

16 **01.12.2021**
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17 (PA-RB/SS)

WPA(P) 299 OF 2021
IA NO: CAN/1/2021
PRATAP BANERJEE
VS
STATE OF WEST BENGAL AND ORS.

with
WPA(P) 271 OF 2021
IA NO: CAN/1/2021
MOUSUMI ROY
VS
WEST BENGAL STATE ELECTION
COMMISSION AND ORS.
(Through Video Conference)

Ms. Pinky Anand,
Mr. Joydip Kar,
Mr. Billwadal Bhattacharyya,
Mr. Dhiraj Trivedi,
Mr. Debanik Banerjee,
Mr. Moyukh Mukherjee,
Mr. Sayak Chakraborti,
Mr. Anish Kumar Mukherjee,
Mr. Amrit Sinha
..for the Petitioner in
WPA(P) 299 of 2021.

Mr. Sabyasachi Chatterjee,
Mr. Sandipan Das,
Mr. Pintu Karar,
Mr. Akashdeep Mukherjee,
Ms. Debolina Sarkar,
Mr. Ankur Sharma,
Mr. Sagar Dey,
Mr. Sayak Banerjee,
Ms. Sreejita Biswas,
Ms. Sejuti Mukherjee
..for the Petitioner in
WPA(P) 271 of 2021.

Mr. S.N. Mookherjee, learned Advocate General,
Mr. A. Ray,
Md. T.M. Siddiqui,
Mr. D. Ghosh
..for the State in
WPA(P) 299 of 2021.

Mr. S.N. Mookherjee, learned Advocate General,
Mr. A. Ray,
Mr. N. Chatterjee
..for the State in
WPA(P) 271 of 2021.

Mr. Anuran Samanta
..for ECI in WPA(P) 271 of 2021.

Mr. Jayanta Mitra,
Mr. Abratosh Majumdar,
Mr. Subhankar Nag,
Ms. Sonal Sinha
..for the West Bengal State
Election Commission in
WPA(P) 299 OF 2021.

Petitioner is seeking for a direction to the Respondent No. 4, the West Bengal State Election Commission to notify simultaneous dates of election for all Municipal Bodies in West Bengal as well as common date for publication of result.

The plea taken in the petition is that the reservation of seats of 111 municipal bodies, where elections are due, was completed on 17th February, 2020. Thereafter, as per the legal mandate, election ought to have been held within seven weeks but the same have not been held till now though elections of West Bengal Legislative Assembly have been held in the State across 292 Constituencies in March/April, 2021. An allegation has been made that the State Government is attempting to influence the State Election Commission to notify dates for election in respect of a few selected Municipal Bodies, where the ruling party has a strong support base and where they are expected to have good result so that the election result of those municipalities will influence the voters and elections of other municipalities. Allegation has also been made that there is failure to discharge the constitutional

obligation for holding the election.

Submission of learned Counsel for the petitioner is that in the State of West Bengal, there are 112 Municipal Bodies which include six Municipal Corporations and 106 Municipalities and their term is over more than one and half years back but the elections have not been held. She has also placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Kishansing Tomar vs. Municipal Corporation of the City of Ahmedabad and Others, (2006) 8 SCC 352** and has submitted that it is the responsibility of the Election Commission and other authorities to carry out the mandate of the Constitution and ensure constitution of new Municipality in time and conduct election before expiry of the term. She has submitted that now COVID risk has reduced in the State, therefore, simultaneous elections can be held in all the Municipal Corporations and Municipalities. Pressing CAN 1 of 2021, it is submitted by the learned Counsel for the petitioner that on 16th November, 2021, Counsel appearing for the State Election Commission had undertaken in the open Court that no steps will be taken by the said respondent for publication of notification for holding Municipal Election in the State as the matter is subjudice, but State Election Commission has published the notification dated 25th November, 2020 for holding the Election of Kolkata Municipal Corporation. The State Election Commission has acted contrary to the statement made by its Counsel in the Court therefore, the notification for election in the Kolkata Municipal Corporation should be stayed/set aside till the election of other Municipal Councils are declared simultaneously. In support of her submissions, she has also

placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **State of Goa and Another vs. Fouziya Imtiaz Shaikh and Another, (2021) 8 SCC 401** and also the orders of the Division Bench of this Court dated 25th August, 2020 in WP 5390 (W) of 2020 in the case of **Sharad Kumar Singh vs. State of West Bengal and Another** and order dated 29th January, 2021 in WPA(P) No. 28 of 2020 in the case of **Communist Party of India (Marxist), Howrah District Committee vs. West Bengal State Election Commission and Others**. Learned Counsel for the petitioner in the connected petition has also submitted that the elections of the Municipal bodies should be held immediately.

