

15th June,
2023
(AK)
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W.P.A 13990 of 2023

Karishma Parvin and another
Vs.
The Election Commission of India and others

Mr. Saikat Chatterjee
Ms. Salma S. Shah
Mr. P. Pal

...for the petitioners.

Mr. Anuran Samanta
...for the Election Commission of India.

Mr. Gangadhar Das
Mr. Tanmoy Chattopadhyay
...for the respondent no.9.

Learned counsel for the petitioners argues that the last cut-off time for filing nominations being on-coming Panchayat Elections is 3 p.m. today.

It is submitted that pursuant to the order of a coordinate Bench of this court dated May 25, 2023, the Electoral Registration Officer (ERO), who was the respondent no.6 in the writ petition before the said coordinate Bench, that is, WPA 11770 of 2023, which was filed by the present respondent no.9, was directed to dispose of the grievance of the petitioners therein by treating a copy of the writ petition as a representation/application under Form-7.

It is submitted, by handing over a photocopy of a certified copy of an order passed by the ERO pursuant to

the said direction on June 9, 2023 that the ERO considered the objection of the private respondent herein and thereafter went on to observe that there is no bar statutorily to prevent the name of the petitioners to be enrolled in the electoral roll under Malda District as resident of Village-Natun Nagharia.

It is submitted that in view of such development, there is no impediment in the petitioners' filing their nominations as candidates for the on-coming Panchayat Elections of the State of West Bengal.

Learned counsel appearing for the private respondent opposes such contentions and hands over a copy of a purported advisory by the learned Additional District Magistrate (PGF), Malda, for advancing the proposition that as per Section 36 of the West Bengal Panchayat Election Act, 2003, the Panchayat Electoral Registration Officers are empowered to have limited applications and in this case the concerned sub-divisional Officer is the Electoral Registration Officer.

It is submitted that the ERO did not have jurisdiction to pass the order as passed by the said authority.

It is further contended that the petitioners are not entitled to file their nominations, in view of the fact that the petitioners' residence in West Bengal, after coming

back from Telengana, started subsequent to the cut-off date necessary for filing such nomination papers.

It transpires from the copy of the order of the ERO dated June 9, 2023 that it was specifically observed by the said authority, in terms of the direction of the coordinate Bench of this court, that there was no bar statutorily to prevent the name of the petitioners to be enrolled in the electoral roll under Malda District.

Accordingly, the application in Form no.7 filed by the present private respondent was dismissed.

It is rightly contended by the respondent authority through counsel that there is an appellate forum provided in law against such order.

That apart, since the present private respondent was the applicant before the ERO and was present at the relevant juncture when the order was passed, without there being any reflection in the said order and/or the order of the coordinate Bench, where the private respondent was also the writ petitioner, regarding the objection of the private respondent in respect of jurisdiction of the ERO, such question cannot be permitted to be raised by the respondent no.9 for the first time before this forum.

Since the present private respondent not only participated in the hearing before the ERO, but was the very applicant therein as well as in the writ petition before

this court, where the direction in-question was passed on the ERO, there cannot be any occasion to reopen the order of the ERO merely on the ground that the said authority did not have jurisdiction.

It is ridiculous to place reliance on an advisory by the Additional District Magistrate (PGE), Malda, which is not only contrary to the direction passed by the coordinate Bench but also to the order passed by the ERO, for the purpose of entertaining the arguments made by the private respondent.

The private respondent's case is further weakened in view of the admitted position that the private respondent, although independently a citizen of India, is the spouse of the Pradhan of the area, who has a vital interest in the participation of the present writ petitioners in the election process.

In such view of the matter, since no dispute regarding election is involved, the writ petition is entertained and is being decided.

Since the petitioners have, as discussed above, made out sufficient reason for there being no impediment for the petitioners to participate in the nomination process as candidates in the on-coming Panchayat Elections of West Bengal, the respondent authorities have no jurisdiction or authority to prevent the petitioners from doing so.

Accordingly, WPA 13990 of 2023 is allowed, thereby directing the respondent authorities to accept the petitioners' application for nomination as candidates in the on-coming Panchayat Elections of West Bengal, subject of course to the said applications being otherwise in conformity with law and procedure.

The respondent authorities shall act on the communication of the learned Advocates for the parties without insisting upon prior production of any certified copy for the compliance of this order.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)