

D/L. 6.
July 20, 2023.
MNS.

WPA No. 16252 of 2023

Sumantra Guha
Vs.
The Union of India and others

Mr. Surajit Samanta,
Mr. Biswajit Samanta,
Ms. Sohini Samanta

... for the petitioner.

Mr. Rudraman Bhattacharyya,
Mr. Surojit Dasgupta,
Mr. Akash Munshi,
Mr. Souvik Majumdar

...for the respondent nos. 2 to 4.

Affidavit-of-service filed in Court today be
kept on record.

Learned counsel for the petitioner points
out that the impugned order, whereby the
respondent authorities dealt with the complaint
raised by the petitioner regarding the election of
the Institute of Chartered Accountants of India,
suffers from several irregularities.

It is, first, submitted that the petitioner
raised various objections, which were not dealt
with adequately by the respondent.

Learned counsel places particular reliance
on the "*modus operandi*" of the election process
and counting, which was pointed out clearly by

the present petitioner, but not dealt with by the respondent authorities.

That apart, several additional grounds were taken by the petitioner, which were not considered by making a proper enquiry by the respondent authority, that is, the Election Tribunal.

As per example, it is submitted that, contrary to the norms and defying common sense, the ballot boxes were brought to Kolkata from Odisha by road instead of by flight, despite several such flights being available.

That apart, the ballot boxes were detained for about five days in transit, without any probable explanation for the same.

An Office Bearer of the Institute of Chartered Accountants of India (ICAI) was entrusted with the transit of the ballot boxes. However, it does not appear that there was any further security to keep any checks and bounds on the said vehicle carrying the ballot boxes, which vitiates the process of the election itself.

Learned counsel further points out, from the additional grounds taken by the petitioner, that one of the rival candidates of the petitioner had issued e-mails to several of the voters,

thereby misguiding the said voters to the effect that the vote would be done by postal ballots, contrary to reality.

Such misguidance of the electorate, it is submitted, also tantamounted to malpractice in the election process, which were also not enquired into by the Tribunal.

Learned counsel appearing for the respondent nos. 2 to 4 submits that the premise of the allegations made by the petitioner was of a communal nature.

It is pointed out from the tenor of the allegations that the petitioner was of the view that the voters of Odisha ought to have voted first for the candidates from Odisha and, as a second priority, for Bengali candidates such as the petitioner, in preference to a third community, which got the maximum number of votes.

It is submitted that such premise cannot be a valid ground for challenging the election process.

That apart, learned counsel appearing for the respondent nos. 2 to 4 places elaborate reliance on the impugned order itself, which dealt with all the allegations and the relevant considerations extensively.

As such, it is submitted that the writ petition ought to be dismissed.

Upon hearing learned counsel for the parties and carefully scrutinizing the nature of the allegations, it transpires that the Tribunal elaborately dealt with most of the allegations. The only allegation, which was not dealt with specifically, is that the ballot boxes with the allegedly forged ballot papers were interchanged, most likely somewhere between Kolkata to Bhubaneswar, as the ICAI representative was travelling by road. It was also alleged that either they met on the way on December 6, 2021 and ballot boxes were exchanged or the swapping of ballot boxes could have been carried out in any of the hotels at Puri and/or Bhubaneswar, where the person in charge of the ballot papers stayed between December 1, 2021 to December 6, 2021. The said stay of the representative of the ICAI with the ballot boxes for five days prior to reaching Kolkata has apparently not been explained.

However, upon considering the entire perspective of the allegations, it transpires that the nature of the allegations only reflects the baseless Paranoia of the petitioner and the

allegations made are not premised on solid grounds.

Moreover, the Tribunal has dealt with the allegations and has observed that the assigning of duty to a person handling the ballot boxes, mode of travel, schedule, receiving the material back in strong room etc. are the responsibilities of the ICAI and it has nothing to do with the respondent/successful candidate. The apprehension raised by the petitioner, that the ballot boxes and the papers were changed by 2-3 persons, as observed by the Tribunal, is based on the fact that the transfer of votes from a candidate from Odisha has not gone in favour of the petitioner, as was expected by him. The petitioner's expectation was that a particular community should have voted in his favour, but after the counting of the results, he found that the transfer of votes were not as per his expectations, which was not a credible ground to the Tribunal.

The Tribunal further held that, as enquired from the office, the printing of ballot papers is a specialized job and done by the security printer only. There are multiple security features, which are known to 1 or 2 offices only, who are managing the printing in a very secret manner.

Out of the total security features, there are some which cannot be copied, it was observed by the Tribunal. What stands out in particular, out of the observations of the Tribunal, is that the ballot boxes are also special boxes taken from the Election Commission of India which have a specialized locking system with a seal.

Once it is locked with a seal, the opening can be done only by breaking the original seal signed by the Polling Officer and the candidates' representatives (if present). During the counting of votes and at the time of opening of ballot boxes, the counting team shows the ballot boxes and its seal to all the available candidates or their representatives to check. Only when there is no objection raised by anyone, the ballot boxes get opened.

In the present case, there is nothing on record to indicate that the petitioner or his representative was prevented in any manner from being present when the ballot boxes were opened at the time of counting of votes. There is also nothing on record to indicate that, at the relevant point of time, any specific objection was raised by the petitioner or the petitioner's representative.

Hence, it cannot be presumed, on the flimsy allegations made, that there was a false play in the opening of the ballot boxes. Since the ballot papers were sealed, and were opened only in due process, no such presumption can be attributed to the election process to vitiate the impugned order of the Tribunal.

As such, there is no scope of interference in the present writ petition.

Accordingly, WPA No. 16252 of 2023 is dismissed on contest.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)