Learned Counsel for the State Election Commission has submitted that the undertaking, if any, given by the Counsel for the Election Commission was only for not notifying the election till the next returnable date and that said, statement was inadvertent and even otherwise, such a statement, contrary to the constitutional mandate has no effect. He has also placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of the **State of Goa (Supra)** and **Kishansing Tomar (Supra)**. He has also stated that elections of Municipal bodies in the State will be conducted in phase manner.

Learned Advocate General appearing for the State has submitted that a decision to hold the election in the Kolkata Municipal Corporation in the first phase has been taken keeping in view the fact that vaccination rate is highest in Kolkata and the medical infrastructure is good. He has submitted that the State is duty bound to cooperate with the State Election Commission in holding the election of the Municipal bodies at the earliest but there is no

constitutional provision requiring simultaneous holding of the elections of all Municipal bodies. He has placed reliance upon the judgment of the Hon'ble Supreme Court in the case of **State of Goa (supra)**.

We have heard learned Counsel for the parties and perused the record.

So far as the issue raised by the learned Counsel for the petitioner in CAN 1 of 2021 for staying/quashing the notification dated 25th November, 2021 declaring the date of election of the Kolkata Municipal Corporation on the ground of the statement made by the learned Counsel for the Election Commission, we are of the view that once the notification dated 25th November, 2021 has been issued, then in view of the bar contained in Article 243-2(d) of the Constitution, the interference of this Court is not proper. Same is the view taken by the Hon'ble Supreme Court in somewhat similar circumstances in paragraph 70 of the judgment in the case of the **State of Goa (Supra)**. In view of above, we do not intend to go into the issue of alleged statement made by the Counsel for the State Election Commission. Such a statement, if any made, would not eclipse the Constitutional provision. Hence, we find no merit in CAN 1 of 2021 seeking stay/setting aside of notification dated 25th November, 2021.

Hence, CAN 1 of 2021 is rejected.

So far as the issue of holding of elections of other Municipal Bodies of the State is concerned, we find that undisputedly, the term of the Municipal Councils/Municipal Corporations in the State of West Bengal is over more than one and a half year back but the

elections of these Municipal Councils/Municipal Corporations have not been conducted till now. Article 243-U of the Constitution in clear terms provides that an election to constitute a municipality will be completed before the expiry of its duration of five years. Hon'ble Supreme Court in the matter of **Kishansing Tomar (Supra)**, after considering Article 243-U of Constitution, has clearly held that it is incumbent upon the Election Commission and other authorities to carry out the mandate of the Constitution and to see that the new municipality is constituted in time and that the State Election Commission shall not put forth any excuse based on unreasonable ground that the election cannot be completed in time. The exceptional circumstances have been taken note of and it has been observed that the exceptional circumstances shall not be a regular feature to extend the duration of the municipality. The Hon'ble Supreme Court in the case of **Kishansing Tomar (Supra)** has held that:

“12. It may be noted that Part IX-A was inserted in the Constitution by virtue of the Constitution (Seventy-fourth) Amendment Act, 1992. The object of introducing these provisions was that in many States the local bodies were not working properly and the timely elections were not being held and the nominated bodies were continuing for long periods. Elections had been irregular and many times unnecessarily delayed or postponed and the elected bodies had been superseded or suspended without adequate justification at the whims and fancies of the State authorities. These views were expressed by the then Minister of State for Urban Development while introducing the Constitution Amendment Bill before Parliament and thus the new provisions were added in the Constitution with a view to restore the rightful place in political governance for local bodies. It was considered necessary to provide a constitutional status to such bodies and to ensure regular and fair conduct of elections. In the Statement of Objects and Reasons in the Constitution Amendment Bill relating to urban local bodies, it was stated:

“In many States, local bodies have become weak

and ineffective on account of a variety of reasons, including the failure to hold regular elections, prolonged supersessions and inadequate devolution of powers and functions. As a result, urban local bodies are not able to perform effectively as vibrant democratic units of self-government.

Having regard to these inadequacies, it is considered necessary that provisions relating to urban local bodies are incorporated in the Constitution, particularly for:

(i) putting on a firmer footing the relationship between the State Government and the urban local bodies with respect to:

(a) the functions and taxation powers, and

(b) arrangements for revenue sharing.

