

(2018) 04 CAL CK 0069
In the Calcutta High Court
Case No : AST 9 of 201

BHARATIYA JANATA PARTY & ANR.

APPELLANT

Vs

THE STATE ELECTION COMMISSION AND OTHERS.

RESPONDENT

Date of Decision : 10-04-2018

Acts Referred:

West Bengal Panchayat Elections Act, 2003 — Section 46, 46(2)

Citation : (2018) 04 CAL CK 0069

Hon'ble Judges : SUBRATA TALUKDAR, J

Bench : Single Bench

Advocate : Pratap Banerjee, Kalyan Banerjee, Nilanjan Sandilya, Saurabh Kumar Das

Final Decision : Disposed Of

Judgement

This writ petition has been presented in person citing grounds of urgency.Â Notice was directed to be served on the respondents and, pursuant to

such notice, the respondents/State

Election Commission (for short the Commission) as well as the State Respondents are represented in person.

On behalf of one of the contesting parties connected to the election in issue, viz. the election to the three tiered Panchayat bodies as notified by the

Commission on 2nd April, 2018, Mr. Kalyan Banerjee,

Vice President of the All India Trinamool Congress (AITMC) represents his party in person.

It is submitted by Mr. Kalyan Banerjee that the AITMC is a necessary party to the writ petition, although not impleaded.Â Therefore, he seeks leave

to intervene and, on the basis of the submissions presented before this Court today, the intervention is upheld.Â Therefore, the first direction which is

issued by this Court is upon the petitioner to add the AITMC, a contesting party to the said election, as a party respondent to the writ petition.

Liberty is granted to amend the cause title of the writ petition accordingly.

After hearing in detail the submissions advanced by the petitioner in person and the respondents in person, to the mind of this Court the following three

issues arise:

The first relates to grant of police protection for filing of nomination papers for the said election.

The second, relates to complaints of alleged obstruction caused to the filing of nomination papers by aspiring candidates of the petitioner in person, who represents a particular political party, viz. the Bharatiya Janata Party (BJP).

The third issue is the cancellation of the Notification dated 9th April, 2018 by the Commission vide its Order dated 10th April, 2018. By the latter the

Commission withdrew the extension of a single date/day granted to the candidates to file their nomination papers which originally expired at 3 p.m. on

9th April, 2018.

To the mind of this Court the first two issues, as stated above, have been and are already the subject matter of litigation both before this Court and

before the Honâ??ble Apex Court. Therefore, this Court does not find it necessary at this stage for the third issue fundamentally raised and argued

by the parties,Â to reiterate the directions already passed by superior Benches, viz the Honâ??ble Division Bench of this Court and the Honâ??ble

Apex Court, qua issue numbers first and second (supra).

The third issue, which has been the focus of the present hearing, connects to the cancellation of the Notification dated 9th April, 2018 extending the

date for filing nomination by a day/date, i.e. by 3 p.m. of today, 10th April, 2018.

Mr. Kalyan Banerjee submits that the rigours of the proviso to Section 46(2) of the West Bengal Panchayat Elections Act, 2003 (for short the 2003

Act) ought to have been noticed by the Commission before extending the day/date (supra). It is pointed out that the Proviso (supra) mandates that any

extension of a single day/date must be by the same order.

Developing his above arguments, Mr. Kalyan Banerjee draws the attention of this Court to the order of the Commission dated 5th April, 2018, also

under Section 46 of the 2003 Act, which permitted acceptance of nomination

papers by the respective Sub Divisional Officers in addition to the authorities competent under the 2003 Act to receive such nomination papers.

Mr. Kalyan Banerjee therefore argues that the Commission could have only exercised powers under the Proviso to Section 46(2) of the 2003 Act

once and, not having done so by its order of 5th April, 2018, could not do so by the subsequent order of 9th April, 2018.

Therefore, it is submitted that the Commission correctly rectified its mistake/error on being apprised of the same by a representation of the present

Intervenor/AITMC dated 9th April, 2018 by issuing the order in the nature of a corrigendum dated 10th April, 2018.

In support of his argument that a constitutional body such as the Commission is always entitled in law to rectify its mistake, reliance is placed on the

authorities of (2006)8 SCC 192 (at paragraph 12); (2006)3 SCC 690 (at paragraph 22) and (1988)2 SCC 602 (at paragraph 104).

Mr. Kalyan Banerjee also raises the issue of maintainability of this writ petition since it has not been brought to the notice of this Court that the person

before this Court is a person directly affected by the failure to file the nomination pursuant to the order of cancellation dated 10th April, 2018.Â In

support of the above noted proposition reliance is placed on the authority 2017 SCC online Cal page 3799.

