

BHARATIYA JANATA PARTY
WEST BENGAL

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v.

STATE OF WEST BENGAL & ORS.

(Writ Petition (Civil) No. 302 of 2018)

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APRIL 09, 2018

[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

Election Laws – State Election Commission issued notifications for panchayat elections – Petitioner, a political party alleged that its candidates were not allowed to collect and submit the nomination forms, on account of violent resistance by supporters of the ruling party – Petitioner sought directions to the State Election Commission to issue nomination papers on internet so that candidates of the petitioner could apply through e-mail – Held: In Bodula Krishnaiah case it was held that once the election process has been set in motion, the Court ought not to interfere – In instant case, election process has been set into motion, therefore the Court not inclined to interfere – Furthermore, the West Bengal Panchayat Elections Act empowers the State Election Commissioner to pass appropriate orders in relation to any grievance, when made by any political party, or/and their individual candidate including any independent candidate with regard to any matter relating to and arising out of the election and election process – Therefore, all political parties, their candidates, including any independent candidate/s proposing to contest the election in question, are granted liberty to approach the State Election Commissioner with their any individual or/and collective grievance – State Election Commissioner to ensure disposal of any such grievance so made by the party concerned strictly in accordance with law forthwith – West Bengal Panchayat Elections Act, 2003 – Constitution of India – Art.32.

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West Bengal State Election Commission v. State of West Bengal & Ors. (Decision dated 28.06.2013 in S.L.P (Civil) Nos. 19928-19931 of 2013) ; Bharat Singh and Others v. State of Haryana & Others (1988) 4 SCC 534 : [1988] 2 Suppl. SCR 1050 – referred to.

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- A *Boddula Krishnaiah and Anr. v. State Election Commissioner, A.P. & Ors.* (1996) 3 SCC 416 : [1996] 3 SCR 687 – relied on.

Case Law Reference

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| B | [1988] 2 Suppl. SCR 1050 | referred to | Para 7 |
| | [1996] 3 SCR 687 | relied on | Para 11 |

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 302 of 2018.

Under Article 32 of the Constitution of India

- C Mukul Rohatgi, P. S. Patwalia, Sr. Advs., Ms. Aishwarya Bhati, Kabir Shankar Bose, Partha Ghosh, Nachiketa Joshi, Shubhankar Chakraborty, Arijit Majumdar, S. Datta, Bharat Sood, Kallol Guha Thakurta, Shamba Dutta, Ms. Sukanya Dutta, Advs. for the Petitioner.
- D Tushar Mehta, ASG, Dr. Abhishek Manu Singhvi, Amrendra Saran, V.Giri, Sr. Advs., Suhaan Mukerji, Harsh Hiroo Gushahani, Sidharth Kalita, Ms. Astha Sharma (for PLR Chambers & Co.), Rajat Nair, Ms. Nupur Sharma, Rohit Bhat (for B.V. Balram Das), Advs. for the Respondents.

- E The Order of the Court was passed by

- R. K. AGRAWAL, J.** 1. By the present writ petition filed under Article 32 of the Constitution of India, the Petitioner seeks a writ of mandamus to direct the West Bengal State Election Commission-respondent No. 6 to issue nomination forms to the candidates of the petitioner so as to enable them to file their nomination in the ensuing upcoming panchayat elections as also to take immediate steps to make arrangements for submission of nomination papers through email and to provide police protection to the candidates of the petitioner so as to enable them to collect and deposit the nomination forms for the purpose of contesting the panchayat elections already notified and also direct the respondents Nos. 1 to 3 to call for Central Para-Military Forces to maintain the law and order during the conduct of the panchayat elections in the State of West Bengal.

- G 2. We have heard Shri Mukul Rohatgi and Shri P.S.Patwalia the learned senior counsels appearing for the petitioner and Dr. Abhishek

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Manu Singhvi and Shri Amrendra Saran, learned senior counsel for the respondent Nos. 1 to 4 and Shri Tushar Mehta, learned Additional Solicitor General for respondent No. 7. A

3. Relying upon the newspaper reports which appeared in the Times of India, Kolkata edition dated 03.04.2018 and 04.04.2018, the Statesmen, Kolkata edition dated 04.04.2018 and the Telegraph e-paper preview, the learned senior counsels for the petitioner submitted that the petitioner's candidates who want to contest election for the panchayat which is to be held in the State of West Bengal are not allowed to collect the nominations forms and to submit the same on account of violent resistance being put by the supporters of the ruling party. B C

4. In support thereof, learned senior counsel for the petitioner placed before us a chart showing the nomination report cumulative upto 04.04.2018 in respect of Zila Parishad, Panchayat Samiti and Gram Panchayat.

