

Bhabani Pakrey and ors. Vs. the State of West Bengal and ors.

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Court : Kolkata Appellate

Decided On : Mar-25-2011

Judge : Kalyan Jyoti Sengupta; Asim Kumar Ray, JJ.

Appeal No. : A.S.T. 21 of 2011 With A.S.T.A. 19 of 2011

Appellant : Bhabani Pakrey and ors.

Respondent : The State of West Bengal and ors.

Advocate for Def. : Mr. Tanay Chakraborty; Ms. Reshmi Ghosh, Advs

Advocate for Pet/Ap. : Mr. Bikash Ranjan Bhattacharyya; Mr. Kallol Bose, Advs

Judgement :

1. This was an appeal against the interim judgment and order dated 10th January, 2011 passed by the learned trial Judge in the writ petition filed by the appellants above-named. The appellants and the respondents Nos. 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 are the students of Shyamsundar College situated at Shyamsundar in the District of Burdwan. The eligible students in this college went for election for the re-constitution of the students union of the said college for the year 2010 - 2011. The said election was held on 23rd of December 2010. The appellants were not successful candidates as such they could not participate in the re-constitution of the students union. The above respondents who were the students were successful and could participate in reconstituted formation of the Students Union. It appears from the writ petition that from the day of publication of

the provisional voter list some of the appellants raised correctness of those voter lists alleging irregularity and impropriety in preparation of the voter list. It is grievance of the appellants before the learned trial Judge and before us as it appears from the body of the writ petition that those grievances during pre-election period were not resolved and despite that the election as scheduled was held. It further appears from the writ petition that during post-election period there were grievances with regard to the conduct of holding election and further method and mannerism of counting of votes and declaration of the result. We could ascertain from the writ petition the basic grievance is that the Returning Officer for holding election, as well as the Governing Body did not address their grievances in proper way. In sum and substance there has been studied neglect and unexplained inaction of the Returning Officer being the Principal of the said college in taking action. The Returning Officer under the Regulations framed under the Burdwan University Act 1981, is duty bound to take action for resolving disputes arose during both pre-election and post-election period.

2. In the aforesaid background, the writ petitioners/appellants prayed for the following reliefs:-

(a) A writ of or in the nature of Mandamus by directing and commanding the respondents concerned and particularly, the Respondent No.7, the Election Commission, Shyamsundar College (Government Sponsored), Shyamsundar, Police Station Raina, District Burdwan, to dispose of and resolve the disputes raised by the petitioners in their petitions of objections dated December 23, 2010 as addressed to the Returning Officer of the said election and dated December 24, 2010 as addressed to the Principal of the said college who is the President of the Election Commission of the said college respectively being Annexure P/8 and P/9 of this application within such a time bound period as to this Honble Court may appear proper in the facts and circumstances of the case;

(b) A writ of or in the nature of Certiorari calling upon the respondents, to certify and produce, or cause to produce, to the Registrar, Appellate Side, of this Honble Court, all papers, documents and records relating to and arising out of the election for the reconstitution of the Students Union of Shyamsundar College (Government

Sponsored), Shyamsundar, Police Station Raina, District Burdwan and the petitions of objections dated December 22, 2010, December 23, 2010, December 24, 2010, and December 27, 2010 respectively being Annexures P/4, P/8, P/9 and P/10 to this application so that conscionable justice may be done to your petitioner after perusing the same;

(c) An interim order of injunction by restraining the respondents and in particular the Respondent No.5, the Principal of the said college from forming the Students Union till the disposal and/or resolution of the disputes as raised by the petitioners in their petitions of complaints dated December 23, 2010 and December 24, 2010 being Annexures P/8 and P/9 to this application by the Election Commission of the said college;

(d) Rules in terms of prayers (a) and (b);

(e) Ad-interim order in terms of prayer (c);

(f) Making the Rule absolute, if the respondents fail to show sufficient cause or return;

(g) Costs of, and incidental, to this application;

(h) Such other or further order or orders as to Your Lordships may deem fit and proper;

3. The learned trial Judge however, refused to grant interim relief as prayed for and it has been made clear that the election so held will abide by the result of the application, and gave direction for filing affidavit.

Going through the order of the learned trial Judge it is reasonably apprehended by the parties that the term of one year may run out by the time writ petition would be heard out finally.

4. Hence, the learned counsel for the parties namely Mr. Bikash Ranjan Bhattacharyya, Senior Advocate and Mr. Kalyan Bandhyopadhyay, Senior Advocate for appellants and respondents respectively submit that they want to advance argument in its entirety touching all controversies contained in the writ

petition, and the matter should not be confined to the issue involved in refusing to grant interim order.

