

18.10.2023
Item No.20
Court No.6.
S. De

MAT 1567 of 2023
With
I.A. No. CAN/1/2023

Fhamida Khatoon (Nazam).
Vs.
The State of West Bengal & Ors.

Mr. Asfak Ahammed ...for the appellant.

Mr. Lalit Mohan Mahato, Ld. A.G.P.
Mr. Ziaul Haque, ...for the State.

A judgment and order dated July 24, 2023, passed by a learned Single Judge of this Court in the appellant's writ petition being WPA 17095 of 2023, is under challenge in this appeal at the instance of the writ petitioner.

The appellant contested the Panchayat General Elections, 2023 and lost by four votes. With the complaint that there were several illegalities at the time of counting of votes, the appellant approached the learned Single Judge seeking various orders. The learned Judge noted that the complaint before the concerned Block Development Officer and Panchayat Returning Officer was lodged only on July 15, 2023, long after the counting process was over. Accordingly, the learned Judge refused to grant relief to the appellant leaving it open for the appellant to approach the appropriate forum by way of election petition in

accordance with law, for redressal of her grievance, if so advised.

Being aggrieved, the writ petitioner has come up by way of this present appeal.

Learned advocate for the appellant referred to an order dated July 21, 2023 passed by the same learned Judge in WPA 17013 of 2023 (Kursed Hossain & Anr. Vs. The State of West Bengal & Ors.). He said that in that matter also complaint was lodged by a candidate on July 15, 2023, in respect of the same election. The learned Judge directed the representation of the candidate to be considered by the competent authority. In the present case, the learned Judge should have passed the same direction.

We have not called upon the State to make submission.

We are of the view that in the teeth of the Constitutional bar to the maintainability of a writ petition involving election disputes in Article 243-O of the Constitution of India read with the West Bengal Panchayat Election Act, 2003 and the 2006 Rules framed thereunder, the learned Judge ought not to have entertained the writ petition in the earlier case referred to by the appellant.

We do not find any infirmity in the decision of the learned Single Judge to dismiss the writ petition, although we are of the view that the writ petition

should have been dismissed as not maintainable and being barred by law and not because of late filing of complaint.

We clarify that dismissal of this appeal will not stand in the way of the appellant pursuing any other remedy that she may have, in accordance with law.

The appeal being MAT 1567 of 2023 is dismissed along with the application being I.A. No. CAN/1/2023.

There is no order as to costs.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)