

22, 23.12.2021
63, PA(SS)
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85,
&
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MAT 1354 of 2021

IA No: CAN 1 of 2021

IA No: CAN 2 of 2021

Bhartiya Janata Party

Vs.

The State of West Bengal and Ors.

with

WPA(P) 299 of 2021

IA No: CAN 2 of 2021

Pratap Banerjee

Vs.

The State of West Bengal and Ors.

with

WPA(P) 271 of 2021

Mousumi Roy

Vs.

West Bengal State Election Commission and Ors.

with

WPA(P) 356 of 2021

Ambooj Sharma

Vs.

West Bengal State Election Commission and Ors.

with

WPA(P) 357 of 2021

Debolina Sarkar

Vs.

West Bengal State Election Commission and Ors.

with

WPA(P) 361 of 2021

Faiyaz Ahmad Khan

Vs.

West Bengal State Election Commission and Ors.

(Through Video Conference)

Present:

Mr. Dhiraj Trivedi,
 Mr. Nilanjan Bhattacharya,
 Mr. Bilwadal Bhattacharyya,
 Mr. Vipul Kundalia,
 Mr. Ajay Choubey,
 Mr. Kallol Mondal,
 Mr. Partha Ghosh,
 Mr. Rajdeep Mazumdar,
 Mr. Loknath Chatterjee,
 Mr. Vikash Singh,
 Mr. K. Kashyap,
 Mr. Rahul Sharma,
 Ms. Sneha Singh,
 Mr. Nilanjan Bhattacharjee, Advocates
 ...for the Appellants in MAT 1354 of 2021

Ms. Pinky Anand, Sr. Advocate
 Mr. Jaydip Kar, Sr. Advocate
 Mr. Billwadal Bhattacharyya,
 Mr. Rajdeep Majumdar,
 Mr. Dhiraj Trivedi,
 Mr. Brajesh Jha,
 Mr. Debanik Banerjee,
 Mr. Lokenath Chatterjee,
 Mr. Sayak Chakraborti,
 Mr. Moyukh Mukherjee,
 Mr. Anish Kumar Mukherjee,
 Ms. Saudamini Sharma,
 Mr. Amrit Sinha, Advocates
 ... for the Petitioner in WPA(P) 299 of 2021

Ms. Pinky Anand, Sr. Advocate
 Mr. P. Karar,
 Mr. Akashdeep Mukherjee, Advocates
 ... for the Petitioner in WPA(P) 271 of 2021

Mr. Ankur Sharma,
 Ms. Senjuti Mukhopadhyay, Advocates
 ..for the Petitioner in WPA(P) 356 of 2021

Mr. Sabyasachi Chatterjee,
 Mr. Sandipan Das,
 Mr. Subhrajit Saha, Advocates
 ..for the Petitioner in WPA(P) 357 of 2021

Mr. Upendra Roy,
 Mr. Shamim Ahmed,
 Mr. Kushal Chatterjee,
 Mr. Surya Prasad Chattopadhyay,
 Mr. Apalak Basu,
 Mr. Saptarshi Kumar Mal,

Mr. Iftekar Munshi,
 Mr. Debabrata Roy,
 Mr. Asif Sohail Tarafdar,
 Ms. Fatima Hassan, Advocates
 ...for the Petitioner in WPA(P) 361 of 2021

Mr. Y.J. Dastoor, Ld. Additional Solicitor General with
 Mr. Phiroze Edulji, Advocates
 ...for the Union of India in MAT 1354 of
 2021

Mr. S.N. Mookherjee, Ld. Advocate General with
 Mr. Anirban Ray, Ld. Government Pleader
 Mr. T.M. Siddiqui,
 Mr. Raja Saha,
 Mr. Avishek Prasad, Advocates
 ...for the State in MAT 1354 of 2021,
 WPA(P) 299 of 2021, WPA(P) 271 of 2021,
 WPA(P) 356 of 2021, WPA(P) 357 of 2021
 and WPA(P) 361 of 2021

Mr. S.N. Mookherjee, Ld. Advocate General with
 Mr. Anirban Ray, Ld. Government Pleader
 Mr. T.M. Siddiqui,
 Mr. D. Ghosh,
 Mr. Arka Nag, Advocates
 ...for the State in WPA(P) 299 of 2021
 and in WPA(P) 356 of 2021

Mr. S.N. Mookherjee, Ld. Advocate General with
 Mr. Anirban Ray, Ld. Government Pleader
 Mr. T.M. Siddiqui,
 Mr. Arka Nag,
 Mr. N. Chatterjee, Advocates
 ...for the State in WPA(P) 271 of 2021

