

(2023) 06 CAL CK 0023

In the Calcutta High Court

Case No : WPA No. 14119 Of 2023, CAN 1 Of 2023

West Bengal State Election Commission And Another

APPELLANT

Vs

National Human Rights Commission And Others

RESPONDENT

Date of Decision : 23-06-2023

Acts Referred:

Constitution Of India, 1950 — Article 243K, 243K(1), 243O, 324, 324(1), 324(6), 327, 328, 329
Protection of Human Rights Act, 1993 — Section 2(1), 2(1)(d), 12, 12(d), 12(e), 36(1), 36(2)
West Bengal State Election Commission Act, 1994 — Section 3(3), 4(1), 4(2)
West Bengal Panchayat Election Act, 2003 — Section 134(1)

Citation : (2023) 06 CAL CK 0023

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Jayanta Mitra, Kishore Datta, Suman Sengupta, Sonal Sinha, Sanjukta Samanta, Ranajit Chatterjee, Dipak Ranjan Mukherjee, Aniruddha Mitra, S. N. Mookherjee, Sirsanya Bandopadhyay, Arka Kumar Nag, Bikash Ranjan Bhattacharya, Samim Ahammed, Arka Maiti, Ambiya Khatun

Final Decision : Allowed

Judgement

Sabyasachi Bhattacharyya, J

1. The West Bengal State Election Commission has challenged an order passed by the National Human Rights Commission (respondent no.1), whereby certain directions were issued in connection with the ongoing Panchayat Elections in West Bengal.

2. It is submitted that the respondent no.1 had no jurisdiction to do so. Learned senior counsel for the petitioner cites the provisions of the Protection of Human Rights Act, 1993 (hereinafter referred to as, "the 1993 Act") to argue that the limited jurisdiction of the respondent no.1 is merely recommendatory. By placing reliance on the provisions of Section 12 of the said Act, it is argued that the functions of the Commission are restricted to making recommendations, that too,

only with regard to causes of action which have already occurred. In the present case, admittedly, the National Commission (NHRC) has sought to take pre-emptive steps, which are beyond its authority.

3. It is argued that the Election Commission is a constitutional authority, vested with powers by the Constitution of India itself. Such powers are plenary insofar as elections are concerned. It is submitted that the NHRC has no such plenary powers, being a statutory body functioning within the authority of such statute. It is argued that the respondent no.1 has no power to monitor the activity of a constitutional authority like the State Election Commission (SEC) and, as such, the impugned directions are vitiated by utter lack of jurisdiction.

4. To highlight the differences in status between the State Election Commission and the NHRC, learned senior counsel places reliance upon Article 243-K of the Constitution, which relates to elections to the Panchayats. The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission in terms of Clause (1) of Article 243-K. Under Article 243-O, there is bar to interference by Courts in electoral matters. It is argued that since Courts themselves are barred, the NHRC, being a statutory recommendatory authority, does not have the power to interfere with such powers of the Election Commission.

5. It is next argued that the said Articles are *pari materia* with the Constitutional provisions regarding general elections to the Parliament and State Legislative Assemblies as provided in Article 324 of the Constitution of India, where similar powers are given to the Election Commission of the country.

6. It is submitted that just as under Article 243-K(3) the Governor of a State can be requested by the State Election Commission to make available such staff as may be necessary for the discharge of the functions conferred on it, Article 324(6) stipulates similar provisions in respect of the President or the Governor of a State.

7. Again, Article 329 provides a bar to interference by Courts in electoral matters, which is on a similar footing as Article 243-O of the Constitution, which pertains to State Elections Commissions.

8. The powers of the Election Commission within the contemplation of Article 324 have been laid down by the Supreme Court in several judgments, it is argued. In support of his contentions, learned senior counsel appearing for the State Election Commission/petitioner cites *Kanhiya Lal Omar Vs. R.K. Trivedi and others*, reported at (1985) 4 SCC 628. It was stated by the Supreme Court that the words "superintendence", "direction" and "control" are wide enough to include all powers necessary for the smooth conduct of elections.

