

01      **13.01.2022**  
PA(SS/P.Adak)

**WPA(P) 4 of 2022**  
**Bimal Bhattacharya**  
**Vs.**

**The State of West Bengal and Others**  
(Through Video Conference)

Mr. Bikash Ranjan Bhattacharyya, Senior Advocate  
Mr. Bikram Banerjee,  
Mr. Sudipta Dasgupta,  
Mr. Arkadeb Biswas,  
Mr. Sutirtha Nayek, Advocates  
... for the petitioner

Mr. S.N. Mookherjee, Id. AG  
Mr. Samrat Sen, Id. AAG  
Mr. Anirban Roy, Id. GP  
Mr. T.M. Siddiqui,  
Mr. Debasish Ghosh,  
Mr. Nilotpal Chatterjee,  
Mr. Bipin Ghosh, Advocates  
... for the State

Mr. Jayanta Mitra, Senior Advocate  
Mr. Jishnu Saha, Senior Advocate  
Ms. Sonal Sinha,  
Mr. Subhankar Nag, Advocates  
... for the W.B. State Election Commission

By this petition a direction has been sought to the respondents to cancel/modify/amend the notification dated 28<sup>th</sup> of December, 2021 whereby the dates of election of four Municipal Corporations, namely Siliguri Municipal Corporation, Chandernagore Municipal Corporation, Bidhannagar Municipal Corporation and Asansol Municipal Corporation have been notified as 22<sup>nd</sup> of January, 2022.

The applicant has sought postponement of the dates of the elections of above Municipal Corporations on the plea that the State of West Bengal has been hit with the 3<sup>rd</sup> wave of COVID 19 Pandemic and that on December 27, 2021 there were only 439 COVID 19 positive cases which have leapfrogged to 6153 cases on January 2<sup>nd</sup>, 2022. The positivity rate at the time of filing of the petition on 1<sup>st</sup> January, 2022 was 15.93. Considering the current pandemic situation in the State, an apprehension has been expressed that life of the residents of the State will be put to threat if the elections are held wherein large gatherings and mass procession is imminent. A plea has been raised that in these Municipal Corporations administrators have already been appointed, therefore, deferment of the elections for short period can be done and that the experience during the recent Kolkata Municipal Elections was not good since the cases of COVID infected persons have risen thereafter.

On the direction of this Court dated 11.01.2022 the State has filed the communication dated 13<sup>th</sup> of January, 2022 sent by the Additional Secretary to the Government Pleader about COVID situation and the State Election Commission has also filed the affidavit dated 13<sup>th</sup> January, 2022 disclosing the measures which will be taken for holding the elections in spite of spread

of COVID virus.

Submission of the learned Counsel for the appellant is that considering the prevailing COVID situation in the State, the elections of the aforesaid four Municipal Corporations should be deferred for four to six weeks and they should be held once the situation is improved. He has submitted that the COVID cases in the State are increasing at an alarming rate, therefore, the Election Commission should take an independent decision to defer the dates of elections and a direction be issued to the Election Commission by this Court in this regard.

Learned Counsel for the Election Commission has referred to Section 8 of the West Bengal State Election Commission Act, 1994 and has submitted that the Election Commission can defer the date of election only in consultation with the State. He has further referred to the various measures which have been indicated in the affidavit of the Election Commission and has submitted that proper steps have already been taken for holding the elections.

Learned Counsel for the State has taken the stand that it is within the exclusive jurisdiction of the Election commission to defer the date of elections.

Responding to the query put by this Court learned Counsel for the Election Commission has stated that the

Election Commission does not have the power to defer the elections once notified unless the State requires it to defer under the Disaster and Management Act.

We have heard the learned Counsel for the parties and perused the records. The petitioner has placed on record material showing that COVID infection cases are increasing in the State at a rapid speed and the COVID 19 Pandemic situation is not good. It has been disclosed that on 9<sup>th</sup> January, 2022 West Bengal had seen the highest number of daily recorded cases of 24287 and district of North 24 Parganas and Hooghly had recorded 5053 and 1276 cases. Along with that affidavit in reply the petitioners have enclosed the health bulletin issued by the State and other material showing high positivity rate and large number COVID infected persons in the State.

Under Article 243-ZA of the constitution the State Election Commission is vested with powers in respect of conduct of elections to Municipal Corporations. Section 5 (1) of the West Bengal Election Commission Act in similar terms provides that the superintendence, direction and control of preparation of electoral roles for, and the conduct of all elections to the Municipalities will vest in the Commission. Hon'ble Supreme Court in the matter of **State of Goa and Another vs. Fouziya Imtiaz Shaikh and Another, (2021) 8 SCC 401** has reiterated

that from the date of notification of election till the date of declaration of result a judicial hands-off is mandated by the non-obstante clause contained in Article 243-ZG of the Constitution. It has been clarified that the bar contained in Article 243-ZG(a) applies only to the Courts and not to the Election Commission which is to supervise, direct and control preparations of electoral roles and conduct the elections to the Municipalities. It has further been clarified that if the assistance of the writ Court is required in subserving the progress of the election and facilitating its completion, the writ Court may issue orders. It has been very categorically held that it is entirely upon the State Election Commission to set the election process in motion or, in any case where the constitutional or statutory provision is not followed or infringed, to postpone the election process until such illegal action is remedied.

Considering the issue relating to the Legislative Assemblies of the State the Hon'ble Supreme Court in the matter of **In the matter of Special Reference No. 1 of 2002, In Re, (2002) 8 SCC 237** has held that the superintendence, direction and control of preparation of electoral roles and conduct of elections is within exclusive domain of Election Commission under Article 324 and it is the duty of the Election Commission hold free and fair elections at the earliest.

In view of the above pronouncement, it is clear that the State Election Commission is vested with the power to take a decision in respect of deferment of the date of the elections if the situation so arises in order to ensure free and fair elections. Though the Counsel for the petitioner has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Bharati Reddy vs. State of Karnataka and Others, (2018) 12 SCC 61** in support of his submission that this Court in exercise of the power under Article 226 of the Constitution of India should issue a direction to defer the date of elections but in the facts of the present case and in view of the judgment noted above, we are of the opinion that the State Election Commission should take into account the prevailing COVID situation in the State and the Municipal Corporations where elections are to be held and take an appropriate decision to defer the dates of polling.

Hence, we dispose of the present petition with a direction to the State Election Commission to consider the galloping speed with which the COVID cases are increasing and also to take into account the issue if holding of elections in such a situation will be in the public interest and if free and fair elections will be possible on the dates notified, and take a decision in respect of the postponement of date of elections of

aforesaid four Municipal Corporations for a short period of 4 to 6 weeks. The respondent State Election Commission is directed to take a decision in this regard within a period of 48 hours. It will be open to the petitioner to submit all the relevant material relating to existing COVID situation before the Election Commission without any delay so that it can be considered by the Election Commission while taking the decision.

The writ petition is accordingly disposed of.

**(Prakash Shrivastava, C.J.)**

**(Ajoy Kumar Mukherjee, J)**