

09-08-2023
Item No.1 JPD
Subrata
Bhattacharyya

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction

WPA No.1531 of 2023
Sahanaj Parvin
-vs-
State of West Bengal & Ors.

Mr. Ajitesh pandey
Ms. Manadipa Mondal
Mr. Zohaib Rauf
Mr. Zubeen Pandey ...for the petitioner

Mr. Lalit Mohan Mahata
Mr. Sirsanya Bandopadhyay
Mr. Ziaul Haque ...for the State

Ms. Sonal Sinha
Mr. Tarun Kumar Chatterjee
Mr. Sujit Gupta
Mr. Sayan Datta
Mr. Soumen Chatterjee...for Election Commission

The petitioner contested the Panchayat General Elections, 2023 from Dupguri Block for Sakoajhota-II Gram Panchayat.

The presiding officer, Shri Moni Mohan Das, has filed a report in the form of affidavit. The ballot papers which were in the custody of the learned Registrar General of this Court have been shown to him and he admits that the ballot papers are genuine ones which contain his signature.

In paragraph 6 of the report, it has been mentioned that after conclusion of the polling process, all the ballot boxes were sealed with lock in the presence of all the polling agents. Around 750 ballot papers were signed by the deponent and out of 750 ballot papers, a little less than 300 ballot papers were issued on the day

of the polling.

Paragraph 7 of the report mentions that on the occasion of the polling process (wrongly mentioned as 'counting process') election agent, namely, Najibul Islam, raised certain issues within the ambit of the polling centre (wrongly mentioned as 'counting centre') indicating the presence of a certain person whose wife was casting the vote ('votes' written by mistake) and at that time the entire scenario turned into a chaotic situation. The deponent tried to resolve the issue in the best possible manner and later on the situation came under control.

It has been mentioned in paragraph 8 of the report that the aforesaid incident took place around 11.30 a.m. and taking advantage of the untoward incident, some of the signed but unused ballot papers may have been taken away from the table of the deponent.

It has been categorically mentioned that the missing ballot papers were unused. The fact could not be ascertained that the unused ballot papers were removed in the chaotic situation and that is why the presiding officer did not mention the same in his diary.

A photocopy of the diary of the presiding officer has been produced in Court wherefrom it appears that the ballot papers received by the presiding officer were from serial nos. 01-880 i.e. total 880 ballot papers were received by the presiding officer.

The ballot papers which were used in the polling centre was 289. Unused ballot papers with the signature

of the presiding officer were 462 and without the signature of the presiding officer were 129.

The ballot papers which are at present in the custody of the Court have been perused by the presiding officer and the learned advocate appearing on behalf of the presiding officer, and the Court has been intimated that the serial numbers of the ballot papers are all above 750. The ballot papers are all signed by the presiding officer.

The submission of the presiding officer that only 462 ballot papers were signed by him appears to be incorrect as the serial numbers of the ballot papers presently in the custody of the Court are reported to be between 750 and 800.

It has been submitted that though the ballot papers are genuine ones, but the distinguishing rubber seal which is appearing in the reverse of the ballot papers may not be genuine. Similar type of seal is readily available in the open market and the petitioner may have misused the seal and used it in the ballot papers.

The petitioner lodged a complaint before the Superintendent of Police immediately on the next date of the poll mentioning that certain ballot papers which were snatched from the polling centre were submitted before the police. A complaint also was lodged before the Superintendent of Police on behalf of the petitioner by the president of the political party which the petitioner is representing regarding violence and disruption of poll on the day of the poll.

Reliance has been placed by the respondents on the signatures of the election agent and the counting

agent of the petitioner – both before and after the poll and after the sealing of the ballot boxes. It has been submitted that no complaint was lodged by the agent of the petitioner at any point of time.

Learned advocate representing the respondents points out to the jural portion of the affidavit affirmed by the petitioner and highlights that the allegations made in the writ petition have been affirmed as matter of record believed to be true. Learned advocate for the petitioner submits that the same is an inadvertent mistake.

Learned advocate representing the respondent no.10, the winning candidate, submits that the writ petition ought not to be maintainable before this Bench, as the prayers of the petitioner are mainly with regard to police inaction, and accordingly, this Bench dealing with panchayat matters ought not to entertain the writ petition.

I have heard the respective submissions made on behalf of all the parties. The very fact that the bunch of ballot papers having reached the table of this Court implies that some incident of violence occurred on the day of the poll which has been admitted by the presiding officer and the Block Development Officer. The ballot papers have been reported to be snatched at the time of the said violence.

The presiding officer ought to have been more cautious and should have mentioned the incident of the violence or snatching of the ballot papers in the presiding officer's diary. Even if the submission of the respondents is to be accepted that the incident of snatching or the missing of ballot papers was not within the knowledge of the presiding officer, then at least the

incident of violence ought to have been mentioned in his diary.

The presiding officer prior to returning the ballot papers to the panchayat returning officer ought to have verified the records and mentioned the numbers properly. The same does not appear to have been done.

The presiding officer prior to handing over the ballot papers to the panchayat returning officer ought to have maintained proper records with regard to the number of ballot papers used, signed by him and the number of the ballot papers which were unused, not signed by him prior to returning the same to the panchayat returning officer.

Form 18 appears to have been filled up by the presiding officer in a very perfunctory manner without mentioning the proper figures. There is no mention about the snatching of ballot papers in the Form 18. There is also nothing on record to suggest that a formal complaint was lodged before the police after it had come to the knowledge of the respondent authorities that the ballot papers have gone missing.

It further appears that the result of the elections was declared on July 11, 2023. By this time steps have been taken for constitution of the board and handing over of charge. At this stage, the Court is not inclined to pass any order either for recounting or for re-poll.

In the event the petitioner seeks countermanding of the election, then it will be open for her to approach the competent forum with an election petition for redressal of her grievance.

The State Election Commission is directed to take necessary action against the presiding officer for the lapses on his part in maintaining proper records in his diary.

The respondent authorities are directed to preserve the CCTV footage/video footage and the ballot papers of the said constituency and produce the same as and when directed.

The ballot papers which are presently in the custody of the Court are returned to the learned advocate for the petitioner for submission of the same before the concerned police station.

The police is directed to seize the ballot papers after issuance of a proper seizure list and to inquire as to how the ballot papers went missing. It will be open for the police to take all necessary steps in the matter in accordance with law.

WPA No.1531 of 2023 stands disposed of.

Certified copy of this order, if applied for, shall be made available to the parties.

[Amrita Sinha, J]