5. Mr. Bhattacharyya, learned Senior Advocate submits that the pre-election dispute regarding anomaly, and irregularity in the voter list are not required to be resolved since election is over therefore, his clients grievance now is confined to the post-election disputes namely, method of counting and declaration of the result. He has drawn our attention to the various letters written by his client and the valid organization on their behalf. Under the Regulation it is the duty of the Returning Officer to look into these grievances, unfortunately the same were not addressed to. Only in one or two cases recounting was done in haphazard manner but not in the way it was legitimately required. In substance, there has been no action on the part of the Returning Officer namely the Principal. It will appear from the series of complaints made by his client and other students who contested the election that during the poll no lawful action was taken to ensure fair and free election.

6. Therefore, he submits that as the term of this re-constituted union is only for one year, he urges taking a pragmatic view this Court will pass an order of recounting of all the ballot papers. He submits that if recounting is done in an independent manner his clients grievances will be redressed.

7. He further submits that it will appear from the affidavit of the Principal that there appears to be strong ground for recounting in this case. In spite of having admitted in his affidavit the Principal did not take any action.

8. Mr. Kalyan Bandyopadhyay learned Senior Counsel appearing for the respondents-students submits that under what situation recounting is to be done is well settled by the Honble Supreme Court. His submission on the point of law regarding recounting is that after result of the election is declared there is no scope of recounting by Returning Officer or for that matter by any other Officer.

9. His contention is that claim of recounting must be founded on strong and cogent case and not on mere asking. He has drawn our attention to the various annexures to the writ petition as well as the appeal papers to submit that in fact

prayer for recounting was allowed and after recounting it was found there is no illegality, infirmity or unfairness either in conducting election or counting of the votes polled and further declaration of result. In spite of his legal submission he has relied on large number Supreme Court decisions which are as follows:-

(2010) 1 SCC 466, (2009) 10 SCC 170, (2009) 9 SCC 396, (2007) 1 SCC 341, (2006) 4 SCC 542, (2006) 2 SCC 300, (2004) 6 SCC 331, (2004) 6 SCC 341, (2003) 1 SCC 108, (2002) 3 SCC 742, (2002) 3 SCC 457, (2000) 8 SCC 355, (1999) 4 SCC 508, (1993) Sup. 2 SCC 82, (1984) Supp SCC 157, (1969) 2 SCC 433, 1972 SLR 915, (2007) 6 SCC 517 and (2006) 4 SCC 501.

10. We have heard the learned counsel for both the parties.

11. Beside the dispute whether the learned trial Judge has rightly refused to grant interim relief as prayed for or not, or for that matter whether any other order was justified or not, we find core controversy involved is something more.

12. If we read the writ petition we could understand that grievance is purely inaction on part of the Returning Officer or any other authority for not addressing to the grievances made by the appellants during pre-election and post-election period. It appears that the University of Burdwan has framed a regulation in exercise of power under Clause (c) of Section 51, Clause (xxiii) of Section 21, sub-section (20)(ii) of Section 2 of the Burdwan University Act 1981, relating to constitution and function of the Students Union of the affiliated colleges. The said College undisputedly is affiliated one. Election Commission is to be formed under Regulation 23 consisting of six members with the Principal as head of this Commission. Three members out of six shall be the whole-time teaching and rest two members of whole-time non-teaching staff of the College who are to be nominated by the Principal. The Commission under the said Regulations are responsible for regular and timely election for constitution of the said Council. Commission is obliged to supervise and oversee right from preparation of the voter list up to the formation of Student Council.

13. In clause 14 of Regulation 23 we find mechanism for redressal of grievances with regard to the election is provided.

14. The said clause is follows:-

Clause (14) The Election Commission shall dispose of all matters relating to any objection raised or clarification sought for by any student in regard to election matters;

Provided that, in case the Election Commission fails to resolve any dispute or prefers to refer any such matter to the Governing Body, the decision of the Governing Body shall be final and binding.

15. It appears from the annexures to the petition which purport to contain grievances ventilated during pre and post-election period were addressed to either the Principal who is the Returning Officer or the Registrar of the University or the President of the Governing Body.

16. We are of the view prima facie, that the authority to resolve dispute with regard to election are rested with the Election Commission at the first instance, and in case of its failure matter has to be taken over by the Governing Body of the College. We are of the opinion that the writ petitioners-appellants did not approach the appropriate authority for redressal of their grievance.

17. While taking into consideration of the submission of Mr. Bhattacharyya, of recounting of the ballot paper which is seriously opposed by Mr. Bandhopadhyay we think that the dispute of recounting is also covered by the aforesaid subclause (14). Relevant portion of wordings of the said regulation are as follows :-

all the matters relating to any objection in regard to election matters. The proviso of the said Regulation provides wider scope with the words any dispute.

