

**ORDER SHEET
EP/10/2021**

IN THE HIGH COURT AT CALCUTTA

Election Petition Jurisdiction

ORIGINAL SIDE

SWADHIN KUMAR SARKAR

VS

CHANDANA SARKAR & ORS.

BEFORE :

The Hon'ble JUSTICE AMRITA SINHA

Date: 23rd February, 2022.

Appearance :

Mr. Rudraman Bhattacharyya, Adv.

Mr. Vikash Singh, Adv.

Ms. Sudha Singh, Adv.

Mr. Rahul Sharma, Adv.

...for the petitioner.

Mr. Chitta Ranjan Chakraborty, Adv.

Mr. Dip Jyoti Chakraborty, Adv.

Mr. Amritam Mandal, Adv.

...for the Respondent No.1.

Mr. Anuran Samanta, Adv.

...ECI.

The Court:- The Court by order dated 16th July, 2021 issued notice in terms of Rule 24 of the Election Petition Rules, 1967 framed by this Court. The matter was made returnable on 20th August, 2021.

By an order dated 23rd August, 2021 the respondent No.1 was directed to file the written statement within eight weeks and reply to the same was to be filed within four weeks thereafter.

On 24th November, 2021 the learned advocate representing the petitioner sought extension of time for filing the reply to the written statement filed by the respondent No.1. The Court accepted such prayer and extended the time limit by two weeks for filing the reply to the written statement.

On 8th December, 2021 the learned advocate for the petitioner submitted before this Court that there was no instruction from the petitioner whether he intended to proceed with the matter any further or not. Reply to the written statement was not filed within the extended time period.

On 3rd February, 2022 present Advocate-on-record submitted before this Court that he has been engaged recently and required further time for filing the reply to the written statement. The prayer for extension of time for filing the reply was vehemently opposed by the learned advocate representing the respondent No.1.

The Court permitted the petitioner to file the reply to the written statement, however, subject to the hearing of the objection of the respondent No.1, to be taken up for consideration on the subsequent date. Reply to the written statement was ultimately filed on 17th February, 2022.

Today the matter is appearing in the list for consideration of the objection raised by the learned advocate representing the respondent No.1 with regard to the delay in filing the written statement.

Section 86(7) of the Representation of the People Act, 1951 clearly lays down that every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented before this Court for trial.

Learned Advocate for the petitioner relies upon the judgment delivered by the Hon'ble Supreme Court on 14th February, 2022 in the matter of Prakash Corporates Vs. Dee Vee Projects Limited in Civil Appeal No. 1318 of 2022 arising out of SLP(C) No.13751 of 2021. The Court in the said matter took into

consideration the pandemic situation that is prevailing and extended the period of limitation for any suit, appeal, application or proceeding.

Learned Advocate appearing on behalf of the respondent No.1 relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of Satya Narain Vs. Dhuja Ram & Ors. reported in (1974) 4 SCC 237 wherein the provision of the Representation of the People Act, 1951 was taken into consideration and the Court held that for the proper functioning of democracy, the principal object of the Act is purity of elections. Therefore, when an election of a returned candidate is challenged under the Act, expeditious trial is necessary to get rid of any taint or suspicion of corrupt practices.

The important object of the Act, namely, expeditious disposal of an election petition is enumerated under Section 86(6) which reads as "the trial of an election petition shall, so far as is practicable consistently with the interest of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded".

The Court clearly laid down that the object of expeditious trial will be defeated if the presentation of the election petition should be treated casually and lightly permitting all kinds of devices to delay the ultimate trial.

Learned Advocate appearing on behalf of the respondent No. 1 further relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of Pukhrem Sharatchandra Singh Vs. Mairembam Prithviraj @ Prithibiraj Singh reported in (2015) 16 SCC 149 wherein also the Court reiterated the principle and the object laid down in the Act.

Learned Advocate for the petitioner submits that the pandemic situation ought to be taken into consideration for the purpose of extension of time in filing the reply to the written statement.

It appears from the conduct of the petitioner that he was never seriously interested to proceed with the matter. Learned Advocate initially appearing on behalf of the petitioner categorically expressed that no instruction was received from the petitioner whether he was at all interested to proceed with the matter or not.

It appears that this Court, in a similar situation, passed an order on 9th December, 2021 in E.P. No.7 of 2021 (Biswanath Banerjee Vs. Tilak Kumar Chakraborty & Ors.) wherein Court recorded that the election petitioner was not interested to continue with this matter any further. Further pleadings were not filed within the time. Considering the facts and circumstances, the Court was pleased to dismiss the election petition.

I am of the opinion that the petitioner herein, is not seriously interested to proceed with the election petition. His conduct implies that he does not have a genuine grievance at all. He is simply trying to drag the matter for the reasons best known to him. Pandemic is certainly not the reason for such casual approach of the petitioner in conducting his case. Time limit as prescribed in the Act is extremely essential for the purpose of conclusion of trial in an election petition, otherwise the returned candidate and the members of the constituency will remain in suspense with regard to their elected candidate and the smooth functioning of the legislature will suffer. Showing any leniency to the petitioner will be against the every object and purpose of expeditious disposal of trial of election petition. Spending any further time for trial of the present petition will

amount to sheer wastage of valuable judicial hours which the Court ought not permit to do. The ratio of the judgment in Prakash Corporates (supra) also does not come to the aid of the petitioner. The plea of pandemic cannot save the petitioner.

In view of the above, the election petition stands dismissed.

No costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon completion of usual legal formalities.

(AMRITA SINHA , J.)