
(2013) 07 CAL CK 0042
In the Calcutta High Court
Case No : Writ Petition No. 19921 (W) of 2013

Basabi Raichowdhury

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 26-07-2013

Acts Referred:

Citation : (2013) 4 CALLT 174

Hon'ble Judges : Arun Mishra, C.J.; Joymalya Bagchi, J

Bench : Division Bench

Advocate : Subrata Mukhopadhyay and Mr. Shamit Sanyal, for the Appellant; L.C. Bihani and Mr. N.C. Bihani for Election Commission, Mr. Bimal Chatterjee, Advocate General, Mr. Abhrotosh Majumder, Ayan Banerjee and Mr. Supratim Dhar for the State, for the Respondent

Final Decision : Partly Allowed

Judgement

Arun Mishra, C.J.—The writ petition has been filed by the petitioner by way of Public Interest Litigation. The main prayer made is that respondents be directed to hold the elections of the Corporation/Municipal Council as the period has come to an end between 15th July, 2013 and 24th July, 2013 from the date of first meeting. There are 13 Municipalities of which the elections have fallen due. They are (1) Burdwan Municipality, District Burdwan, (2) Guskara Municipality. District Burdwan, (3) Dubrajpur Municipality. District Birbhum, (4) Alipurduar Municipality, District of Jalpaiguri, (5) Mekliganj Municipality, District Cooch-behar, (6) Haldibari Municipality, District Cooch-behar, (7) Medinipur Municipality, District Paschim Medinipur, (8) Chakdah Municipality, District Nadia. (9) Panihati Municipality, District North 24-Parganas, (10) Habra Municipality. District North 24-Parganas, (11) Diamond Harbour Municipality, District South 24-Parganas, (12) Balurghat Municipality, District Dakshin Dinajpur and (13) Dalkhola Municipality. District of Uttar Dinajpur.

2. With respect to Medinipur Municipality, it is submitted by the State Election Commission that since delimitation of constituency has to take place, election

cannot be held before 22nd November, 2013. They have proposed the election to be held for Medinipur Municipality on 22nd November, 2013 along with four other Municipalities/Corporation, of which the period of 5 years will also come to an end in the month of November, 2013. The said four Municipalities/Corporation are - (1) Krishnagar, District Nadia. (2) Jhargram, District Paschim Medinipur, (3) Berhampore Municipality, District Murshidabad and (4) Howrah Municipal Corporation, District Howrah.

3. The State Government has proposed to hold the election of aforesaid 13 municipalities on 5th of September, 2013, whereas the State Election Commission has proposed the date on 22nd September, 2013 for holding the election of 12 municipalities out of the aforesaid 13 municipalities except Medinipur, as it has to finalise the voters' list and as at present Panchayat elections are going and counting to be completed by 3rd August, 2013 and they will start the process by inviting objections on voters' lists from 10th of August, 2013 and have proposed to issue election notification on 17th August, 2013 for elections proposed to be held for 12 municipalities of which has expired, on 22nd September, 2013.

4. We have directed vide order dated 17th July, 2013 to the State Government as well as the State Election Commission to hold a joint meeting to finalise the date. However, they are unable to reach any consensus in the matter of fixing the date for holding of the election of the municipalities whose terms have already come to an end.

5. The State Election Commission has filed minutes of the meeting held on 18.7.2013 at 11-30 A.M. with the Secretary, Municipal Affairs Department and other officers of the Commission. The following are the minutes of the meeting held on 18.7.2013:

1. Fixing the date of election

The Secretary, M.A. Department met with the Commissioner as per Order passed on 17.7.2013 by the Hon"ble High Court, Calcutta, and proposed to fix 7th September, 2013 as the date of election in respect of 13 (thirteen) Urban Local Bodies and Bye-election to 22 (twenty two) Municipal Constituencies of different Urban Local Bodies including Ward No. 1 of Kolkata Municipal Corporation. He stated that, the State Govt. desired to hold the elections.

For the purpose of holding Municipal General Elections to the aforementioned ULBs, it was informed to the Secretary, M.A. Department that the delimitation process of Midnapore Municipality has not yet been completed. After completion of the delimitation proposal, the process for reservation of seats of the said municipality shall have to be started and for completion of such process it will take 2 & 1/2 months in terms of the provision of rule 4 of the West Bengal Municipalities (Reservation of Seats) Rules, 1994. Thus, it would not be possible to hold the Municipal General Elections to the said Municipality on 7th September, 2013 as proposed by the State Government. It was also proposed to hold the

election of Midnapore municipality in the month of November, 2013 simultaneously with the elections to 4 (four) other Urban Local Bodies due to be held in the month of November, 2013. The Commission suggested to hold the Municipal General Elections to 12 (twelve) Urban Bodies (except Midnapore) and Bye-elections to 22 municipal constituencies on 22nd September, 2013 on the following grounds:

