”.

That Memo reads as follows:

“It has been observed from various quarters that the persons whose names are mentioned in the enclosed list (Annexure-A) are actively involved in intimidating voters and creating disturbance in the electoral process in the respective Assembly

Constituencies/Police Station areas indicated against their names.

You are requested to kindly issue directions to concerned officers to take immediate suitable preventive actions against all such persons after due diligence and in accordance with law. The actions may include, but not be limited to, registration of FIR and issuance of notices under appropriate sections of law, preventive detention where justified, increased patrolling in the concerned booths/areas, and close monitoring of their movements during the election period.

Further, a clear and urgent message must be conveyed to all Police Officers and other functionaries at every level (from District Superintendent of Police/Commissioner down to the Officer-in-Charge of the concerned Police Station and SDPOs) that:

- The persons listed in Annexure-A shall not be allowed to indulge in any form of trouble-mongering, intimidation, or interference with voters.*
- Any instance of voter intimidation or disturbance caused by any of these persons will be viewed seriously.*

- *Accountability be fixed at all levels, from top to bottom in Police hierarchy, in case any such incident occurs in their jurisdiction.*

Kindly requested to ensure that this communication reaches all concerned officers immediately through the fastest possible means and that compliance reports be submitted by concerned CPs/SPS to this office on a daily basis until the completion of the election process.”

4. Challenging the said Memo, a writ petition was filed being WPA (P) 192 of 2026 by the same person who has filed the present writ petition. On that writ petition, an interim order dated April 22, 2026, was passed by a Co-ordinate Bench headed by the Hon’ble the Chief Justice and one of us (Partha Sarathi Sen, J.) was the other member of that Bench. The operative portion of that order reads as follows :

“18. In Kanhiya Lal Omar v. R.K. Trivedi and Ors reported at (1985) 4 SCC 628, the Apex Court opined that the general power of superintendence and control of ECI under Article 324 of the Constitution is subject to other law.

Thus, in our prima facie view the police observer in the office of Chief Election Officer, West Bengal has erred in issuing blanket direction by treating certain citizens as “trouble-makers”. Hence, as an interim measure, we deem it proper to stay the effect and operation of the impugned order dated 21.04.2026 (Annexure-P/1) till the last day of June, 2026 or till further order whichever is earlier.

19. However, it is made clear that this order will not come in the way of the civil/police authorities to proceed against any person, who commits an offence under the B.N.S, R.P. Act, 1951 or any other penal law. Putting it differently, even if the persons, whose names find place in Annexure –A of letter dated 21.04.2026, commit an offence, this interim order will not come in the way of the authorities to proceed against them in accordance with law as per their own independent discretion.”

[Emphasis supplied by us.]

It is pertinent to note that the said writ petition is still pending.

5. In the above factual background the present writ petition has been filed.
6. Appearing for the writ petitioner Mr. Kalyan Bandopadhyay, learned senior advocate, submitted as follows :
 - a. The impugned notice dated April 27, 2026, amounts to violation of the interim order dated April 22, 2026, passed in the previous writ petition. Hence, the notice is void.
 - b. Referring to certain pages of the instant writ petition, learned senior counsel submitted that the impugned notice would clearly demonstrate the mindset of Election Commission of India (in short ECI). The notice would show that ECI is working in the vested interest of a particular political party.
 - c. Learned counsel submitted that police observers attached to the office of ECI should not act beyond law.

d.Mr. Bandopadhyay relied on the observations of the Hon'ble Supreme Court in paragraphs 43 to 45 of the decision dated June 27, 2025 rendered in Criminal Appeal No 2920 of 2025 (**Annu @ Aniket Through His Father As Next Friend Krupal Singh Thakur Vs. Union of India & Ors.**).

The said observations read as follows:

“43. Preventive detention of a person is a drastic measure. An order of preventive detention has the effect of invading a person's personal liberty. Therefore, the detaining authority should exercise utmost care and caution while invoking such a draconian provision.

44. Preventive detention being a hard law, it is axiomatic that an order of preventive detention should be strictly construed. It is the duty of a constitutional court like the High Court to minutely scrutinize an order of preventive detention to ensure that the order of preventive detention squarely falls within the four corners of the relevant law and that the liberty of a person is not unlawfully compromised.

45. Thus, having regard to the discussions made above, we are of the unhesitant view that the impugned judgment and order of the High Court as well as the order of preventive detention, as extended, are wholly untenable in law as well as on facts and are thus liable to be set aside.”

7. Learned Advocate General appearing for the State submitted that there has been a complete substitution of the administration by ECI. The Chief Secretary and Home Secretary selected by the State Government have been removed. All senior officers in the administration have been removed. ECI does not have the power to do so under Articles 324/327/328 of the Constitution of India. It cannot displace the administration.

8. Learned Advocate General then submitted that police and law and order are State subjects. ECI cannot exercise jurisdiction over the State police officers as a whole.

9. Appearing for ECI, Mr. Jishnu Chowdhury, learned senior advocate, submitted that the ECI has withdrawn the impugned Memo dated April 27, 2026 by issuing a subsequent Memo of that date. A copy of the said withdrawal Memo dated April 27, 2026, be kept with the records.

10. Mr. Chowdhury, submitted that ECI has not flouted this Court's interim order passed on the earlier writ petition in any manner. He drew our attention to paragraphs 18 to 20 of the said interim order and said that ECI has been acting strictly in conformity with such order. He submitted that numerous complaints of intimidation have been received by the office of the Chief Electoral Officer and the police authorities. However, since the impugned notification has been withdrawn, he refrained from making any further submission to justify issuance of the notification and

submitted that the writ petition has become infructuous and ought to be disposed of.

11. In reply, learned Advocate General submitted that withdrawal of the impugned notification is possibly a ploy on the part of the ECI to non-suit the writ petitioner. ECI should record an undertaking that similar notifications for preventive detention will not be issued before the election. He submitted that ECI can of course take action against a person if he has committed a criminal offence under the law of the land or if he is a history sheeter.

12. We have anxiously given our consideration to the respective contentions of the parties.

13. Since the subject matter of challenge in the present writ petition is memo dated April 27, 2026 which has been set out hereinabove and since that impugned memo has been withdrawn by

ECI by a subsequent memo dated April 27, 2026, we are of the view that nothing remains of this writ petition. The writ petition has become substantially infructuous.

14. Mr. Bandopadhyay, however said that an order should be passed in terms of prayers (g) and (j) of the writ petition, which have been set out hereinabove.

15. Since it has become unnecessary for us to adjudicate the writ petition on merits, because of the same having become infructuous, we do not wish to pass any formal order on this writ petition. However, we trust and believe that ECI which is a constitutional authority and all its officers including observers appointed by it shall discharge their respective duties in the election process fairly, efficiently, impartially without any bias, political or otherwise and strictly in accordance with law.

16. It cannot be gainsaid that it is in the interest of all the citizens of this State that the election scheduled to be held tomorrow (April 29, 2026) is held in a fair, transparent and peaceful manner where each member of the electorate will be able to exercise his franchise freely without any fear.

17. We are also sure that the competent authorities will not resort to preventive detention or arrest of persons excepting where the same is absolutely essential and that too, in accordance with law. One must keep in mind the paramount importance of a citizen's fundamental right to personal liberty enshrined in Article 21 of the Constitution of India, which can be curtailed only by following due process of law.

18. Accordingly, WPA (P) 209 of 2026 is disposed of.

19. Since we have not called for affidavits, the allegations contained in the writ petition are deemed not to be admitted by the respondents.

(Arijit Banerjee, J.)

(Partha Sarathi Sen, J.)