9. The general powers of superintendence, direction and control of the elections, vested in the Commission under Article 324(1), were held only to be subject to

any law made either under Article 327 or under Article 328 of the Constitution. The word "election" in Article 324, it was held, is used in a wide sense so as to include the entire process of election which consists of several stages and embraces many steps, some of which may have an important bearing on the result of the process. The power of the Commission under Article 324(1) was observed to be plenary in character. Article 324 of the Constitution, it was held, operates in areas left unoccupied by legislation and the words, "superintendence", "direction" and "control" as well as "conduct of all elections" are the broadest terms which would include the power to make all such provisions.

10. Next citing Election Commission of India Vs. State of T.N. and others, reported at 1995 Supp (3) SCC 379, learned senior counsel appearing for the petitioner contends that the Election Commission of India is a high constitutional authority charged with the function and the duty of ensuring free and fair elections and of the purity of the electoral process. It has all the incidental and ancillary powers to effectuate the constitutional objective and purpose. The plenitude of the Commission's powers corresponds to the high constitutional functions it has to discharge. It was also held that the assessment of the Election Commission as to the state of law and order and the nature and adequacy of the machinery to deal with situations so as to ensure free and fair elections must, prima facie, prevail. It was also discussed that there may be limitations of resources for which the Elections Commission of India and the Union Government should find a mutually acceptable coordinating machinery for resolution of such differences.

11. Learned senior counsel next relies on a judgment reiterated in (2002) 8 SCC 237 [Gujarat Assembly Election Matter], where the Supreme Court reiterated the same proposition as in the earlier cited judgments.

12. It is argued that a far higher status has been conferred on the State Election Commission since the members thereof, to be removed, have privileges equivalent to Judges of the Supreme Court/High Courts, which are not available to members of the NHRC. In terms of the West Bengal State Election Commission Act, 1994 (for short, "the 1994 Act"), Sections 3(3) and Section 4(2), all matters relating to elections to the Panchayats are regulated by the West Bengal Panchayat Elections Act, 2003 and the Rules framed thereunder.

13. Learned senior counsel for the petitioner lastly argues that the NHRC is a statutory body, hence, an authority sui juris and not sui generis.

14. Learned counsel appearing on behalf of the NHRC (respondent no.1) argues that the said Authority within the contemplation of Section 12, Clauses (d) and (e), has the power to review the safeguards provided by or under the Constitution or any law for the protection of human rights, to recommend measures for their effective implementation and/or to review the factors which inhibit the enjoyment of human rights and recommend appropriate remedial

measures. Hence, there is no bar to the NHRC taking pre-emptive measures as well.

15. Learned counsel places reliance on a recent Division Bench judgment of this Court in a Public Interest Litigation (PIL), whereby the Division Bench directed deployment of Central Forces on the specific ground that there were law and order issues with regard to the Election process in the current Panchayat Elections.

16. It is argued that the same, read in conjunction with multiple statistics and complaints pending before the NHRC, go on to show that the law and order situation in West Bengal is not conducive to facilitation of human rights and, as such, particularly in the time of Panchayat Elections, the safety and security of life and limb of the inhabitants of the State are at risk. The same was also the case in the Panchayat Elections held in the year 2021, the fallout of which is still continuing.

17. Learned counsel seeks to place reliance on the definition of "human rights" in Section 2(1)(d) of the 1993 Act and contends that the same means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. Clause (f) of Section 2(1) defines "International Covenants" to mean such covenant on civil and political rights as well, hence granting authority on the NHRC to interfere where there is patent scope of violation of human rights, even on the political and electoral front.

