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19.06.2023
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**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 14477 of 2023

**Kalimuddin Saikh @ Sk. Kalimuddin
-versus
The State of West Bengal & Ors.**

**Mr. Biswaroop Bhattacharyya,
Mr. Golam Mohinddin.
...For the Petitioner.**

**Mr. Samrat Sen,
Mr. Sirsanya Bandopadhyay,
Mr. Arka Kumar Nag.
...For the State.**

**Ms. Sonal Sinha,
Mr. Asish Dutta,
Mr. S. Samanta,
Mr. Sayan Datta,
Mr. Soumen Chatterjee.
...For Election Commission.**

The present writ petition has been filed by one Kalimuddin Saikh @ Sk. Kalimuddin claiming himself to be the All India President of Indian National Socialistic Action Forces (INSAF), Amua, Sainthia, Birbhum.

The petitioner also claims himself to be the leader of the prospective candidates of the aforesaid party intending to contest the upcoming election of the Gram Panchayats and Panchayat Samities of West Bengal.

The allegation of the petitioner is that the worker and supporters of the party desirous of filing their

nominations for the Panchayat Election reached the office of Sainthia Block Development Office at 2 P.M. on 15th June, 2023.

All the intended candidates wanted to file the nomination as candidate for the post of Gram Panchayat, Panchayat Samity and the Zilla Parishad.

Allegation is that hooligans supported by the ruling party members forcibly restrained them and ousted them from the office of the premises and also brutally assaulted them.

The petitioner alleges that despite reaching the office on time the dealing officers refused to receive their nominations and tried to discourage them from filing their nominations. At around 3 P.M. a large group of people led by the leader of the ruling political party and the anti-social elements associated with the ruling political party entered the room where the candidates of the petitioner were filing their nominations and the said candidates were abused using filthy language and threatened of murder.

The election officials on duty failed to come to the rescue of the candidates of the petitioner.

It has been submitted that the fundamental right to contest the election has been taken away forcibly in view of the action of the ruling party members.

Reliance has been placed on the order passed by this Court on 16th June, 2023 in WPA 14333 of 2023 (Dr. Archana Majumdar –vs- The State of West Bengal & Ors.) wherein the Court permitted filling of

nominations after the last date for filing the nomination was over.

It has been submitted that the Court ought to come to the rescue of the petitioner's candidates and permit them to contest the same, more so because the last date for withdrawal of the candidature is yet to be over.

The State respondents oppose the said application.

It has been pointed out that paragraph nos. 10, 11 and 12 which are the bedrock of filing the present writ petition has not been affirmed either true to knowledge or upon information derived from the records.

It has been submitted that the petitioner has intentionally and deliberately not affirmed the said paragraph as the petitioner does not intend to take the responsibility of the averments made therein.

The locus standi of the petitioner in filing the writ petition has also been questioned.

It has been submitted that the petitioner himself is not an intending candidate. He claims to be the representative of INSAF.

It has been contended that the writ petition has not been filed in the form of a Public Interest Litigation and, accordingly, the writ petition filed by the petitioner in his individual capacity is liable to be dismissed with exemplary costs.

Learned advocate appearing for the Election Commission submits, upon instructions that, the political party whom the petitioner represents is not a recognized one. The last date for filing the nomination is long over that is 15th June, 2023. The date for scrutiny of the nomination is also over, i.e. 17th June, 2023.

At this stage allowing the prayer of the petitioner will disturb the entire election schedule.

The respondents pray for dismissal of the writ petition.

In reply to the submission made by the learned advocate appearing for the Commission that the political party of the petitioner is not a recognized one learned advocate appearing for the petitioner refers to the communication dated 8th June, 2023 made by the District Panchayat Election Officer and District Magistrate, Birbhum addressed to the political party wherein the President/Secretary of the political party was requested to attend the meeting to be held on 9th June, 2023 in connection with the Panchayat General Election, 2023.

I have heard the submissions made on behalf of all the parties.

