

09
03.10.2023
Court No. 24
A.G.M.

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

W.P.A 16905 of 2023

**Tarun Kumar Ghosh
-versus
The Secretary of West Bengal
Election Commission & Ors.**

**Mr. Sayan Banerjee,
Mr. Sandipan Das,
Mr. Badrul Karim,
Ms. Indrani Roy
Mr. Dipankar Das,
Mr. Suman Sarkar.
...For the Petitioner.**

**Ms. Sonal Sinha,
...For the State Election Commission.**

**Mr. Santanu Kumar Mitra,
Ms. Rama Halder.
...For the State.**

**Mr. Billwadal Bhattacharya,
Mr. Ayanabha Raha.
...For UOI.**

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

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

Perused the report filed by the District Magistrate, South 24 Parganas wherefrom it appears that the total number of ballot papers found in the ballot box is 1093. The Presiding Officer's diary mentions that a total number of (549+598) i.e. 1147

votes were polled. It appears that 54 votes went missing.

The winning candidate secured 431 votes while the petitioner secured 421 votes; that is, the petitioner lost by 10 votes.

The petitioner alleges that 54 missing votes have been manipulated for the interest of the ruling dispensation.

There is no explanation in the report with regard to the missing 54 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 at the earliest, but positively within eight weeks from the date of communication of this order.

WPA 16905 of 2023 stands disposed of.

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

(Amrita Sinha, J.)