1. The Municipal Returning Officers and SDOs are also acting as Panchayat Returning Officer for Zilla Parishad constituencies and they will not be able to do the municipal election works simultaneously with the Panchayat Elections.
2. The Electoral Rolls for the aforementioned municipal bodies, by adopting the Assembly Electoral Rolls, will be published on 10th August, 2013.
3. After publication of Electoral Rolls. State Govt. and Commission's Notification can be issued on 16th August, 2013.
4. Since the municipal elections are to be held by using Electronic Voting Machines (EVMs) at least 10 to 15 days are to be required for checking the EVMs. For setting of candidates on EVMs, it will take another 12 days. Thus about 22 to 25 days are to be required after withdrawal of the candidatures for holding of polls in terms of clause (d) of Section 37 of the West Bengal Municipal Elections Act, 1994.

However, the Secretary, M.A. Department has been requested by the Commissioner to communicate the views of the State Govt. regarding the date of election, so that the Commission can initiate the process for such elections immediately.

The meeting ended with thanks to and from the chair.

6. The State Government has also filed written submissions in the matter of fixing the date of municipal election. The following submissions have been made:

1. According to the 2nd paragraphs of the minutes of the meeting held on 18th July, 2013 two and half months would be required for completion of process involving (a) delimitation and (b) reservation of seats in terms of the provision of Rule 4 of the West Bengal Municipalities (Reservations of Seats) Rules. 1994.
2. Therefore, it appears that completion of such process on approximate calculation will take us to the end of September or early October.
3. Viswakarma Puja is celebrated with all gaiety all over the State and more particularly in the small towns where the municipality elections are to be held. In fact Viswakarma Puja is truly the commencement of the Puja Festive in the State. Ordinary people start getting ready for the Puja Festival Shops are even kept open for longer hours to facilitate the people's buying spree all over for the festival.

Viswakarma Puja falls on 17th September, this year when factories, engineering

firms all over remain closes for 2/3 days and then immersion ceremony takes a day or two.

4. The State Government has duly assessed the mood of the people. The government does not want to upset the people at large by holding municipal election on the eve of Puja or during Puja festival. State Election Commission only holds election and it cannot claim must touch with the people as such and hence it is not possible for the Commission to assess the mood of the people. It is now known to all that Panchayat election during Ramzan month was sincerely sought to be avoided by the State. Minority community did not take it happily. Similar experience should be avoided for Municipal election.

5. Municipality election if held on either on 20th or on 21st or on 22nd September the first meeting of the elected candidates will have to be held during Puja when offices etc. will remain closed. It will be very difficult to hold such meetings for constituting the Board and if the Boards cannot be constituted nothing can function.

6. As the lives of the Boards of the municipalities have already expired and the State Government has exercised its power section 14(4) of the Act appointing administrators those administrators are now carrying out the day to day function of the municipalities and they will do so till the Boards are constituted.

7. (a) Considering all these factors and other factors mentioned in page 2 of the Minutes of the meeting held on 18th July, the State is more reluctant to hold municipal elections any day beyond 7th September and at the most the said date can be pushed to 10th or 11th of September, 2013.

(b) Alternatively elections of 13 municipalities along with 4 others (for which it will be due in November) can be held some time in the first half of the month of November, 2013. It is understood from the deliberations of 18th July, 2013 that the State Election Commission may not be averse to that suggestion to avoid all possible controversies.

7. We have heard the learned counsel appearing for the parties at length. The learned Counsel S. Mukherjee appearing on behalf of the petitioner submitted that there is imperative to hold election before the expiry of the term as provided in Article 243(U)(3) of the Constitution of India. Municipalities can continue for 5 years from the date appointed for its first meeting and no longer. Thus, election ought to have been held before the expiry of the terms of the municipalities, which have come to an end between 15th July and 24th July, 2013 from the date of first meeting.

8. Mr. L.C. Bihani, learned Senior Counsel appearing with Mr. N.C. Bihani, on behalf of the State Election Commission, has submitted that considering the period required for holding the election finalisation of the voters' lists, reservation of wards etc., election can be held at the earliest on 19th September, 2013 and not before that. He has also submitted that the results of such election

shall be published by the Election Commission by 26th September, 2013.

