

6.
25-02-2022
debajyoti
(Ct. no.06)

MAT 228 of 2022
with
IA NO:CAN/1/2022

Janata Bibi
Vs.
The State of West Bengal & Ors.

Mr. Robiul Islam,
Mr. K. Bose,
Mr. R. Mondal

... For the Appellant.

Mr. Biswabrata Basu Mallick,
Mr. Raja Saha

... For the State.

By consent of the parties, the appeal and the application are taken up together for hearing.

This appeal has been preferred against an interim order dated February 17, 2022, passed by the learned Single Judge whereby the learned Single Judge refused to grant any interim relief in favour of the petitioner and gave directions for filing affidavits.

The case made out by the petitioner before the learned Single Judge was that the concerned Municipal Returning Officer illegally rejected the nomination papers of the petitioner to contest from Ward No.6, Beldanga Municipality, on the ground that the proposal of the 10th member did not mention the correct serial number as per the Voters' List.

The learned Single Judge declined to interfere with the matter holding, *inter alia*, that any relief, if granted to the petitioner, would amount to putting a clog on the election process and the scope of judicial

review with regard to any decision of the Election Commission is extremely restricted. The learned Judge thereby rejected the contention of the petitioner that she has no remedy under Sections 75 and 76 of the West Bengal Municipal Election Act, 1994.

We do not see any reason to interfere with the view expressed by the learned Single Judge. The election is scheduled to be held on February 27, 2022, that is, day after tomorrow. Even if we interfere with the learned Single Judge's order by directing the Returning Officer to accept the nomination, the same will be a futile exercise since there is no sufficient time to complete the process for inclusion of the petitioner in the published list of candidates so as to enable the petitioner to contest the election.

That apart, *prima facie*, we are of the opinion that the nature of disputes involved in this case form an election dispute so as to come within the purview of Section 75 of the 1994 Act. Therefore, the writ petition was not maintainable before the learned Single Judge.

With the aforesaid, *prima facie*, findings we are not inclined to interfere with the interim order passed by the learned Single Judge. Accordingly, the appeal and the connected application are dismissed.

Affidavits not having been called for, the allegations in the stay application shall be deemed not to have been admitted by the respondents.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

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

(Kausik Chanda, J.)

(Arijit Banerjee, J.)