

25-09-2023
Item No.20
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

WPA No.16900 of 2023
M D Mostak Uddin

-vs-

**The Secretary of West Bengal Election Commission &
Ors.**

Mr. Sabyasachi Chatterjee
Mr. Sandipan Das
Mr. Sayan Banerjee
Mr. Omar Faruk Gaji
Mr. Subhrajit Saha
Mr. Badrul Karim
Mr. Kiron Sk ...for the petitioner

Ms. Sonal Sinha
Mr. Tarun Kumar Chatterjee
Mr. Sujit Gupta
Mr. Sayan Datta
Mr. Soumen Chatterjee ...for the State Election
Commission

Mr. Lalit Mohan Mahata
Mr. Jagabandhu Roy ...for the State

Mr. Billwadal Bhattacharyya, DSG
Mr. Arijit Majumder ...for the Union of India

Mr. Anuran Samanta ...for respondent no.3

Mr. Mir Anuruzzaman ...for respondent no.13

Perused the report filed by the Block Development Officer, Sonarpur, South 24 Parganas. It appears from the counting sheet annexed to the report that the total number of ballot papers found in the ballot box is 937, whereas from the Presiding Officer's diary it appears that the total number votes polled is 1047. The same implies that 110 ballot papers went missing. The petitioner lost by 11 votes.

There is no explanation in the report filed by the concerned Block Development Officer with regard to the missing ballot papers.

The petitioner in his exception filed to the report mentions that vandalism and hooliganism took place at the time of counting of ballot papers. The officers engaged in counting duty being employees of the State Government were attacked by the members of the ruling dispensation and the entire incident in counting hall no.8 has been captured in the CCTV footages.

The Hon'ble Supreme Court in the matter of **Union Territory of Ladakh & Ors. v. Jammu & Kashmir National Conference & Anr.** reported in **2023 SCC Online SC 1140** observed that election to any office/body is required to be free, fair and transparent. Elections lie at the core of democracy. The authority entrusted by law to hold/conduct such elections is to be completely independent of any extraneous incident/consideration. A just cause ought not to be frustrated by efflux of time.

I am of the opinion that the matter is required to be remanded to the Election Commission for taking a decision upon proper appreciation of facts.

Accordingly, the Election Commissioner is directed to inquire into the matter, after perusing the CCTV footages, and thereafter take a decision as to whether recounting may be required or not. Decision shall be taken in the matter only after giving a reasonable opportunity of hearing to the winning as well as the losing candidates. The issue to be decided by the Commissioner as the earliest, but positively within eight weeks from the date of communication of this order.

WPA No.16900 of 2023 stands disposed of.

Certified copy of this order, if applied for, shall be made available to the parties.

[Amrita Sinha, J]