18. It is further submitted that the State Election Commission is unnecessarily apprehending conflict. Rather, the NHRC, as also evident from the impugned order, merely seeks to work in tandem with other authorities, including the State Government and the State Election Commission, for the purpose of affording ample protection against violation of human rights of the people residing in the State of West Bengal.

19. It is further highlighted by learned counsel for the respondent no.1 that the functionaries of the NHRC are retired IPS Officers and high-level police personnel, hence implying that the observers sought to be appointed by the NHRC are sufficiently competent to deal with similar situations. Conferring the authority to observe and appointment of Micro Observers, thus, would ensure that the electorate is in safe hands.

20. Learned counsel for the respondent no.1 cites a Division Bench judgment dated August 19, 2021 passed by a five-Judge Bench of this Court headed by the then Hon'ble Chief Justice and highlights certain paragraphs to indicate that fundamental rights of victims were being violated in the State. As such, the NHRC Chairperson was requested to constitute a committee, of which the Member Secretary of the West Bengal State Human Rights Commission would be a member, to deal with such situations. By placing reliance on certain other paragraphs of the judgments, in particular paragraphs 33 and 36, learned

counsel argues that sufficient data was furnished by the Director General of police to the Committee to indicate the number of human rights violations in the State.

21. Learned counsel submits that even in a subsequent judgment dated June 15, 2023 passed in a Public Interest Litigation, a Division Bench presided over by the present Hon^{ble} Chief Justice of this court observed that no appreciable steps have been taken ever since the order was passed in earlier writ petitions and till date no effective steps had been taken to identify sensitive areas from law and order point of view and in the light of the submission on behalf of the Commission that it may take a couple of more days to do so, it was held that waiting any longer would cause more damage to the situation and would not aid in protecting the purity of the election process. Accordingly, the State Election Commission was directed to requisition the deployment of Central Forces in all Districts in the State of West Bengal which was to be complied with by the State Election Commission within 48 hours from the date of receipt of the server copy. It is submitted that the said order has subsequently been affirmed by the Supreme Court as well.

22. The learned Advocate General, appearing for the State, cites another Division Bench judgment, also presided over by the current Hon^{ble} Chief Justice of this Court, in connection with certain Public Interest Litigations where it was observed that the State Election Commission appoints observers from senior officers of WBCS (Executive) and IAS Cadres and the appointment is made following the stipulation in Section 134(1) of the West Bengal Panchayat Election Act, 2003.

23. In the opinion of the Division Bench, the exercises to be done by the State Election Commission being in accordance with the statutory provisions, the court would not be justified in interdicting the same as the senior officers of the WBCS as well as officers in the IAS cadres are bound to act with due diligence bearing in mind the purpose for which they have been nominated as observers. Hence, a sanction has been given by the Division Bench in those Public Interest Litigations to the steps taken by the State Election Commission with regard to the ongoing Panchayat Elections.

24. The said judgment is also as recent as of June 13, 2023.

25. The question which has primarily arisen in the present writ petition is whether the NHRC had the jurisdiction to pass the impugned order. Another facet of the said question is whether, by passing the impugned order, the respondent no.1 has interdicted the constitutional authority of the State Election Commission.

26. A consideration of the impugned order reveals that among other things, the respondent no.1 directed that pre-emptive steps in time should be taken to prevent and inhibit in advance any form of human rights violation of the citizens.

27. Such pre-emptive steps were being taken, as reflected in the order, on the basis of a media report by a particular magazine, wherein certain incidents of

violence which had recently taken place, involving people connected with the political parties being targeted, were mentioned. By citing the said media report, the Commission held that in certain Districts of West Bengal, certain acts of murder and violence stemming from political considerations had occurred. It was further mentioned in the news report, according to the respondent no.1, that the 2018 Rural Elections were considered one of the most violent and bloody elections in the State of West Bengal.

28. That apart, the Commission cited a Calcutta High Court judgment of the year 2021 where a fact-finding enquiry was conducted by the NHRC across the State and a report was submitted to the High Court and it was held that any violation during the poll or after and the partisan attitude of the chosen Government offends the basic fabric of the Constitution and the rights guaranteed therein.

