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Ct.16

**WPA(P) 271 of 2021
With
I.A. CAN 1 of 2021**

**Mousumi Roy.
Vs.
West Bengal State Election Commission & Ors.**

Mr. Imteaz Ahmed,
Mr. Sabyasachi Chatterje,
Mr. Pintu Karar,
Ms. Debolina Sarkar,
Mr. Sayan Banerjee for the petitioner.

Mr. S. N. Mookherjee, Ld. A.G.,
Mr. Arinbay Ray, Ld. G. P.,
Mr. Sanjay Basu,
Mr. T. M. Siddique,
Mr. Soumen Mohanty,
Mr. Raja Saha .. for the State.

Mr. Jishnu Saha, Sr. Adv.,
Ms. Sonal Sinha,
Mr. Shubhankar Nag
.... For the State Election Commission.

Re: I.A. CAN 1 of 2021

This application for appropriate order has been filed pursuant to the notification dated December 28, 2021 issued by the West Bengal State Election Commission in exercise of power under Section 8 of the West Bengal State Election Commission Act, 1994 read with sub-Section (3) of Section 36 of the West Bengal Municipal Elections Act, 1994. By the said notification,

the schedule for election of four municipal corporations, namely, Siliguri Municipal Corporation, Chandernagore Municipal Corporation, Bidhannagar Municipal Corporation and Asansol Municipal Corporation has been gazetted and notified. The Additional Secretary to the Government of West Bengal, Department of Urban Development and Municipal Affairs has also issued a similar notification.

According to Mr. Chatterjee, learned Advocate for the petitioner, neither the State nor the Election Commission has abided by the observations made and directions of the Division Bench in its order dated December 23, 2021. He further submits that the respondents could not have gone back on the undertaking given before this Court, thereby excluding the election of Howrah Municipal Corporation from the notification. It is submitted that the reason behind such action was motivated, mala fide and in order to favour a particular political party. It is further submitted that in view of the misappropriation of funds and other illegal activities, which are going on in the Howrah Municipal Corporation, the election is not being held although the same is due since 2018.

Learned Advocate General appears on behalf of the Department of Urban Development and Municipal Affairs, Government of West Bengal and submits that the application is not maintainable in its present form.

According to him, a proposal was made at the relevant point of time but the said proposal could not be taken as an undertaking or a statement before the Court that elections of all the corporations including Howrah Municipal Corporation would be held definitely on January 22, 2022. He further submits that the allegations are against the Howrah Municipal Corporation but the Board has not been impleaded as a party respondent in this proceeding. He submits that his statement before the Division Bench, recorded at internal page 5 of the order dated December 23, 2021 with regard to bifurcation of Howrah Municipal Corporation into Howrah Municipal Corporation and Bally Municipality and the fact that the Bill had received the assent of the Governor, was mistakenly made by him. He further submits that an application shall be filed in this regard before the regular Bench for modification. He also submits that the contentions of the writ petitioner before this Court are statements from the bar and not reflected in the pleadings.

This Court is of the opinion that other issues with regard to the bifurcation of Howrah Municipal Corporation, creation of Bally Municipality and the prayers which are yet to be decided by the Learned regular Court are not required to be gone into. This Court only restricts its order to the allegations of

excluding the Howrah Municipal Corporation from the notification dated December 28, 2021, for political gain.

We are of the view that the reasons for which the respondents have decided not to hold the election for Howrah Municipal Corporation on January 22, 2022, although there was a proposal submitted before the court, is to be brought on record by way of affidavits. Accordingly, all the respondents are directed to file affidavits clarifying the following position:-

- a) The reason why Howrah Municipal Corporation was excluded from the notification dated December 28, 2021.
- b) Why the proposal of the Additional Secretary to the Government of West Bengal, Department of Urban Development and Municipal Affairs was not accepted by the State Election Commission?
- c) Whether the exclusion of Howrah Municipal Corporation from the notification would amount to a violation of the directions of this Court dated December 23, 2021.
- d) Whether the proposal made was an eye wash and an attempt to non-suit the petitioner, by rendering the primary prayer for a direction upon the respondents to hold simultaneous elections for the municipal corporations and municipal bodies, as infructuous.

Let such affidavit be filed before the regular Bench on January 6, 2022 when the main writ petition has been made returnable. An advance copy of the said affidavit be served upon the petitioner or her learned Advocate-on-Record.

(Shampa Sarkar , J.)

(Bibhas Ranjan De, J.)