

WPMS No.782 of 2013

Hon'ble Kalyan Jyoti Sengupta, J.

Mr. V.B.S. Negi, Senior Advocate assisted by Mr. Vipul Sharma, Advocate present for the petitioner.

Mr. Paresh Tripathi, Addl. C.S.C. present for the State of Uttarakhand.

Mr. Sanjay Bhatt, Advocate present for the respondent Nos. 2 & 3.

In this matter only point raised is whether the State Election Commission is having power to requisition the services of Central Government employees or not in conducting Municipal Election. The State Election Commission is going to conduct the election of members of Municipal Board in the State under the provisions of Article 243ZA of the Constitution of India. This Article is of part IX A of Constitution of India and is to be applied reading with article 243K, which reads as follows:

“243K. 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 consisting of a State Election Commissioner to be appointed by the Governor.

(2) Subject to the provisions of any law made by the Legislature of a State the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine;

Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the

like ground as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.

(3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause(1).

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats.

In which manner, the State Election Commission will conduct the election has also been provided in Article 243 K of the Constitution of India which is adopted in this Article.

In Article 243ZA, no power has been conferred upon State Election Commission to requisition services of Central Government or State Government employees. If this Article is read with Article 243K clause (2), it is clear that State Election Commission is having power to requisition services of State Government employees, and not of Central Government employees.

Learned counsel for the Election Commission is unable to show any legal provision under which the State Election Commission can requisition services of Central Government employees. The petitioner before me is a statutory body and its officers and staffs are in all senses

Central Government employees. In any event, they are not State Government employees.

I think that in order to ensure free, fair and impartial election, the Commission can take all lawful measure. The Central Government employees are independent personnel if deployed, as far as the local elections are concerned. It is true that above constitutional provision do not authorize expressly to call for services of Central Government employee, however, if the State Election Commission makes any request to the petitioner for deployment of staff though, it is not mandatory to accept the same, courtesy demands that the petitioner should accede to the same, as far as practicable, releasing number of personnel to the State Election Commission to help, conducting the election, according to the petitioner's choice. Therefore, the writ petition is disposed of directing the petitioner to consider the request of State Election Commission. It is desirable that the petitioner will place personnel at the disposal of State Election Commission for conducting fair and free election.

(K.J. Sengupta, J.)

17.04.2013