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Ct. 24
20.06.2023

W.P.A. 14486 of 2023

**Tapas Pramanik
Vs.
The Secretary, West Bengal State Election
Commission & Ors.**

Mr. Sankar Prashad Dalapati,
Mr. Rajib Kumar Acharyya,
Mr. Arka Bhattacharya,
Mr. Banshi Badan Maity,
Mr. Abhisek Addhya,
Ms. Tanushree Ghosh,
Mr. Sudipta Maiti,
Mr. Sourav Mondal ... For the petitioner.

Mr. Lalit Mohan Mahata,
Mr. Arka Kumar Nag ... For the State.

Ms. Sonal Sinha,
Mr. Sujit Gupta,
Mr. Sayan Dutta,
Mr. Soumen Chatterjee,
Mr. Subhajit Chowdhury
... For the State Election Commission.

Supplementary affidavit filed on behalf of the
petitioner in Court today is taken on record.

The engagement letter of the petitioner is annexed
with the said supplementary affidavit. The same
mentions that the petitioner has been engaged as
volunteer facilitator for water testing. The duties of
volunteer facilitator include collection of water sample
for the purpose of testing, carrying of water to the test
center, to create general awareness in the locality of
the Panchayat for using pollution free water, to collect
the report from the testing center etc.

The engagement letter does not mention that the petitioner is required to perform any matter where technical skill is required.

The petitioner is paid from the 10% fund which is provided by the State Government through the public Health Engineering Directorate.

The petitioner submits that he is required to perform this work only once in a month. There is no formal contract between him and the Panchayat. The petitioner does not receive any payment from the fund of the Panchayat.

In terms of the notification published by the State Election Commission on 12th April, 2023 the petitioner filed his nomination.

It appears that in the said notification the State Election Commission clearly mentioned that the Gram Panchayat Resource Person, Village Resource Person, District Resource Person, the Community Service Provider, Barefoot Technicians, Anganwadi Workers and Helpers are all eligible to participate in the Panchayat Election.

The disqualification for membership of Gram Panchayat is mentioned in Section 7 of the Panchayat Elections Act, 2003.

The petitioner submits that he is eligible to participate in the Panchayat Election and accordingly has filed his nomination. It is only at the time of scrutiny that the subsequent notification of the State

Election Commission dated 15th June, 2023 was invoked treating his candidature to be ineligible for participation as the petitioner was held to be a Gram Panchayat Level Water Quality Tester, i.e. Jalabandhu.

The learned advocate representing the respondents opposes the submission of the petitioner. It has been submitted that as the candidature of the petitioner has been rejected, accordingly, there is no scope to entertain the writ petition. The only remedy is to file an election petition after the result of the election is declared.

Learned advocate representing the respondents rely upon the judgment delivered by the Hon'ble Supreme Court in the matter of N.P. Ponnuswami & Ors. Vs. Returning Officer, Namakkal Constituency and Ors. reported in AIR 1952 SC 64 (paragraph 27).

Reliance has also been placed on the judgment delivered by the Hon'ble Supreme Court in the matter of State of Goa and Anr. Vs. Fouziya Imtiaz Shaikh & Anr. reported in 2021 (8) SCC 401 (paragraphs 68, 68.1 and 68.5).

The thrust of the argument of the respondents is that there is no scope for entertaining the petition of the petitioner on account of rejection of his candidature.

Provisions of the Constitution of India also been placed before this Court.

I have heard the submissions made on behalf of all the parties and perused the materials on record.

It appears that by subsequent notification dated 15th June, 2023 the Jalabandhu's were considered ineligible to contest the Panchayat Election. Service of the petitioner is not of Jalabandhu. The petitioner is not the Gram Panchayat Level Water Quality Tester. Engagement of the writ petitioner is as a volunteer to facilitate for water testing. The service of a volunteer cannot be the same as the service of water quality tester.

Moreover, the petitioner does not receive any payment from the fund of the Gram Panchayat. According to the engagement letter of the petitioner he receives the honorarium from the fund which is forwarded by the Public Health Engineering Directorate. The petitioner is not under any contract with the Gram Panchayat.

With regard to the submission of the respondents that the writ petition is not maintainable, it is noted that the petitioner has hardly raised any election dispute. He has already filed his nomination papers and intends to contest the Panchayat Election.

At the initial stage his nomination was accepted but thereafter his candidature has been rejected allegedly on the ground of subsequent notification brought by the State Election Commission mentioning that the

Gram Panchayat Level Water Quality Tester, i.e. Jalabandhu is not eligible to contest.

At this stage, learned advocate representing the State Election Commission produces a communication made by the Executive Engineer, Alipore Division, Public Health Engineering Directorate addressed to the Additional District Magistrate (Zilla Parishad) South 24 Parganas on 17th September, 2021 with regard to the problem related to the facilitators engaged for water collection.

It mentions that there are 18 number of functioning water testing laboratories for which water facilitator/collectors were engaged by the Gram Panchayat and their remuneration is provided by the Gram Panchayat.

Attention has also been drawn that some Gram Panchayats have engaged facilitators and have not paid their remuneration for water collection.

The communication further mentions that some of the Gram Panchayats have not yet provided the equipments to the facilitators and the payment of honorarium of the water quality surveillance personnel has been allowed under administrative expenses under the Finance Commission Grants.

From the further communication attached to the instruction provided by the concerned authority, it appears that the funds have been provided by the

Department of Panchayats and Rural Development and payment is made through the Gram Panchayat.

The provisions of Section 79, 93(1)(c) of the Panchyat Elections Act, 2003 have been placed in Court. It has been submitted that in accordance with the ratio laid down by the Hon'ble Supreme Court in the Case of Ponnuswami (supra) and State of Goa (supra) improper rejection of nomination papers can only be adjudicated by the Court if election petition is filed.

Section 83(1)(c) of the Act of 2003 mentions that subject to the provisions of sub-section (2) if the Court is of the opinion that any nomination has been improperly rejected then the same may be a ground for filing election petition.

Section 79 (1) of the Act lays down that if any dispute arises as to the validity of election under the Act, any person entitled to vote at such election may, after the declaration of the result file a petition, calling in question such election.

The Hon'ble Supreme Court in the matter of State of Goa (supra) has laid down that the State Election Commission is in overall charge of superintendence, direction and control of the preparation of electoral rolls and conduct of all municipal elections. Judicial review of State Election Commissions order is available on the ground of review of administrative orders.

The writ Court must adopt a hands-off policy while the election process is on and interfere either before the process commences or after such process is completed unless interference with such order sub-serves and facilitates the progress of the election.

In the instant case the concerned authority misinterpreted a subsequent notification published by the State Election Commission on 15th June 2023 and held that the petitioner was ineligible to contest the election.

From the facts narrated above it is crystal clear that the petitioner is not serving as a Gram Panchayat Level Water Tester, i.e. Jalabandhu and, accordingly, the restriction imposed on the Jalabandhu's from participating in the general panchayat election cannot be made applicable in favour of the petitioner.

The concerned authority is directed to scrutinize the nomination papers filed by the petitioner in terms of the notification published by the State Election Commission on 12th April, 2023 by today being the last date of withdrawal of nomination.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Amrita Sinha, J.)