
(2015) 05 SC CK 0073

In the Supreme Court Of India

Case No : C.A. Nos. 4867-4868 of 2015 (Arising out of SLP(C) Nos. 15537-15538/2015)

State of West Bengal and Others

APPELLANT

Vs

Pranoy Roy and Others

RESPONDENT

Date of Decision : 25-05-2015

Acts Referred:

Constitution of India, 1950 — Article 243U, 243U(3)
West Bengal Municipal Election Act, 1994 — Section 14(3), 36(3)
West Bengal Municipal Elections (Reservation of Seats) Act — Section 29, 3

Citation : (2015) 7 SCALE 61

Hon'ble Judges : Arjan Kumar Sikri, J;U.U. Lalit, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Leave granted. We have heard the learned Counsel for the parties including Mr. Anil B. Diwan, learned senior Counsel for the State Election Commission.
2. Writ Petition No. 6063/W/15 was filed as public interest litigation in the High Court of Calcutta. In that writ petition the Petitioners had primarily challenged the vires Section 8 of the West Bengal State Commission Act, 1994 and Section 36(3) of the West Bengal Municipal Elections Act, 1994.
3. The Writ Petition has been decided by the High Court vide judgment dated 16.4.2015. Insofar as challenge to the vires of the aforesaid provisions is concerned, the same has been repelled and the writ petition dismissed to that extent. However, at the same time, taking note of the fact that elections to seven Urban Local Bodies have not been held so far though term of few is already completed and of rest of them is about to be over, the Court has given the direction to the State Election Commission to forthwith initiate steps for holding elections to the said seven urban local bodies. It is coupled with further direction that entire election process be completed within two months from the date of the order, in accordance with the procedure contemplated under the relevant statute.

4. The Appellant herein as well as the State Election Commission had filed civil application seeking modifications of the aforesaid directions on the ground that as far as these seven urban local bodies are concerned, process of constitution/reconstitution of the municipal areas was under way and therefore it was not possible to hold the election in terms of directions contained in order dated 16.4.2015 passed in the said writ petition. These applications have also been dismissed by the High Court vide order dated 15.5.2015.

5. In these appeals the aforesaid directions contained in orders dated 16.4.2015 read with order 15.5.2015 are challenged.

6. It is thus clear that only challenge pertains to the directions to hold the election in respect of the said seven urban local bodies within a period of two months.

7. It is not in dispute that the matter of reconstitution of the said seven local bodies is in process. That was the reason that otherwise the elections have already been held in respect of other constituencies, which are 92 in number, leaving these seven municipalities. The reason given by the Appellants was that once the municipalities are reconstituted, then in accordance with the provisions of Section 14(3) of the Act the elected Municipal Councilor would no more remain in the office and as per the said provision the function of the municipality will have to be discharged by the designating such person or persons as the administrative or the Board of Administrators which sought to be appointed by the State Government by Notification. It would inevitably lead to holding of fresh elections once again within few months itself.

8. It is a matter of record that the term of three municipal bodies has already come to an end and therefore fresh elections are due. It is also a matter of record that in respect of four other municipal bodies the term is expiring in June 2014. At the same time it is also a matter of record that by Notifications issued in February and May 2015, exercise with reference to reconstitution of these municipal bodies has already been started.

9. We find from the impugned judgment of the High Court that the High Court has directed holding of the elections primarily on the ground that once the term was coming to an end, the exercise of reconstitution of the municipal bodies should have started by the State Government much earlier and it has initiating this process at the fag end or after the term was over shows lack of bona fides on the part of the Government. To that extent the High Court may be right. However, at the same time we feel that it should not have been a ground to direct to hold the elections within a period of two months as the same is not going to serve any useful purpose. Even if elections are held, the term of the new bodies so constituted shall hardly last for few weeks or few months. The moment the said municipal bodies are reconstituted, the term of the new members, as per the proposed election, would come to an end and fresh elections will have to be held. Therefore, holding of the elections, at this stage would not be of any use.