Mr. S.N. Mookherjee, Ld. Advocate General with
 Mr. Anirban Ray, Ld. Government Pleader
 Mr. S. Basu,
 Mr. T.M. Siddiqui,
 Mr. D. Ghosh,
 Mr. N. Chatterjee,
 Mr. Arka Nag,
 Mr. Soumen Mohanty, Advocates
 ...for the State in MAT 1354 of 2021

Mr. S.N. Mookherjee, Ld. Advocate General with
 Mr. Anirban Ray, Ld. Government Pleader
 Mr. T.M. Siddiqui,
 Mr. D. Ghosh, Advocates
 ...for the State in WPA(P) 361 of 2021

Mr. Ratnanko Banerjee, Sr. Advocate,
 Ms. Sonal Sinha,
 Mr. Shubhankar Nag,
 Mr. Kanishk Kejriwal, Advocates
 ...for the West Bengal State Election
 Commission in MAT 1354 of 2021

Mr. Jayanta Mitra, Sr. Advocate,
 Ms. Sonal Sinha,
 Mr. Shubhankar Nag, Advocates
 ...for the West Bengal State Election
 Commission in WPA(P) 299 of 2021 and
 WPA(P) 271 of 2021

Mr. Anuran Samanta, Advocate
 ...for the ECI in WPA(P) 271 of 2021

WPA(P) 299 of 2021 and WPA(P) 271 of 2021

This Court by order dated 15th of December, 2021 had directed the respondent Nos. 2 and 3 to disclose minimum phases in which the elections for the remaining Municipal Corporations/Municipalities in the State (except Municipal Corporation of Kolkata) will be held and the tentative time schedule giving early dates for holding such elections.

Learned Advocate General has placed on record the communication dated 22nd of December, 2021 sent by the Additional Secretary, Department of Urban Development & Municipal Affairs, Government of West Bengal to the Secretary, West Bengal State Election Commission conveying the decision and proposing the dates for holding the Municipal General Election, urban, local bodies in the following manner:

“a) In the 1st phase proposed date of poll is 22.01.2022 to conduct municipal general

election to Howrah Municipal Corporation, Chandernagore Municipal Corporation, Bidhannagar Municipal Corporation, Assansol Municipal Corporation and Siliguri Municipal Corporation.

- b) In the 2nd phase proposed date of poll is 27.02.2022 to conduct municipal general election to remaining 109 municipalities (list enclosed).”

Clarifying the position in respect of Howrah Municipal Corporation, learned Advocate General had initially stated that a Bill has already been passed by the State Legislative Assembly bifurcating the Howrah Municipal Corporation into Howrah Municipal Corporation and Bally Municipality and that Bill is pending for the assent before the Hon’ble Governor but later on he has informed that Bill has received the assent of the Hon’ble Governor.

CAN 2 of 2021 has been filed by the petitioner in WPA (P) 299 of 2021. The prayer ‘A’ in CAN 2 is in respect of simultaneous holding of elections to all the other Municipal Corporations/Municipalities. This prayer has already been considered in the earlier order dated 15th December, 2021 and after taking note of difficulty in this regard and after noting that sufficient EVMs are available to hold elections of remaining Municipalities in 2 phases, this Court had directed the respondents to disclose the time schedule for holding

election in minimum phases. Today the time schedule has been disclosed, thus the prayer does not survive.

Pressing the prayer 'B' in respect of deployment of Central Paramilitary Forces in the elections to the other Municipal Corporations/Municipal bodies and prayer 'C' in respect of the installation of CCTV cameras and audit of the footage in the elections to be held, learned Counsel appearing for the petitioner has referred the various documents enclosed with the CAN and has submitted that large scale violence has taken place in the Kolkata Municipal Corporation Elections. Referring to the newspaper report of Anandabazar Patrika dated 20th of December, 2021, she has submitted that the CCTV cameras which were installed in the polling booths were either not functioning or facing upward towards the sky or downwards towards the ground, therefore, installation of CCTV cameras was mere a formality. She has also referred to the irregularities which are reported in annexure 'D'. Placing reliance upon the judgment of the Hon'ble Supreme Court in the matter of **People's Union for Civil Liberties and Another vs. Union of India and Another, (2013) 10 SCC 1**, it has been submitted that the provision of None Of The Above (NOTA) option in the EVM machines was mandatory, but the EVM machines during the election of Kolkata Municipal Corporation were not having that option, therefore, election cannot be

sustained.

