

1 10.02.2022
&
2 PA(RB/SS)

WPA(P) 271 of 2021
IA NO: CAN/2/2022
Mousumi Roy
Vs.
West Bengal State Election Commission & Ors.
With
WPA(P) 299 of 2021
IA NO: CAN/2/2021, CAN/4/2022, CAN/5/2022,
CAN/6/2022
Pratap Banerjee
Vs.
The State of West Bengal & Ors.
(Through Video Conference)

Mr. Sabyasachi Chatterjee,
Mr. Akashdeep Mukherjee,
Mr. Pintu Karar,
Mr. Sayan Banerjee, Advocates
... for the petitioner in WPA(P) 271 of 2021

Ms. Pinky Anand, Ld. Sr. Adv.
Mr. Rajdeep Majumder,
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,
Mr. Surajit Saha, Advocates
... for the petitioner in WPA(P) 299 of 2021

Mr. S.N. Mookherjee, Ld. AG
Mr. Samrat Sen, Ld. AAG
Mr. Anirban Ray, Ld. GP
Mr. T.M. Siddiqui,
Mr. Dabishis Ghosh,
Mr. Nilotpal Chatterjee, Advocates
... for the State in WPA(P) 271 of 2021 and
WPA(P) 299 of 2021

Mr. Y. J. Dastoor, Ld. ASG
Mr. Vipul Kundalia, Advocates
... for Union of India in WPA(P) 271 of 2021
and WPA(P) 299 of 2021

Mr. Anuran Samanta, Advocate
... for E.C.I in WPA(P) 271 of 2021

Mr. Jayanta Kr. Mitra, Ld. Sr. Adv.
 Mr. Jishnu Saha, Ld. Sr. Adv.
 Ms. Sonal Sinha,
 Mr. Subhankar Nag, Advocates
 ... for the State Election Commission in
 WPA(P) 271 of 2021 and WPA(P) 299 of 2021

Mr. Srijib Chakraborty,
 Mr. Suryaneel Das,
 Mr. Aditya Mondal, Advocates
 ... for the applicant in CAN 5 of 2022

1. In both these writ petitions, the issue raised is about holding the elections of the municipal corporations/municipal council and other local bodies in the State of West Bengal.

2. CAN 2 of 2022 has been filed in WPA(P) 271 of 2021 challenging the order/notification of the State Election Commission dated 15.01.2022 and 07.02.2022 and seeking a direction to ensure free and fair elections and also to hold simultaneous counting of votes of all remaining Municipal Corporations/Municipalities.

3. CAN 4 of 2022 has been filed in WPA(P) No. 299 of 2021 by the writ petitioner questioning the order dated 25th January, 2022 issued by the State Election Commission and seeking modification of the notification dated 22nd December, 2021 whereby second phase of elections are scheduled to be held on 27th February, 2022. The decision of the respondent Nos. 3 and 4 in respect of the election agents has also been challenged

in this CAN.

4. CAN 5 of 2022 and CAN 6 of 2022 have been filed with a prayer to direct the State Election Commission to take steps for deployment of Central Para-Military Forces during the Bidhannagar Corporation Election scheduled to be held on 12th February, 2022.

5. The Municipal General Elections to the Siliguri Municipal Corporation, Chandernagore Municipal Corporation, Bidhannagar Municipal Corporation and Asansol Municipal Corporation have been notified by the Election Commission on 15th January, 2022 by appointing 12th February, 2022 as the polling date.

6. The applicants in these CANs are expecting that free and fair elections may not take place on account of the apprehended violence during the election and they are also questioning certain orders issued by the State Election Commission.

7. Submission of the applicant in CAN 2 of 2022 is that the State Election Commission has issued illegal order dated 29.11.2021 providing that election agent must be an elector of the polling areas for which polling station is set up and order dated 07th February, 2021 making provision for polling agent in respect of polling premises where more than one polling station are situated. He submits that no such provision has been

made under Sections 47, 48, 50 and 57 of the West Bengal Municipal Elections Act, 1994 or Rule 14 read with Form 11 of the West Bengal Municipalities (Conduct of Election) Rules, 1995 and that the order is also contrary to Clause 9.1 of the Handbook issued by the Election Commission of India about polling agents. He has also submitted that simultaneous counting of votes of all the Municipal Corporations should be done on a fixed date after completion of second phase of polling in other Municipal Corporations/Councils.

