

03 12.03.2024
rkd Ct.15

W.P.A. 6580 of 2024

Subir Sengupta
-vs-
State of West Bengal & Ors.

Mr. Subir Sanyal,
Mr. Srijib Chakraborty,
Mr. Sukanta Chakraborty,
Mr. Lokenath Chatterjee,
Mr. Sukanta Ghosh,
Mr. Falguni Banerjee,
Mr. Arghya Chatterjee,
Mr. Sankarshan Majumder,
Mr. Pradip Kumar Mondal,
Mr. Surojit Mukherjee

....for the petitioners.

Mr. Kishore Datta,
Mr. Soumen Chatterjee

....for the respondent no.5.

Mr. Anant Kumar Shaw,
Mr. Arindam Sen,
Mr. Mainak Ganguly,
Mr. Soukleya Ganguly

....for the respondent no.6.

Mr. Joydip Kar,
Mr. Sankha Biswas,
Mr. Abhinav Rakshit

....for the respondent no.9.

Mr. Debabrata Saha Roy,
Mr. Neil Basu

....for the respondent no10.

Mr. Amal Kumar Sen,
Mr. Suman Ghosh,
Mr. Siddhartha Ghosh

....for the State.

A candidate who is desirous to contest the election of Alipore Bar Association has come up with this writ petition questioning the steps taken by the said Bar Association regarding publication of final voter list and the gap which has been

maintained in terms of the election notice dated 27th February, 2024 i.e. from 28th February, 2024 to 4th March, 2024 for submitting nomination papers; according to Mr. Sanyal, learned advocate representing the petitioner this is contrary to the observations made by the coordinate Bench in the order dated 19th December, 2023 passed on the writ petition being WPA 28560 of 2023.

It is contended on behalf of the petitioner that as per the order dated 19th December, 2023 Alipore Bar Association is required to maintain a gap of at least one month from the date of publication of final voter list and issuance of election notice which has not been maintained in this case and reliance is placed on paragraph 36 of the order dated 19th December, 2023 wherein it has been held in the context of election notice dated 12th December, 2023 issued by Alipore Bar Association that seven days' gap from the date of issuance of nomination papers till the date of submission is not sufficient for a person to participate in the election either as a voter or a candidate and to prepare himself and make himself available for such purpose.

It is submitted that as per the General Election notice dated 27th February, 2024 the

nomination papers were permitted to be issued on and from 28th February, 2024 to 4th March, 2024 and the last date for filing nomination papers has been fixed on 4th March, 2024 which goes to show that precisely six days have been allotted for filing of nomination which is contrary to the observations made by the coordinate Bench in the order dated 19th December, 2023.

In addition thereto, it has also been contended that there are at least 400 members whose names have been incorporated in the final voter list, who till date have not cleared All India Bar Examination (AIBE); therefore these candidates do not have right to franchise pursuant to the election notice dated 27th February, 2024. Therefore, as per the submission made on behalf of the petitioners there is defect in publication of final voter list to the extent of including names of the candidates who have not cleared AIBE and the time gap which is required to be maintained in the light of the observations made by the coordinate Bench on 19th December, 2024 on a writ petition being WPA 28560 of 2023 **(Sankarshan Majumder -vs- The State of West Bengal & Ors.)** in between publication of voter list and issuance of election notice and commencement of issuing nomination

papers and last date of submission of nomination papers, has not been maintained.

The learned advocate representing the petitioner has also relied upon a notice dated 4th March, 2024 which is placed before this Court and the same is taken on record. From the said notice, it appears that the members of the said Bar Association who paid membership fee upto the month of October, 2023 by 20th January, 2024 were permitted to approach the Chairman, Election Commission, in person with the subscription receipt within 12th March, 2024 for the purpose of inserting name/names of such member/members in the voter list of 2024-2025.

According to the petitioner, if there is publication of final voter list on 25th January, 2024 how the said voter list can be permitted to be tweaked in the month of March, 2024 before holding of election on 19th March, 2024 which goes to show that there was no voter list published finally on 25th January, 2024.

Mr. Kar, learned senior advocate appears on behalf of Alipore Bar Association who has drawn attention of this Court to a notice dated 25th January, 2024 and the copy of the same has been placed before this Court, which is taken on record.

It has been submitted on behalf of the said Bar Association that final voter list was published on 25th January, 2024 at 3 P.M. and the notice for holding election has been published subsequently on 27th February, 2024 therefore the requisite gap of one month as contemplated in the order of the coordinate Bench dated 19th December, 2023 has been maintained and the contention of the petitioner in this regard is not correct.

It is also submitted that in the writ petition the date of publication of final voter list i.e. 25th January, 2024 has not been indicated and the same has been suppressed. With regard to the time which has been granted in terms of the election notice dated 27th February, 2024 from the date of issuance of nomination papers till the date of submission of nomination papers which is from 28th February, 2024 to 4th March, 2024, it is contended that petitioner in this writ petition is not prejudiced since he has filed nomination paper and going to contest election for the post of Assistant Secretary.

According to Bar Association no instance has been offered in the writ petition from where it can be concluded that due to fixation of time from 28th February, 2024 to 4th March, 2024 for

submission of nomination papers any candidate has been prejudiced in the matter of filing of nomination papers. Therefore, the time as indicated in the election notice dated 27th February, 2024 needs to be considered in the context of the present situation.