29. Thus, it is seen that the sole basis of the impugned order of the Commission was the media report in a magazine circulated in India as well as certain reports of violent incidents in the State during the Panchayat Elections held in the year 2018 and the Assembly Elections of the year 2021.

30. The Commission goes on to observe that the Assembly Elections in the year 2021 were not very peaceful and that even the aftermath of it was that the people of West Bengal had passed through a nightmare as the post-poll violence had claimed many lives. Public and personal properties were damaged and crimes like physical assault, extortion and rape were committed in various Districts of the State undeterred by the rowdy elements, it was observed.

31. However, apart from the alleged media report and the 2021 Assembly Election violence, in conjunction with the 2018 Panchayat Election violence, which apparently prompted the Commission to suo motu take up the issue, the Commission resorted to utter conjecture and surmise.

32. It was held by the Commission in the impugned order that Panchayat polls are a routine process in a democratic country and it observed that the SEC, being an independent body, has been given the power to get the local body elections conducted in the State in a time-bound and appropriate manner in exercise of its duty reposed under the law. It was even observed in the impugned order that the NHRC has no qualms qua holding Panchayat polls by the SEC.

33. However, contrary to the tenor of such observations, the NHRC assumed jurisdiction as the "apex statutory body on human rights" and held that it was "equally responsible" to ensure that the will of the people, by cast of votes, freely and fairly, emerged to achieve the Constitutional goal of "Gram Swaraj" through local Panchayat elections. Thus, the NHRC proceeded on the premise that it was absolutely necessary that all preparatory precautions are taken by the SEC for smooth conduct of the Panchayat Elections in the State. Thereafter it was held that there is a history of violence during elections in the State where innocent people suffered irretrievably and irreparably when a number of human lives were lost.

34. Even *ex facie*, such assumption of jurisdiction by the NHRC was palpably based on conjecture and surmise, based on the notion of the NHRC that preparatory pre-emptive precautions were to be taken by the SEC for smooth conduct of the Panchayat Elections. Hence, even holding that it had no qualms *qua* holding of Panchayat polls by the SEC and without a single aspersion against the SEC, the NHRC, of its own, took up the matter *suo motu* on a magazine report and proceeded to pass the impugned order.

35. Courts have been repeatedly deprecating media trial.

36. The impugned order is no exception. It is unfortunate, however, that a statutory authority placed reliance merely on media reports and certain observations with regard to violence in 2018 and 2021, to *suo motu* assume that a similar violence would be repeated in the State of West Bengal and that the SEC was incompetent to deal with the same.

37. There is not a single observation, however, in the impugned order as to the incompetency of the SEC in that regard. Such lack of any recent cause of action to assume jurisdiction by the NHRC has been sought to be improved from the Bar by submitting that the NHRC has several current reports, complaints and statistics to support its stand. However, there is absolutely no reflection of the same in the impugned decision.

38. Reference to orders of 2021 and incidents of 2018 elections in the State was sought to be projected as the reason for the NHRC invoking jurisdiction in the matter. However, Section 36 (2) of the Protection of Human Rights Act, 1993 debars the Human Rights Commissions from making any inquiry into any alleged violation of human rights which took place prior to one year.

39. The NHRC *suo motu* arrogated to itself the specific constitutional power vested in a constitutional authority, in the garb of performing its duty.

40. The expression "human rights" has to be liberally construed and is the membrane of most fundamental and legal rights. However, the powers vested in the NHRC under the 1993 Act are in addition to, and not in derogation of, specific constitutional and legal powers vested in particular authorities. Such powers are definitely to be exercised where there is a gap and chink in the legal and constitutional armour to ensure protection of human rights, but cannot give a charter to the NHRC to function autocratically, superseding specific powers conferred by the Constitution on other authorities.