8. Learned Counsel for the applicant in CAN 4 of 2022 has also made a prayer for simultaneous counting of votes after completion of polling in the other Municipal Corporations/Councils in second phase on 27th February, 2022. An alternate prayer has been made that the date of polling in the second phase be postponed because first and second phase of polling on 14th February, 2022 and 27th February, 2022 are very close. Learned Counsel has also questioned the order issued by the State Election Commission in respect of polling agent.

9. In CAN 5 of 2022 and CAN 6 of 2022, learned Counsel for the applicants have submitted that considering the violence during the Kolkata Municipal Corporation Elections and also considering the earlier

experience in the elections of Bidhannagar Minicipal Corporation, for free, fair and peaceful elections, it is necessary to deploy Central Paramilitary Forces in the forthcoming Bidhannagar Municipal Corporation Elections. They have submitted that the previous experience is that whenever CRPF is not deployed in Bidhannagar during elections, violence takes place. They have also referred to the earlier order of this Court dated 23rd December, 2021 whereby liberty was granted to file fresh IA with the prayer about deployment of paramilitary forces at the appropriate stage. Reliance has also been placed upon the order of the Hon'ble Supreme Court dated 23rd November, 2021 in the matter of **All India Trinamool Congress and Anr. vs. Manik Das and Ors. in Conmt. Pet. (C) No. 884 of 2021**. It has been submitted that deployment of paramilitary forces will not prejudice anyone but will ensure peace during election.

10. Learned Counsel for the Election Commission has submitted that all the preparations for the forthcoming Municipal Corporation Elections have been made. He has produced the note signed by the Commissioner, State Election Commission and has pointed out that the meeting of the State Election Commission with the Chief Secretary and other high administrative officials of the State along with Director General & Inspector General of

Police and ADG (L&O) has taken place and a detailed strategy has been chalked out to avoid unnecessary violence. He has placed reliance upon Hon'ble Division Bench order of this Court 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 State Election Commission to consider the law and order situation and other circumstances for the purpose of taking a decision to deploy Central paramilitary forces. He has also placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **State of Goa and Another vs. Fouziya Imtiaz Shaikh and Another** reported in **(2021) 8 SCC 401** and has submitted that judicial hands of approach is to be adopted in such matter once the election process commences. He has made a categorical statement before this Court that the Commissioner, State Election Commission is taking the personal responsibility to ensure that no violence will take place in forthcoming Municipal Corporation Elections and the elections will be held in free, fearless and peaceful atmosphere. He has also submitted that the order relating to polling agents has been issued exercising the power under Article 243-ZA of the Constitution to ensure that only local polling agents are appointed and no outsider comes to create any disturbances in the polling booth and also to ensure

that the voters are properly identified. He has submitted that no provision of the Act or Rules has been violated. Opposing the prayer for simultaneous counting, he has submitted that it is not mandated in any Act or in the Constitution to hold simultaneous counting and practically also, it is not possible because after the first phase, EVMs will have to be detained till the second phase is over.

11. Learned Advocate General has also submitted that the order of the State Election Commission about polling agents does not run counter to the provision of the Act or the Rule and the Handbook issued by the Election Commission of India is in the nature of guideline and that the order of the State Election Commission itself gives reason for appointing local polling agents. He has referred to the earlier orders dated 03rd May, 2012 and 17th March, 2015 passed by the State Election Commission which are enclosed as Annexure – E along with CAN 4 of 2022 and has submitted that the similar orders were also issued earlier. He has also submitted that each Municipal Corporations/Councils is a separate independent body, therefore, the issue in this regard cannot be compared with the simultaneous counting of vote in the Legislative Assembly Election and that the notification disclosing date of counting has already been issued and counting is a part of the election process,

therefore, it cannot be interfered with by the Court and the similar prayer for deployment of paramilitary forces and has already been rejected. He has submitted that in respect of the incidents of violence disclosed in CAN 6 of 2022, due steps were taken by the police. A detailed chart relating to area domination and route march activity by SPF from 28th January, 2022 to 08th February, 2022 has been produced. He has referred to the communication dated 08th February, 2022 sent by Chief Secretary, Government of West Bengal to the State Election Commission stating that more than sufficient police force is available with the West Bengal Police and Kolkata Police to conduct the election in peaceful manner.

