

(2023) 07 CAL CK 0039
In the Calcutta High Court
Case No : WPA No. 15075, 15079 Of 2023

Somjit Ray And Others

APPELLANT

Vs

State Of West Bengal

RESPONDENT

Date of Decision : 07-07-2023

Acts Referred:

West Bengal State Election Commission Act, 1994 — Section 6, 6(5)
West Bengal Panchayat Elections Act, 2003 — Section 23(2), 28(1), 29

Citation : (2023) 07 CAL CK 0039

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Sonali Mitra, Samriddhi Bose, M. N. Roy, B. Nandy, S. N. Mookherjee, Sirsanya Bandopadhyay, Arka Kumar Nag, Kishore Datta, Sonal Sinha, Sumita Shaw, Sujit Gupta, Sayan Datta, Soumen Chatterjee, Anuran Samanta

Final Decision : Dismissed

Judgement

Sabyasachi Bhattacharyya, J

1. The petitioners in both the matters are Professors/teachers in various Government colleges/universities. The present challenge has been preferred against the deployment of the petitioners as Presiding Officers in the ongoing Panchayat Elections, to be deputed at the polling stations. Learned counsel for the petitioners argues that as per the Notification dated February 16, 2010 issued by the Elections Commission of India (ECI), Group-"A" or equivalent senior officers, including teaching staff of universities, colleges, etc., should not be drafted for polling duties in polling station premises without specific reasons to be recorded in writing by the District Election Officer, where such appointments become unavoidable. It is further submitted that even the West Bengal State Election Commission (SEC), in its notification dated May 10, 2018, clarified that seniority of officials should properly be taken care of while giving election related duty and it should be ensured that a senior official is not put on

duty under an official who is quite junior to him/her.

2. The learned Advocate General, appearing on behalf of the State, places reliance on the judgment of a co-ordinate Bench of this Court reported at 2019 SCC OnLine Cal 754 [All Bengal State Government College Teachers' Association and another Vs. Election Commission of India and others]. The learned Single Judge held in connection with an election proceeding, that the Polling Officers report to the Presiding Officers who, in turn, report to the Chief Electoral Officer of the State. Therefore, in such hierarchy of things, a Presiding Officer, at which the members of the first petitioner therein are likely to be appointed in the election process, will not be placed below any person lower in rank. A submission was recorded that the Court need not pass orders on surmise, apprehension and conjectures which, according to the learned advocate appearing for the ECI, at that stage of the writ petition.

3. Thus, it is argued that the engagement as Presiding Officer in a polling station of the petitioners was not derogatory to their seniority in any manner, since the Presiding Officer was the senior-most officer functioning in the booth.

4. The learned Advocate General also cites a judgment rendered by a Division Bench of this Court presided over by the Chief Justice, in connection with a Public Interest Litigation, where the relevant provisions of The West Bengal State Election Commission Act, 1994 (for short, "the 1994 Act") and The West Bengal Panchayat Elections Act, 2003 (in brief, "the 2003 Act") were considered. The Division Bench also considered the relevant portions of the handbook of the Returning Officer (Panchayat Election) with regard to selection of polling personnel. It was held therein that in view of the provisions laid down under the 1994 Act read with the 2003 Act with regard to appoint of Presiding Officers and Polling Officers, the Court was of the considered view that persons who do not suffer any disqualification for appointment as Presiding Officers and Polling Officers as specially provided under Section 6 of the 1994 Act read with Section 28(1) of the 2003 Act can be appointed as Presiding Officers and Polling Officers. Following the said judgment, a Learned Single Judge of this Court, vide Order dated June 28, 2023 passed in WPA No.15252 of 2023 [Joydeep Sengupta and others Vs. The West Bengal State Election Commission and others], also held in similar line, upon considering the submission of the State that there would be acute shortage of Presiding Officers and it would be difficult to manage the election procedure if all Assistant Professors are exempted of their polling duty.

5. The learned Advocate General next relies on a judgment of the Supreme Court in Kishansing Tomar Vs. Municipal Corporation of the City of Ahmedabad and others, reported at (2006) 8 SCC 352. In the said judgment, the primacy of the SEC was recognized by the Supreme Court by observing that it enjoys the same status in its domain as the ECI with regard to superintendence, direction and control as well as conduct of elections.

6. Learned counsel for the petitioners, in reply, submits that, within the Scheme

of Section 29 of the 2003 Act, the general duty of the Presiding Officer at a polling station is to keep peace and order therein and to see that the poll is fairly taken and counting of votes is done. Such activity, however, as per the said Section, is subject to the general guidance, superintendence and control of the Panchayat Returning Officer, who is generally a Block Development Officer having lower pay-scale than the petitioners. Hence, it is submitted that the superintendence and control of the Panchayat Returning Officer, who is quite junior to the petitioners, would operate in contravention of the Notification dated May 10, 2018 issued by the SEC.