The maintainability of the writ petition is also questioned by the Commission.Â The respondents uniformly submit that with the expiry of the deadline

to file nominations, assuming but not admitting at 3 p.m. today, any proceeding at this stage must be treated to be an election proceeding and, cannot

therefore come within the jurisdiction of the Writ Court.

Mr. Pratap Banerjee appearing in person for the petitioners and, describing himself as the General Secretary of the petitioner/ BJP, submits that the

order of the Honâ??ble Apex Court dated 9th April, 2018 in Writ Petition (Civil) No. 302 of 2018 clearly provides that the apprehensions of

candidates/parties pertaining to obstruction in filing of their nomination papers should be allayed by the Commission. Therefore, notwithstanding the

technicalities related to the Proviso to Section 46(2) as submitted by the respondents, it is submitted that the Honâ??ble Apex Court made its

intentions clear that steps be taken by the Commission to address grievances arising out of a non-level playing field.

Referring further to the order of 9th April, 2018 of the Honâ??ble Apex Court, Mr. Pratap Banerjee clarifies that the grievances referred to in the

solemn order relate to both collective entities such as political parties as well as individual candidates.Â Therefore, it is contended that the present

writ petition is maintainable.

Having heard the parties and considering the materials placed, this Court, on the third issue under consideration, must respectfully notice the terms of

the order of the Honâ??ble Apex Court, dated 9th April, 2018. This Court finds that the Honâ??ble Apex Court mandated the Commission to pass

appropriate orders keeping in view the nature of grievances made by political parties/independent candidates and ensure disposal of such

grievances.Â To the further mind of this Court the Honâ??ble Apex Court was pleased to observe that the Commission shall take steps to remove

the apprehensions of parties/candidates connected to such grievances.

Needless to elaborate such grievances relate to the expectation of the parties/candidates to file their nomination papers.

Next, this Court must address the issue of the Proviso to Section 46(2), as argued by Mr. Kalyan Banerjee, grievances in connection thereof to be

addressed by the Commission strictly in accordance with law.

Proviso to Section 46(2) reads as follows:

â??Provided that the Commission may also, by the said order, extend the last date for making nomination for one day and also direct that all the

nomination papers received under sub-sections (1) and (2) for any Gram Panchayat or Panchayat Samiti constituency, as the case may be, shall be

taken up by the Panchayat Returning Officer for scrutiny for all such nomination papers, at one sitting, one after another, in terms of the notice under

section 44.â??

Notwithstanding the emphasis placed by Mr. Kalyan Banerjee on the expression â??by the said orderâ? in the Proviso (supra), this Court cannot lose

sight of the fact that the Commission, by use of the expression â??may also,â?|â?|, extend the last date for nomination for one day,â? is bestowed

with a discretion to Act in a manner enabling any bottleneck to be cleared.

At this stage this Court cannot be oblivious to the obvious fact that notwithstanding the order dated 5th April, 2018 and the insistence on behalf of the

Intervenor to an extension under the same order, post the order of the Honâ??ble Apex Court dated 9th April, 2018 (supra), the Commission found

itself obliged to allay grievances upon noticing facts on the ground and the law by allowing the prescribed statutory extension of one day till 3 p.m. of

10th April, 2018.

Therefore, inspite of the insistence by the respondents that the extension of the nomination filing day/date does not find specific mention in the order of

the Honâ??ble Apex Court dated 9th April, 2018, the implicit conduct of the Commission to extend the day/date on the 9th of April, 2018 itself

requires this Court not to miss the wood for the trees and, read the issue purposively.

In the backdrop of the above discussion at this stage, prima facie, this Court cannot be ad idem with the arguments advanced by respondents that the

powers of the Commission in issuing the order of 10th April, 2018 brought on record by way of a Supplementary Affidavit by the petitioners, have

been correctly exercised.

Therefore, at this interim stage this Court permits the Commission to take steps in accordance with law by treating the operation of its order dated

10th April, 2018, to have been kept in abeyance.

The petitioners shall serve a copy of all documents to the Intervenor in the course of tomorrow and file Affidavit of Service on the next date.

Let the matter next appear under the heading â??For Ordersâ?? â??Fixedâ?? on 24th April, 2018. Parties shall exchange their Affidavits to the writ

petition by the date fixed.

Urgent Photostat certified copies, if applied for, be supplied to the parties subject to compliance of all requisite formalities.