

June 27, 2022
Sl. No.2 & 3
Court No.1
s.biswas/s.das

WPA (P) 271 of 2022

Raju Bista
vs.
Union of India and others

With

WPA (P) 237 of 2022

Pukar Gahatraj
vs.
Union of India and others

Mr. Subir Sanyal,
Mr. Swataroop Banerjee,
Mr. Lokenath Chatterjee,
Mr. Jasojeet Mukherjee,
Mr. Sukanta Ghosh, Advocates

...for the petitioner
in WPA (P) 271 of 2022

Mr. Billwadal Bhattacharyya, Asst. Solicitor General
Mr. Somnath Adhikari, Advocate

... for the Union of India
in WPA (P) 271 of 2022

Mr. S. N. Mookherjee, Id. AG
Mr. Samrat Sen, Id. AAAG
Mr. Anirban Ray, Id. GP
Mr. Nilotpall Chatterjee,
Mr. Yash Singhi, Advocates

... for the State
in WPA (P) 271 of 2022

Mr. Manojit Bhattacharya, Advocate

... for the petitioner
in WPA (P) 237 of 2022

Mr. Billwadal Bhattacharyya, Asst. Solicitor General
Mr. Indrajit Dasgupta, Advocate

... for the Union of India
in WPA (P) 237 of 2022

Mr. Samrat Sen, Id. AAAG
Mr. Anirban Ray, Id. GP
Mr. Nilotpall Chatterjee, Advocate

... for the State
in WPA (P) 237 of 2022

In re: WPA (P) 271 of 2022

In this public interest petition, the Notifications dated 20th May, 2022 and 27th May, 2022 are under challenge which relate to the conduct of General Elections to the Gorkhaland Territorial Administration Sabha in

terms of the provision of Gorkhaland Territorial Administration (Elections) Rules, 2012 which have been framed under Gorkhaland Territorial Administration Act, 2011.

Learned counsel for the petitioner has pointed out that WPA 12212 of 2012 involving the same issue is already pending before the learned Single Judge. He has referred to the order of the Hon'ble Supreme Court dated 20th April, 2017 passed in Writ Petition (C) No.688 of 2016, wherein the Hon'ble Supreme Court had observed that in the first instance, the issue pertaining to constitutional validity of the Memorandum of Agreement dated 18.07.2011 and the Gorkhaland Territorial Administration Act, 2011 needs to be determined and only thereafter the question of implementation of the Memorandum and the Act would arise.

He has submitted that the issue relating to the constitutional validity raised in the pending writ petition before the learned Single Judge, has not been decided till now, yet the Elections have been held.

He has also referred to the order dated 12th April, 2019 passed in Transfer Petition (Civil) No.718 of 2019 in the matter of Gorkha National Liberation Front (GNLF) & Anr. versus Union of India & Ors. in terms whereof this Court is required to take steps for early disposal of W.P.No.12212(W) of 2012.

It has been pointed out that before the learned Single Judge, an application in the pending petition was

filed for stay of the Notifications which are under challenge in the present petition and the same was declined by the order dated 19.05.2022.

Learned counsel for the parties have also pointed out that the matter was mentioned before the Hon'ble Single Judge today and the writ petition has been fixed for final hearing tentatively on 25th July, 2022.

Having regard to the above, we are of the opinion that instead of entertaining a separate petition for the same cause, the pending writ petition being WPA 12212 of 2012 itself should be decided without any delay.

Having due regard to the orders which have been passed by the Hon'ble Supreme Court, a prayer has been made by the learned counsel for the petitioner that the date of hearing of the pending petition before the learned Single Judge should be preponed. He would be at liberty to make such a prayer before the learned Single Judge and we are hopeful that considering the urgency and nature of controversy involved, learned Single Judge will duly consider the prayer and will hear the petition as expeditiously as possible.

If on account of heavy board or for some other reason Hon'ble Single Judge is unable to take up the petition on an early date, the petitioner will be at liberty to mention before the Hon'ble Chief Justice as per procedure.

It is also pointed out that another writ petition being WPA 1171 of 2022 of the Jalpaiguri Circuit Bench is also

pending before the same learned Single Judge involving the same issue.

Therefore, we expect that the said matter will also be taken up for hearing along with the pending petition being WPA 12212 of 2012.

In re: WPA (P) 237 of 2022

In the connected petition being WPA (P) 237 of 2022, the prayer is for issuing a direction to formulate the reservation for SC/ST in upcoming General Elections in the Darjeeling under Gorkhaland Territorial Rules. The elections have already been held. Therefore, the issue is no longer survived.

However, the petitioner will be at liberty to intervene in the pending petition before the learned Single Judge and raise the issue in the pending petition.

With the aforesaid observations both the writ petitions are disposed of.

[Prakash Shrivastava, C.J.]

[Rajarshi Bharadwaj, J.]