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**ACCOUNTABILITY OF ELECTION
COMMISSION OF INDIA IN WEST BENGAL
STATE ASSEMBLY GENERAL ELECTION 2021
AMID COVID-19 SECOND WAVE - A CRITICAL
ANALYSIS**

Author –

Brajendra Nath Mandal

Assistant Professor
Uttarayan College of Law

ABSTRACT

Election amid the second wave of corona virus pandemic is itself full of challenges, especially in the State of West Bengal where population density is at the highest rate among the other States of India. Even can be held with minimum chance of covid infection if political campaigns and other procedures are done digitally but where physical political rallies and road shows are allowed there are more chances of covid infection undoubtedly. The West Bengal State Assembly Election was announced on 26th February 2021 which was scheduled to be held on and from 27th March to 29th April by the 8th phase and the second wave of corona virus was started on 10th February which was supposed and predicted to be more dangerous than the first wave. But yet physical political rallies and road shows were allowed by the ECI with a detailed covid protocol to regulate the public gatherings in political rallies and road shows. In those conditions, the ECI got failed to implement these covid protocols strictly and to regulate the massive public gatherings. And when the ECI woke up with the strict implementation of these guidelines after the strong criticism made by the Kolkata High Court, it became too late to control the covid infection. In this paper it could be tried to understand the transparency and accountability of ECI towards the citizen and to analyze critically their performance, further, I would like to put some suggestions in respect of this topic.

Keywords: - *coronavirus, roadshows, covid protocols, corona infection, COVID-19, Election Commission, political campaign.*

INTRODUCTION

Election Commission of India is a Constitutional Body with the basic and specific powers and responsibilities to hold the Centre and State's electoral functions. If we trace out the history of ECI we can found that T. N. Seshan was the great reformer of election functionaries in India, he is well known as a strong decision taker, he has shown that what the power a Chief Election Commissioner has. Now we can feel his disappearance in the West Bengal State Assembly Election 2021, where the bold and strong decision had to be taken to manage the electoral conditions amid the COVID-19 Pandemic originated due to the massive gatherings of people in a political campaign. The WB State Assembly Election was announced on 26th February 2021, and the election was scheduled to be held on and from 27th March to 29th April by the 8th phase and the result will be declared on 2nd

May. Before this announcement, the ECI had released a detailed guideline relating to corona virus, how the nomination process would have to be done, what will be the process of the political campaign, how the road shows and political meetings/rallies have to be done etc. to curb the corona virus spreading. But unfortunately no political parties, workers and followers have followed the covid protocols and every day the guidelines made by the ECI have been violated by the political rallies and road shows. By observing the condition the Calcutta High Court on 13th April called for strict implementation of COVID-19 guidelines laid down by the Election Commission of India (ECI) and the Chief Electoral Officer of West Bengal during the election campaign for the ongoing Legislative Assembly Elections in the State¹. It should also not be forgotten that the population density in WB is the highest among the other States of India and on the other hand the second wave of COVID-19 was started on 10th February. In this election amid the COVID-19 second wave every day the guidelines were violated during the political campaigns by all the contesting parties but the ECI had not taken any strong decision to curb the situation, it has played its role just like a silent spectator. By observing the worst situation in the State, the Kolkata High Court on 22nd April made a strong criticism about the performance of ECI and warns about their power. Furthermore, the Court also observed that it is the failure of ECI to manage the election amid the COVID-19 second wave. The Madras High Court also held the ECI singularly responsible for current COVID-19 conditions in India.

ANNOUNCEMENT OF W. B. S. A. ELECTION AND THE KEY

GUIDELINES OF ECI

The West Bengal State Assembly 2021 was announced on 26th February and the election was scheduled to be held on and from 27th March to 29th April by the 8th phase and the result was to be declared on 2nd May. Though election in 2 seats was postponed due to the death of two candidates from two different parties and among them one was from Indian National Congress Party, who was contesting from Samsanganj Assembly, Murshidabad and died due to COVID-19. In both the assemblies' election was scheduled to be held on 16 May.

¹ Rintu Marium Biju, published on 13th April 2021 on 10.25 p.m., <https://www.barandbench.com/news/litigation/election-campaigns-covid-19-calcutta-high-court-calls-strict-implementation-eci-guidelines>, visited on 16th May 2021, at 9.00 p.m.

Besides the announcement of the election, the ECI had also released a detailed guideline relating to corona virus to manage the election amid the COVID-19. The key guidelines i. e. guidelines relating to the political campaign by political parties/contesting parties which were mostly violated are as following:

1) Door to Door Campaign- Subject to other restriction(s) including extant COVID-19 guidelines, a gaggle of 5 (five) persons including candidates, excluding security personnel, if any, is allowed to do door to door campaigning.

2) Road Shows - The convoy of vehicles should be broken after every 5 (five) vehicles rather than 10 vehicles (excluding the security vehicles, if any). The interval between two sets of a convoy of vehicles should be half an hour rather than a gap of 100 meters.

