

01. 25.07.2023
Court No.6
Tanmoy Ghosh

MAT 1339 of 2023

**Munsi Nazbul Karim
-Versus-
The West Bengal State Election Commission & Ors.**

**With
IA No: CAN/1/2023**

Mr. Anjan Bhattacharya, Adv.,
Ms. Anita Shaw, Adv.,
Ms. Salma Sultana, Adv.

...for the appellant.

Mr. Sonal Sinha, Adv.,
Mr. Tarun Kr. Chatterjee, Adv.,
Mr. Sujit Gupta, Adv.,
Mr. Sayan Datta, Adv.,
Mr. Soumen Chatterjee, Adv.

...for the West Bengal
State Election Commission.

Mr. Amal Kr. Sen, Ld. AGP.,
Mr. Jaladhi Das, Adv.

...for the State.

Affidavit of service filed in Court today be kept with the records.

By consent of the parties, the appeal and the connected application are taken up together for hearing.

This appeal is directed against a judgment and order dated July 18, 2023, whereby the appellant's writ petition being WPA 16771 of 2023 was disposed of.

The appellant contested the *Panchayat* General Elections, 2023, held in the State of West Bengal, as a candidate. He lost the Election.

The appellant approached the learned Single Judge with the grievance, *inter alia*, that because of certain irregular acts that the Presiding Officer committed, about 500 votes had to be declared to be invalid. This adversely affected the appellant since he lost only by a margin of 343 votes. The further grievance of the appellant was that the Ballot Box was not opened by the Presiding Officer in the presence of the appellant or his election agents/counting agents, as is mandated by Rule 87 of the West Bengal *Panchayat* Election Rules, 2006 (hereinafter referred to as ‘the 2006 Rules’). Learned Advocate for the appellant further submitted that Rule 88(3) of the 2006 Rules has also been flouted in the present case. That sub-rule is to the effect that – “*before rejecting any ballot paper under sub-rule (2), the Presiding Officer shall allow the candidate or his election agent, and each counting agent present a reasonable opportunity to inspect the ballot paper but shall not allow him to handle it or any other ballot paper.*” Learned Advocate submitted that this provision also was not followed.

The learned Single Judge, after hearing the appellant’s learned Counsel, was of the view that the writ petitioner’s grievance constitutes an election dispute and, therefore, the remedy of the writ petitioner was to file an election petition. The writ petition was disposed of with the liberty to file election petition before the appropriate forum.

Being aggrieved, the writ petitioner is before us by way of this appeal.

We have heard Mr. Anjan Bhattacharya, learned Advocate appearing for the appellant at some length. Learned Counsel reiterated the submission that he had made before the learned Single Judge which we have recorded above.

Learned Advocate for the Election Commission made a very short submission to the effect that the proper remedy of the appellant is by way of an election petition.

Having considered the submissions made on behalf of the parties, we have no doubt in our mind that the present writ petition is not maintainable and had been rightly not entertained by the learned Single Judge. This we say because Article 243-O(b) of the Constitution of India provides that – “*no election to any Panchayat shall be called in question except by an **election petition** presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.*” (**emphasis is ours**) The West Bengal State Legislature has enacted the West Bengal *Panchayat* Elections Act, 2003 (hereinafter referred to as the ‘said Act’). Section 79 of the said Act provides for resolution of election disputes by filing election petition before the forum mentioned in that Section. The grounds on which

an election can be declared to be void are mentioned in Sections 93 and 94 of the said Act.

In view of the above, we are of the considered opinion that there is a Constitutional bar to the maintainability of any proceeding other than an election petition for challenging an election dispute. Hence, without going into the merits of the grievance of the appellant/writ petitioner, we dismiss the appeal being MAT 1339 of 2023 and the connected application being IA No: CAN/1/2023, leaving it open for the appellant to approach the appropriate forum, in accordance with law. If the appellant does so within the prescribed time period, the forum is requested to dispose of the grievance of the appellant at the earliest without being influenced by any observation in this order or in the order of the learned Single Judge, impugned before us.

Parties shall act on the server copy of this order, duly downloaded from the official website of the Court.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)