In addition thereto, submission has been made in order to vindicate inclusion of candidates in the voter list who have not cleared AIBE upon placing reliance on the relevant provisions of the Advocates Act, 1961 and the Bar Council of India Rules in order to make out a case before this Court that these candidates are eligible to exercise their franchise pursuant to the election notice dated 27th February, 2024 since their names are on State roll maintained by the Bar Council of West Bengal. In the same breath it has also been submitted, if the names of these candidates are deleted from State roll then situation would be different so far right to exercise franchise by these candidates is concerned. In support of such contention reliance has been placed on the judgment of the Apex Court, reported in (2023) 7 SCC 756 (**Bar Council of India –vs- Bonnie FOI Law College & Ors.**), paragraphs 23.4 and 49.

The learned advocate representing the State

respondents has filed a report dated 6th March, 2024 on 11th March, 2024 prepared by the Officer-in-Charge, Alipore Police Station wherefrom it appears that prayer has been made for giving direction upon the concerned authorities to install adequate number of CCTV for having thorough surveillance of the process of holding election.

Mr. Datta, learned Advocate General is representing the State Bar Council being the nodal body of advocates in the State who has made significant submission in deciding the issue involved in this writ petition which ultimately has led this Court to decide the lis in different manner, albeit this Court after hearing the learned advocates representing the petitioner and Alipore Bar Association was contemplating to give direction for holding election based on the election notice dated 27th February, 2024 by ensuring certain safeguards so that free and fair election can be conducted. It has been submitted on behalf of the Bar Council of West Bengal that there is requirement to follow the observations made by the coordinate Bench in paragraph 36 of the order dated 19th December, 2023 passed on the writ petition being WPA 28560 of 2023.

According to Mr. Datta by issuing General

Election notice dated 27th February, 2024 only six days have been provided for submitting nomination papers from the first date fixed for issuance of nomination papers i.e. 28th February, 2024 to 4th March, 2024 which can not be countenanced since it has been specifically observed by the coordinate Bench that seven days' gap in the context of earlier election notice dated 12th February, 2023 is not sufficient and being extremely short for candidate to participate in the election either as a voter or a candidate.

It is also submitted on behalf of the West Bengal Bar Council that the issue raised in this writ petition regarding eligibility of the members of Bar Association who have not cleared AIBE needs to be decided and if direction is given upon the Bar Council of West Bengal, the eligibility of these candidates would be decided within a short period.

Having considered the submissions made on behalf of the parties and on perusal of the materials available on record this Court finds it apt to quote paragraph 36 of the order of the coordinate Bench dated 19th December, 2023 below:

“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.”

It is indisputable that though the gap of one month as envisaged in the order dated 19th December, 2023 from the date of publication of final voter list till the date of issuance of election notice has been maintained in the present case, if this Court proceeds on the premise that final voter list was published on 25th January, 2024 but it is explicit that only six days have been allotted for submitting nomination papers if the period is counted from the first date of issuance of nomination papers as it appears from the election notice dated 27th February, 2024 which is contrary to the observations and directions made by the coordinate Bench in paragraph 36 of the order dated 19th December, 2023.

It has rightly been pointed out by Mr. Dutta, learned Advocate General representing West Bengal Bar Council that since the order dated 19th December, 2023 has attained finality the observations and directions as contained therein

need to be followed strictly. Therefore, in view of this lacuna as persists in the notice dated 27th February, 2024 it can safely be concluded that Alipore Bar Association has failed to maintain the gap from the first date of issuance of nomination papers till the date of submission of nomination papers as it is required to be maintained in terms of the order dated 19th December, 2023.

There is another aspect which needs to be addressed while deciding the issue. It is surprising that even after publication of final voter list on 25th January, 2024 another notice was published on 4th March, 2024 permitting the candidates who have cleared membership fee upto October, 2023 to get their names inserted in the voter list by 12th March, 2024 and such attempt on the part of Alipore Bar Association by issuing notice dated 4th March, 2024 clearly vitiates publication of voter list on 25th January, 2024 and it is found that preparation of voter list finally on 25th January, 2024 is not sacrosanct.

Therefore, based on the said voter list dated 25th January, 2024 it is not advisable to permit the concerned respondent to hold election on 19th March, 2024. Another issue which has cropped up during the course of hearing is the eligibility of the

members of Alipore Bar Association whose names are appearing in the voter list published on 25th January, 2024 to exercise their franchise before clearing AIBE. Arguments and counter arguments have been made by the learned advocates representing the petitioner and Alipore Bar Association in support of their respective contentions for determination of the eligibility of these candidates who according to the petitioner are more than 400 in number.

However, considering the issue of eligibility of some members raised in this writ petition it appears that the said issue needs to be settled once for all for which the same needs to be referred to the Bar Council of West Bengal for taking decision on eligibility of these candidates whether they have right to exercise their franchise or not since they have not cleared AIBE.

The Bar Council of West Bengal is directed to take decision within six weeks from date on the eligibility of the candidates who have not cleared AIBE though their names are appearing in the voter list prepared by Alipore Bar Association and published on 25th January, 2024 after granting opportunity of hearing to the representative of Alipore Bar Association and one representative of

these candidates and the decision to be taken by the West Bengal Bar Council shall be communicated to the parties within one week thereafter. After the issue is settled relating to eligibility of these candidates to participate in the election, Alipore Bar Association shall be at liberty to take decision for conducting election by following the observations and directions as contained in the order dated 19th December, 2023 passed by the coordinate Bench, expeditiously.

Accordingly, the election notice dated 27th February, 2024 stands set aside.

With the aforesaid observations and directions the writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)