The notification dated 9th June, 2023 published by the West Bengal State Election Commission sets out the dates for the various stages of the election.

15th June, 2023 was the last date for filing the nomination, 17th June, 2023 was the date for scrutiny of nominations, 20th June, 2023 is the last date for

withdrawal of candidature and 8th July, 2023 is the date of the election.

It appears from the said timeline that the last date for filing the nomination and the date for scrutiny of nominations are over. Tomorrow is the last date for withdrawal of the candidature.

At this stage, whether it will be permissible to extend the time for filing the nomination is required to be answered.

It appears that a Public Interest Litigation being WPA (P) 250 of 2023 (Sri Dipankar Rit –vs- State of West Bengal & Ors.) along with two other Public Interest Litigations were heard and disposed of by the Hon'ble Division Bench taking up PIL matters presided over by the Hon'ble Chief Justice and judgment was delivered on 13th June, 2023 wherein the Court was of the opinion that if there is any reasonable apprehension of prevention of or obstructions to making of nomination and/or there has been any alleged obstruction, the aggrieved party has to take recourse to provision laid down under sub-Section 2 of Section 46 of the Panchayat Elections Act, 2003.

The Court specifically recorded that writ of Mandamus cannot be issued to compel statutory authority to act de hors the provisions of the relevant statute. The Court refrained from passing any direction upon the State Election Commission directing acceptance of nomination papers either by the Commission or permit filing of nominations before the concerned District Magistrate as prayed for by the writ petitioner.

The Court recorded that the Act empowers the Commission to extend the last date for filing nominations for a day under the contingencies mentioned in the Act itself and the aggrieved person ought to take action in accordance with the said provision.

In the present case, allegation is that on 15th June, 2023 the workers and supporters of the party desirous of filing their nominations reached the office of the BDO at 2 P.M.

It is noticed that 15th June, 2023 was the last date for filing the nominations. The notification was published by the State Election Commission on 9th June, 2023.

Had the members of the petitioner's party been so interested to contest the Panchayat Election, they ought to have taken steps immediately upon publication of the notification.

Assuming that they reached the BDO's office on 15th June, 2023 and were restrained from filing their nominations, the said members ought to have approached the Court in proper time.

Today on 19th June, 2023, after the date of filing nomination is over and the date of scrutiny of nominations is also over it may not be proper for the writ court to issue a writ of Mandamus commanding the respondent authority to accept nomination or to permit the intending candidates to file their nominations.

Similar prayer appears to have not been accepted by the Hon'ble PIL Bench.

In this connection as reference has been made to the order dated 16th June, 2023 passed by this Court in the matter of Dr. Archana Majumdar (supra), be it recorded that the said order was passed as the petitioner in the said writ petition approached the Court immediately after the date of filing the nomination was over i.e. on the 16th June, 2023 and as there was a submission recorded on the part of the Election Commission that a day could have been extended for filing the nomination, accordingly, the candidates were permitted to file their nominations only by the 16th June, 2023 and not thereafter.

In view of the above, there is hardly any scope to exercise jurisdiction in the matter.

Learned advocate appearing for the petitioner refers to a communication allegedly forwarded through electronic mail to the State Election Commission on 16th June, 2023 at 12.35 P.M. forwarding documents in support of the submission that candidates were restrained and obstructed from filing the nominations within the prescribed time period.

Learned advocate appearing for the petitioner submits that the same may be taken as compliance in accordance with the provisions of Section 46(2) of the Act, 2003.

Reference has also been made to paragraph 39 of the judgment passed in the matter of Sri Dipankar Rit (supra) wherein the Court expressed the view that an

aggrieved person may take recourse to Section 46(2) of the Act.

The State Election Commission may take a decision in response to the electronic mail allegedly forwarded by the petitioner on 16th June, 2023 at 12.35 P.M.

Decision shall be taken by the Election Commission at the earliest but positively by 5 P.M. today.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)