

(2004) 02 CAL CK 0070
In the Calcutta High Court
Case No : Writ Petition No. 3031 (W) of 2004

Partha Sanyal and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 26-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 324

Citation : (2004) 3 CHN 153

Hon'ble Judges : Subhro Kamal Mukherjee, J

Bench : Single Bench

Advocate : Joydeep Kar, Naranarayan Gooptu, V.N. Dwivedi, Krishnendu Gooptu and Sarathi Sharma, for the Appellant; Balai Chandra Roy, General, Debasish Kar Gupta and Amitava Chaudhuri, for the Respondent

Final Decision : Dismissed

Judgement

Subhro Kamal Mukherjee, J.—This is an application under Article 226 of the Constitution of India ("the writ petition" in short) challenging the circular letter dated February 11, 2004 issued by the Election Commission of India addressed to the Chief Secretaries and the Chief Electoral Officers of the States and Union Territories concerned about the posting of officers in the wake of general elections of the Lok Sabha and the State Legislative Assemblies. In the said letter the Commission communicated its policy that an officer, who has worked for four years or more in the same district, should be transferred out so that free and fair election could be conducted. It was, further, conveyed that the said Commission has decided that no officer connected with elections should be allowed to continue in his/her home district. It was stated that those instructions, inter alia, would be applicable to the Officers-in-Charge of the police stations, whether in the rank of Inspector or Sub-Inspector. It was conveyed that the policy of the Commission was communicated at this stage and even prior to the formal announcement of the election to ensure that the State Government concerned could take steps for transfer of the officer falling in the categories

specified in the said circular letter as immediate steps to avoid large-scale dislocation of officers immediately after the announcement of the election.

2. The writ petitioners are Sub-Inspectors in rank and they are holding the posts of the Officer-in-Charge of different police stations in the District of Purba Midnapore. They are aggrieved as in consequence of the said circular letter dated February 11, 2004. West Bengal Police Directorate requested all the Deputy Inspector Generals of all the ranges to initiate steps to transfer the Officer-in-Charge of the rank of Sub-Inspectors within their ranges immediately.

3. Mr. Nara Narayan Gooptu, learned senior advocate, appearing in support of the writ petition, submits the Election Commission has exceeded its jurisdiction in issuing the said circular letter even before the formal announcement of election and thereby usurped the power of the appointing authorities. Mr. Gooptu submits that the West Bengal Police Directorate threatened to transfer the petitioners without any application of mind, but only to satisfy the desire of the Election Commission. Mr. Gooptu refers to the Regulations 834(c), 835(b), 836 and 877 of the Police Regulations of Bengal, 1943 and submits that the rules for periodical transfer of subordinate police officers have not been followed, but mechanically the Government decides to follow the desires of the Election Commission, Mr. Gooptu finally submits that the District of Purba Midnapore has been created only sometime in the year 2002 and as such even in terms of the said letter of the Election Commission his clients cannot be transferred.

4. Mr. Balai Chandra Ray, learned Advocate General, submits that this application is not maintainable before this Court inasmuch as if the petitioners are aggrieved by the threat of transfer they should approach State Administrative Tribunal for redressal of their grievances. Mr. Ray submits, further, that the Election Commission is the best judge to issue instructions in order to secure a free and fair election and as such, it is submitted, that the petitioners should be permitted to challenge the instructions of the Election Commission.

5. Mr. Joydeep Kar, learned advocate, appearing for the Election Commission, draws my attention to sub-article (6) of Article 324 of the Constitution of India and submitted that the Election Commission in order to hold free and fair election requires staff, which are normally borrowed from the State Governments concerned. These instructions, according to Mr. Kar, are not new inasmuch as at the time of holding earlier elections similar instructions were issued to all the States and the Union Territories. Mr. Kar in this connection draws my attention to the letter dated February 8, 1986 issued by the Election Commission.

6. In my view, this writ application is maintainable before this Court as the writ petitioners have challenged the authority of the Election Commission to issue the circular letter dated February 11, 2004. The orders of transfers would only be consequential in nature.

7. I have perused the circular letter dated February 11, 2004 and I think that the Election Commission in exercise of its discretion rightly issued, the said circular

letter even prior to the formal announcement of the election to enable the State Governments to take proper steps to avoid last moment large scale dislocation of the officers after the announcement of the election. Transfer is an incident of service. The petitioners have no vested right. The Election Commission thought that certain classes of officers, who have worked for four years or more in the districts, should be transferred to establish that free and fair elections are conducted. State of West Bengal is the employer of the writ petitioners; State has no problem with the circular letter. State of West Bengal rather issues necessary instructions for implementation of the circular letter.

8. Under Article 324 of the Constitution of India, the Election Commission is vested with the power to supervise and to conduct the elections of the Lok Sabha and the State Assemblies. The power of the Election Commission is wide enough to do everything that is necessary to ensure free and fair elections. In my considered opinion the directions contained in the circular letter dated February 11, 2004 are well within the powers of the Election Commission as conferred under Article 324 of the Constitution of India. The circular letter is not arbitrary and it does not discriminate between different officers; uniform directives have been issued in respect of all the officers, who have completed four years or more in the same district. The directions are reasonable and those directions have not been issued arbitrarily or whimsically. No allegation of mala fide could be established against the Election Commission. Moreover, this Court does not sit in appeal over such directions of the Election Commission.

9. I do not think that this writ petition has been filed bona fide; this writ petition has been filed to frustrate the attempt of the Election Commission to ensure free and fair election.

10. The writ application is, therefore, rejected.

11. I make no order as to costs.

12. Xerox plain copy of this order duly countersigned by the Assistant Registrar (Court) is to be supplied to the learned advocates appearing for the parties on their usual undertaking.