(ii) ensuring regular conduct of elections,

(iii) ensuring timely elections in the case of supersession; and

(iv) providing adequate representation for the weaker sections like the Scheduled Castes, Scheduled Tribes and women.

Accordingly, it has been proposed to add a new part relating to the urban local bodies in the Constitution to provide for—

(f) fixed tenure of 5 years for the municipality and re-election within a period of six months of its dissolution.”

13. The effect of Article 243-U of the Constitution is to be appreciated in the above background. Under this article, the duration of the municipality is fixed for a term of five years and it is stated that every municipality shall continue for five years from the date appointed for its first meeting and no longer. Clause (3) of Article 243-U states that election to constitute a municipality shall be completed—(a) before the expiry of its duration specified in clause (1), or (b) before the expiration of a period of six months from the date of its dissolution. Therefore, the constitutional mandate is that election to a municipality shall be completed before the expiry of the five years' period stipulated in clause (1) of Article 243-U and in case of dissolution, the new body shall be constituted before the expiration of a period of six months and elections have to be conducted in such a manner. A proviso is added to sub-clause (3) of Article 243-U that in case of dissolution, the

remainder of the period for which the dissolved municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the municipality for such period. It is also specified in clause (4) of Article 243-U that a municipality constituted upon the dissolution of a municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved municipality would have continued under clause (1) had it not been so dissolved.

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19. From the opinion thus expressed by this Court, it is clear that the State Election Commission shall not put forward any excuse based on unreasonable grounds that the election could not be completed in time. The Election Commission shall try to complete the election before the expiration of the duration of five years' period as stipulated in clause (5). Any revision of electoral rolls shall be carried out in time and if it cannot be carried out within a reasonable time, the election has to be conducted on the basis of the then existing electoral rolls. In other words, the Election Commission shall complete the election before the expiration of the duration of five years' period as stipulated in clause (5) and not yield to situations that may be created by vested interests to postpone elections from being held within the stipulated time.

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21. It is true that there may be certain man-made calamities, such as rioting or breakdown of law and order, or natural calamities which could distract the authorities from holding elections to the municipality, but they are exceptional circumstances and under no (*sic* other) circumstance would the Election Commission be justified in delaying the process of election after consulting the State Government and other authorities. But that should be an exceptional circumstance and shall not be a regular feature to extend the duration of the municipality. Going by the provisions contained in Article 243-U, it is clear that the period of five years fixed thereunder to constitute the municipality is mandatory in nature and has to be followed in all respects. It is only when the municipality is dissolved for any other reason and the remainder of the period for which the dissolved municipality would have continued is less than six months, it shall not be necessary to hold any elections for constituting the municipality for such period.

22. In our opinion, the entire provision in the

Constitution was inserted to see that there should not be any delay in the constitution of the new municipality every five years and in order to avoid the mischief of delaying the process of election and allowing the nominated bodies to continue, the provisions have been suitably added to the Constitution. In this direction, it is necessary for all the State Governments to recognise the significance of the State Election Commission, which is a constitutional body and it shall abide by the directions of the Commission in the same manner in which it follows the directions of the Election Commission of India during the elections for Parliament and the State Legislatures. In fact, in the domain of elections to the panchayats and the municipal bodies under Part IX and Part IX-A for the conduct of the elections to these bodies they enjoy the same status as the Election Commission of India.”

Thus, as per the scheme of the Constitution and the judicial pronouncements, the elections should be held before the expiry of the term of the Municipal Councils/Municipal Corporations unless some valid justifiable reasons exist.

A plea has been taken before this Court by the State Election Commission that on account of the COVID-19 pandemic, the elections could not be held, but learned Counsel for the petitioner has pointed out that the West Bengal Legislative Assembly Elections in 292 Constituencies across the State have already been held in the month of March and April, 2021, State Government has issued the memo dated 28th October, 2021 for resumption of offline classes in UG/PG and higher level including Ph.D in all general degree colleges and provisional colleges with effect from 16th November, 2021, Department of School Education has issued the notification dated 28th October, 2021 for opening of the schools and various initiative have been taken by the State to encourage public gathering adhering to COVID-19 protocol and even the South Eastern and Eastern

Railways have resumed local train services with effect from 31st October, 2021 with 50 per cent sitting capacity and that the positivity rate of COVID-19 is also very low in the State, therefore, now, the elections cannot be unnecessarily postponed taking the shelter of COVID-19 pandemic.