3) Election Meetings - Public gatherings/ rallies could also be conducted subject to adherence to extant COVID-19 guidelines. District Election Officer should take the subsequent steps for this purpose:

(a) District Election Officer should, beforehand, identify dedicated grounds for public gathering with clearly marked Entry/Exit points

(b) Altogether such identified grounds, the District Election Officer should, beforehand, put markers to make sure social distancing norms by the attendees.

(c) Nodal District Health Officer should be involved in the process to make sure that all COVID-19 related guidelines are followed by all concerned in the district.

(d) District Election Officer and District Superintendent of Police should make sure that the amount of attendees doesn't exceed the limit prescribed by the State Disaster Management Authority for public gatherings.

(e) DEO should employ Sector Health Regulators to oversee whether COVID-19 instructions/guidelines are being followed or not during these meetings.

(f) The political parties and candidates concerned should also make sure that whether all COVID19 related requirements are being followed or not during each of these activities.

(g) Non-compliance of Instructions – If anybody has violated the instructions on COVID19 measures then he shall be punished according to the provisions of the Disaster Management Act, 2005, despite that Section 188 of the IPC, and other legal provisions shall be applicable.

SECOND WAVE OF COVID19 AND POLITICAL CAMPAIGNS

In West Bengal on 9th February new positive cases founded were at 179 but on 1st May the number increased up to 17515². The number shows not only the responsibilities of political parties but also the negligent manner to hold the election, while whole administrative power was in the hand of the ECI. Here it is obvious that a detailed guideline relating to corona virus has been released to manage the election but during the violation of these guidelines no necessary steps have been taken by the ECI and the WBCEO. Now in the following discussion, it can be tried to understand, how the political campaigns by every contesting party violated these campaigns-related guidelines and how it affects the increase of COVID-19 positive cases.

After the announcement of the WB general election 2021, all the respected political parties started their campaigns i.e. door to door campaigns, road shows, political meetings/rallies, the campaign in running train etc. The Bharatiya Janata Party tried its best to convince the people by every means. Above a dozen of political rallies and roadshows have been done where lacs of people were present and violated the covid protocols. The All India Trinamul Congress Party also tried their best to defend the opposite parties and done dozens of road shows and political meetings with lacs of people by forgetting the corona pandemic situations. Among the leaders who are well known public figures like Prime Minister of India, Indian Home Minister, Chief Minister of West Bengal and many more have attended several rallies and road shows with the above lacs of people where covid protocols were violated without a face mask, by not maintaining social distancing etc. And same was the case with the other political parties who were contesting the election.

All the political parties came under severe criticism for holding road shows, political rallies and flouting covid protocols at a time the second covid wave was sweeping the country. On 11th March the active cases had gone down to 3110 before they started increasing again³. However, since March 20, the number of active cases in the State was over 53000 - a 1500 percent rise⁴. While

² West Bengal COVID-19 Health Bulletin, Department of Health and Family Welfare, Govt. of West Bengal , <https://www.wbhealth.gov.in/pages/corona/bulletin>

³ West Bengal COVID-19 Health Bulletin, Department of Health and Family Welfare, Govt. of West Bengal, <https://www.wbhealth.gov.in/pages/corona/bulletin>

⁴ ibid

several factors have contributed to the spread of covid infection, large gatherings have been the major reason for the spike in positive cases. It is difficult to assess which political parties' gatherings may have turned into super spreader events but collectively all the contesting political parties are responsible for the rise in the active positive cases.

TRANSPARENCY AND ACCOUNTABILITY OF ECI

During the period of Central and State elections, the ECI has the sole authority to administer the election and administration. So, it has full hand power how the election and administration will work. Though the ECI had released a detailed guideline to administer the election amid COVID-19 almost at every step the covid protocols were violated and the ECI has performed like a silent spectator till the strong criticism by the Kolkata High Court on the mismanagement of covid protocols.

Specifically, when the campaign-related guidelines by the political parties/ contesting candidates had been violated, the Chief Electoral Officer (WB), District Election Officer, Nodal District Health Officer, Sector Health Regulators were performing their duty negligently. The Madras High Court on 26th April criticized the ECI by observing that “Almost in every order of election petition the Court had warned the ECI about the significance of covid protocols and to adhere by it during the campaign time, as because the ECI was in silent mode while campaigning and rallies were conducted without maintaining distancing norms”⁵. For example, "door to door campaign would have to be done with maximum 5 people including the Candidate but most of the Candidates did not follow the covid protocols. During the road shows and political meetings face mask, thermal scanning, sanitizer, social distancing were had to be maintained according to the protocols but almost in every rally and road shows lacs of people have attended violating the covid protocols but besides the ignorance of the general people, supporters and workers, the political leaders were also negligent to follow the covid protocols. The District Election Officer should have to identify the dedicated grounds for public meetings/ gatherings with clearly marked entry and exit points and also has to in advance put markers to ensure social distancing norms by the attendees but due to the massive gathering of people, these covid protocols were not possible to follow properly. The

⁵ The ECI v. M.R. Vijaybhaskar, W.P. NO. 10441 of 2021

Nodal District Health Officer should have to be involved in the process to ensure that all the covid protocols are adhered to by all concerned in the district but the role of the Health Officer was mostly inactive during the violation of these guidelines. The duty of the Sector Health Regulators was to oversee whether the covid protocols are being followed during these rallies and road shows or not but here also the Officer played the same role. Above all, under the guidelines, there was a punitive provision for violation of these guidelines or non-compliance with these covid instructions but its application was rare.

