

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE**

14 23.4.2024

Ct-01

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**MAT 141 of 2023
with
IA No. CAN 1 of 2023**

**West Bengal State Election Commission
Vs.
Rina Begam & Ors.**

Mr. Amales Ray
Mr. Deborshi Dhara
Mr. Nigam Mittal
Ms. Oshmita Mukherjee
... For the Appellant

Mr. Kunaljit Bhattacharjee
Mr. Haider Ali
Mr. Satyam Sarkar
Mr. Alok Sah
... For the Respondents

1. Mr. Amales Ray, learned advocate appearing on behalf of the appellant, has submitted that the issue raised in this appeal has been decided by a coordinate bench in MAT 136 of 2023 with CAN 1 of 2023 (West Bengal State Election Commission Vs. Serajul Islam & Ors.) on 5th December, 2023 and in view thereof, the impugned order is required to be set aside.
2. In Serajul Islam & Ors.(supra), the learned Single Judge directed video recording of the places, namely, polling booths, strong rooms and counting centres, although it was objected on behalf of the State on the ground of availability of alternative remedy under the West Bengal

Panchayat Election Act. It appears that in *Serajul Islam & Ors.(supra)* similar order was passed by the learned Single Judge and in appeal the principal ground taken was that having regard to the nature of the dispute and the issues raised in the writ petition, the proper recourse would be to challenge the election process under Section 93 of the Act of 2003 as it is an election dispute under Section 79 of the said Act. The coordinate bench agreed with the submissions made on behalf of the appellant and observed as follows:-

“21. Ratio of a judgment cannot be read like an Euclidean axiom or the words of a statute. It is to be read in the light of its factual matrix and not in a vacuum. In the present case the unsuccessful candidate i.e. the writ petitioner had raised disputes relating to illegalities in the election process after the result was published. Nature of his grievances squarely fall within the grounds of challenge envisaged under Section 93 of the Act of 2003 and is an election dispute under Section 79 of the said Act. Its adjudication would involve appreciation of oral, documentary and electronic evidence and cannot be equated with an ex-facie inaction in allotting symbol to a political party which had already been allotted the said symbol in the erstwhile State. On the contrary, efficacious adjudication of the disputes raised in the present case involve questions of fact and would require

appreciation of evidence tested on the anvil of cross-examination.

22. These factors persuade us to hold the decision of the learned Single Judge to entertain the writ petition seeking repoll notwithstanding the constitutional bar under Article 243-O of the Constitution of India and Section 80 of the Act of 2003 was clearly unwarranted.

23. As noted earlier other reliefs are merely consequential and in aid of the principal relief which partakes the character of an election dispute.”

3. On a reading of the impugned order and the order passed by the coordinate bench on 5th December, 2023, it appears that the issues raised in Serajul Islam & Ors.(supra) are identical to the issues raised in this appeal.
4. Mr. Kunaljit Bhattacharjee, learned advocate representing the respondents, has fairly submitted that the issues have been decided by the coordinate bench whereby the impugned order was set aside. In view of identical issues involved in this appeal and the fact that these issues have already been decided by the coordinate bench on 5th December, 2023, we allow this appeal.
5. MAT 141 of 2023 is accordingly disposed of.
6. The impugned order is set aside.

7. In view of disposal of the appeal, CAN 1 of 2023
is also disposed of.

(Soumen Sen, J.)

(Partha Sarathi Sen, J.)