In the connection WPA (P) 271 of 2021, the learned Counsel for the petitioner has also raised issue of violence during the Kolkata Municipal Corporation and has submitted that during the elections, offices of the political parties were captured and some of the candidates receives zero votes which indicates that large scale irregularities during the elections have taken place, even the dead voters' vote have been casted and the votes in the names of NRIs who are outside India have been casted. He has further submitted that the State Election Commission is acting as an agent of the State and is not acting independently and the Election Commission is not justified in taking the stand that only 52 complaints are received whereas many of the persons were not allowed to file their complaints.

Learned Advocate General responding to the prayer for deployment of the paramilitary forces has placed reliance upon the Division Bench judgment in the matter of **Basabi Raichoudhury vs. State of West Bengal**, reported in **(2013) SCC OnLine Cal 15463** and has submitted that it is for the Election Commission and the State authorities to take a decision in respect of the deployment of paramilitary forces and that the decision for deployment of paramilitary forces in the forthcoming elections of Municipal Corporations/Municipalities will

be taken after notification of the elections is issued. In respect of prayer 'C' in CAN 2, he has submitted that the State has no role in respect of installation of CCTV cameras.

MAT 1354 of 2021

In this matter, by the order dated 17th of December, 2021 this Court had issued certain directions to the respondent Nos. 6, 7 and State Election Commission directing them to take measures to boost up confidence in the voters and also reiterating the earlier order dated 14th of December, 2021 passed in WPA (P) 340 of 2021 for installation of the CCTV cameras in each polling booth. Considering the prayer for deployment of paramilitary forces, this Court had held that the decision in this regard would be taken by the concerned State authority and the State Election Commission keeping in view the ground situation. This Court had directed the respondent Nos. 6, 7 and State Election Commission to submit the report in respect of the compliance of the directions contained in the order.

The reports by the respondent Nos. 6, 7 and State Election Commission have been filed today. Learned Counsel for the appellant has prayed for time to file exception to these reports.

Learned Counsel for the appellant has also made the submission that having regard to the large scale

irregularities in the Kolkata Municipal Corporation Elections, the CCTV footage of the polling booths should be preserved and audit of the CCTV footage should be done by some independent agency which will reveal that in some polling booths only persons of ruling party were present and others were driven out, some of the cameras were facing upwards or downwards and many of the cameras were not functioning and even the agents of the candidates were not allowed to vote. A submission has also been made to preserve the other record of election.

Learned Counsel appearing for the State Election Commission has referred to the report filed today and has submitted that all the steps as directed by this Court have been taken by the Election Commission.

WPA(P) 356 of 2021

By this petition one of the social workers and political activists has raised a grievance that there was huge State sponsored violence in broad day light during the Municipal Elections on 19.12.2021. The polling agents of a particular party were ousted from polling booths, bombs were hurled in various parts of the city therefore, without deployment of the Central Armed Forces free and fair elections are not possible. It is further alleged that many voters could not reached their booths and could not cast their votes. A prayer has been made to seek an answer from the concerned respondent

in this regard and further prayer is to issue a direction to the respondent to prepare and submit comprehensive guidelines for holding forthcoming civil polls peaceful manner and to get the investigation done in respect of violence and hurling of bombs on 19.12.2021 by CBI or any other independent agency and to provide compensation to the victims of violence during the poll.

WPA (P) 357 of 2021

This is a petition filed by one of the candidates who was contesting elections from Ward No. 2 of Kolkata Municipal Corporation on CPI(M) ticket. It is alleged in the petition that the police authorities were acting as mute spectators while the candidates of her party and opposite political parties were thrashed. There is an allegation of vote rigging in many polling booths, false voting, cast of lacs of false votes throughout 144 wards. It is also alleged that her party members had lodged several complaints against violence and atrocities inflicted upon them but the State authorities did not take any steps. In respect of Ward No. 22 it is alleged that the goons resorted to vandalize the polling booth. In the petition a prayer has been made to declare the elections held on 19.12.2021 as void and a mandamus has been sought seeking a direction to the respondents to investigate the instance of violence and hurling of bombs on 19.12.2021. Learned Counsel for the

petitioner has referred to list of dead voters whose votes have been casted and has also referred to the complaints enclosed with the petition and has submitted that the reports of the candidates were not taken by the Election Commission.

WPA(P) 361 of 2021

This is a petition by a member of Communist Party of India (Marxist) who was a candidate from Ward No. 75. It is alleged that during the polls on 19.12.2021 booths were captured, voting process were rigged and manipulated, EVM machines were destroyed and booths were captured, voters were intimidated and even bombs were hurled. Incident which took place at polling booth at Marine House has been narrated stating that the booth was captured and when the petitioner and the agents reached there, they were mercilessly assaulted inside the polling booth premises in the presence of the police personnel. Learned Counsel for the petitioner has referred to the complaint annexure 'P4' which was sent to the Election Commission and returning officer and the medical report annexure 'P3'. In this petition a prayer has been made to declare the election as nullity and to constitute the Special Investigation Team to inquire into the issue of capturing of polling booths, vote rigging etc. A further prayer has been made to ensure free and fair future elections, monitoring of every booth through

CCTV cameras, permitting only polling officers and accredited polling agents inside the booths during the polling hours and also similar other directions.

