
(2015) 04 CAL CK 0118
In the Calcutta High Court
Case No : A.S.T. No. 84 of 2015

Bharatiya Janata Party and Others

APPELLANT

Vs

West Bengal State Election Commission and Others

RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Citation : (2015) 3 CALLT 467

Hon'ble Judges : I.P. Mukerji, J.

Bench : Single Bench

Advocate : Abhrajit Mitra, Som Mondal, Phrize Edulzi, A. Chaubey, A. Chowdhury and K. Chatterjee, for the Appellant; Laxmi Gupta, Ld. A. Advocate General, Abhrotosh Majumder and Subhabrata Dutta, for the Respondent

Final Decision : Disposed Off

Judgement

I.P. Mukerji, J.—This is an application by the Bharatiya Janata Party which, inter alia, wants postponing of the ensuing Municipal Elections for the 91 Municipalities in our State, scheduled to be held on 25th April, 2015. They allege that various malpractices have been carried out by some persons, which resulted in an unfair polling process in Kolkata for the Kolkata Municipal Corporation on 18th April, 2015. They want fresh election dates to be announced and the election be conducted under the surveillance of the Central forces.

2. Mr. L.K. Gupta, learned Additional Advocate General, at the outset, takes the point of jurisdiction of this Court to entertain, try and determine this application. He submits that the election pertains to municipalities and this Court exercising residuary jurisdiction has no determination over the subject matter.

3. In my opinion, to a certain degree and extent this Court and the court exercising determination over the municipal matters have concurrent jurisdiction over the subject matter. The issues are not restricted to municipalities but also involve police inaction and in action of the State Election commission over which the writ Court exercising residuary jurisdiction has exclusive determination. Since

this is a most substantial part of the subject matter, this court has the jurisdiction to entertain this writ.

4. According to the judgment of the Supreme Court reported in Boddula Krishnaiah and another Vs. State Election Commissioner, A.P. and others, , the writ court does not enjoy the power to stop elections or order fresh elections. This decision has been followed by the Division Bench of this Court in an unreported decision in W.P. 6063(W) of 2015 (Pranoy Roy v. State of West Bengal & Ors.) decided on 16th April, 2015, both cited by the Additional Advocate General.

5. However, Mr. Mitra, learned Senior Advocate for the petitioners cites decisions reported in Election Commission of India Vs. State of Haryana, and Election Commission of India Through Secretary Vs. Ashok Kumar and Others, to argue that the writ Court's power to interfere in the electoral process had been preserved to some context by the Supreme Court in these decisions.

6. In my opinion, the Court has no power to stop elections or to postpone elections, normally. It cannot be said that any of these decisions has denied the power of the writ court to regulate the elections or the election process to prevent breakdown of law and order or the constitutional machinery. In fact the 2000 decision of the Supreme Court approves and upholds an order that "sub-serves the progress of the elections "(See paragraph 32).

7. The elections are scheduled to be held on 25th April, 2015.

8. There are manifold allegations, including allegations against the Election Commissioner with regard to the alleged malpractices practised in the Kolkata elections. There are similar allegations with regard to the impending elections.

9. I would view the Municipal Election as a separate election. The allegations made with regard to the 18th April, 2015 elections or the electoral process for the municipalities are yet to be substantiated. Therefore, on the basis of those allegations relating to a different election or the present election process, cancelling or postponing the municipal elections would not be proper. The Court would be acting on insufficient evidence.

10. However, the allegations with regard to the 18th April, 2015 elections and with regard to the electoral process for the 25th April, 2015 elections are taken into account by this court. It was submitted by Mr. Behani that three companies of the Central Armed Police forces stationed in Darjeeling had been deployed to ensure compliance with law during the 18th April, 2015 election. He submitted that the State government had requested the Centre for fifty companies for the West Bengal Municipal Election. This request was not acceded to. Mr. Mitra submitted that 500 Companies more required. Cancelling or postponing elections just two days prior to the election would not be proper, in my opinion.

11. But I do maintain that this Court has the power to regulate the elections so that it "progresses" according to law. I direct the respondent authorities to utilize

the services of the three companies of Central Forces so that the Municipal Elections are held in a free and fair manner. Their deployment and utilization would be according to the advice of the State Election Commission and the directions of the respondent Police Authorities.

12. Any party or parties or a group of parties collectively will be at liberty to make a written representation to the Chief Election Commissioner identifying sensitive areas where such deployment can be made. The Chief Election Commissioner will advise the police authorities regarding such deployment, considering such representations.

13. No other reliefs are granted.

14. Affidavits were not invited. The allegations contained in the writ petition are deemed not to have been admitted. This writ application is accordingly disposed of.

Let a plain photocopy of this Order, duly countersigned by the Assistant Registrar (Court), be given to the learned Counsel for the Parties, on the usual undertakings.