

1 23.02.2022
& PA(SS/RB)
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WPA(P) 271 of 2021

IA NO: CAN/4/2022

Mousumi Roy

Vs.

West Bengal State Election Commission & Ors.

With

WPA(P) 299 of 2021

IA NO: CAN/2/2021, CAN/7/2022

Pratap Banerjee

Vs.

The State of West Bengal & Ors.

(Through Video Conference)

Mr. Sabyasachi Chatterjee,

Mr. Sandipan Das,

Mr. Pintu Karar, Advocates

..for the Petitioner in

WPA(P) 271 of 2021

Mr. Paramjit Singh Patwalia, Sr. Adv.

Mr. Billwadal Bhattacharyya,

Mr. Dhiraj Trivedi,

Mr. Rajdeep Majumder,

Mr. Brajesh Jha,

Mr. Kabir Shankar Bose,

Mr. Subas Ray,

Mr. Debanik Banerjee,

Mr. Lokenath Chatterjee,

Ms. Harsikha Verma,

Mr. Sayak Chakraborti,

Mr. Moyukh Mukherjee,

Mr. Anish Kumar Mukherjee,

Mr. Amrit Sinha,

Mr. Surajit Saha, Advocates

... for the petitioner in

WPA(P) 299 of 2021

Mr. Jayanta Kr. Mitra, Sr. Adv.

Mr. Jishnu Saha, Sr. Adv.

Ms. Sonal Sinha,

Ms. Jaweria Rubana,
 Mr. Subhankar Nag, Advocates
 ... for the State Election Commission
 Mr. S.N. Mookherjee, AG
 Mr. Samrat Sen, AAAG
 Mr. Anirban Ray, GP
 Mr. T.M. Siddiqui,
 Mr. Raja Saha,
 Mr. Dabashis Ghosh,
 Mr. Nilotpal Chatterjee, Advocates
 ...for the State
 Mr. Y. J. Dastoor, ASG
 Mr. Vipul Kundalia, Advocates
 ... for Union of India
 Mr. Anuran Samanta, Advocate
 ...for the ECI
 Mr. Sakti Nath Mukherji, Sr. Adv.
 Mr. Biswajit Kumar,
 Mr. Debayan Sen, Advocates
 ...for the respondent
 No. 2 in CAN 7 of 2022

1. CAN 7 of 2022 has been filed by the petitioner seeking a direction to the respondent No. 4 State Election Commissioner to deploy central paramilitary forces in the elections of 108 Municipalities in the State scheduled on 27.02.2022. Further prayers have been made seeking direction for effective CCTV surveillance, to appoint independent impartial general observer and micro-observer, to direct verification of EPIC cards/photo identity cards before entry inside the polling stations by CRPF, to hold respondent No. 4 personally liable to

discharge his duty as directed by the earlier order.

2. The above prayers have been made by pleading that the State Election Commission vide notification dated 03.02.2022 has declared that the election for 108 Municipalities in the State will be held on 27.02.2022. The last date of filing nomination was 09.02.2022. It is alleged that large number of BJP candidates were forcibly prevented by the goons of the ruling party from filing their nominations. In respect of one Rakesh Majumdar from Ward No. 6 of Guskara Municipality, it is alleged that though he had reached on time but his nomination paper was not accepted on the ground that he had reached the office of the concerned authority late. It is further alleged that there is a state of terror prevailing in the State and in almost 10% of the Municipalities which are going for polls, the ruling party candidates have won uncontested as the nominations were not allowed to be filled up by other candidates. Further allegation has been made that State Election Commission is acting in partisan manner and that despite the announcement of the date of elections, acting against Model Code of Conduct, the Government of the State through its Chief Minister is undertaking new schemes to woo its voters. Alleged incidents of violence during the polls for Municipal Corporation Bidhannagar, Asansol, Siliguri and Chandernagore which took place

on 12.02.2022 have been stated in the application.

