

## **Indian Elections and West Bengal: The Predicament of the Un-elected**

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### **Summary**

*The Indian Constitution mandates that a minister in the State or Union government must be a Member of the Legislative Assembly (MLA). In the eventuality of his not being a MLA, he has to get himself elected within six months of his taking oath as a minister. If he fails to do so, he has to demit office. Most recently, the Chief Minister (CM) of Uttarakhand (who was a Member of Parliament but not a MLA) also resigned as holding elections during the pandemic was uncertain. This has put pressure on the CM of West Bengal who lost her seat at the recent Assembly elections and needs to get elected via a by-poll to retain her position. The issue is whether or not the Election Commission will order an election within six months of her having assumed office.*

A piquant situation is developing in West Bengal. The scenario has been rendered interesting by the course of action taken by the Bharatiya Janata Party (BJP) in Uttarakhand. All members of the Council of Ministers of the State and the Union are required to be Members of the State Legislature and Parliament respectively. In the eventuality of their being appointed as ministers without being Members of the Legislative Assembly (MLA), they are required to contest election in a by-poll and become duly elected. In the case of the Parliament and bi-cameral State Legislatures, they have the option of being elected to the Upper House and thereby become members of the Parliament/Legislature. In the case of uni-cameral bodies, a by-poll has to be conducted to enable them to continue as ministers. Article 164(4) of the Constitution states, “a minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.” This also applies to the Prime Minister (PM) and Chief Minister (CM).

In 2020, two Madhya Pradesh ministers, Tulasiram Silawat and Govind Singh Rajput, resigned as they failed to get elected to the State Assembly. They could be re-inducted into the cabinet only after they won in the by-polls later. In an attempt to circumvent this requirement, Tej Parkash Singh, a minister in Punjab in 1995, resigned at the end of the six-month period, and was reappointed as a minister again in 1996 without getting elected to the State Assembly. However, this re-appointment, without being elected, was struck down by the Supreme Court in 2001. So a minister cannot take another oath at the expiry of the six month period to start another stint of six months, in the hope of facing a by-poll in the second stint.

The BJP face a similar situation in Uttarakhand when Tirath Singh Rawat, who was appointed CM in March 2021, had till September 2021 to be elected to the House. However, the prevailing COVID-19 situation created doubts whether the Election Commission (EC) would find the prevailing environment conducive to hold elections. In view of the uncertainty, the

BJP decided to request the CM to resign. A new CM, who is already a MLA and thus does not face any deadline, has been appointed.

In April 2020, the Shiv Sena also faced the same complication as its appointee CM, Uddhav Thackeray, had to be elected to the State Legislature. In that case too, the prevailing pandemic made the conduct of a by-poll uncertain. He managed to finally get himself elected to the State Legislative Council.

The interesting situation developing in West Bengal is that Mamata Banerjee took oath as CM despite having lost the election from Nandigram constituency, to Suvendu Adhikari. To remain in her position, she will have to get herself elected to the Legislative Assembly within six months through a by-poll. To facilitate her election in a by-poll, the MLA from Bhabanipur, her home constituency, [resigned his seat](#) on 21 May 2021. By-elections to seven assembly seats, including Bhabanipur, are also due in the state.

The moot point however is whether, considering the pandemic, the EC will agree to hold a by-poll. In not conducting a by-poll, its argument would be the severe criticism it faced from inter alia, the Madras High court for conducting elections in the prevailing pandemic situation. The BJP, ever wanting to embarrass Banerjee, will take the high moral ground that since it did not consider it proper to seek a by-poll in the midst of the pandemic for its nominee in Uttarakhand, it made him resign. This will obviously be to put moral pressure on the CM. The EC may take the stand that in view of the stringent comments passed by the Madras High Court, it does not deem it appropriate to hold a by-poll till the pandemic eases and an environment conducive to conduct elections prevails. The BJP leaders have already been making statements to the effect that it is not so much the EC, but the prevailing COVID-19 situation that will be the deciding factor on when the by-poll can be conducted as, when the West Bengal elections and Uttar Pradesh *panchayat* polls were held, the EC was severely criticised. On the other hand, the CM has been requesting the EC for by-polls to be conducted for the seven Assembly constituencies and even publicly stated that she will request the PM to prevail upon the EC to conduct the elections (since Thackeray had also spoken to the PM to request the EC to conduct election to the Legislative Council in 2020). It is anybody's guess as to the situation that will finally emerge.

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