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27.03.2024
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 19606 of 2023

**Sk. Kursi Alam & Ors.
-versus
The State of West Bengal & Ors.**

**Mr. Samim Ahammed,
Mr. Arka Maiti,
Ms. Gulsanwara Pervin,
Mr. Arka Ranjan Bhattacharya,
Ms. Saloni Bhattacharjee.
...For the Petitioners.**

**Mr. Lalit Mohan Mahata, AGP
Ms. Indumouli Banerjee.
...For the State.**

**Ms. Sonal Sinha,
Ms. Shabnam Farooqui.
...For the State
Election Commission.**

The matter relates to the Panchayat General Elections, 2023.

The petitioners allege that certain ballot papers were recovered outside the counting center at Muradi SRBP High School where the counting of all the three tiers of the election took place.

The ballot papers were, thereafter, submitted in the custody of the Block Development Officer and the Panchayat Returning Officer.

The petitioners seek for reelection along with investigation.

The report of the Deputy Secretary, West Bengal State Election Commission signed on 15th February, 2024 admits that the representatives of the political parties handed over the ballot papers and envelopes along with declaration that the ballot papers and the envelopes were found at the time of cleaning of the DCRC and the counting venue and the said ballots and the envelopes were kept in sealed cover in the custody of the Block Development Officer and the Panchayat Returning Officer. A report also forwarded to the Sub-Divisional Officer, Raghunathpur and to the Officer-in-Charge, Santuri Police Station on 13th July, 2023.

Despite noticing that the ballot papers were found elsewhere than the ballot boxes, the Commission observes that pre-poll and post-poll ballot papers were kept in the strong room under round the clock police security and CCTV surveillance.

The report of the Commission mentions that during the entire process of counting, no incident of violence or complaint regarding manipulation or rigging of poll or counting process was received or reported either on the day of election or day of counting.

The Commission has observed that after declaration of the result and after handing over the winning certificate, the ballot papers were sealed and kept under tight security and surveillance. The ballot papers cannot be opened at this stage by the Commission to verify the authenticity of the ballot papers.

The statements made in the report and the observation therein are contrary to each other. On one

hand the Commission admits that ballot papers were found outside the counting venue and on the other it mentions that the ballot papers are kept in the strong room under police security and CCTV surveillance.

Had proper surveillance and police security been maintained, then the ballot papers could not have been found outside the counting center or the polling booth. The moment the ballot papers were found outside the ballot boxes, the Commission ought to have enquired into the same irrespective of the fact whether any complaint was formally lodged by any candidate or any political party.

There is no mention in the report as to whether Sub-Divisional Officer of the Officer-in-Charge of the police station took any step on receipt of the ballot papers which were found outside the ballot boxes. The police ought to have taken immediate steps on receiving the complaint.

The genuinity of the ballot papers which were found outside, is also required to be enquired, otherwise, the sanctity and purity of the election process cannot be maintained.

The petitioners raise a genuine demand for cancellation of the entire election process.

The Court is of the opinion that the Election Commission ought to investigate and enquire as to how the ballot papers could be found outside the ballot boxes. A thorough investigation ought to be conducted to arrive at a conclusive finding with regard to the genuinity of the ballot papers found outside the ballot boxes.

If it ultimately transpires that the ballot papers are genuine ones, then a decision shall be taken by the Commission whether to countermand the election in question and to conduct fresh election to uphold the purity of the election process.

The Election Commission is directed to afford a reasonable opportunity of hearing to all the necessary parties prior to taking a conclusive decision in the matter.

A decision shall be taken at the earliest, but positively within a period of five months from the date of communication of this order.

If after investigation and enquiry the allegations of the petitioners are found to be incorrect, then the enquiry report shall be forwarded to the petitioners so that they can take further steps in the matter, if advised.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)