

23
25.09.2023
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 16903 of 2023

**Sahani Bibi
-versus
The Secretary of West Bengal
Election Commission & Ors.**

**Mr. Sayan Banerjee
...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. Santanu Kumar Mitra,
Mr. Amartya Pal.
...For the State.**

**Mr. Billwadal Bhattacharya,
Mr. Tirthapati Acharya.
...For UOI.**

**Mr. Anuran Samanta.
...For the Respondent No.3.**

**Mr. Mir Anuruzzaman.
...For the Respondent No.13.**

Exception filed by the petitioner to the report filed by the State respondents is taken on record.

From the documents annexed to the report filed by the District Panchayat Election Officer and the District Magistrate, Sough 24-Parganas, it appears that the total number of votes polled is 1047.

The number of ballot papers found in the ballot box is 937 which suggests that 110 ballot papers are missing.

The petitioner lost by 8 votes.

There is no explanation in the report filed by the DPEO with regard to the number of missing votes.

Learned advocate appearing for the State respondents submits that as no complaint was lodged before the competent authority and, accordingly, the issue of the missing votes remained unnoticed.

As it appears from records forwarded by the Presiding Officer and the Panchayat Returning Officer that there is anomaly of 110 votes and the margin of win is only 8, accordingly, the matter is to be revisited by the State Election Commission.

It appears from the submissions made on behalf of the respective parties and upon perusal of the materials on record that, admittedly, there has been mismatch of votes. The votes polled appear to be more than the votes counted and the margin of win is far less than the number of ballot papers missing.

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.

The writ petition stands disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)