Submission of learned Counsel for the petitioner is that the violence and irregularities during the polling were done at the instance of the ruling party. Learned Counsel for the petitioner has also placed reliance upon the judgment of the High Court of Madras in the matter of **All India Anna Dravida Munnetra Kazhagam vs. State Election Commissioner** reported in **2007(1) CTC 705** and had submitted that even if the election is over the writ petition can be maintained in special circumstances challenging the election.

Learned Advocate General has referred to the reports filed by respondent Nos. 6, 7 and 8, he has submitted that the elections are required to be conducted as per the provisions of the West Bengal Municipal Elections Act, 1994 and West Bengal Municipalities (Conduct of Elections) Rules, 1995, he has submitted that in terms of the said Rules necessary steps will be taken to preserve the relevant record and control unit of the voting machines. He has further submitted that in terms of Article 243-ZG(b) of the Constitution and Sections 74, 75 and 76 of the Act, 1994, there is an absolute bar in examining the validity of any election of a Municipality/Municipal Corporation

except by way of a election petition. In support of his submission, he has placed reliance in the judgment of **State of Goa and Another vs. Fouziya Imtiaz Shaikh and Another**, reported in **(2021) 8 SCC 401**. He has also submitted that out of 144 wards only candidates of 2 wards have come forward alleging violence. He has submitted that FIRs against the alleged violators have been registered and have been arrested.

We have heard learned Counsel for the parties and perused the record.

So far, as issue of deployment of paramilitary forces during the remaining forthcoming Municipality/Municipal Corporation Elections is concerned, the parties are permitted to raise it at the appropriate stage when the elections are notified by placing on record the relevant material at that time.

The issue as to extent of interference in these writ petitions in Kolkata Municipal Corporation Elections will be considered and decided having due regard to the provisions of Article 243-ZG(b) of the Constitution and Act of 1994 after the pleadings are complete.

So far as the issue of compliance of earlier directions of this Court is concerned, the reports have been filed by respondent Nos. 6, 7 and State Election Commission in MAT 1354 of 2021. Appellant is permitted to file exception to the reports.

Having regard to the totality of the facts and circumstances of the case and considering the submissions of the Counsel for the parties and also the plea which has been raised in the fresh petitions being WPA(P) 356 of 2021, WPA(P) 357 of 2021 and WPA(P) 361 of 2021 and considering the fact that serious allegations have been made in respect of rigging of booths, false voting, voting in the name of dead persons, in the name of absent NRIs, driving out the polling agents of other parties from the polling booths, violence with the candidates and polling agents and improper functioning of the video cameras, to ascertain the compliance of the directions of this Court and to ensure fair elections in remaining Municipalities/Municipal Corporations, etc., we deem it proper to issue following directions:

- (i) The respondent State Election Commission is directed to preserve CCTV footage of all polling stations of Kolkata Municipal Corporation Elections held on 19th December, 2021.
- (ii) The State Election Commission is also directed to preserve the diaries of the presiding officer and register containing the thumb impression/signature of voters of all the polling booths in a sealed cover with immediate effect.
- (iii) The State Election Commission is directed

to preserve the control unit of EVM machines in terms of Rules 61N of the Rules of 1995 without any delay.

(iv) State Election Commission is also directed to preserve voting record prepared from the EVM in terms of Rules 61N until further orders.

(v) For the forthcoming elections of the remaining Municipal Corporations/Municipal Councils, local bodies, in order to maintain the transparency and fairness, we direct that the State Election Commission shall take steps to install CCTV cameras at conspicuous spots in all main and ancillary booths across the State and will preserve the CCTV footages so that in case of need it can be sent for audit.

(vi) The appellants are permitted to file their objections to the reports submitted today by the respondent Nos. 6, 7 and State Election Commission before the next date of hearing.

(vii) In WPA (P) 356 of 2021, WPA (P) 357 of 2021 and WPA (P) 361 of 2021, the respondents are directed to file their affidavit-in-opposition, therefore, affidavit-in-reply be filed by the petitioners.

(viii) CAN 2 of 2021 filed in WPA (P) 299 of 2021 is disposed of with liberty to file fresh IA with the

prayer regarding deployment of paramilitary forces
at the appropriate stage.

List on 06th January, 2022.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J)