3. The respondents have filed their affidavit in opposition and the affidavit in reply has also been filed.

4. Submission of Counsel for the petitioner is that the candidates have been prevented from filing nomination forms in the forthcoming elections which resulted into uncontested victory of the candidates of the ruling party and that the State Government after declaration of elections by violating the Model Code of Conduct has floated two new schemes. Referring to the various newspaper reports filed along with the applications he has submitted that in the Elections of four Municipal Corporations already held, there was large scale violence and that the complaints in this regard have not been considered. He has also submitted that in respect of Contai Municipality, notice dated 19.02.2022 has been issued stating that Mauve Paper Seals will not be used in 150 ballot units and that in terms of the earlier order of this Court dated 10.02.2022 the Election Commission did not take any decision for deployment of the paramilitary forces, therefore, now the direction be issued by this Court to deploy Paramilitary Forces in forthcoming Municipality Elections. He has also submitted that earlier Division Bench judgment in the matter of **Basabi Raichoudhury vs. State of West**

Bengal & Ors., 2013 SCC OnLine Cal 15463 has no application in the facts of the present case. In support of his submission to deploy paramilitary forces he has placed reliance upon the orders dated 23.11.2021 in the matter of **All India Trinamool Congress & Anr. vs. Manik Das & Ors., CONMT. PET. (C) No. 884/2021 in W.P. (Crl.) No. 455/2021** and the order dated 25.11.2021 passed in **All India Trinamool Congress & Anr. vs. State of Tripura and Ors., Writ Petition Criminal No. 455/2021**. He has pressed his prayer for appointment of independent observer.

5. Learned Counsel for the Election Commission has opposed the prayer and has submitted that earlier direction of this Court dated 10th of February, 2022 was duly complied with and assessment of ground situation to deploy paramilitary forces was done and no need for the same was found. He has denied the allegations that any candidate has been illegally prevented from filing the nomination form and has submitted that the dispute which the petitioners are raising is factual in nature for which proper remedy will be to file election petition. He has also referred to the order of the Single Judge of this Court in WPA No. 2466 of 2022 filed by Rakesh Majumdar. In respect of the Elections of the Bidhannagar, Asansol, Siliguri and Chandernagore Municipal Corporations, he has submitted that only

stray incidents of violence had placed and that the newspaper reports are conflicting. He has referred to the newspaper reports enclosed along with the affidavit-in-opposition in support of his submission that the earlier elections were held peacefully. In respect of the detailed allegations about irregularities in four Municipal Corporation Elections already held, he has referred to the reports filed along with affidavit-in-opposition and has submitted that each of the allegation has been replied in these reports indicating that the allegations are incorrect. He has referred to the minutes of meeting dated 10th of February, 2022 held by the Election Commission with the State official and submitted that direction issued by this Court in the order dated 10.02.2022 was duly complied with. He has also submitted that two schemes were floated by the State Government earlier and they are not new schemes, therefore, not covered by the Model Code of Conduct, hence permitted by the Election Commission. He has also submitted that there is no need for appointing the observers by this Court as the Election Commission itself is an independent body.

6. Learned Advocate General has submitted that in view of Article 243-ZA(1) of the Constitution it is for the Election Commission to take a decision about calling the paramilitary forces and this issue has also been

considered by this Court in the earlier orders. He has submitted that in respect of 108 Municipalities no evidence of any violence on any candidate has been placed on record and that the only grievance pleaded in the CAN is that the candidates were prevented from filing the nomination form but even the particulars thereof have not been placed on record. He has objected to the pleadings contained in paragraph 5 to 7 of CAN 7 by referring to the affidavits sworn in support thereof. He has also submitted that the complaints enclosed with the affidavit-in-reply were made between the period 14th of February to 17th of February which was after filing of CAN 7 on 14th of February. He has also submitted that whenever any complaint of violence was received, the same was duly looked into. He has also submitted that the complaints enclosed from page 61 to 72, CAN are of the same date by the same person, hence they are suspicious and that the Model Code of Conduct itself provide for appointment of the observer by the Election Commission. He has also submitted that the photographs enclosed at page 87 of the CAN were prior to the issuance of the election notification and that the person shown therein was the administrator of the Municipality and that photograph was taken during the community outreach programme. He has also submitted that the two schemes were floated by the State prior to

the declaration of election and were stopped during the COVID and restarted, therefore, Code of Conduct will not apply. He has fairly stated that it is necessary to have Mauve Paper Seals for all ballot units during the elections and that the necessary notice dated 20th of February, 2022 has also been issued in this regard.