By observing all these incidents, the Kolkata High Court on 22nd April in Nitish Debnath v. Election Commission of India and Ors.⁶ held: “We are not satisfied with the data on the record presented before this Court that the ECI and its officers in West Bengal have enforced their circulars. Surely, the covid protocols are not merely advisories; they should have to be followed by the political parties or even by the public at large. The covid protocols of the Election Commission of India are the route map of how the human behavior should be, meaning thereby, during the election complaining, the behavior of the political parties, their workers, the people at large have to be maintained by the responsible management, officers including the police and other forces under the order of the Election Commission of India.”

The Court also tried to remind its power and observed that “We are unable to reconcile with the fact that the Election Commission of India is unable to update us, what action by way of enforcement of the covid protocols has been obtained. Issuance of such protocols and just holding of meetings by themselves are not enough to discharge their onerous responsibility of the Election Commission of India and its officers towards the citizen. Despite the ECI’s statutory power and authority under the Representation of People Act, 1950 and the Representation of People Act, 1951, there is a confidence that the Indian polity would have to carry forward the mechanism of sustaining the democracy by use of necessary facilities even in a pandemic period like a grave challenge by COVID-19 virus and its variants⁷.”

⁶ WPA (P) 117 of 2021

⁷ ibid

After the strong criticism made by the Court on mismanagement of covid protocols by the ECI, they were started to implement these covid guidelines strictly. After this criticism, most of the political parties have started to avoid massive gatherings and canceled several rallies and road shows for the next three phases of the election which had been done on 22, 26 and 29 of April. But the problem is that till then the covid infection rate takes place in its remarkable peak and was started to increase at a surprising rate.

CONCLUSION

To conclude, it cannot be said that the election was the sole reason for the spike in the rate of covid infection but was the most notable among the others. Though on 26th April, the Madras High Court made an oral observation and told the council of ECI that “Your institution is singularly responsible for the second wave of COVID-19⁸”. Furthermore, Chief Justice Sumir Banerjee told that “Your Officers should be booked on murder charges probably⁹”. The election had left bad effects on the general people who became more negligent and had been seen in their behavior. Rather than being cautious about the infection, their positive engagement was continuous. Rather than taking necessary steps to curb the devastating situations of the corona pandemic, political parties were blaming each other for forgetting the general people's safety and health security. Before the criticism of the Court every day these covid protocols were violated but the election officials were just playing the role of helpless spectators though all the powers were in the hand of ECI of State's administration. Though it was supposed and warned by the scientists and experts that the second wave of corona virus will be dangerous and will have a destructive effect on human life but yet the ECI had failed to implement these guidelines strictly. The Madras High Court on 26th April observed that “Public health has paramount importance and Constitutional authorities should have to be responsible in such regard. It is only if the citizens survive then they can enjoy the other rights which this democratic country guarantees unto them. Now the situation is of survival and protection and the rest comes thereafter¹⁰”. A webinar had also been hosted by the ECI on “Issues, Challenges and Protocols for Conducting Elections during COVID-19: Sharing

⁸<https://www.livelaw.in/top-stories/madras-high-court-pulls-up-election-commission-for-allowing-political-rallies-during-amid-covid-173135>, visited on 18.05.2021, at 12.58 p.m.

⁹ ibid

¹⁰ The ECI v. M.R. Vijaybhaskar, W.P. NO. 10441 of 2021

Country Experiences¹¹” where several country's election commissions and election experts participated but no proper methodology was employed and the ECI fails to implement the covid protocols made by itself.

The former Chief of the Election Commission of India, T. N. Seshan, is an example and is well known for his election reforms in India. He has a great identity as Chief of ECI for taking bold and strong decisions whatever is needed. The present Chief of ECI could take the inspiration from him that only mere guidelines are not enough their implementation is also necessary for the upcoming elections in India amid COVID-19.

SUGGESTIONS

The following are the suggestions that can be applied in the elections if held amid the Covid-19 pandemic in India:

1. Instead of physical political rallies and road shows where massive gatherings happened, in our modern digital era digital campaigns would be very helpful to convince the people by the political parties;
2. Through handbills etc. election campaign can be done to reach out to the people to avoid the fear of corona infection;
3. More strict than the present covid guidelines are needed to hold election amid such Covid19 pandemic and
4. Mere guidelines will not be enough to avoid such a pandemic but also their strict implementation is needed to bring out the changes in the upcoming elections.

¹¹ PRESS NOTE, No. ECI/PN/60/2020, dated: 21st September 2020, Election Commission of India.