18. It appears that though the demand and/or the issue of recounting are not indicated in the writ petition specifically, these are the disputes of post-election period. These disputes can very well be covered by the aforesaid mechanism. It further appears to us prima facie, that the writ petitioners approached this Court without resorting to the aforesaid mechanism and it is not such a strong case where the Writ Court will intervene in the public law field immediately. It is true that the learned trial Judge has intervened the matter to take upon itself to decide the

issue. When it is done so we think that Appeal Court should not non-suit the writ petition on this ground.

19. But the dispute has to be resolved by the aforesaid mechanism at the first instance.

20. On reading of all the decisions cited by Mr. Bandyopadhyay of the Supreme Courts it has been uniformly held and laid down where and when the recounting should be done.

Re-count of votes could be ordered very rarely and on specific allegation in the pleadings in the election petition that illegality or irregularity was committed while counting. The petitioner who seeks re-count should allege and prove that there was improper acceptance of invalid votes or improper rejection of valid votes. If only the court is satisfied about the truthfulness of the above allegation, it can order re-count of votes. Secrecy of ballot has always been considered sacrosanct in a democratic process of election and it cannot be disturbed lightly by bare allegations of illegality or irregularity in counting. But if it is proved that purity of elections has been tarnished and it has materially affected the result of the election whereby the defeated candidate is seriously prejudiced, the court can resort to re-count of votes under such circumstances to do justice between the parties.

21. It appears from the materials placed with the writ petition that it is almost impossible for the Writ Court for that matter the Appeal Court to decide the matter. But at the same time, the grievances as raised are required to be addressed by the mechanism as provided. We, therefore, direct let the Election Commission as formed under the said Regulation 23 decide the matter provided the appellants individually before us make representations stating specifically the nature of the grievance justifying recounting. None other than appellants will be entitled to make such representation. In the event for any reason the said Commission is unable to decide the matter within the period as being stipulated by this Court the Governing Body shall decide the matter. This of course, has to be done giving hearing both the complainant(s) and the respondent(s) and upon reading and appreciating materials to be placed before them. In the process the said Authority will be at

liberty to call for any materials and documents which forms part of the election process and declaration of result. The said Authority will pass a speaking order keeping in view of the principle laid by the Honble Supreme Court quoted above. The entire exercise shall be completed by the Election Commission, if it is done by it, within a period of three weeks from the date of receipt of copy of this order, in case of failure within the time as above the Governing Body shall decide the matter within three weeks thereafter without fail. The decision of this order shall be published immediately thereafter if any of the parties is aggrieved by the order will be entitled to approach appropriate forum as may be advised. We firmly make it clear at the time of hearing individual candidate(s)/complaint(s) and respondent(s) concerned shall remain present no other person.

22. Thus the appeal is disposed of without awarding any cost.

23. If the authority concerned viz. the Commission or the governing body, as the case may be, while undertaking the task in terms of this order feels that there is any likelihood of breach of peace in the college compound then the said authority shall give at least 72 hours prior intimation to the officer-in-charge of the local police station as well as the Superintendent of Police concerned. The Superintendent of Police shall provide all the security measure to prevent any sort of breach of peace being committed in the college, at that point of time. The Superintendent of Police shall ensure that sufficient number of police force, both in uniform and incognito, which include lady police force, are deployed.

24. We direct that no member nor any supporter of any political party, will come at or assemble in or around college. Only the students, who participated in the election process, will be entitled to enter into the college compound.

25. Whether the aforesaid authority inform or not, the officer-in-charge of the local police station shall visit the college at least three days before undertaking of this exercise and assess the situation. Thereafter, he shall take all appropriate measures if situation so warrant. It is made clear in the event any untoward incident takes place for the laches and/or negligence of any police official, or Principal then the police official and the Principal concerned shall be held responsible for such incident.

26. After the judgment having been read out, all the learned Counsels for the parties feel that nothing remains in the subject matter of the writ petition, as everything has been taken care of by this judgment. Accordingly, they jointly pray that the writ petition should also be disposed of.

27. We, therefore, give liberty to all the parties to approach the learned trial Judge to get the writ petition disposed of upon production of this judgment. Let Xerox plain copy of this judgment duly countersigned by the Assistant Registrar (Court) be given to the learned Lawyer for the appellant on his undertaking that he will apply for and obtain Xerox certified copy of this order. In the event, Xerox certified copy is not taken delivery of, in spite of being notified, effect of the Xerox plain copy will stand extinguished.

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