

S/L 2
06.12.2021
Court. No. 19
GB

WPA 2985 of 2020
With
CAN 1 of 2020 (Old. No. CAN 2281 of 2020)

Kanchan Sikdar
Vs.
The State of West Bengal & Ors.

Mr. Anindya Lahiri.

...for the Petitioner.

*Mr. Debabrata Saha Roy,
Mr. Neil Basu.*

...for the Respondent No.5.

Mr. Samrat Dey Paul.

...for the Respondent No.6.

Ms. Sonal Sinha.

...for the Election Commission.

In Re: CAN 1 of 2020 (Old No. CAN 2281 of 2020)

This is an application for addition of party. The applicant claims to be similarly situated like the petitioner of the writ petition.

According to the applicant, the contentions of the writ petitioner with regard to the reservation of seats are correct and the reliefs prayed in the writ petition are similar to the reliefs as the applicant would also pray for. As such, the application is allowed.

Let the applicant be added as the respondent no.6. The respondent no.6 is supporting the petitioner.

Accordingly, the application being CAN 1 of 2020 (Old No. CAN 2281 of 2020) is disposed of.

The petitioner is directed to add the respondent no.6 in the array of respondents here and now.

The department is to take note accordingly.

In Re: WPA 2985 of 2020

The petitioner as also the added respondent no.6 have challenged the determination of seats by the West Bengal State Election Commission. Reliance has been placed on Rule 3 of the West Bengal Municipal Elections (Reservation of Seats) Rules, 1994 (hereinafter referred to as the 'said Rules') in the context of the reservation of ward No.23. The ward No. 23 had been created for the elections of Baidyabati Municipality.

It is submitted that the municipality caused delimitation of ward No. 17 to create ward No. 23. The population of ward No.17 was divided and the newly created ward no.23 was allotted 5400 persons.

According to the petitioner, ward No.23 has been reserved, incorrectly for Schedule Caste candidates. If the calculation of the population and the reservation of seats of the 2015 elections are taken into consideration then ward No.23 ought to be unreserved/general candidate.

These are issues, which relate to the orders passed by the prescribed authority and there are factual disputes.

This court is of the opinion that the State Election Commission is empowered under the law to correct all irregularities allegedly committed by the prescribed authority. In this regard, reference is made to a decision of the Hon'ble Apex Court in the matter of State of Goa & Anr.

Vs. Fouziya Imtiaz Shaikh & Anr. reported in (2021) 8 SCC 401. The relevant portions of the said judgement are quoted below:

“68. A conspectus of the aforesaid judgments in the context of municipal elections would yield the following results:

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.

68.2. If, however, the assistance of a writ court is required in subserving the progress of the election and facilitating its completion, the writ court may issue orders provided that the election process, once begun, cannot be postponed or protracted in any manner.

68.3. The non obstante clause contained in Article 243-ZG does not operate as a bar after the Election Tribunal decides an election dispute before it. Thus, the jurisdiction of the High Courts under Articles 226 and 227 and that of the Supreme Court under Article 136 of the Constitution of India is not affected as the non obstante clause in Article 243-ZG operates only during the process of election.

68.4. Under Article 243-ZA(1), the SEC is in overall charge of the superintendence, direction and control of the preparation of electoral rolls, and the conduct of all municipal elections. If there is a constitutional or statutory infraction by any authority including the State Government either before or during the election process, the SEC by virtue of its power under Article 243-ZA(1) can set right such infraction. For this purpose, it can direct the State Government or other authority to follow the Constitution or legislative enactment or direct such authority to correct an order which infracts the constitutional or statutory mandate. For this purpose, it can also approach a writ court to issue necessary directions in this behalf. It is entirely up to the SEC to set the election process in motion or, in cases where a constitutional or statutory provision is not followed or infringed, to postpone the election process until such illegal action is remedied. This the SEC will do taking into account the constitutional mandate of holding elections before the term of a municipality or Municipal Council is over. In extraordinary cases, the SEC may conduct elections after such term is over, only for good reason.

68.5. Judicial review of a State Election Commission's order is available on grounds of review of administrative orders. Here again, the writ court must adopt a hands-off policy while the election process is on and interfere either before the process commences or after such process is completed unless interfering with such order subserves and facilitates the progress of the election.

68.6. Article 243-ZA(2) makes it clear that the law made by the legislature of a State, making provision with respect to matters relating to or in connection with elections to municipalities, is subject to the provisions of the Constitution, and in particular Article 243-T, which deals with reservation of seats.

68.7. *The bar contained in Article 243-ZG(a) mandates that there be a judicial hands-off of the writ court or any court in questioning the validity of any law relating to delimitation of constituency or allotment of seats to such constituency made or purporting to be made under Article 243-ZA. This is by virtue of the non obstante clause contained in Article 243-ZG. The statutory provisions dealing with delimitation and allotment of seats cannot therefore be questioned in any court. However, orders made under such statutory provisions can be questioned in courts provided the statute concerned does not give such orders the status of a statutory provision.*

68.8. *Any challenge to orders relating to delimitation or allotment of seats including preparation of electoral rolls, not being part of the election process as delineated above, can also be challenged in the manner provided by the statutory provisions dealing with delimitation of constituencies and allotment of seats to such constituencies.*

68.9. *The constitutional bar of Article 243-ZG(a) applies only to courts and not the State Election Commission, which is to supervise, direct and control preparation of electoral rolls and conduct elections to municipalities.*

68.10. *The result of this position is that it is the duty of the SEC to countermand illegal orders made by any authority including the State Government which delimit constituencies or allot seats to such constituencies, as is provided in Proposition 68.4 above. This may be done by the SEC either before or during the electoral process, bearing in mind its constitutional duty as delineated in the said proposition.*

Considering the decision of the Hon'ble Apex Court, as quoted above, the West Bengal State Election Commission is the ultimate authority to decide all objections of illegality, irregularity or statutory infraction with regard to the action of an authority relating to an election process. This Court is not to venture into a judicial review of the decision of the prescribed authority at this stage.

If any objection is raised by the petitioner and the respondent no.6 before the West Bengal State Election Commission within seven days from date, the same shall be disposed of expeditiously and in accordance with law by passing a reasoned order and upon hearing the petitioner as also the respondent No. 6.

As this matter was substantially heard by this Court and the Court had directed that the data, and documents relating to reservation of seats, delimitation, etc. of the ward Nos.17 and 23 in the 2015 election of the Baidyabati Municipality shall be supplied to the petitioner, this court directs that before the hearing is held the petitioner and the respondent No. 6 shall be entitled to request for all necessary documents in this connection. Upon supply of the said documents, as available in the office of the Election Commission a hearing shall be given and a reasoned order shall be passed and communicated to all concerned.

In the order, the West Bengal State Election Commission shall specifically indicate how the prescribed authority followed the provisions of the West Bengal

Municipal Elections (Reservation of Seats) Rules, 1994 while reserving the ward No. 23. The reasoned order shall be mandatorily communicated to the petitioner within fifteen days from conclusion of the hearing.

This writ petition is, thus, disposed of.

There will be no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)