12. Learned Additional Solicitor General has submitted that paramilitary forces can be sent within 24 hours if required and there is no objection in this regard.

13. Having heard the learned Counsel for the parties and on perusal of the record, it is noticed that the first issue which has been raised in this matter is about deployment of paramilitary forces in Bidhannagar Municipal Corporation election. The focus has been placed on Bidhannagar, out of the four Municipal Corporations where elections are to be held, by submitting that in the previous elections, whenever the

CRPF was not deployed, large scale violence in Bidhannagar had taken place.

14. The issue relating to deployment of paramilitary forces had come up before this Court during the Kolkata Municipal Corporation elections when this Court taking note of the Division Bench judgment in the matter of **Basabi Raichoudhury (Supra)** in the order dated 17th December, 2021 passed in MAT 1354 of 2021 had held as under:

“The deployment of Central Paramilitary Forces during the elections has been opposed by learned Advocate General placing reliance upon the Division Bench judgment of this Court in the matter of **Basabi Raichoudhury (supra)** wherein it has been held that:

“After hearing the learned Counsel for the petitioner at length, we are of the considered opinion that the petition is premature. Apart from that, we find that in the matter of holding election, law and order situation has to be considered by the State Election Commission and there are various factors for requisition of the Central Paramilitary Forces, such as, law and order situation and paucity of State Forces etc. Such a matter has to be considered by the State Election Commission and the State Government and, in case of any dispute between them, the State Election Commission had approached this Court earlier. In judicial review, the Court cannot

decide whether Central Paramilitary forces are necessary in any of the election. These are the decisions to be taken by the constitutional bodies like the State Election Commission, the State Government, etc. Ordinarily, it is not for the Court to interfere with such matter. It is the duty of the Election Commission to ensure that free and fair election is held and for that, necessary step to be taken by them.

Considering the prayer made in the writ petition, we find that the same is not only premature but on merits this writ petition is misconceived also.”

So far, no instance of violence has been pointed out nor along with the writ petition, any such material has been enclosed which furnishes a ground for deployment of the Central Paramilitary Forces in the forthcoming Kolkata Municipal Corporation Elections. Therefore, at this stage, we do not find sufficient material to accept the prayer. However, we take note of the submission of the learned Additional Solicitor General that within six hours, the Central Paramilitary Forces can be sent to avoid any untoward incident. Hence, we direct the Election Commission to take an appropriate decision having due regard to the ground situation in consultation with the State authorities for deployment of Central Paramilitary Forces, in case, if the need so arises, to ensure free and fearless elections.

So far as the judgment of the Hon’ble Supreme Court relied upon by the learned

Counsel for the parties in the case of deployment of Paramilitary Forces in the Municipal Election in the State of Tripura, the fact situation noted therein was different and even otherwise, the Hon'ble Supreme Court by order dated 23rd November, 2021 had directed the DGP and IGP (Law and Order, Tripura) to hold a meeting with the State Election Commission for the purpose of assessing requirement of sufficient strength of Paramilitary Forces and further directed that after making an assessment of the situation, if so required, requisition should be submitted to the CRPF or to the Ministry of Home Affairs. Hence, a decision in this regard is required to be taken by the concerned State authorities and the State Election Commission, keeping in view the ground situation.”

15. It is essentially for the State Election Commission, which has been vested with the responsibility to ensure free, fair and fearless elections, to assess the ground situation and to take a decision in respect of deployment of paramilitary forces if the circumstances so demand. Instances have been pointed out to this Court about the violence during election and post-poll violence on the earlier occasions during elections in Bidhannagar. Hence, the Election Commission along with the State Authorities is required to do reappraisal of the ground situation prevailing in Bidhannagar and take a decision to deploy the paramilitary forces if required.