9. Mr. Bimal Chatterjee, learned Advocate General, appearing on behalf of the State, has submitted that as per calculation of the State Election Commission as two and half month is required for holding election which can be held at the end of September or early October. As Puja festival falls in the month of October and people makes preparation for Puja festival, shops are kept open for longer hours to facilitate people buying spree all over for the festival and Viswakarma Puja falls on 17th September, 2013 when factories and engineering firms all over the State remain closed for 2/3 days and the immersion ceremony takes a day or two. Presently Panchayat election is being held during Ramjan month. Similar experience should be avoided for municipal election. In case municipal election is held either on 20th, 21st or 22nd September, 2013, the first meeting of the elected candidates will have to be held during the Puja when offices etc. will remain closed. It will be very difficult to hold such meeting for constituting the Board. As the tenure of the Board of the municipalities has already expired, the State Government has exercised the power u/s 14(4) of the West Bengal Municipal Act, 1993, appointing administrators and they are now carrying out day to day function of the municipality and they will do so till Boards are constituted. Thus, the learned Advocate General has suggested two alternatives as given in the written submission. The State Government is reluctant to hold election on any date beyond 7th September, 2013 and in any case, the learned Advocate General has submitted that election date cannot be stretched beyond 15th of September, 2013. It was also submitted that if elections are held on 22nd September, 2013 not only the first meeting of the elected candidates will have to be held during Puja when offices will remain closed and since Viswakarma Puja is fixed few days before it on 17th September it would not be practical to hold election on any day beyond 15th September, 2013. If it is not possible to hold election on or before 15th September, 2013, election may be held in the month of November, 2013. The learned Advocate General has also submitted that in case election is held before the 15th September, 2013 or in the month of November, 2013 that would avoid all possible controversies.

10. It is not in dispute that duration of 5 years of the municipalities from date of first meeting has already come to an end and election ought to have been held as per the constitutional mandate before the expiry of the term of the concerned municipalities. The term has come to an end between 15th July, and 24th July, 2013. Now administrators have been appointed in exercise of the power u/s 14(4) of the Act of 1993. Article 243(U)(3)(a) of the Constitution of India casts a mandate to the effect that election of the constituted municipality shall be completed before expiry of its duration. Clause (1) of Article 243(U) of the Constitution of India lays down that every municipality unless sooner dissolved under any law for the time in force, shall continue for five years from the date appointed for its first meeting and no longer. Thus, elected bodies cannot continue a day beyond 5 years from the date of first meeting as constitutionally envisaged and they have to be replaced as per constitutional mandate by elected

bodies not by administrator. However, in the instant case as the dates have not been finalised so far and there is no consensus reached between State Government and State Election Commission and the period has already come to an end, constitutional mandate of Article 243(U) of the Constitution of India cannot be permitted to be violated till November, 2013 with respect to the 12 municipalities where elections are possible. With respect to Medinipur Municipality, District Paschim Medinipur, where delimitation of the constituency is proposed and it will require two and half months and thereafter other process have to be conducted, we reluctantly direct the election to be held for Medinipur Municipality on 22nd November, 2013 as proposed by the State Election Commission, However, with respect to 12 municipalities whose tenure has already come to an end, though State Election Commission and the State Government both ought to have taken steps for holding election before expiry of the terms of elected bodies as per constitutional mandate but they have not done so. However, constitutional imperative cannot be permitted to be defeated any longer, then minimum period required as per the rules for holding the election. Considering the period required for publication of the voters' lists, inviting objections, finalising the same, reservation of wards etc., it is not practicable to accept the suggestion made by the State Government that election be held on 5 September, 2013 and in any case not beyond 15th September, 2013 as it would not be possible for the State Election Commission to complete the procedure as per the time Schedule prescribed in the Rules.

11. Thus, it would be appropriate to direct the election of 12 Municipalities to be held in the month of September itself after the minimum requisite period, which is required for holding election is over. Thus, the State Election Commission has worked out that election can be held on any day between 19th and 22nd September, 2013. As 20th September, 2013 is going to be commencement of "Prittapaksha" and Viswakarma Puja is scheduled for 17th September and immersion period would come to an end on 19th September, we direct to hold the elections of aforesaid 12 municipalities on 21st September, 2013 and publish the results of such election by 26th September, 2013. With respect to Medinipur Municipality. District Paschim Medinipur, election to be held on 22nd November, 2013 along with bye-elections and election for other four municipalities/corporation as stated above, whose term is coming to an end in the month of November, 2013.

12. Let Election Notification be issued on 16th August, 2013 by the State Government for holding elections of the aforesaid 12 municipalities.

13. The question of vires is left open to be questioned in appropriate proceedings as prayed by Mr. Mukhopadhyay, learned counsel appearing on behalf of the petitioner. Writ Petition is disposed of with the aforesaid directions.

Let photostat plain copy of this order duly countersigned by Assistant Registrar (Court) be handed over to the learned counsel for the State Election Commission as also for the State.