7. Learned Counsel for the respondent No. 2 has submitted that the allegation against the respondent No. 2 is in respect of distribution of title deeds violation of Model Code of Conduct but these title deeds were registered much prior to publication of election notification on 3rd of February, 2022 and formal felicitation programme for the beneficiaries was also announced prior to 1st of February, 2022, hence there is no violation of Code of Conduct.

8. We have heard the learned Counsel for the parties and perused the records. The first issue raised by the petitioner is in respect of deployment of paramilitary forces in forthcoming 108 Municipality Elections. This Court on earlier two occasions, i.e, at the stage of Kolkata Municipal Corporation and at the stage of Bidhannagar, Asansol, Siliguri and Chandernagore Municipal Corporation elections had considered this prayer. After duly considering the Division Bench judgment of this Court in the matter of **Basabi**

Raichoudhury (supra) and orders of the Hon'ble Supreme Court in the case of **All India Trinamool Congress (Supra)**, before the elections of the four Municipal Corporations this Court had passed the order dated 10.02.2022 to the following effect:

“14. The issue relating to deployment of paramilitary forces had come up before this Court during the Kolkata Municipal Corporation elections when this Court taking note of the Division Bench judgment in the matter of **Basabi Raichoudhury (Supra)** in the order dated 17th December, 2021 passed in MAT 1354 of 2021 had held as under:

“The deployment of Central Paramilitary Forces during the elections has been opposed by learned Advocate General placing reliance upon the Division Bench judgment of this Court in the matter of **Basabi Raichoudhury (supra)** wherein it has been held that:

“After hearing the learned Counsel for the petitioner at length, we are of the considered opinion that the petition is premature. Apart from that, we find that in the matter of holding election, law and order situation has to be considered by the State Election Commission and there are various factors for requisition of the Central Paramilitary Forces, such as, law and order situation and paucity of State Forces etc.

Such a matter has to be considered by the State Election Commission and the State Government and, in case of any dispute between them, the State Election Commission had approached this Court earlier. In judicial review, the Court cannot decide whether Central Paramilitary forces are necessary in any of the election. These are the decisions to be taken by the constitutional bodies like the State Election Commission, the State Government, etc. Ordinarily, it is not for the Court to interfere with such matter. It is the duty of the Election Commission to ensure that free and fair election is held and for that, necessary step to be taken by them.

Considering the prayer made in the writ petition, we find that the same is not only premature but on merits this writ petition is misconceived also.”

So far, no instance of violence has been pointed out nor along with the writ petition, any such material has been enclosed which furnishes a ground for deployment of the Central Paramilitary Forces in the forthcoming Kolkata Municipal Corporation Elections. Therefore, at this stage, we do not find sufficient material to accept the prayer.

However, we take note of the submission of the learned Additional Solicitor General that within six hours, the Central Paramilitary Forces can be sent to avoid any untoward incident. Hence, we direct the Election Commission to take an appropriate decision having due regard to the ground situation in consultation with the State authorities for deployment of Central Paramilitary Forces, in case, if the need so arises, to ensure free and fearless elections.

So far as the judgment of the Hon'ble Supreme Court relied upon by the learned Counsel for the parties in the case of deployment of Paramilitary Forces in the Municipal Election in the State of Tripura, the fact situation noted therein was different and even otherwise, the Hon'ble Supreme Court by order dated 23rd November, 2021 had directed the DGP and IGP (Law and Order, Tripura) to hold a meeting with the State Election Commission for the purpose of assessing requirement of sufficient strength of Paramilitary Forces and further directed that after making an assessment of the situation, if so required, requisition should be submitted to the CRPF or to the Ministry of Home Affairs. Hence, a decision in this regard is required to be taken by the concerned State authorities and the State Election Commission, keeping in view the ground situation.”

15. It is essentially for the State Election Commission, which has been vested with the responsibility to ensure free, fair and fearless elections, to assess the ground situation and to take a decision in respect of deployment of paramilitary forces if the circumstances so demand. Instances have been pointed out to this Court about the violence during election and post-poll violence on the earlier occasions during elections in Bidhannagar. Hence, the Election Commission along with the State Authorities is required to do reappraisal of the ground situation prevailing in Bidhannagar and take a decision to deploy the paramilitary forces if required.

