

12.04.2021
Item No.6
Crt.No.11
K.B.

**M.A.T. 349 of 2021
with
I.A. No. CAN 1 of 2021**

**Nasrin Bibi Sekh
-Versus-
The State of West Bengal & Ors.**

Mr. Sarwar Jahan
Mr. Asraf Mondal
.... For the appellant.

Ms. Sonal Sinha
.... For the West Bengal State Election
commission/Respondent No.3.

Mr. Dipayan Choudhury
Mr. Suvradal Choudhury
Mrs. Priyanka Choudhury
.... For the Election Commission of India.

Mr. Amal Baran Chatterjee
Mr. Alokesh Dalai
Mr. Mayukh Moitra
.... For the Private Respondents.

Party/parties is/are represented in the order of their
name/names as printed above in the cause title.

Under challenge in this appeal is the order of the
Hon'ble Single Bench dated 9th March, 2021 in Writ
Petition No.WPA 6715 of 2021.

The Hon'ble Single Bench was pleased to, *inter alia*,
hold that the meeting convened by the concerned Block
Development Officer (*BDO*)/the Prescribed Authority (*PA*)
under Section 12 of the West Bengal Panchayat Act, 1973
(for short the 1973 Act) should be allowed to be held.

The Hon'ble Single Bench opined that the meeting as convened by the *BDO/PA* is a meeting statutorily prescribed under Section 12 of the 1973 Act and therefore the notice of motion brought by the majority of members against both the *Prodhan* and *Upo-prodhan* of the Gram Panchayat(*GP*) in issue be allowed to be convened within the time limits as also prescribed by Section 12(supra).

The writ petitioners are the appellants before this Court represented by Mr. Jahan, Learned Counsel. The appellants argue that the order of the Hon'ble Single Bench has the effect of not recognising the restriction imposed by the Election Commission of India (*ECI*) through its Model Code of Conduct (*MCC*) governing elections to the State Assembly which is presently in progress.

Referring to several provisions of the *MCC*, Mr. Jahan submits that the meetings have the effect of impacting voters' choice and hence forbidden by the *MCC*.

The *PA* had accordingly sought clarification from the *ECI* connected to the notice of meeting as impugned in the writ petition. In its clarification the *ECI* has put strict conditions which bar meetings where new policy decisions and announcements, except for considering day-to-day routine management and emergency issues.

The *ECI* is represented by Mr. Choudhury, Learned Counsel.

The *ECI* relies on a paragraph of its General Instructions as filed before the Hon'ble Court at Calcutta in

relation to a *pari maateria* meeting of Councillors of a Municipality.

The *ECI* argues that the paragraph under reference and set forth below for a better appreciation of its contents, has generic application and therefore equally applies to the facts of this case.

The paragraph reads as follows”

“INSTRUCTION Sl. No.12

ECI letter No.437/6/INST/2011-CC&BE dated: 05th April, 2011 addressed to the Chief Secretaries and Chief Electoral Officers of all States and UTs.

Subject:-Model Code of Conduct for the guidelines of political parties and candidates in connection with Meeting of Municipalities-regarding.

The matter has been considered by the Commission. The Commission has decided that there would be no objection on its part to the holding of the statutory meetings, which cannot be avoided by the Municipalities and Panchayats and other local bodies, subject to the condition that no new policy decisions and announcements shall be made in such meetings till the elections are over and only the decisions related to routine day-to-day management issues, and on emergency issues may be taken in such meetings.”

Mr. Chatterjee, Learned Senior Counsel, appearing on behalf of the Private Respondents submits that the

paragraph under reference (*supra*) does not prohibit statutory meetings which cannot be avoided.

It is submitted that the impugned notice of the meeting is a notice under Section 12 and Section 12 is a statutory provision required to be diligently followed by the *BDO/PA* within the time limits as imposed by the statute.

Therefore, there cannot be any impediment to the holding of the meeting since the intention of the statute, which is not under challenge in this writ petition and neither is the *vires* of Section 12 (*supra*).

Mr. Chatterjee submits that since the will of the majority members of the *GP* in issue want a meeting on the notice of motion as served by them on the *BDO/PA*, the *MCC* does not prohibit such meetings which must yield to the statutory prescription.

Having heard the parties and having anxiously considered the materials placed, this Court finds force in the submission of Learned Counsel for the Respondents that the meeting as proposed to be convened under Section 12 of the 1993 Act is one such example of a statutory meeting required to be followed by the *BDO/PA*.

Accordingly, on such aspect, this Court finds no reason to intervene with the solemn order of the Hon'ble Single Bench. The meeting is accordingly allowed to be convened for the reasons as aforesaid.

However, this Court further abundantly clarifies that the restrictions/conditions attached to the holding of such

statutory meeting which flow from the General Instructions of the *ECI* as evident from the Paragraph as quoted above would apply to such meeting. It will be open to the *ECI* to take appropriate steps in the event such restrictions/conditions connected to the above mentioned statutory meeting are violated and brought to its notice.

In the backdrop of the above discussion, this appeal, being **MAT 349 of 2021** and its connected application, being **CAN 1 of 2021** stand **disposed of**.

Since the discussion has turned on pure points of law, affidavits have not been invited. Therefore, other allegations in the stay petition filed in this appeal, are deemed to be denied and disputed.

MAT 350 of 2021
with
I.A. No. CAN 1 of 2021

Nargis Sekh
With
The State of West Bengal & Ors.

The appeal is taken up on day's list with the consent of the parties and in view of the similarity of issues involved in both the appeals, i.e. MAT 349 of 2021 and MAT 350 of 2021, on a parity of reasoning, **MAT 350 of 2021 with IA No. CAN 1 of 2021** also stand **disposed of** on the same terms as directed by this order in MAT 349 of 2021 with CAN 1 of 2021.

All concerned parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Hiranmay Bhattacharyya, J.) (Subrata Talukdar, J.)