

AD-07
Ct No.01
Jalpaiguri
01.02.2023
TN

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

CO 123 of 2022

Smt. Jayanti Paul
Vs.

West Bengal State Election Commission and others

Mr. Kamalesh Jha,
Mr. Debasish Mukhopadhyay,
Mr. Bhaskar Roy Mahasoy,
Mr. Anirban Banerjee,
Ms. Sriya Basu

...for the petitioner

Mr. Bikramaditya Ghosh

....for the State Election Commission

Mr. Subir Kumar Saha

....for the State

Mr. Saikat Chatterjee,
Mr. Momenur Rahman,
Mr. Pretom Das

....for the opposite party no.11

Learned counsel for the petitioner contends that the petitioner has taken out a challenge under Section 75 of the West Bengal Municipal Election Act, 1994 (for short “the 1994 Act”) before the concerned District Judge, that is, the District Judge at Jalpaiguri. In connection with the said proceeding, the petitioner made interim applications, *inter alia*, seeking for

production of the CCTV footage of the day of election in the relevant booth and to seek an inspection of the relevant materials for the purpose of pointing out the discrepancies therein.

Learned counsel places reliance on a copy of the relevant Form 16C application, which indicates that the total number of electors assigned to the polling station were 604, whereas the total number of voters as entered in the Register for voters were 477. The number of voters deciding not to record votes under rule 39N was recorded to be 7. However, the total number of votes recorded as per voting machine was indicated as 484. It is argued that there is patent discrepancy in such recording and, as such, in order to discharge the burden of proof on the petitioner to establish irregularities, the petitioner is required to have an inspection and the CCTV footage is required to be maintained and preserved properly.

Learned counsel appearing for the Election Commission submits that the impugned order was passed by the District Judge on April 25, 2022. The petitioner waited for several months before preferring the instant application under Article 227 of the Constitution of India in the month of September, 2022 only.

That apart, it is contended that CCTV footage cannot be preserved inordinately and, as such, it cannot be ascertained as to what is the exact condition of the CCTV footage at present. Moreover, learned counsel

argues that an enquiry under Section 75 of the 1994 Act is limited in scope and one of the private parties cannot dispute the mechanism by which the enquiry may be conducted, unlike a regular civil suit.

Heard learned counsel for the parties.

It is clear from the impugned order itself that the District Judge, Jalpaiguri observed that it is the mandate of the 1994 Act and the Rules framed thereunder that the voting machines and all other election papers shall be preserved in terms of the provisions made in the relevant Rules. The opposite party nos.1 and 3 in the said proceeding were also directed by the District Judge to keep in safe custody the voting machines and other election papers in connection with the concerned election of Ward No.1 of Jalpaiguri municipality held on February 27, 2022 in terms of Section 88(2)(h) of the West Bengal Municipal Act, 1995.

Hence, sufficient directions have already been issued by the District Judge for preservation of the relevant machines and documents.

Inasmuch as the petitioner's prayer for having an inspection of the relevant materials and documents is concerned, it is entirely within the domain of the District Judge, Jalpaiguri, upon being satisfied with the *prima facie* case made out by the petitioner, to decide the approach to be adopted for concluding the enquiry. A direction of inspection of the relevant materials by the

petitioner at this juncture would tantamount to fishing out of evidence at a premature stage.

Moreover, the alleged discrepancy in the mathematical calculation on Form 16C, a purported copy of which has been relied on in this court by the petitioner, cannot be looked into for the first time by this court sitting in its supervisory jurisdiction under Article 227 of the Constitution. In the event the petitioner seeks to rely on the same, the same has to be incorporated in the records of the challenge before the District Judge in proper manner and in accordance with law. As such, there is no scope of interference with the impugned order.

Accordingly, CO 123 of 2022 is dismissed on contest without any order as to costs.

However, it is made clear that the material allegations made by the petitioner herein are deemed to stand controverted since no affidavits have been invited and further that this court has not entered into the merits of the allegations and counter-allegations made before the learned District Judge in any manner whatsoever. It will be open to the District Judge to decide the proceeding pending before it independently and in accordance with law without being influenced by any of the observations made herein.

In view of the nature of the allegations made, it is expected that the District Judge shall decide the dispute

as expeditiously as possible, preferably within four months from the date of communication of this order to the District Judge.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)