10. Mr. Kapil Sibal and Mr. Salman Khurshid, learned senior Counsel appearing for the Appellants pointed out that the exercise of reconstitution of these municipal bodies is at an advance stage and is going to be over by 15.6.2015.

11. This Court in *The State of Maharashtra and Another Vs. The Jalgaon Municipal Council and Others*, AIR 2003 SC 1659 : (2003) 5 JT 509 : (2003) 9 SCC 731 : (2003) 1 SCR 1112 : (2003) AIRSCW 1061 : (2003) 2 Supreme 72 . though emphasise that the elections of the Municipal Corporations should be conducted before the expiry of the term of the existing tenure, but at the same time it noted certain exceptional-circumstances under which such elections could be deferred. One of the circumstances specifically taken note of by the Court was reconstitution of the municipal bodies as is clear from the following passage (21 & 41) in the said judgment:

21. Having heard the learned Counsel for the parties at length on this aspect we are of the opinion that the said hiatus is an unavoidable event which must take place in the process of conversion of Municipal Council into a Municipal Corporation. Reliance on Article 243U by the learned Counsel for the Respondents in this context is misconceived. The use of expression "a municipality" in Sub-article (3) of Article 243U in the context and in the setting in which it is employed suggests and means the duration of the same type of municipality coming to an end and the same type of successor municipality taking over as a consequence of term of the previous municipality coming to an end. Article 243U cannot be applied to a case where the area of one description is converted into an area of another description and one description of municipality is ceased by constituting another municipality of a better description. Article 243U(3) cannot be pressed into service to base a submission on that an election to constitute a municipal corporation is required to be completed before the expiry of duration of a municipal council.

41. It is unfortunate that the litigation stalled the process of Municipal Corporation of the city of Jalgaon being constituted. The expenditure, the time and the energy of State machinery which was intended to be avoided by the State Government came to be wasted and the elections had to be held for constituting the successor Municipal Council. As on the day the Municipal Council is in place. Inasmuch as it has been held that the process for constituting the Municipal Corporation of the city of Jalgaon in place of Municipal Council does not suffer from any infirmity upto the stage to which it has proceeded, the State Government may now take a final decision and issue final notification depending on the formation of its opinion. The process of consultation within the meaning of proviso to Section 6(1) of M.R. Municipal Council Act shall now be completed if not already done. Needless to say the objections preferred by the Municipal Council of Jalgaon and 239 other objections shall be considered and disposed of in accordance with law if not already done.

12. Mr. Diwan, learned senior Counsel appearing for the State Commission, though resisted the petition initially, but after some arguments he fairly states

that in view of the aforesaid ground and having regard to the statement given by the learned senior Counsel on behalf of the Appellants that there would be reconstitution of these bodies by 15th June, 2015, the State Commission is ready to wait till the end of June, 2015 so that fresh election process in respect of reconstituted municipal bodies is undertaken after the said reconstitution exercise is complete within the time undertaken.

13. Even after there is a reconstitution of the municipal bodies, the State Government will have to determine the number of wards in terms of Section 8 of the West Bengal State Commission Act, 1994. It is stated at the Bar by Mr. Kapil Sibal, learned senior Counsel, that this would also be accomplished by 30.6.2015.

14. The Stages which are required for holding the election thereafter are (1) to delimit municipal areas into the ward as per Sections 3 and 29 of the West Bengal Municipal Elections (Reservation of Seats) Rules; (2) determination of reservation of seats and (3) issuance of Notification for holding the election under the relevant statutes. These steps are to be taken by the State Election Commission as primacy to hold the election rests with the State Election Commission.

15. Thus, after the exercise is completed in the manner mentioned above, by 30.6.2015, by the State Government, the State Commission shall start its exercise for holding election in the manner mentioned above immediately thereafter. At that time if the State Commission needs police force to conduct fair and impartial election it can always send requisition for this purpose to the Central Government.

16. The appeals are disposed of. In case of any difficulty parties are at liberty to approach the Court for necessary directions.