The Division Bench of this Court in the matter of **Sharad Kumar Singh (supra)** has observed that it should be the honest endeavour of State and State Election Commission to ensure that the elections for the Kolkata Municipal Corporations are held expeditiously as the improved situation may allow. In the case of **Communist Party of India (Marxist) (Supra)**, the Division Bench of this Court while considering the issue of holding the Municipal Elections has already observed that the decision is to be taken by the State Election Commission and the State Government in consultation with each other fairly and judicially taking all logistic factors into consideration to ensure peaceful and uninterrupted election bearing in mind that the term of Councils of Municipal bodies have long expired and all steps should be taken to conveniently hold the Municipal Election as early as its feasible. Hon'ble Supreme Court also in the order dated 07th December, 2020 passed in SLP (Civil) Nos. 10629 and 10834 of 2020, considering the affidavit of the West Bengal State Election Commission, has held that:

“We have perused the affidavit of the West Bengal State Election Commission in terms whereof the summary revision of photo electoral rolls dates have been set out in Annexure R-6/24 as specified by the Election Commission of India. Thus, the final publication of electoral rolls will take place on 15.01.2021. Learned senior counsel states that this schedule will be followed. The State Election Commission on 12.11.2020, addressed a letter to the Chief Secretary of the Government of West Bengal requesting

them to communicate the views of the State Government for conduct of election to local bodies immediately so as to file a proper reply before this Court to which on 02.12.2020, the Election Commission was informed as under:

“Let the COVID situation improve. The Government will let SEC know its decisions.”

On our specific query, learned senior counsel appearing for the State submits that the response will be sent to the State Election Commission within a week.

We have conveyed to learned counsel that the elections are being held in different States and it is necessary to hold the elections as expeditiously as possible as otherwise we will have to look to make some possible alternative arrangements insofar as the functioning of the Corporations are concerned.

List on 17.12.2020.”

After the above order almost a year has passed and elections of Municipal bodies in the State have not been held.

Section 8 of the West Bengal State Election Commission Act, 1994 provides that the State Government in consultation with the Commission by notification will fix the date or dates on which and hours during which the poll will be taken. The sub-Section 36(3) of the West Bengal Municipal Act, 1994 requires the State Government subject to provisions to Section 8 of the above Act, to publish the notification and determine the date calling upon the municipalities to elect members.

In the background of the above provisions and the Constitutional mandate, now it is the duty of the State of West Bengal and the West Bengal Election Commission to conduct the election of the Municipal Corporations/Municipalities without any unnecessary delay.

The stand of the State Election Commission before this Court is that the elections of remaining Municipalities/Municipal

Corporation will be held in the phase manner keeping in view the availability of the EVM machines and other relevant factors but no such tentative dates and details or time frame for holding the elections of other Municipalities in two or more phases has been disclosed. Learned Counsel for the West Bengal State Election Commission has prayed for short adjournment to produce before this Court, the plan containing the tentative dates/time for holding the election of Municipal Corporations/Municipalities in two or more phases.

We are of the opinion that once the elections for Kolkata Municipal Corporation has been notified, then there should be no further delay in holding the election of the other Municipal Corporations/Municipalities also.

An allegation has been made in the petition that the State Government is trying to hold the elections of the Municipal Corporations/Municipal bodies in the areas where it has a strong hold so that the result of those areas can affect the subsequent elections in other Municipal Corporations/Municipalities. We expect that the State Election Commission will duly keep in mind while preparing the plan for holding the election in the phase manner to ensure that fair, impartial and independent elections take place.

A prayer has also been made for simultaneous counting of ballot papers of all the Municipal Councils/Municipal Corporations so that election result of one Municipality may not affect the election of other. This possibility may also be explored by the State Election Commission.

Hence, we direct that:

- i. The State as well as the State Election Commission, on

or before the next date of hearing, give the plan disclosing the tentative time schedule for conducting the election of all the Municipal Corporations/Municipalities in the State in the phase manner.

ii. The State Election Commission is also directed to explore the possibility and feasibility of doing counting of votes of the Municipal Corporations/Municipal Elections after the polling is completed in all the Municipalities of the Municipal Corporation in the State.

iii. The State Election Commission is expected not to declare the election of the Municipal bodies in the State in such a manner which will give benefit to one particular party.

Let the necessary affidavit in terms of the above directions be filed by the State Election Commission and the State Authorities on or before 06th December, 2021.

List on 06th December, 2021.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J)