

**07.01.2022**  
(PA – PD)

**WPA(P) No. 271 of 2021**

**IA NO: CAN/1/2021**

**Mousumi Roy**

**Vs.**

**The West Bengal State Election Commission & Ors.**

**With**

**WPA(P) No. 299 of 2021**

**IA NO: CAN/2/2021, CAN/3/2022**

**Pratap Banerjee**

**Vs.**

**State Of West Bengal & Ors.**

Mr. Sabyasachi Chatterjee,  
Mr. Imtiaz Ahamed,  
Mr. Pintu Karar,  
Mr. Akash Deep Mukherjee,  
Mr. Sayan Banerjee,  
Mr. Ankur Sharma, Advocates  
... for the petitioner in WPA (P) 271 of 2021

Mr. Satyaki Banerjee, Advocate  
... for the respondent no. 1 in  
WPA(P) No. 271 of 2021

Mr. Billwadal Bhattacharyya,  
Mr. Rajdeep Majumdar,  
Mr. Dhiraj Trivedi,  
Mr. Brajesh Jha,  
Mr. Debanik Banerjee,  
Mr. Lokenath Chatterjee,  
Mr. Sayak Chakraborti,  
Mr. Moyukh Mukherjee,  
Mr. Anish Kumar Mukherjee,  
Ms. Saudamini Sharma,  
Mr. Amrit Sinha, Advocates  
... for the Petitioner in WPA(P) 299 of 2021

Mr. Jishnu Saha, Advocate  
... for the E.C in WPA(P) No. 271 of 2021

Mr. S.N. Mookherjee, Ld. AG  
Mr. Samrat Sen, Ld. AAAG,  
Mr. Anirban Ray, Ld. GP,

Mr. T.M. Siddiqui,  
 Mr. Raja Saha,  
 Mr. Debashis Ghosh,  
 Mr. Nilotpall Chatterjee,  
 Mr. Avishek Prasad, Advocates  
 ... for the State in WPA(P) No. 271 of  
 2021 and in WPA(P) No. 299 of 2021

Mr. Jayanta Kumar Mitra,  
 Mr. Jishnu Saha,  
 Ms. Sonal Sinha,  
 Mr. Subhankar Nag, Advocates  
 ..for the State Election Commission in  
 WPA(P) No. 271 of 2021

Mr. Anuran Samanta, Advocate  
 ... for the ECI in WPA(P) No. 271 of 2021

Mr. Sanjay Basu,  
 Mr. Soumen Mohanty, Advocates  
 ... for the respondent in WPA(P) No. 271 of  
 2021 and in WPA(P) No. 299 of 2021

CAN 3 of 2002 has been filed in WPA (P) 299 of 2021 by the State seeking modification of the order dated 23<sup>rd</sup> December, 2021 in the above petitions. Along with the CAN 3 of 2022 the prayer C made in CAN 1 of 2021 in WPA (P) 271 of 2021 is also taken into consideration as it relates to initiating suo moto appropriate action against the responsible constitutional authority for misleading this Court.

On 23.12.2021 when the matter was heard, Learned Advocate General clarifying the decision in respect of election of Howrah Municipal Corporation had initially stated that a bill was passed by the State Legislative Assembly bifurcating the Howrah Municipal Corporation into Howrah Municipal Corporation and Bally Municipal Corporation and that bill was pending

for before the Hon'ble Governor but later on he had stated before this Court that the Bill had received the assent of the Hon'ble Governor.

In CAN 3 of 2022, the State has sought the modification of the Order dated 23.12.2021 by stating that the Learned Advocate General had made the above statement on the basis of misunderstanding of instructions given to him. It has been clarified that the Bally Municipality has been constituted as per the provisions of West Bengal Municipal Act, 1993 vide notification dated 12<sup>th</sup> February, 2021 after exclusion of part of area from Howrah Municipal Corporation by passing a resolution in West Bengal Legislative Assembly in terms of Section 219 (3) of the Howrah Municipal Corporation Act, 1980. The West Bengal Legislative Assembly has adopted a resolution in this regard and Schedule 1 (Schedule) of the Act has been amended accordingly by issuing the notification dated 12<sup>th</sup> February, 2021, but Howrah Municipal Corporation (Amendment) Bill 2021 relating to Amendment of Clause (a) of Sub-Section (1) and Sub-Section (2) of Section 5 of the Howrah Municipal Corporation Act, 1980 is pending before the Hon'ble Governor for his consideration under Article 200 of the Constitution of India and the assent of the Hon'ble Governor has not been received.

Learned Advocate General has tendered unconditional apology for making an incorrect

statement before the Court on 23.12.2021. He submits that the incorrect statement was made before this Court because of some misunderstanding of instructions on his part.

Having regard to the particulars which are disclosed in CAN 3 of 2021 the unconditional apology tendered by the Learned Advocate General is accepted and by allowing the CAN 3 of 2022 the aforesaid part of the Order dated 23.12.2021 is modified and the fact is taken on record that the assent of Hon'ble Governor in the Howrah Municipal Corporation (Amendment) Bill, 2021 is awaited.

Having regard to the fact that a bona fide mistake of making incorrect statement was made by the learned Advocate General, we are not inclined to initiate the suo moto proceedings against the Advocate General or any other authority. The Prayer C in CAN 1 of 2021 is accordingly rejected.

List on 13.01.2022.

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

**(Kesang Doma Bhutia, J.)**