

AD-13
Ct No.09
19.12.2023
TN

WPA No. 28560 of 2023

Sankarshan Majumder
Vs.
State of West Bengal and others

Mr. Subir Sanyal,
Mr. Srijib Chakraborty,
Mr. Lokenath Chatterjee,
Mr. Sukanta Ghosh,
Mr. Jasojeet Mukherjee,
Mr. Rivu Dutta,
Ms. Marry Dutta,
Mr. Arghya Chatterjee,
Ms. Sarda Sha,
Mr. Chandan Kumar Saha,
Mr. Pradip Kumar Mondal,
Mr. Dibakar Biswas

.... for the petitioner

Mr. Suman Ghosh,
Mr. S. Ghosh,
Mr. Arka Kr. Nag

.... for the State

Mr. Prasun Kumar Dutta,
Mr. Santanu Deb Roy

.... for the respondent nos.5 & 6

Mr. Debabrata Saha Roy,
Mr. Neil Basu,
Mr. Sankha Biswas,
Mr. Rittik Mandal,
Mr. Ankan Das

.... for the respondent no.9

Ms. Chandreyi Alam

....for the respondent no.14

- 1.** The petitioner is a member of the Alipore Bar Association which is a registered association.

- 2.** The grievance of the petitioner is that there were several alleged irregularities and illegalities in the election process which has been initiated by the current Bar Association Executive Committee. It is contended by learned counsel for the petitioner that the notice purportedly dated December 12, 2023, which declared the elections, was actually put up on the notice board on December 14, 2023.
- 3.** It is argued that the said notice, apart from being patently contrary to the principles of natural justice, are also violative of previous orders passed by a coordinate Bench of this court which were passed in connection with a previous election of the same Bar Association.
- 4.** It is argued that as per Clause 1 of the said impugned notice, nomination papers for the general election for the year 2023-2024 will be issued from the office on and from December 15, 2023 to December 19, 2023 at the stipulated times. The last date of filing/submitting nomination papers was fixed on December 19, 2023 (today). Hence, barely five days were left from the date of putting the notice up on the notice board, that is, December 14, 2023 till the last date of filing the nomination. Even assuming

for argument's sake but not admitting, it is submitted by the petitioner, that the notice was dated December 12, 2023, barely seven days' time was given till the last date of filing of the nomination papers which is extremely scanty and such shortage of time would be insufficient for any person who for example is not regularly attending the court to participate in the election process.

5. The hot haste in which the notice proceeds is also sought to be highlighted by spelling out the next few dates. The last date of filing the nomination papers is December 19, 2023. The date of scrutiny is December 20, 2023 on which date itself the names of the valid candidates are to be published as per the said notice. The last date of withdrawal of candidates is the very next date, that is, December 21, 2023.
6. It is further highlighted that the voters' list as per the said notice is to be published on December 14, 2023 at a cost of Rs. 5,000/- each. Apart from the cost being prohibitive for participation of a common member of the Bar, publication of the voters' list after commencement of the electoral process vitiates the entire process of elections.

- 7.** Learned counsel places particular reliance on the order dated March 24, 2022 passed by a coordinate Bench in WPA No. 5250 of 2022 where the learned Single Judge issued certain specific directions. For example, the District Judge was directed to make immediate arrangement for installation of CCTV cameras under the voting booth/area where security arrangement shall also be made appropriately.
- 8.** More importantly, a voters' list was directed to be henceforth published well in advance and appropriate rules were to be put in place to decide the eligibility of persons to come on such voting list. It was observed by the learned Single Judge that it was expected that the voters' list in future shall be published well in advance, at least two weeks before the election date. The Chairman of the Executive Committee was directed to ensure framing of appropriate rules regarding publication of voters' list for future election.
- 9.** It is argued that none of the said directions have been complied with.
- 10.** Learned counsel for the petitioner next argues that in absence of a valid voters' list and/or rules

in place regarding publication of such voters' list, the election notice itself is vitiated *ab initio*.

- 11.** Learned counsel places the Rules of the Alipore Bar Association annexed to the writ petition and argues that Clause 50 thereof, which stipulates that all members of the association will be eligible to vote, is circumscribed by Clauses 4 and 6.
- 12.** Clause 4 stipulates that any person whose name is struck off for default shall not be readmitted except on payment of all sums due from him to the Association in addition to a re-admission fee.
- 13.** Clause 6 provides that the name of any member who may be adjudged guilty of misconduct or who may be considered unfit to be a member, may be removed or suspended from the roll or he may be ensured by a vote of not less than three-fourth of members present in the meeting. It is sought to be argued that in such cases, it may very well be that the list of members of the association is not equivalent to the voters' list.
- 14.** The ineligible members might still be continued to be reflected in the members' list which is published few and far between but those persons may not be actually eligible to vote.
- 15.** Learned counsel appearing for the respondent nos. 9 and 10 controverts the allegations made

by the petitioner. At the outset, it is argued that the writ petition is not maintainable against an association. An association, it is contended, does not come within the purview of 'State' within Article 12 of the Constitution of India.

16. The petitioner, it is submitted, himself did not submit any nomination paper and, as such, does not have *locus standi* to challenge the election process by way of a writ petition.
17. It is pointed out that the present writ is not a public interest litigation or one filed in representative capacity.
18. Thus, it is argued that the same should be dismissed *in limine*.
19. Although tacitly agreeing that the cost of the voters' list might have been on the higher side, it is pointed out that in view of Rule 50 of the existing Rules of the association, all members of the association are eligible to vote for and be members of the Executive Committee for two years. Therefore, no separate publication of voters' list is necessary. Learned counsel argues that the said existing Rules were not placed before the learned Single Judge when the previous writ petition was taken up, leading to the directions regarding formulation of

appropriate rules regarding publication of voters' list being issued.

