

03.04.2023
Court No. 19
Item no.21
CP

WPA No. 6445 of 2023

Kamala Kanta Jana
Vs.
The State of West Bengal & Ors.

Mr. Ziaul Haque

....for the petitioner.

Mr. Moloy Singh
Mr. Tapas Ballav Mandal

.....for the State respondents.

The petitioner is directed to add the Commissioner, West Bengal State Election Commission as a respondent. Let a copy of the writ petition along with the copy of this order be served upon the added respondent.

The order passed by the District Panchayat Election Officer & District Magistrate, Purba Medinipur is the subject matter of the challenge in this writ petition.

According to the petitioner, the estimated growth of SC and ST population by adding 7.5% to the relevant figures as published in the Census of 2011, was arbitrary. It is submitted that the electoral rolls would reflect that the SC and ST population had not increased and was not beyond 2.5% of the total population in Jukhia-VI Gram Panchayat. Thus

computing the population by adding a growth of 7.5% was anomalous and not as per the rules.

As the election is imminent and the calculation as the SC/ST population had been made as per the order of the State Election Commission, the writ court cannot interfere with the decision of the District Panchayat Election Officer.

The court deems it fit to allow the petitioner to file an objection with his allegation of erroneous reservation of the seat of Jukhia-VI Gram Panchayat for an SC category candidate. According to the petitioner, the SC population in Jukhia-VI Gram Panchayat was less than 5% of the total population. Thus the seat could not have been reserved in violation of the rules.

The order impugned does not call for interference by the writ court as the executive action complained of, has been taken on the basis of the order of the West Bengal State Election Commission dated July 27, 2022, relevant portion of which is quoted below:

“Now, therefore, the Commission after considering all the above facts and in exercise of the powers conferred by Article 243K of the Constitution of India read with Section 3 of the West Bengal Panchayat Elections Act, 2003 and Rules 22, 24 & 26 of the West Bengal Panchayat Elections Rules, 2006, hereby directs that for the purpose of reservation of seats as well as reservation of office bearers for the three-tier panchayat bodies in connection with the forthcoming Panchayat General Elections, the figures for

total population as well as that for the SC and ST categories shall be calculated by adding the estimated rate of growth of population during 2011 to 2021 i.e. 7.5 percent to the relevant figures as published in Census 2011.

This order may be communicated to all concerned immediately.”

It appears that the Election Commission directed that the figures of the total population as well as those for SC and ST categories must be calculated by adding the estimated rate of growth of population during 2011 to 2021 @ 7.5% to the relevant figures as published in the Census of 2011.

In the decision of ***State of Goa vs. Fouziya Imtiaz Shaikh***, reported in **(2021) 8 SCC 401**, the Hon’ble Court observed the supreme power of the Election Commission to decide issues of such nature. The relevant portion of the said decision is quoted below:-

“**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.

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.....

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.”

It appears that delimitation was completed in November 2022. The election is imminent, although the notification has not yet been published. Thus, as the third last proviso of Section 4(2) of the West Bengal Panchayat Act, 1973 categorically states that the State Election Commission has the jurisdiction to pass necessary orders with regard to delimitation, reservation etc., the petitioner is entitled to approach the said Commission immediately.

The third last proviso to Section 4(2) of the Panchayat Act reads as follows:-

“Provided also that the State Election Commissioner may, at any time, for reasons to be recorded in writing, by order, direct the prescribed authority to make fresh determination of the number of members of a Gram Panchayat or fresh reservation on rotation of the number of seats of such Gram Panchayat and, on such order being issued by the State Election Commissioner, the determination of the number of

members or the number of seats to be reserved or the sequence of rotation of reservation of seats or any combination of them as may be specified in such order shall not be varied for the next two successive general elections”

If such approach is made, the same shall be disposed of in accordance with law, upon hearing the petitioner and the concerned authorities responsible for delimitation and reservation of seats.

A reasoned order shall be passed and communicated to the petitioner.

The entire exercise shall be completed within a period of one week from the date of receipt of the petitioner’s objection.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)