16. Therefore, we hereby direct that the Commissioner, State Election Commission will hold the joint meeting with the Chief Secretary and Home Secretary of the State and the Director General and Inspector General of Police within 12 hours and will do the reappraisal of the ground situation in Bidhannagar Municipal Corporation area and ascertain if deployment of paramilitary forces is necessary for ensuring the peaceful conduct of election of Bidhannagar Municipal Corporation and if require, he will submit and requisition to the Union Ministry of Home Affairs or the competent authority for deployment of paramilitary forces and any request in this regard will be duly considered having regard to the ground situation and in the interest of ensuring peace, security and orderly conduct of the forthcoming Bidhannagar Municipal

Corporation Election without any delay. In case, if the Commissioner, State Election Commission forms an opinion that deployment of the paramilitary forces during Bidhannagar Municipal Corporation election is not necessary, then he will be personally liable to ensure that no violence takes place and free, fearless and peaceful elections are held in Bidhannagar.”

9. We find that the above direction of this Court dated 10th of February, 2022 was almost in terms of the order of the Hon’ble Supreme Court dated 23rd of November, 2021 in the case of **All India Trinamool Congress (supra)**. So far as further reliance upon the order of the Hon’ble Supreme Court dated 25.11.2021 in **All India Trinamool Congress & Anr. vs. State of Tripura and Ors., W.P. (Crl.) No. 455/2021** by the Counsel for the petitioner is concerned, a perusal of the said order indicates that as per the earlier direction of the Hon’ble Supreme Court, after considering the ground situation, a decision was already taken to deploy the paramilitary forces and subsequently the issue was only to provide additional companies of CRPF. But in the present case the Election Commission has yet to take the decision to deploy the paramilitary forces after assessing the ground situation.

10. In respect of elections of 108 Municipal Council, though an allegation has been made that the

candidates have been prevented from filing their nomination paper but neither the names of those candidates are disclosed nor their supporting affidavits have been filed. The name of only one candidate, i.e., Rakesh Majumdar from Ward No. 6 of Guskara Municipality has been disclosed with the allegation that he was not permitted to file his nomination by the concerned authority but the record reflects that the said candidate had filed WPA No. 2466 of 2022 raising this grievance and Single Bench of this Court by order dated 11.02.2022 has held that the petition involves disputed questions of facts and in view of the constitutional bar the petition was not entertained. In respect of the four Municipal Corporations where elections have already held conflicting material has been placed on record about the violence. Even otherwise that material cannot form the basis for issuing direction in respect of remaining 108 Municipalities, as decision for deployment of the paramilitary forces in a particular Municipality is to be taken on the basis of the ground situation existing therein.

11. At this juncture it would be worth mentioning that by the order dated 10th of February, 2022 this Court had directed the State Election Commissioner to hold a meeting and ascertain if deployment of paramilitary forces is necessary during elections in Bidhannagar

Municipal Corporation. The minutes of the meeting dated 10th of February, 2022 have been placed before us but those minutes only reflect certain discussions based on oral information submitted by the State authorities. The Election Commission is required to ascertain the ground situation after calling the reports and also gathering the information from relevant sources about the conditions prevailing in the concerned Municipality where election is scheduled.

12. Hence, we direct that the Commissioner, State Election Commission will collect information in respect of the conditions prevailing in each of the Municipalities where the elections are scheduled and will hold the joint meeting with the Home Secretary of the State and the Director General and Inspector General of the Police within 24 hours and will examine the ground situation of each of the 108 Municipalities and take a decision in writing in respect of deployment of paramilitary forces by mentioning the relevant circumstances in support of his decision to deploy/not to deploy the paramilitary forces. If the Commissioner, State Election Commission takes the decision not to deploy the paramilitary forces, then he will be personally liable to ensure no violence takes place and free, fair and fearless elections take place in the municipality where paramilitary forces are not

deployed.

13. The next issue raised by the Counsel for the petitioner is about the order dated 19.02.2022 issued by the Municipality returning officer Contai Municipality to the effect that Mauve Paper Seals for 150 ballot units will not be used in the given number of ballot units. Subsequent order dated 20th of February, 2022 has been placed on record which clarifies that for 138 ballot units mentioned in the order dated 11.02.2022 Mauve Paper Seals will be used. It is not disputed by the learned Advocate General that Mauve Paper Seals should be used in all ballot units. That is also required for fair election process. Therefore, the Election Commission is directed to ensure that Mauve Paper Seals are used in all the ballot units.

