

(2013) 07 CAL CK 0095
In the Calcutta High Court
Case No : W.P. No. 21027(W) of 2013

Pramatha Ranjan Mondal

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 17-07-2013

Acts Referred:

Citation : (2013) 5 CHN 264

Hon'ble Judges : Soumitra Pal, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

Soumitra Pal, J.—In the writ petition the petitioner, an Assistant Teacher, has challenged the order dated 6th July, 2013 issued by the Panchayat Returning Officer and the Block Development Officer, Bagnan II Development Block, Uluberia, Howrah, the respondent No. 5 directing him to act as Presiding Officer in the ensuing panchayat election and the memo dated 9th July, 2013 directing him to attend the third training for polling officers on the ground that the initial notification dated 18th May, 2013 for holding poll was given a go by, as evident from the subsequent amended notification, on 19th June, 2013, and he had been appointed as polling agent by a candidate subsequently. It is submitted by Mr. Bikash Ranjan Bhattacharya, learned senior advocate for the petitioner that though election was notified on 18th May, 2013, however, as dates were subsequently changed and fresh dates of polling were announced as evident from the fresh notification dated 6th July, 2013, which is identical to the earlier notification dated 11th June, 2013, and as the earlier training stood cancelled and as the Panchayat Returning Officer on 19th June, 2013 approved the appointment of the petitioner as a polling agent, the stand of the Election Commission is illegal. Moreover, as the candidate by letter served on the Returning Officer on 11th July, 2013 had requested the Commission to release the petitioner and to allow him to perform duties as polling agent, if the orders under challenge are upheld, the entire election process may be vitiated.

2. Mr. L.C. Bihani, learned senior advocate appearing on behalf of the West Bengal State Election Commission and Mr. Joytosh Majumdar, learned advocate for the State submit that as the initial notification dated 18th May, 2013, though amended, still stands and on the basis of such notification training programmes had commenced on 17th June, 2013 and had continued till 24th June, 2013 and as the petitioner was intimated by an order dated 11th June, 2013 that he had already been selected as a Presiding Officer and accordingly training was imparted on 17th June, 2013, that is, before his appointment as a polling agent, the orders under challenge are just and proper. With regard to the approval of the petitioner as being appointed as a polling agent of a candidate submission is it was a routine matter and has nothing to do with his initial appointment as Presiding Officer. It is submitted that the petitioner is trying to avoid election duties.

3. Heard learned advocates for the parties. In order to appreciate the issue, it is necessary to refer to section 6(5) of the West Bengal State Election Commission Act, 1994 which is set out hereunder:-

6(5). Subject to the provisions of the W.B. Ranch, Act 1973 and the rules thereunder the Panchayat Returning Officer shall appoint such number of persons to be the-

(a) Presiding Officer, and

(b) Polling Officer,

as may be necessary for holding elections or bye-elections to a Panchayat:

Provided that no person, who has been employed by or on behalf of or has otherwise been working for, a candidate in or about the election or bye-election to a Panchayat, shall be appointed to be the Presiding Officer or Polling Officer for holding such election or bye-election, as the case may be.

(Emphasis supplied)

4. In this context it is also appropriate to refer to section 28(1) of the West Bengal Panchayat Elections Act, 2003 which is extracted hereunder:-

28. Appointment of Presiding Officer and polling officers.--(1) Subject to the provisions of sub-section (5) of section 6 of the West Bengal State Election Commission Act, 1994, the Panchayat Returning Officer shall, with the prior approval of the District Panchayat Election Officer, appoint a Presiding Officer for each polling station and such number of polling officer or officers to assist the Presiding Officer as he thinks necessary but shall not appoint any person who has been employed by, or on behalf of or has been otherwise working for, a candidate in or about the election as a Presiding Officer or a polling officer:

Provided that if any polling officer is absent from the polling station, the Presiding Officer may appoint in his place any person who is present at the polling station other than a person who has been employed by, or on behalf of, or

has been otherwise working for, a candidate in or about the election to be the polling officer and shall, when such appointment is made, inform the Panchayat Returning Officer accordingly.

(Emphasis supplied)

5. From a perusal of section 28(1) of 2003 Act it is clear that the Panchayat Returning Officer "shall not appoint any person" as a Presiding Officer or officer or officers to assist the Presiding Officer "who has been employed" or "has been otherwise working for a candidate", meaning thereby that a person who has already been employed by a candidate shall not be entrusted with the polling duty. In the instant case the initial notification for holding Panchayat Elections was issued on 18th May, 2013. Though pursuant to the directions of the Apex Court there have been changes with regard to dates for holding elections, however, on the basis of the initial notification, first training was imparted on 17th June, 2013 and second training was conducted on 24th June, 2013 which demonstrates that the election process had begun on 18th May, 2013. As the petitioner had participated in the first training conducted on 17th June, 2013 it shows that the petitioner had already been engaged to conduct the polling duty by the Commission, that is, much before 19th June, 2013 when he was appointed as a polling agent by a candidate.

6. The argument of the petitioner, that a fresh training programme was initiated on 24th June, 2013, that is, after he was appointed as a polling agent on 19th June, 2013, cannot be accepted as it is evident from the notice dated 11th June, 2013 appointing Jiim as a Presiding Officer that he was apprised of the fact that the first and second training would be held on 17th June, 2013 and 24th June, 2013 which also emphasises that the polling process had begun on 18th May, 2013. Moreover, the approval of the appointment of the petitioner on 19th June, 2013 as a polling agent of a candidate is not of much significance as it was a routine matter and cannot go against the principles of law as explained that a person already appointed as a Presiding Officer cannot be subsequently appointed as a polling agent of a candidate and any such approval by the Commission is not acceptable. Therefore, no order is passed on the writ petition. The writ petition is disposed of.

7. No order as to costs. Urgent photostat certified copy of this order, if applied for, be furnished on priority basis.