

The High Court Of Madhya Pradesh

WP-15280-2021

(NAGRIK UPBHOKTA MARGDARSHAK MANCH THROUGH ITS PRESIDENT DR. P.G. NAJPANDE AND OTHERS Vs THE STATE OF MADHYA PRADESH AND OTHERS)

Jabalpur, Dated : 22-09-2021

Heard through Video Conferencing.

Shri Dinesh Kumar Upadhyay, learned counsel for the petitioner.

Shri Pushpendra Yadav, learned Additional Advocate General for the respondents/State.

Shri Siddharth Seth, learned counsel for the respondents No.2 & 3.

This writ petition has been filed as Public Interest Litigation by the Nagrik Upbhokta Margdarshak Manch with a prayer that the Election Commission of India may be directed not to conduct bye-elections of Parliamentary Constituency of Khandwa and Assembly Constituencies of Prathvipur, Jobat and Rajgarh in the State of Madhya Pradesh. A further prayer has been made to direct the respondents to conduct the bye-elections only after assessing the ground situation of coronavirus in the State.

The Election Commission of India has filed reply to the writ petition. A copy of its Press Note dated 05.05.2021 has been placed on record as Annexure-R/1 stating that the Commission has reviewed the matter and has decided that due to outbreak of the second wave of Covid-19 in the country, it would not be appropriate to hold bye-elections till the pandemic situation significantly improves and conditions become conducive to hold these bye-elections. It has been further stated that the Commission will take a decision in the matter at appropriate time in future after taking inputs from the concerned States and assessing the pandemic situation from mandated authorities like NDMA/SDMA.

A recently issued Press Note dated 04.09.2021 has also been placed on record as Annexure- R/15 showing that after taking into consideration the inputs and views of the Chief Secretaries of the concerned States and respective Chief Electoral Officers, the Commission has decided not to hold

bye-elections in other 31 Assembly Constituencies and 3 Parliamentary Constituencies. However, considering the constitutional exigency and special request from State of West Bengal, it has decided to hold bye-election in 159 - Bhabanipur. Much stricter norms have been kept by the Commission as an abundant caution to safeguard from Covid-19 pandemic.

It is a settled position of law that Article 324 of the Constitution is a reservoir of power for the Election Commission to act in such vacuous area where enacted laws make no provisions or make 'insufficient provisions' to deal with the situation confronting the Election Commission in the conduct of elections as held in catena of judgments. Reference in this connection may be made to the judgments of the Supreme Court in *Mohinder Singh Gill vs. The Chief Election Commissioner (1978) 1 SCC 405*; *Kanhiya Lal Omar vs. R.K. Trivedi & Others [AIR 1986 SC 111]*; *Union of India vs. Association for Democratic Reforms and Others [AIR 2002 SC 2112]*.

Even with regard to Covid-19 pandemic, the Election Commission has issued Broad Guidelines for Conduct of General Elections/Bye-Elections during Covid-19 as Document No.324.6.EPS.OT.001.2020 in August, 2020. These guidelines deal in detail with political campaigns, meetings, number of electors in polling station, polling station arrangements etc. Item 13(g) of these guidelines clearly mentions that anybody violating instructions on Covid-19 measures will be liable to be proceeded against as per the provisions of Section 51 to 60 of the Disaster Management Act, 2005, besides being liable for legal action under Section 188 of Indian Penal Code and other legal provisions as applicable as specified in order dated 29.07.2020 of Ministry of Home Affairs.

The Supreme Court in *Special Reference No.1 of 2002, AIR 2003 SC 87*, decided on 28.10.2002, categorically held that the decision regarding elections should not be interfered with as the Election Commission of India is best suited to decide the same. It would be appropriate to quote the relevant part of the judgment of the Supreme Court in para-80 which reads as under :-

"80. So far as the framing of the schedule or calendar for election of the Legislative Assembly is concerned, the same is in the exclusive domain of the Election commission, which is not subject to any law framed by the Parliament. The Parliament is empowered to frame law as regards conduct of elections but conducting elections is the sole responsibility of the Election Commission. As a matter of law, the plenary powers of the Election Commission can not be taken away by law framed by Parliament. If Parliament makes any such law, it would repugnant to Article 324."

Even when the Bihar General Elections were announced and the Supreme Court was approached by a writ petitioner to stay the same in *Avinash Thakur vs. Chief Election Commissioner & Others W.P.(C) No.875/2020*, the Supreme Court was not inclined to interfere with the matter and the writ petition was eventually dismissed as withdrawn.

In view of the position of laws as noticed above, it must be held that only the Election Commission of India is competent to decide as to when should the bye-elections to Parliamentary Constituency of Khandwa and Assembly Constituencies of Prathvipur, Jobat and Rajgarh should be held. There is no reason to assume that such decision shall not be taken by the Commissioner after assessing the situation of Covid-19 on ground. On the contrary, the material produced on record clearly indicates the Election Commission is fully cognizant of the situation of corona virus and has therefore, taken a conscious decision for the time being not to hold the bye-elections. This Court, therefore, would not be in exercise of its power of Judicial review under Article 226 of the Constitution of India justified in making any interference in the matter.

Accordingly, we do not find any merit in the writ petition, which in our view, in any case, is premature. The writ petition is therefore, **dismissed**.

(MOHAMMAD RAFIQ)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE

Priya.P



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Date: 2021.09.24 10:29:58 IST