41. Any other interpretation of the 1993 Act would run the risk of conferring uncharted and blanket authority on a recommendatory body which could, in turn, lead to such bodies being used as tools to satisfy political vendetta. Thus, the scope of operation of the NHRC has to be tested on the anvil of Constitutionality and conscionable justice.

42. The petitioner is justified in contending that the provisions of the Constitution of India pertaining to the SEC puts it on *pari materia* pedestal as the Election

Commission of India. Not only is the removal of SEC members on a similar footing as Constitutional Court Judges, which lends additional protection to the said Members, plenary powers have also been conferred Constitutionally on the Elections Commissions, as held by the Supreme Court time and again.

43. A bare perusal of the ratio laid down in the judgments cited by the petitioner and discussed above indicates that the entire process of election was included within the word "election" in Article 324, which consists of several stages and embraces many steps, some of which may have an important bearing on the result of the election process. The terms "superintendence", "direction" and "control" are found not only in the Constitution of India, including Article 243-K and Article 324, but are also found in the conferment of authority on the State Election Commission under the West Bengal State Election Commission Act, 1994, in Section 4(1) thereof as well as in the West Bengal Panchayat Elections Act, 2003.

44. It has been clarified by the Supreme Court time and again that the assessment of the Election Commission as to the state of law and order and the nature and adequacy of the machinery to deal with the situations so as to ensure free and fair elections must, prima facie, prevail. In case of limitations of resources, it would be open to the State Election Commission to approach the Governor for finding out a mutually acceptable coordinating machinery for resolution of differences, if necessary by approaching the State Government as well. The plenitude of the Election Commissions' powers corresponds to the high constitutional functions it has to discharge, it has been held.

45. The exception to such powers has been made only with regard to law enacted by the Parliament as regards matters relating to conduct of election of either Parliament or State Legislature, without affecting the plenary powers of the Election Commission. It was held in the Gujarat Assembly Election Matter by a five-Judge Bench of the Supreme Court that the general power of superintendence, direction, control and conduct of election vested in the Election Commission under Article 324(1) is subject to any law either made by the Parliament or a State Legislature in connection with elections within the contemplation of Articles 327 and 328 of the Constitution of India.

46. Article 327 of the Constitution of India confers power on the Parliament to make provisions with respect to elections to the legislature and Article 328 empowers the legislature of a State to make provisions with respect to elections to the State legislature.

47. The protection of 1993 Act operates on an entirely different footing and is not a piece of legislation within the contemplation of either Article 327 or Article 328 of the Constitution. Hence, the question does not arise of the plenary powers of the State Election Commission being curtailed in any manner by the 1993 Act.

48. The argument of the respondent no.1, that the scope of human rights vis-à-vis interference by the Human Rights Commissions also extends to the political

process, is acceptable only to the extent where such power does not interdict or conflict with the constitutional conferment of power on the State Election Commission.

49. Even if the NHRC feels that there may be a law and order situation during elections, it does not have the power to interdict the authority of the State Election Commission and pass independent directions on the Commission as well as other authorities of the State with regard to the conduct of Elections, which would be directly detrimental to the powers of the State Election Commission under the Constitution of India.

50. In the impugned order, the NHRC did not stop at seeking to identify sensitive areas within West Bengal vis-à-vis the Panchayat Elections. It went further to depute the Director General (Investigations) of the Commission as a Special Human Rights Observer to apprise first hand information of recent incidents and to conduct an on-the-spot survey of the State of West Bengal to identify the sensitive constituencies where violence is likely to occur relating to Panchayat Elections. The expression "in consultation with the SEC" does not mitigate the utter violation of its constitutional mandate and does not justify the intrusion by the NHRC into the exclusive domain of the SEC. Not stopping there, the respondent no.1 directed that once such sensitive areas are identified, a comprehensive report was to be filed to the Commission for "deployment of Micro Human Rights Observers" in all such sensitive constituencies in the State "during and after the Panchayat Polls" either by engaging Special Rapporteurs or Special Monitors of the Commission, etc., for the purported object of protecting basic human rights by ensuring "no violence takes places in Panchayat Elections in the State of West Bengal".

