

ITEM NO.4

COURT NO.4

SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).5451/2023

SUVENDU DEY & ORS.

Appellant(s)

VERSUS

ELECTION COMMISSION OF INDIA & ORS.

Respondent(s)

(Only I.A. No. 79140/2024 is listed under this item
IA No.79140/2024 - PERMISSION TO FILE APPLICATION FOR DIRECTION)

Date : 26-04-2024 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SURYA KANT

HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA

For Appellant(s) Mr. Mukul Rohatgi, Sr. Adv.
Mr. Devadatt Kamat, Sr. Adv.
Mr. Sanchit Garga, Adv.
Ms. Mithu Jain, AOR
Mr. Harsh Pandey, Adv.
Ms. Devanshi Singh, Adv.

For Respondent(s) Mr. Ankit Agarwal, AOR
Mr. Atul Raj, Adv.
Mr. Ashish Shukla, Adv.
Mr. Jayant Rao, Adv.

Mr. Srisatya Mohanty, AOR
Mr. Sanjeev Kaushik, Adv.
Ms. Ripul Swati Kumari, Adv.

Ms. Anju Thomas, AOR

Mr. Arun Maji, Adv.
Mr. Shashank Tripathi, AOR

Ms. Kajal Dalal, AOR

UPON hearing the counsel the Court made the following
O R D E R

1. Sadhan Pande was declared as the returning candidate from
Assembly Constituency-167, Maniktala, in the General Election to

the Legislative Assembly for West Bengal in 2021. Respondent No.3 (Kalyan Chaubey) filed Election Petition No.9 of 2021 before the High Court to declare the election of Sadhan Pande as null and void and to hold him as the elected candidate. Unfortunately, Sadhan Pande passed away on 20.02.2022, leaving the Assembly seat vacant. The petitioners, who are residents of the said Constituency, represented the Election Commission of India to hold bye-election. However, their request was not accepted. They then approached the High Court, but their Writ Petition has also been dismissed vide the impugned judgment. Briefly put, the reason assigned by the Election Commission, which has found favour with the High Court, is that as long as the Election Petition is pending, in which respondent No.3 seeks to declare himself as the returned candidate, a bye-election cannot be held.

2. To resolve the controversy, we requested the High Court vide order dated 18.08.2023, the High Court was requested to expedite the hearing of Election Petition No.9 of 2021.

3. The petitioners/applicants have now moved I.A.No.79140/2024 to apprise the conduct of respondent No.3 who is hoodwinking the time bound directions issued by us. Firstly, it is to be noticed that respondent No.3 has chosen not to appear before this Court despite service. Secondly, we find from the proceedings of the High Court dated 31.08.2023 that when the order dated 18.08.2023 of this Court was brought to the notice of the High Court, respondent No.3 "candidly expressed his difficulty in giving evidence" on the date fixed. The matter was then listed on 12.09.2023. On that day, respondent No.3 again moved an application

for adjournment, claiming that he is the President of the All India Football Federation (AIFF) and also the acting C.E.O. of the Indian Olympic Association (IOA) and was busy with the Asian Games, which were scheduled between 23.09.2023 and 08.10.2023 in China. Thirdly, with an endeavour to honour the request of this Court, the High Court on consideration of the request of respondent No.3 expressed the desire to take up the Petition on a Saturday. It further appears that when the Election Petition was listed before the High Court on 18.01.2024, respondent No.3 was present but stated that he was suffering from a severe throat infection and sought an adjournment. The case was then adjourned to 08.02.2024. After that, the statement of respondent No.3 was recorded in part, but on 07.03.2024, counsel for respondent No.3 sought an adjournment "on the personal ground of his senior".

4. From the events noticed above, including the proceedings reportedly held today, we are satisfied that respondent No.3 is adopting every possible delaying tactic. His counsels are also colluding with him in seeking adjournments on one false pretext or the other. We are constrained to observe that the request made to the High Court on 18.08.2023 has not been taken in its right perspective.

5. We, therefore, issue a show-cause notice to respondent No.3, in order to ensure that the Election Petition can be taken up on day-to-day basis. Further, respondent No.3 is directed to explain as to why (i) he should not be removed/relieved from his responsibilities as the President of the All India Football Federation (AIFF) and as the acting C.E.O. of the Indian Olympic

Association (IOA) through a judicial order. It would enable respondent No.3 to fully concentrate on the concluding of the Election Petition proceedings; and (iii) Why he should be not asked to give an undertaking before this Court that he shall have no objection if the Election Petition is taken up on day-to-day basis and concluded in all circumstances on or before 01.07.2024 (Monday).

6. We make it clear that if respondent No.3 chooses not to appear on the next date of hearing, we will take coercive action against him, including the issuance ofailable warrants of arrest, to secure his presence as we are satisfied that he is defying the Court's directions deliberately and willfully.

7. We will also consider the desirability of transferring the Election Petition to the Delhi High Court.

8. Post for hearing on 06.05.2024.

(SATISH KUMAR YADAV)
ADDITIONAL REGISTRAR

(POOJA SHARMA)
COURT MASTER (NSH)