

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 14843 of 2023

Sirajuddin Dewan & Ors.

Vs.

The West Bengal State Election Commission & Ors.

For the writ petitioners	:-	Mr. Subir Sanyal, Adv. Mr. Joy Chakraborty, Adv. Mr. Partha Sarathi Ghosh, Adv. Mr. Azam Khan, Adv. Mr. Sandip Dinda, Adv. Ms. Dipsita Ghosh, Adv.
For the State	:-	Mr. Kalyan Kumar Bandopadhyay, Sr. Adv. Mr. Lalit Mohan Mahata, Adv. Mr. Rudranil De, Adv.
For the Election Commission	:-	Ms. Sonal Sinha, Adv. Mr. Tarun Kumar Chatterjee, Adv. Mr. Sujit Gupta, Adv. Mr. Sayan Datta, Adv. Mr. Soumen Chatterjee, Adv.
Hearing concluded on	:-	23.06.2023
Judgment on	:-	26.06.2023

Amrita Sinha, J.:-

The case of the petitioners as made out in the writ petition is that for contesting the panchayat general elections, 2023 in Canning I block, Dist. – South 24 Parganas they intended to file their nomination papers but they were forcefully prevented and obstructed by the supporters of the ruling political party with the aid and assistance of the police and government administration to file the same. The petitioners contend that as many as 274 seats have remained uncontested as the opposing party candidates were prevented from submitting their respective nominations. The petitioners are aggrieved by the same.

The petitioners seek for leave to file nomination papers and direction upon the State Election Commission to accept the nomination papers from the

petitioners with a further direction upon the Commission to permit the petitioners to contest the election.

It has been brought to the notice of this Court that in writ petition being WPA 14479 of 2023 (Sirajul Islam Gharami –vs- State of West Bengal & Ors.) the Hon'ble Court had to pass order for police protection to enable the petitioner and his supporters to return to their residences. In the said case the petitioner Sirajul Islam Gharami along with his supporters, who are the petitioners herein, were on their way to file nominations for the ensuing panchayat elections when they were prevented from reaching the nomination centre.

Repeated objections and complaints were raised before the respondent authorities for redressal of their grievances but there has been no response from the end of the authorities.

Learned senior counsel representing the State respondents vehemently opposes the prayer of the petitioners. It has been submitted that Article 243-O of the Constitution of India specifically bars interference by Courts in electoral matters. Article 243-O(b) specifically lays down that no election to any panchayat shall be called in question except by an election petition.

Reliance has been placed on Sections 79, 80, 93 and 94 of the Act. It has been argued that the ground agitated by the petitioners in the instant writ petition seeking relief may be a ground for filing an election petition. The petitioners may agitate all their points in an election petition and not by way of filing a writ petition as the same is impermissible in law.

The issue of candidates being forcefully restrained from filing their nominations fell for consideration before the Hon'ble PIL Bench of this Court and by a judgment delivered on 13th June, 2023 the Hon'ble Court in WPA (P) 250 of 2023 (***Sri Dipankar Rit –vs- State of West Bengal & Ors.***) observed that if there is any reasonable apprehension of prevention or obstruction to making nomination or there has been any alleged obstruction, the aggrieved party has to

take recourse to Section 46(2) of the Act in the manner specifically provided therein.

The State Election Commission declared the dates of the various stages of the election by publishing a notification on 9th June, 2023. The last date for filing the nomination was 15th June, 2023. The date for scrutiny of nomination was 17th June, 2023 and the last for withdrawal of candidature was 20th June, 2023. The date of election is scheduled on 8th July, 2023.

According to Section 43 of the West Bengal Election Panchayat Act, 2003 the last date for making nomination shall not be later than twenty one days but earlier than thirty five days before the date fixed for the poll; provided that the Commission may, for reasons which it considers sufficient, extend, by notification, the date for completion of any election.

The timeline mentioned in the Act cannot be adhered to if the prayer of the petitioners for filing nomination is accepted by the Court at this stage.

In view of the aforesaid provision of law and in line with the judgment delivered by the Hon'ble PIL Bench in the matter of Dipankar Rit (supra), no relief can be granted to the petitioners in the instant case.

The writ petition fails and is hereby dismissed.

Dismissal of the writ petition will, however, not stand in the way of the petitioners to approach the appropriate forum for relief in accordance with law, if so advised.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)