51. Such directions, coupled with other directions issued by the NHRC by way of issuance of notices to the Chief Secretary and the Director General of Police, West Bengal to provide assistance to the Director General of the NHRC and also ensure that law and order is maintained within the State, "during the entire process of Panchayat polls starting from filing nomination papers till the time the result is declared and also subsequent days" is patently de hors the jurisdiction of the NHRC and directly conflicts with the exclusive authority of the SEC conferred by the Constitution.

52. Further notice was to be issued, as per the impugned order, to the Secretary, SEC for taking effective steps so as to ensure no human rights violations, pre and post Panchayat Polls, takes place in identified sensitive areas where there is need to deploy Micro Human Rights Observers. Such exercise was patently de hors the authority statutorily vested in the NHRC, more so, since the SEC wields absolute powers regarding the election process.

53. The NHRC also directed notice to be issued to the Secretary of the Ministry of Home Affairs, Government of India, New Delhi, to inform measures proposed by it to prevent any kind of human rights violations within the State of West Bengal

during and after the Panchayat polls.

54. Such notice to the Secretary, Ministry of Home Affairs, Government of India, is not only de hors the powers of the Commission but entirely derogates from the Panchayat Election process and the Constitutional scheme thereof.

55. It is the exclusive domain of the SEC, in conjunction with the State Authorities, to conduct Panchayat Elections in a State, not only within the contemplation of Article 243-K but also within the West Bengal State Election Commission Act, 1994 (for short, "the 1994 Act").

56. Such domain of the SEC and the State cannot be interdicted by the NHRC by invoking interference of the Secretary, Ministry of Home Affairs, Government of India, where the law does not provide for such interference.

57. That apart, each and every direction given in the impugned order by the NHRC pertains to the exclusive domain of the SEC, conferred by nothing less than the Constitution of India, which is the source of authority of all Indian statutes. The powers of the NHRC, as rightly argued by the petitioner, are merely recommendatory.

58. The pre-emptive powers admittedly sought to be exercised by the respondent no.1 are based primarily on media reports and conjectures, based on happenings of the year 2018 and 2021, as reflected in the impugned order itself.

59. Section 36(1) of the 1993 Act itself clearly prohibits the NHRC to enquire into any matter which is pending before the State Commission or any other Commission duly constituted under any law for the time being in force. The SEC is, in fact, such a Commission, constituted not only under the authority of the 1994 Act but also the provisions of the Constitution.

60. Again, sub-section (2) of Section 36 of the said Act prohibits the Commission from enquiring into any matter after the expiry of one year from the date on which the Act constituting violation of human rights is alleged to have been committed, thus, excluding the powers of the NHRC to delve into the alleged violations of the years 2018 and 2021.

61. In fact, the current Division Bench Judgment of the Bench presided over by the Hon'ble the Chief Justice has sufficiently dealt with the issue by directing appointment of Central Forces to be deployed for the purpose of holding the Panchayat Elections in West Bengal.

62. However, the observation made therein by the Division Bench does not confer any jurisdiction on the NHRC to pass directions on the SEC of West Bengal in domains exclusive to the said authority. Such exercise by the NHRC, hence, is palpably de hors the Constitutional scheme and the law and, as such, cannot be sustained.

63. Accordingly, WPA No.14119 of 2023 along with CAN 1 of 2023 is allowed on contest, thereby setting aside the impugned order dated June 12, 2023 passed

by the respondent no.1-Authority (Annexure P3 at page 44 to the writ petition). Any action taken pursuant thereto, thus, stands revoked and reversed with immediate effect.

64. There will be no order as to costs.

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