

09.06.2023
Item Nos.1-2
S/L
gd/ssd

WPA(P)/286/2023
ADHIR RANJAN CHOWDHURY
VS
THE WEST BENGAL STATE
ELECTION COMMISSION AND ORS.
with
WPA(P)/287/2023
SUVENDU ADHIKARI AND ANR.
VS
STATE OF WEST BENGAL AND ORS.

Mr. Koustav Bagchi,
Mr. Debayan Ghosh,
Ms. Priti Kar
..for the Petitioner in
WPA(P)/286/2023.

Mr. Guru Krishna Kumar, Id Senior Advocate,
Mr. Soumya Majumder,
Mr. Srijib Chakraborty,
Mr. Lokenath Chatterjee,
Mr. Vikas Singh,
Mr. Sayak Chakraborti,
Mr. Anish Kumar Mukherjee,
Mr. Suryaneel Das,
Mr. Chiranjit Pal
..for the Petitioners in
WPA(P)/287/2023.

Mr. Kalyan Bandopadhyay, Id. Senior Advocate,
Mr. Anirban Ray,
Mr. T.M. Siddiqui,
Mr. Sirsanya Bandopadhyay,
Mr. Raja Saha,
Mr. Arka Kumar Nag,
Mr. Piyush Agarwal
..for the State.

Mr. Jishnu Saha, Id. Senior Advocate,
Mr. Avishek Prasad,
Ms. Sanjukta Samanta
..for State Election Commission.

Mr. Ashoke Kr. Chakrabarti, learned ASG,
Mr. Billwadal Bhattacharyya, learned DSGI,
Mr. Ayanabha Raha
..for the Union of India.

1. These writ petitions have been filed as public interest litigations concerning the forthcoming election to the Panchayats in the State of West Bengal.

2. The matter was mentioned before this Court at 10.30 a.m. today and considering the urgency, leave was granted to file these writ petitions and the same were directed to be listed in the supplementary list today and to be taken at around 12 noon.

3. The respondents have been served and in particular, the West Bengal State Election Commission has also been served and represented by Mr. Jishnu Saha, learned Senior Advocate.

4. The prayer in WPA(P) 286 of 2023 is for issuance of Writ of Mandamus to set aside the notification issued by the State Election Commission notifying the elections for the Panchayats and issue the same afresh after implementation of the demands made by the writ petitioner vide his representation dated 24th April, 2023. The petitioner also seeks for deployment of central forces from the date of filing nomination till the declaration of results; for a direction upon the Election Commissioner, West Bengal State Election Commission to ensure that the candidates are permitted to file their nominations before the State Election Commissioner and/or concerned District Magistrate of the concerned district and for certain other interim reliefs.

5. In WPA(P) 287 of 2023 the petitioners seek for issuance of Writ of Certiorari to quash the decision arrived at by the respondent authorities in allowing only five days to submit nomination papers for the upcoming Gram Panchayat elections to be held on 8th July, 2023; to appoint an Hon'ble retired Judge of this Court as Special Officer/Observer to ensure the conduct of a free, fair, transparent and peaceful election to the three-tier Gram Panchayats in the State of West Bengal; to allow the prospective candidates to file their nominations in the head office of the West Bengal State Election Commission or in the alternative allow the filing of their nominations online; provide adequate number of Central Para Military Forces immediately for the conduct of free and fair election; to extend the time for filing of nomination papers by at least 12 days from the date of notification of election to complete the process of filing such nomination papers and to comply with the directions issued by this Court issued in WPA(P) 611 of 2022 dated 28th March, 2023; to install CCTV Cameras at all polling stations; to ensure simultaneous counting of the votes for the Gram Panchayats, Panchayat Samities as well as Zilla Parishads under the superintendence of a Special Officer; to prohibit the Election Commission from using any contractual workers and/or civic volunteers and/or teachers and non-teaching staff whose issue is

subjudice by not giving any election duty; to direct the Election Commission to ensure imposition of prohibitory orders under Section 144 of the Cr.P.C. within one kilometer radius of the various counting stations and other interim reliefs.