5. At this juncture, learned senior counsel relied upon a decision dated 28.06.2013 passed in SLP (C) Nos. 19928-19931 of 2013 titled West Bengal State Election Commission Vs. State of West Bengal & Ors. to impress upon the court that on earlier occasion also when the panchayat election in the State of West Bengal was to be held in the year 2013, then this Court exercised its powers and directed to re-schedule the elections. D E

6. Learned Senior Counsel, therefore, submitted that the State Election Commission be directed to issue nomination papers on internet which may be downloaded, filled and submitted on internet by the candidates of the Petitioner as well as candidates of all other political parties including those persons who want to contest the election as independent candidates. F

7. The learned counsel for the respondent, however, submitted that the writ petition has neither been filed by an individual candidate nor any details have been given to show that any candidate has been prevented by anybody from obtaining and filing the nomination papers. Thus, in view of the decision of this Court in the case of *Bharat Singh and Others vs. State of Haryana & Others* - (1988) 4 SCC 534, the writ petition itself is not maintainable. G

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A 8. Further, relying upon the decision in *Boddula Krishnaiah and Anr. vs. State Election Commissioner, A.P. & Ors.* – (1996) 3 SCC 416 wherein it was held as under:-

B “...11. Thus, it would be clear that once an election process has been set in motion, though the High Court may entertain or may have already entertained a writ petition, it would not be justified in interfering with the election process giving direction to the election officer to stall the proceedings or to conduct the election process afresh, in particular when election has already been held in which the voters were allegedly prevented from exercising their franchise. As seen, that dispute is covered by an election dispute and remedy is thus available at law for redressal.”

C Learned Senior Counsel for the respondent submitted that as the election process has been set in motion, this court should not pass any directions which may effect the elections. According to him, the State Election Commission is the appropriate authority to look into all these grievances and in fact on 05.04.2018, the West Bengal State Election Commission had issued a Notification No. 632-SCC/3E-30/2018 providing additional venue for filing nomination.

D 9. Shri Tushar Mehta, learned counsel submitted that the respondent No. 7 can make arrangements for providing para military forces if the State Election Commission makes a request or any directions is issued by this Court.

E 10. In reply, the learned senior counsel for the petitioner invited the attention of the court to paragraph 6(o) wherein a specific mention has been made where a person who went to file his nomination was severely beaten up and succumbed to the injuries.

F 11. We have given our thoughtful consideration to the submissions made by learned senior counsel for the parties. It is not in dispute that the West Bengal State Election Commission had issued notifications 02.04.2018 for holding panchayat elections in the State of West Bengal. Thus, the election process has been set into motion. In view of the decision of this Court, in the case of *Bodula Krishnaiah (supra)* wherein it was held that once the election process has been set in motion, the Court ought not to interfere, we are not inclined to interfere. However, the fact remains that according to the newspaper

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reports filed along with writ petition which has been referred to by the learned senior counsel for the petitioner incidence of violence has taken place when the candidates have gone to obtain and file their nomination papers. This also stands fortified with the notification dated 05.04.2018 issued by the West Bengal State Election Commission where the State Election Commission had provided additional venue for filing the nomination papers. A B

12. From the perusal of the Scheme and the provisions of the West Bengal Panchayat Elections Act, 2003 (for brevity “the Act”), we find that the Act has empowered the State Election Commissioner to pass appropriate orders in relation to any grievance, when made by any political party, or/and their individual candidate including any independent candidate with regard to any matter relating to and arising out of the election and election process. C

13. It is, therefore, essentially for the State Election Commissioner to consider the grievance once made by any party or/and candidate as the case may be and pass appropriate order/s keeping in view the nature of grievance made and relevant factors concerning the election and its process. D

14. We are, therefore, inclined to dispose of this petition by granting liberty to all political parties, their candidates, including any independent candidate/s proposing to contest the election in question, to approach the State Election Commissioner with their any individual or/and collective grievance. E

15. If any such grievances are made by any political parties or/and any candidate/s in writing then needless to say, the State Election Commissioner would ensure disposal of any such grievance so made by the party concerned strictly in accordance with law forthwith. F

16. We hope and trust that in order to ensure fair and free election to the panchayats, the State Election Commission shall take appropriate steps to remove the apprehensions of the petitioner and/or intending candidates and they may not be deprived of their chance to contest the panchayat elections. With the aforesaid observations, the writ petition is disposed of. G