- 20.** If the Rules were placed before the coordinate Bench, it is submitted, there would be no occasion for directions to be issued for publication of voters' list in advance.
- 21.** Learned counsel appearing for the State as well as for the District Judge, Alipore submits that due arrangements regarding CCTV installations are already in place. The said respondents submit that they are in a position to provide the necessary security arrangement as and when required.
- 22.** A perusal of the impugned notice indicates that *prima facie* the same was issued on December 12, 2023. In the absence of anything specific to indicate that publication was made for the first time on December 14, 2023, it is required to be proceeded with on the basis that the date of publication was as depicted therein, that is, December 12, 2023. The time given for submission of the nomination papers was, according to the said notice, seven days. However, we have to keep in mind that some of the directions of the previous coordinate Bench were not complied with in the said notice. For

example, the coordinate Bench had specifically directed, in presence of the learned Advocate for the present respondent no.10, that is, the Chief Election Commissioner, that the voters' list should henceforth be published well in advance and appropriate rules should be put in place to decide the eligibility of persons to come on such voting list.

- 23.** Neither was the said order challenged before any forum nor was it pointed out to the learned Single Judge that there was an existing set of Rules which would operate as the relevant rules regarding publication of voters' list. In the teeth of the said order, it cannot now be argued by the Chief Election Commissioner that there were already preexisting rules which are the relevant rules governing the election of the bar association.
- 24.** The said directions, read in such perspective, also sheds light on the subtle distinction between the provisions in the existing rules of the bar association and the requirement to publish a separate voters' list.
- 25.** The petitioner is somewhat justified in arguing that although all members will be eligible to vote and be members of the executive committee in

terms of Rule 50 of the Bar Association Rules, there may crop up situations under Rules 4 and 6 of the said Rules, for example. Supposing that a person falls in arrears of payment of subscription subsequent to the publication of the members' list or is adjudged guilty of misconduct after such publication, the said members, although their names would still continue to appear in the members' list, no longer remain members eligible to vote.

- 26.** Thus, it is required that a voters' list is to be published sufficiently proximate but not too close to the elections.
- 27.** In order to enable challenges to be preferred to the voters' list and/or rectifications to be carried out, it is incumbent for any election process that a list of the eligible voters is published sufficiently prior to the commencement of the election process itself and not immediately prior to the election date. On the other hand, in order to reflect the correct position regarding eligible voters, it has to be published sufficiently close to the elections.
- 28.** The directions passed by the learned Single Judge in WPA No.5250 of 2022, accordingly, observes that due advance publication of voters'

list shall be made at least one month prior to the elections.

- 29.** The term “elections” has been sought to be portrayed by learned counsel for the respondent nos. 9 and 10 to be the date of the election itself. However, if such an interpretation is lent to the said expression, it would be meaningless for the rest of the riders in the said order to fall in place. In order to properly give an opportunity to all the voters for seeking corrections, inclusions or exclusion of invalid names, the voters’ list must precede the election notice and not succeed the same.
- 30.** A valid voter, to cast his vote and/or to participate in the nomination process, has to have a clear idea as to who are the exact voters who would be voting in the election. Such a transparency can only be attained if the voters’ list is published sufficiently prior to the issuance of the election notice, which is for all practical purposes the commencement of the electoral process. Unless a clear voters’ list is there prior to the issuance of the notice, no valid objection worth the name can be raised in that regard.
- 31.** Publication of the voters’ list subsequent to the publication of election notice or simultaneously

therewith is absurd, since it does not leave any opportunity to challenge the same.

- 32.** Seen from such perspective, the direction of the coordinate Bench dated March 28, 2022 has to be read in context. It must be construed that the voters' list had to be published at least one month prior to the issuance of the election notice, that is, the commencement of the electoral process itself.
- 33.** The one month cut-off date is a sufficient safeguard to ensure that the voters' list is sufficiently contemporary to take into account the exigencies which may crop up under Rules 4 and 6 as pointed out above. The said transparency may not be available in the members' lists, which are published at larger intervals and may not necessarily reflect the names of the eligible and valid voters.
- 34.** Another aspect which has to be considered is that in the impugned notice itself, the executive committee construed the voters' list to be separate from the members' list by putting in the clause that a voters' list will be published on December 14, 2023, that is, two days after the notice, and would be available at a prohibitive cost of Rs.5,000/- each.

- 35.** The moment such a clause is incorporated in the notice, contemplating a separate voters' list, the executive committee and/or the chief electoral officer are precluded from resiling from such position and arguing that the voters' list and the members list are equivalent to each other.
- 36.** Seen in proper perspective, the time given for submitting nomination papers is also extremely short, since seven days may not be sufficient for a person intending to participate in the election, either as a voter or a candidate, to prepare himself or make himself available for such purpose.
- 37.** In such view of the matter, the petitioner has made out a sufficient case to vitiate the impugned notice of election.
- 38.** Hence, WPA No. 28560 of 2023 is allowed on contest, thereby setting aside the election notice of the Alipore Bar Association dated December 12, 2023. Any consequential steps taken in terms thereof are also hereby revoked and rescinded.
- 39.** Nothing in this order, however, shall preclude the existing executive committee of the Bar Association and its office bearers from initiating fresh proceedings for holding the next elections

for the period of 2023-2024 in accordance with law, keeping in view the observations as made above.

40. There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)