

04.08.2023
Item No.03
Court No.6.
S. De

M.A.T. 1372 of 2023
With
I.A. No. CAN/1/2023

Jasminara Khatun.
Vs
The Secretary of West Bengal Election Commission
& Ors.

Mr. Sarthak Burman,
...for the appellant.
Mr. Anuran Samanta,
...for the respondent no.3.
Mr. Lalit Mohan Mahato,
Mr. Ziaul Haque,
...for the State.
Ms. Sonal Sinha,
Mr. Tarun Kr. Chatterjee,
Mr. Sujit Gupta,
Mr. Sayan Datta,
Mr. Soumen Chatterjee
...for the WBSEC.

This appeal is directed against a judgment and order dated July 18, 2023, whereby the appellant's writ petition being WPA 16792 of 2023 was dismissed by a learned Single Judge of our Court.

The appellant approached the learned Single Judge alleging certain irregularities committed by the Presiding Officer. The appellant was a candidate in the recently conducted Panchayat Elections from Ellahabad Gram Panchayat. She lost the election.

Learned advocate for the appellant drew our attention to Form No.18 (page 41 of the stay application) and submitted that 1,220 ballot papers

were received. 276 ballot papers were unused. Therefore, 944 ballot papers were used. However, no ballot paper was cancelled. This is a gross irregularity. Learned Single Judge dismissed the writ petition with the following observations :-

“From the submission made on behalf of the petitioner, the Court cannot be convinced that the 125 ballot papers which were found to be not signed by the Presiding Officer was actually issued by the Presiding Officer at the time of the election. The same can be ascertained on taking evidence only if an election petition is filed.

In view of the above, no relief can be granted in the instant case.”

We have heard learned counsel for the appellant. We have not called upon the respondents to make submission.

Having considered the submissions made on behalf of the appellant, we are of the considered opinion that the present writ petition is not maintainable and has been rightly dismissed by the learned Single Judge. This is 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, 2023 (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 prescribed forum. The grounds on which an election can be declared to be void are enumerated in Sections 93 and 94 of the said Act.

In view of the above, we are of the 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 1372 of 2023 and the connected application being I.A. No. CAN/1/2023, leaving it open for the appellant to approach the appropriate forum, in accordance with law. If the appellant approaches the appropriate forum within the prescribed time period, that forum is requested to dispose of the grievance of the appellant at the earliest without being influenced by any

observation made in this order or in the order of the learned Single Judge which is impugned before us.

Since we have not called for affidavits, the allegations contained in the stay application are deemed not to be admitted by the respondents.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)