

16 03.07.2023
RP Ct. No. 01
AN

WPA (P) 319 of 2023

Sridhar Chandra Bagari
Vs.
The State of West Bengal & ors.

Mr. Sridhar Chandra Bagari
... For the petitioner (in-person)

Mr. S. N. Mookherjee, Ld. A.G.
Mr. Arka Kr. Nag
Mr. S. Bandopadhyay
... For the State

Mr. Billwadal Bhattacharyya
Mr. Arijit Majumder
... For the U.O.I.

1. This writ petition has been filed as a Public Interest Litigation by a person who is stated to have voluntarily retired from the Indian Army. He was an Ex-Assistant Post-Graduate Teacher in one of the Stated aided Higher Secondary School and he claims himself to be a bio-chemic doctor and practicing through bio-chemic system medicine with allied homoeopathy and a social worker, is an advocate of this Court. The petitioner would also state that he is an unreturned candidate of the Joka Gram Panchayat in the election conducted in 2003, Pathar Pratima in 2016 and an unreturned candidate in the Parliamentary Election in South Kolkata in the year 2019.

2. The petitioner has essentially two prayers. The first of which is postponement of the forthcoming Panchayat Election. This prayer cannot be granted for more than one reason. Firstly, this very issue was brought before this Court in a batch of Public Interest Litigations and by

judgment dated 13.06.2023 in WPA(P) 250/2023, this Court had rejected the said prayer after interpreting the provisions of Section 42, 43 and 46 of the West Bengal Panchayat Elections Act, 2003 (in short, the Act of 2003). The said order passed by this Court was affirmed by the Hon'ble Supreme Court in a Special Leave Petition on 20.06.2023. Therefore, as rightly pointed out by the learned Advocate General, principles of res judicata will also apply to Public Interest Litigations. Therefore, such a prayer for postponement of elections would clearly tantamount to calling election in question and such prayer cannot be granted and the same is rejected. In this regard, it is relevant to point out that in terms of Article 243(o)(b), no election to any Panchayat shall be called in question except by way of Election petition presented to such authority and in such manner as is provided for by or under any law made by legislature of a State. Further, Section 80 of the West Bengal Panchayat Elections Act, 2003 states that no election to Panchayat shall be in question except by an election petition, presented in accordance with the provisions of this part. It is to be noted that the forum before which the dispute has to be raised with regard to the validity of an election has been provided for under Section 79(1) of the West Bengal Panchayat Act. Further, Article 329 also speaks about bar to interference by Court in electoral matters. Therefore, the prayers sought for by the petitioner cannot be granted.

3. With regard to other prayers as sought for by

the petitioner for declaring an emergency in the State, such a prayer is sought for against the 2nd respondent, viz., the Union of India, Ministry of Home Affairs, New Delhi. The language of Article 356(1) is very clear and in terms of the said constitutional provision, if the President on receipt of a report from the Governor of a State or otherwise is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution, the President may by proclamation do any of the matters as enumerated in Clauses (a) to (c) of Article 356(1) of the Constitution of India. The petitioner appearing in-person would rely upon the proviso under Article 356(1) of the Constitution of India. In our considered view, this proviso will no manner assist the case of the petitioner as the power of the Court to interfere in the election matters has been clearly circumscribed under Article 243(o) of the Constitution of India read with Section 80 of the Act of 2003. Therefore, the second prayer sought for by the petitioner cannot be granted by this Court.

4. For the reasons stated hereinabove, the instant writ petition stands **dismissed**.

(T. S. Sivagnanam)
Chief Justice

(Hiranmay Bhattacharyya, J.)

