

14
06.09.2023
d.p.

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

**W.P.A 16973 of 2023
IA No. CAN 1 of 2023**

**Khabir Sekh & Anr.
-versus
The State of West Bengal & Ors.**

**Mr. Rudranil De,
Mr. Aranya Saha,
Mr. Rajeshwar Chakraborty.
...For the Petitioners.**

**Mr. Lalit Mohan Mahata,
Mr. Ziaul Haque.
... For the State.**

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

From the report filed by the Panchayat Returning Officer, it appears that out of 1163 votes that were cast in the polling station no. 8 under Gayespur/VIII, Seat Nos. 8 and 9 of the Gayespur Gram Panchayat, 374 ballot papers were found to be valid and as many as 789 stood rejected on the ground that the same did not bear the distinguishing mark and signature of the Presiding Officer.

The report further mentions that the Presiding Officer viz. Shibu Prasad Biswas of booth no.8 became seriously ill on 8th July, 2023 at the polling station and

he had to be admitted to the Fulia Block Primary Health Centre, Santipur and on his absence, the first Polling Officer conducted the rest of the election. Due to mistake, the first Polling Officer did not put his signature and the distinguishing mark in the ballot papers.

In view of the provision of Rule 88(2)(g) of the West Bengal Panchayat Election Rules, 2006, the ballot papers without the signature and the distinguishing mark stood rejected.

It appears that the first proviso of Rule 88(2)(g) mentions that where the Presiding Officer is satisfied that any defect as mentioned in Rule 88(2)(g) has been caused by mistake or failure on the part of the Presiding Officer or the Polling Officer, the ballot papers shall not be rejected merely on the ground of such defect.

In the case at hand, admittedly, the mistake was on the part of the first Polling Officer who conducted the rest of the election in the absence of the Presiding Officer.

The electors were not at fault for the mistake committed on the part of the first Polling Officer in not affixing the signature and the distinguishing rubber mark in the reverse of the ballot papers.

The mandate of the electors ought not to be disregarded only on account of the inadvertent act of the first Polling Officer.

In view of the above, the State Election Commission is directed to revisit the issue and decide

as to whether the ballot papers in respect of that particular booth may be counted by treating the same to be valid.

A decision shall be taken in the matter only after giving reasonable opportunity of hearing to all the candidates who contested from the said particular seat.

The aforesaid opportunity of hearing is required to be afforded to all concerned because the counting agents of all the candidates signed the proceedings of the counting on 11th July, 2023.

Decision shall be taken at the earliest, but positively within a period of four weeks from the date of communication of a copy of this order.

The reasoned order shall be communicated to all the parties immediately thereafter.

Exception of the petitioners to the report filed by the Panchayat Returning Officer be retained with the records.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)