14. Further issue has been raised by the Counsel for the petitioner in respect of deployment of the observers and micro-observers in the forthcoming Municipality Elections. The Model Code of Conduct has been placed before this Court which provide that:

“VII. Observer:

State Election Commission shall appoint Observers to oversee the entire election process as well as the conduct of poll at the Polling Station. In case of any complaint about the conduct of poll, the candidates or the

concerned political parties may bring it the notice of the Observers.”

15. In terms of the above the State Election Commission is required to appoint the observers. Needless to say that observers should be an independent person. Having regard to the nature of allegations which have been made in this petition we are of the opinion that Election Commission should appoint impartial officers of IAS cadre as observers.

16. An issue has also been raised by the Counsel for the petitioner in respect of floating of two schemes, namely Duare Sarkar (DS) and Paray Samadhan (PS) by the notification dated 25th of January, 2022 in violation of Model Code of Conduct and in this regard the communication of the Election Commission dated 18.02.2022 has been referred to stating that the Election Commission had no objection in continuation of the schemes. Sub-clause (viii) of Clause VIII of Model Code of Conduct provides that:

“VIII(viii) From the time the elections to a Municipality are announced and till the elections are over, no authority of the Central or State Government or board of a councillors of Municipality shall, in the municipal area or for the benefit of the Municipal area concerned-

(a) Announce or promise any financial

grant,

- (b) allow laying of foundation stone etc. of projects or schemes of any kind,
- (c) make any promises of construction of roads, provision of drinking water facilities etc., or
- (d) announce or promise or commence any new scheme or project:

Provided that this restriction shall not affect continuing schemes, essential repair works, measures necessary for public health and sanitation and public utility interests and relief measures necessitated by calamities and disasters and any other emergency measures that may be necessary. ”

- (e) Make any appointment for temporary posts or job”

17. In terms of the above clause, announcement or promise or commencement of any new scheme or project is not permissible but continuation of scheme is not affected. The proviso makes it clear that the restriction does not apply to continuing scheme, measures necessary for public health etc. If any scheme was stopped earlier then restarting that scheme during the Model Code of Conduct cannot be said to be covered by “continuing schemes”. The communication of the District

Municipal Election Officer dated 03.02.2022 is also on record seeking clarification about implementation of above two schemes in areas where the elections are to be held. Hence, we direct the State Election Commission to examine if the schemes have been allowed to operate violating the Model Code of Conduct and not to permit their implantation till the elections are over if they violate the Code of Conduct. Same is the position in respect of the distribution of title deeds. Though it has been stated before us that title deeds were registered prior to declaration of the elections but their distribution during the elections may influence the voters, therefore, the Election Commission is also required to examine it and take a decision. Let this exercise be completed within 24 hours.

18. So far as the issue of installation of CCTV camera, etc. are concerned, this Court by order dated 23rd December, 2021 passed in MAT 1354 of 2021 and connected applications had issued following directions:-

“(i) The respondent State Election Commission is directed to preserve CCTV footage of all polling stations of Kolkata Municipal Corporation Elections held on 19th December, 2021.

(ii) The State Election Commission is also directed to preserve the diaries of the presiding officer and register containing the thumb

impression/signature of voters of all the polling booths in a sealed cover with immediate effect.

(iii) The State Election Commission is directed to preserve the control unit of EVM machines in terms of Rules 61N of the Rules of 1995 without any delay.

(iv) State Election Commission is also directed to preserve voting record prepared from the EVM in terms of Rules 61N until further orders.

(v) For the forthcoming elections of the remaining Municipal Corporations/Municipal Councils, local bodies, in order to maintain the transparency and fairness, we direct that the State Election Commission shall take steps to install CCTV cameras at conspicuous spots in all main and ancillary booths across the State and will preserve the CCTV footages so that in case of need it can be sent for audit.”

19. We direct that above directions will apply *mutatis mutandis* in the forthcoming 108 Municipality Elections.

20. A prayer for cancellation of the elections held on 12.02.2022 in Municipal Corporations Bidhannagar, Asansol, Siliguri and Chandernagore has also been made but this prayer has not been pressed at this stage, therefore, liberty is granted to file a separate application in this regard if so desired.

21. CAN 7 of 2022 filed in WPA (P) 299 of 2021 is accordingly disposed of.

22. List on 07.03.2022.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)