

D/L
Item No. 06
28.11.2023
KOLE

**MAT 2002 of 2023
With
IA CAN 1 of 2023**

**Prafulla Kumar Sardar
-Vs.-
The State of West Bengal & Ors.**

*Mr. Sanjib Kumar Mukhopadhyay,
Mr. N. Adhikari,
Mr. A. Bhattacharya,
Mr. N. Parveen*

...for the appellant.

*Mr. Sirsanya Bandopadhyay,
Mr. Arka Kr. Nag,*

...for the State.

*Mr. Sonal Sinha,
Mr. Avishek Prasad,*

...for the Election Commission.

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

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

The writ petitioner has come up against a judgment and order dated September 2, 2023, whereby a learned Single Judge of this court has dismissed his writ petition being WPA No. 16923 of 2023, leaving it open to him to approach the appropriate forum for necessary relief, if so advised.

The writ petitioner approached the learned Single Judge with the grievance that there was irregularity in counting of the ballot papers in certain booths in the last Panchayat Elections. It appears that the video footages

recorded on the day of counting in respect of the concerned counting stations were produced before the learned Single Judge. Having viewed such footages, the learned Single Judge was of the opinion that the allegations of the writ petitioners are not readily evident from such video footages and further evidence is required to be recorded for adjudicating the disputes raised by the writ petitioner, which cannot be done in a writ procedure. In view of the aforesaid, the learned Single Judge dismissed the writ petition reserving liberty to the writ petitioner to approach the appropriate forum.

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

Having heard learned counsel for the appearing parties, we are of the considered view that the learned Single Judge ought not to have entertained the writ petition at all. Article 243-O of the Constitution of India read with the relevant provisions of the West Bengal Panchayat Election Act, 2003 and the Rules framed thereunder and numerous decisions of the Hon'ble Apex Court, constitute a complete bar to the maintainability of a writ petition for adjudication of an election dispute. The present dispute is obviously an election dispute. The only way to raise an election dispute is by way of an election petition before the appropriate forum mentioned in Sections 79 and 80 of the West Bengal Panchayat Election Act, 2003.

Accordingly, we do not find any error in the conclusion of the learned Single Judge. We, therefore,

disposed of this appeal and the connected application by reiterating that the appellant/writ petitioner will be at liberty to approach the appropriate forum for ventilating his grievance which is the subject matter of the present writ petition. If so approached, that forum will decide the disputes raised by the writ petitioner in accordance with law observing the principles of natural justice.

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

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Partha Sarathi Sen, J.)