

21 18.04.2023
AN Ct. No. 01
S.S.

WPA(P) 399 of 2022

Debasish Dey
Vs.
The State of West Bengal & ors.

Mr. Kallol Basu
Mr. Srijib Chakraborty
Mr. D. Bhattacharyya
Mr. S. Sarkar
Mr. D. Kar

... For the petitioner

Mr. Jahar Lal De
Mr. Shamim-ul-Bari

... For the State

Ms. Sonal Sinha

... For the State Election
Commission

1. By way of this Public Interest Litigation the petitioner has sought for multiple prayers. The first prayer is against the State Government directing the authorities to issue notification for constitution of a new Municipality at Amtala, South 24-Parganas District. The other limb of the prayer is to restrain the State Election Commission, the 5th respondent from giving effect to the order dated 25.07.2022. So far as the first limb of the prayer sought for in the writ petition is concerned, is to direct issuance of notification under the provisions of the West Bengal Municipal Act, 1993 (in short, 'the Act') by issuing a preliminary notification for constitution of a new Municipality at Amtala, South 24-Parganas District.

2. Learned counsel appearing for the petitioner has drawn our attention to the relevant documents annexed to the said petition and, in particular, that the proposal for constitution of a new Municipality at Amtala has received

the approval of the Cabinet as early as on February 24, 2016 and till date no notification has been issued and, in the meantime, de-limitation exercise has been commenced by the State Election Commission and, therefore, prayer has been made to issue necessary direction to the authorities to issue preliminary notification. The constitution of municipal areas is done in terms of the various provisions in Part – II, Chapter - II of the Act. Under Section 3 of the said Act, the power has been given for declaring intention to constitute a municipal area. The provisions state that whenever it appears to the Governor that any town, together with, or exclusive of, any railway station, village, land or building in the vicinity of such town (i) contains a population of not less than 30,000 inhabitants, (ii) has a density of population of not less than seven hundred and fifty inhabitants per square kilometer of area, and (iii) has an occupational pattern in which more than one half of the adult population are chiefly engaged in pursuits other than agriculture, and if the Governor is satisfied that if such town is constituted a municipal area, the municipal income from taxation and other sources is likely to be adequate for the discharge of municipal function under this Act, the Governor may, by notification, declare his intention to constitute such town a municipal area under this Act. If the Governor decides to exercise such power as discretion has been conferred in the said provisions, then the procedure contemplated under Sections 4 and 5 of the said Act have to be followed.

3. Learned counsel appearing for the petitioners

would contend that the Governor of the West Bengal has given assent to the proposal of the Municipal Affairs Department for issuance of preliminary notification for constitution of new Municipality at Amtala, South 24-Parganas District. This information is pressed into service which was obtained by the petitioner as a reply to the petition filed under the Right to Information Act. In any event, Section 3 of the West Bengal Municipal Act, 1993 confers discretion on the Governor and, therefore, a writ of mandamus cannot be issued by issuing a direction to His Excellency, the Governor to exercise his discretion in a particular manner.

4. Thus, the provision is very clear that it is the satisfaction of the Governor which is a pre-requisite and one of the provisions also says that it is the discretion of the Governor to issue a notification. The purpose for which such constitution of municipal area has been contemplated under Section 3 of the West Bengal Municipal Act, 1993 is to take note of the three factors mentioned in clauses 3(i) to 3(iii) of Part II, Chapter II and, more particularly, that if the Governor is satisfied that if such town is constituted in a municipal area, the municipal income from taxation and other sources is likely to be adequate for the discharge of municipal function under this Act. Therefore, the petitioner cannot mix up the purpose for which such notification is to be issued under Section 3 of the said Act with that of the de-limitation exercise undertaken by the State Election Commission. The petitioner hinges upon a Cabinet

approval granted in the year 2016. The Government in the report filed in this writ petition has taken a clear and categorical stand that the State Government is not contemplating for formation of new Municipality as it involves an additional financial liability to the State Exchequer. Thus, when the Statute itself provides for a discretion to be exercised by the Governor of the State taking note of the factors as contemplated under Section 3 of the said Act, no writ of mandamus as sought for by the writ petitioner, can be issued. Furthermore, the second limb of the prayer sought for against the State Election Commission is also misconceived as it is settled position of law that once a delimitation exercise has commenced, the Court under Article 226 of the Constitution of India would not interdict such process, we are unable to pursue ourselves to grant any relief to the petitioner in this writ petition.

5. Hence, in the result, the writ petition fails and is hereby **dismissed**, however without any order as to costs.

(T. S. Sivagnanam)
Acting Chief Justice

(Hiranmay Bhattacharyya, J.)