7. Heard learned counsel for the parties. As per Section 6(5) of the 1994 Act, the appointment of a Presiding Officer, in which post the petitioners have been allotted, is made by the Panchayat Returning Officer, who is usually a District Magistrate. Under Section 23(2) of the 2003 Act, the Panchayat Returning Officer usually, subject to the direction and control of the Commission, does all such acts and things as may be necessary for effectually conducting the election in the manner provided under the said Act. Under Section 28(1) of the 2003 Act, subject to the provisions of Section 6(5) of the 1994 Act, 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 working for a candidate in or about the election as a Presiding Officer or a Polling Officer.

8. A composite reading of Section 28(1) of the 2003 Act with Section 6(5) of the 1994 Act indicates that the appointment of Presiding Officers in Panchayat Elections shall be made by the Returning Officer, with the prior approval of the District Panchayat Election Officer, who is of the rank of a District Magistrate, thus, not junior to the petitioners. As such, the appointment of the Presiding Officer at the polling stations, although made by the Returning Officer, has to be with approval of the Electoral Officer.

9. Another factor which has to be considered is that that Notification dated May 10, 2018 provides that seniority of officials should be properly taken care of and it should be ensured that a senior official is not put on duty under an official who is quite junior to him/her.

10. A Presiding Officer, in his/her activity as a Presiding Officer, is confined to the polling station. The limited duty of the Presiding Officer, over and above booth duty, is to ensure that the election documents are submitted to the Returning Officer.

11. Although Section 29 of the 2003 Act provides that the work of the Presiding Officer will be subject to the general guidance, superintendence and control of the Panchayat Returning Officer, the Returning Officer does not have a direct role to play within the polling station, which is the domain of activity of a Presiding

Officer, where the Presiding Officer has the prerogative to keep peace and order and to see that the poll is fairly taken and counting of votes is done. In discharging such job, also taking into account the Handbook cited by the learned counsel for the petitioners in respect of the scope of work of Presiding Officers issued by the Election Commission of India, it is seen that the Presiding Officer has to maintain a diary where several important entries regarding the polling are to be made. Naturally, such job cannot be entrusted to a person not having sufficient educational acumen to deal with the issues involved. A short note at the end of the said Handbook states that the diary kept by the Presiding Officer has to be forwarded to the Returning Officer with the voting machine, Visit Sheet, "16-Point Observer's Report" and other sealed papers. The physical act of forwarding the same to the Returning Officer does not imply subjugation of the Presiding Officer under the Returning Officer in any manner whatsoever.

12. Interpreted rationally, the Notification dated May 10, 2018 issued by the SEC can only imply that a senior official is not put on duty under an official who is quite junior to him/her. Since the Polling Officers are Government Employees and have a lower pay-scale than the petitioners, it cannot be said by any stretch of imagination that the Presiding Officer is "put on duty" under an official who is quite junior to him/her. That apart, the service cadre of Professors in colleges and universities is entirely different from that of the Returning officer and, as such, the general power of supervision of the Returning Officer cannot be said to be a deterrent to officials senior to him/her in performing their duties.

13. In any event, such appointment cannot be said to be demeaning, since the Presiding Officer has absolute authority within the polling station, which is the entire sphere of their deployment. The general powers of superintendence referred to in the provisions of law are not on such a serious footing that those powers would be construed to put the Presiding Officer "on duty under an official who is quite junior to him/her".

14. Insofar as the judgment of the learned Single Judge in All Bengal State Government College Teachers' Association and another (supra) is concerned, it was observed on the submission of the ECI that in the hierarchy of things a Presiding Officer will not be placed below any person lower in rank.

15. In fact, the same is also evident from the Scheme of both the statutes as discussed above.

16. The Notification dated February 16, 2010, in any event, is not germane in the present context, since the same was issued by the ECI with regard to elections of Parliament and State Legislatures. The SEC has co-equal jurisdiction with the ECI in respect of Panchayat Elections and exercises the same unfettered authority which the ECI wields in respect of Parliamentary and Legislative elections. Hence, the said Notification is not binding in the present case at all.

17. As held by the Division Bench in the Public Interest Litigation referred to by the State, persons who do not suffer any disqualification for appointment as

Presiding Officers and Polling Officers under Section 6 of the 1994 Act, read with Section 28(1) of the 2003 Act, can be appointed as Presiding Officers and Polling Officers. In the present case, the said consideration is satisfied and, as such, there is nothing special to exclude the petitioners from being deployed for election duty, having been contemplated as eligible to be so deployed under the law.

18. The judgment of Kishansing Tomar (*supra*) is not directly relevant in the present context, as none of the parties disputes the unfettered powers of the SEC with regard to Panchayat Elections under the Scheme of the 2003 Act and the 1994 Act.

19. Another factor which has to be considered is that the pay-scale of the Returning Officers (BDO) has been argued by the petitioners to be lower than that of the petitioners. However, mere pay-scale, in the absence of any other factor, may not be a determinant of seniority, if the service is not the same. The service where a BDO is employed is entirely different from that of senior staff in colleges and universities and the two are not comparable in terms. As such, there is no occasion to hold that the petitioners, if deployed as Presiding Officers in polling booths, would be put on duty under an official "who is quite junior to him/her". Hence, there is no merit in the writ petitions.

20. Accordingly, WPA No.15075 of 2023 and WPA No.15079 of 2023 are dismissed on contest, without any order as to costs.

21. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.