

21
06.09.2023
d.p.

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

W.P.A 17224 of 2023

**Sk. Abdul Robe
-versus
The West Bengal State Election
Commission & Ors.**

**Mr. Debasish Das.
...For the Petitioner.**

**Mr. Santanu Mitra,
Mr. Amartya Pal.
... For the State.**

**Mr. Moyukh Mukherjee,
Mr. Abhijit Singh.
...For the Respondent No.11.**

**Ms. Nandini Mitra.
Ms. Dipa Acharyya.
...For the PO.**

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

The petitioner contested the Panchayat General Election 2023 in respect of the Panchayat Samity and lost by 16 votes.

From the counting sheet (Form-20) it appears that 203 ballot papers stood rejected allegedly on the ground of not affixing the distinguishing mark in the reverse of the ballot papers.

Learned advocate appearing for the Presiding Officer has filed a report wherein it has been mentioned that except for 3 or 4 bundles almost all the ballot papers were signed and stamped in the night of July 7, 2023 i.e. the day preceding the poll. On the day of election, the Presiding Officer had to sign few more stamped ballot papers.

The Presiding Officer is not very sure as to whether the distinguishing mark was inadvertently not affixed in the reverse of any ballot paper. The defect in the polled ballot papers was detected only on the counting table. An objection appears to have been raised by the petitioner.

According to the provisions of Rule 88(2)(g) of the West Bengal Panchayat Elections Rules, 2006, ballot papers which do not bear both the mark and the signature of the Presiding Officer shall be rejected.

The first proviso to the aforesaid Rule mentions that if the defect in the ballot paper was caused by any mistake or failure on the part of the Presiding Officer or the Polling Officer, the ballot paper shall not be rejected merely on the ground of such defect.

In the present case, admittedly the ballot papers stood rejected on account of non-affixing the distinguishing mark in the reverse of the ballot papers.

The electors were not at fault and the mandate of the electors ought not to be disregarded on account of an inadvertent error in affixing the distinguishing mark by the Presiding Officer.

The margin of win is only 16 whereas the number of ballot papers which stood rejected far outnumbers the said margin.

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.)