16. Therefore, we hereby direct that the

Commissioner, State Election Commission will hold the joint meeting with the Chief Secretary and Home Secretary of the State and the Director General and Inspector General of Police within 12 hours and will do the reappraisal of the ground situation in Bidhannagar Municipal Corporation area and ascertain if deployment of paramilitary forces is necessary for ensuring the peaceful conduct of election of Bidhannagar Municipal Corporation and if require, he will submit and requisition to the Union Ministry of Home Affairs or the competent authority for deployment of paramilitary forces and any request in this regard will be duly considered having regard to the ground situation and in the interest of ensuring peace, security and orderly conduct of the forthcoming Bidhannagar Municipal Corporation Election without any delay. In case, if the Commissioner, State Election Commission forms an opinion that deployment of the paramilitary forces during Bidhannagar Municipal Corporation election is not necessary, then he will be personally liable to ensure that no violence takes place and free, fearless and peaceful elections are held in Bidhannagar.

17. The next issue is a about the legality of the orders of the Election Commission dated 29th November, 2021 and 07th February, 2022. The order dated 29th November, 2021 provides that polling agent must be an

elector of the polling area wherein polling station is set up. The subsequent order dated 07th February, 2022 provides that for polling premises where more than one polling station are situated, the polling agent must be an elector of any polling station area located within that premises. These orders give reason for imposing such a restriction i.e. to ensure peaceful poll and these orders reveal that such a condition has been imposed from the security point of view to prevent any person who is not an elector of the polling station area concerned to function as a Polling Agent or Relief Agent. These orders have been issued by the Election Commission exercising jurisdiction under Article 243-ZA of the Constitution which vest the State Election Commission with the requisite powers to take necessary steps for conducting the election. The orders dated 29th November, 2021 and 07th February, 2022 do not run counter to any of the provisions of the West Bengal Municipal Elections Act, 1994 or the West Bengal Municipalities (Conduct and Elections) Rules, 1995. The Handbook for Polling Agents, 2014 relied upon by the Counsel for the applicants is in the nature of guideline and it is not in respect of local body elections and even otherwise the orders of the State Election Commission are not in material conflict with those guidelines.

18. So far as the issue of simultaneous holding of

counting and declaration of results of all the Municipal Corporations is concerned, the notification dated 03rd February, 2022 has already been issued by the State Election Commission notifying the date of polling of remaining Municipal Corporations/Councils as 27th February, 2022 and further notifying that the election process will be completed before 08th March, 2022. Hon'ble Supreme Court in the matter of **Fouziya Imtiaz Shaikh (Supra)** has already held that from the date of notification of election till the date of declaration of result, a judicial hands-off is mandated by the non obstante clause contained in Article 243-ZG. Hon'ble Supreme Court in the case of **Fouziya Imtiaz Shaikh (Supra)** has held that:

“68.1. Under Article 243-ZG(b), no election to any municipality can be called in question except by an election petition presented to a Tribunal as is provided by or under any law made by the legislature of a State. This would mean that from the date of notification of the election till the date of the declaration of result a judicial hands-off is mandated by the non obstante clause contained in Article 243-ZG debarring the writ court under Articles 226 and 227 from interfering once the election process has begun until it is over. The constitutional bar operates only during this period. It is therefore a matter of discretion exercisable by a writ court as to whether an interference is called for when the electoral process is “imminent” i.e. the notification for

elections is yet to be announced.”

19. Hence, it is for the Election Commission to consider the prayer for simultaneous counting in all the Municipal Corporations or for the declaration of results of all the Municipal Corporations at the same time. While taking such a decision, the Election Commission is expected to keep in mind the plea that declaration of result of one Municipal Corporation may affect the elections scheduled soon thereafter in other Municipal Corporations/Municipalities.

20. Hence, we grant liberty to the applicants to file appropriate representation before the State Election Commission with all the supporting materials in respect of their prayer for simultaneous counting of votes in all the Municipal Corporations or simultaneous declaration of result of polling in all the remaining Municipal Corporations or postponing date of polling of remaining corporations, etc. If such representations are filed by the applicants within 24 hours from today, then the same will be considered and appropriate decision in accordance with law will be taken by the State Election Commission within 48 hours.

21. Needless to mention that the respondents will duly comply with the directions in respect of installing CCTV camera etc. already issued earlier.

22. The CAN 2 of 2022 filed in WPA (P) 271 of 2021 and CAN 4 of 2022, CAN 5 of 2022 and CAN 6 of 2022 filed in WPA (P) 299 of 2021 are accordingly, disposed of.

23. List on 15.02.2022.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J)