6. We have elaborately heard Mr. Guru Krishna Kumar, learned senior advocate appearing for the petitioners in WPA(P) 287 of 2023, Mr. Koustav Bagchi, learned advocate appearing for the petitioner in WPA(P) 286 of 2023, Mr. Jishnu Saha, learned senior advocate appearing for the West Bengal State Election Commission, Mr. Kalyan Bandopadhyay, learned senior advocate appearing for the State of West Bengal and other learned advocates who are present in Court.

7. From the varied prayers sought for in both the writ petitions the Court is able to decipher that the object of the writ petitions is not to stall the elections nor interdict the election process. This is presumably because the petitioners are aware of the legal position in this regard. The endeavour of the petitioners appears to be to ensure free and fair election. Therefore, the Court is required to consider as to how best the same can be ensured so that not only the nominations are filed in a peaceful manner, the election is also conducted and results are declared in a fair and peaceful manner. We are informed that the nominations have to be filed in physical format.

8. It is submitted by Mr. Kalyan Bandopadhyay, learned senior advocate that there is a decision of the Hon'ble Supreme Court which has set aside the order passed by this Court in the election conducted during 2018 directing the filing of nominations electronically.

9. Be that as it may, the endeavour of the State Election Commission should be that there should be fair and free elections and the electorate should have confidence in the Election Commission that all will be done well so that they can exercise their franchise in a peaceful manner and elect their desired representative.

10. Prima facie, we are of the view that the time limit fixed in the notification is inadequate. The notification has been uploaded/published today i.e. on 9th June, 2023 and filing of nominations would start from 11 AM today.

11. This, in our view, would appear to be hurrying up the process which needs to be reconsidered by the State Election Commission. We are also informed that the term of office of the present elected bodies of all the Panchayats at the three-levels is to come to an end in August, 2023.

12. Bearing this in mind, the State Election Commission can fix a reasonable time for the prospective candidates to file their nominations because it is insisted that nominations have to be filed in physical form.

13. The other concern expressed is with regard to the safety of the candidates who seeks to file their nominations. It is the uniform representation of the petitioners that they seek for directions to file their nominations before the District Magistrate of the concerned district or the State Election Commission. It is not clear as to what is the apprehension in the minds of the prospective candidates or that of the petitioners. It is said that past instances do not give them confidence to file their nominations before the concerned Block Development Officer of the Panchayat. This issue can also be examined by the State Election Commission.

14. So far as ensuring free and fair polls, it goes without saying that right from the stage of filing of nomination till the counting of votes and publishing results the entire process should be videographed and the said video footages have to be protected and preserved and the duty lies with the State Election Commission in this regard.

15. With regard to the deployment of Central Forces, if in the opinion of the State Election Commission it would augur well to seek for deployment of Central Forces so that the State Police Force can work along with the Central Forces so as to preserve and maintain law and order situation, it is for the State Election Commission to take a decision in that regard.

We, therefore, call for the response from the State Election Commission on such issue.

16. The other concerns expressed in the writ petitions shall also be taken note of by the State Election Commission and their response to such issues shall be filed in the form of a report before this Court on 12th June, 2023.

17. The petitioners have also sought for appropriate direction not to deploy contractual employees and badli workers as election officers or to take part in the election process and in this regard we note that a writ petition has been filed as a public interest litigation wherein certain instructions given by the Chief Election Commissioner have been referred to wherein there appears to be an embargo for deploying contractual staff in the election process. This aspect also shall be considered by the State Election Commission and be addressed in the report to be submitted on the next date.

18. Mr. Bandopadhyay, learned senior advocate appearing for the State of West Bengal submits that the State is questioning the maintainability of the writ petitions. This issue will be considered at an appropriate stage.

19. We find that the State Election Commissioner has been impleaded by name as the 9th

respondent in WPA(P) 287 of 2023 which, in our opinion, uncalled for.

20. Mr. Guru Krishna Kumar, learned senior advocate appearing for the petitioner in WPA(P) 287 of 2023, on instructions, submits that the 9th respondent is given up and leave may be granted to correct the cause-title.

21. The learned advocate-on-record for the writ petitioner in WPA(P) 287 of 2023 is permitted to delete the 9th respondent from the array of respondents and the cause-title be corrected.

22. Let the matter appear on 12th June, 2023.

(T. S. SIVAGNAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)