

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 16670 of 2023

Tijendranath Mahato

Vs.

The West Bengal State Election Commission & Ors.

For the writ petitioner	:-	Mr. Koustav Bagchi, Adv. Mr. Debayan Ghosh, Adv. Ms. Priti Kar, Adv.
For the State Election Commission	:-	Ms. Sonal Sinha, Adv. Mr. Tarun Kumar Chatterjee, Adv. Mr. Sujit Gupta, Adv. Mr. Sayan Datta, Adv. Mr. Soumen Chatterjee, Adv.
For the respondent no. 4	:-	Mr. Amal Kumar Sen, Ld. AGP. Ms. Sohina Sumi, Adv.
For the respondent no. 6	:-	Mr. Kishore Dutta, Sr. Adv. Mr. Suman Sengupta, Adv.
Hearing concluded on	:-	13.09.2023
Judgment on	:-	11.10.2023

Amrita Sinha, J.:-

The petitioner contested the Panchayat General Elections, 2023 for a Panchayat Samity seat. He claims that after counting of votes was over on 11th July, 2023 he was declared the winner and he won by six votes. The petitioner claims to be intimated that the winning certificate would be issued to him within a short period of time.

In the early morning of 12th July, 2023 the petitioner came to learn that the votes were recounted and he was declared loser. The petitioner submits that after declaration of result there is no scope for recounting and the ballot papers ought not to have been recounted. The counting officer in respect of the Panchayat Samity votes had left after the initial declaration of result and the Block Development Officer took the sole initiative to recount the votes. The

recounting was made in the interest of the candidate supported by the ruling dispensation.

Petitioner alleges manipulation of the election result at the behest of the Block Development Officer who acted as the Panchayat Returning Officer in connivance with the ruling dispensation. A complaint was immediately lodged by the petitioner. The silence on the part of the respondent authority to redress the grievance of the petitioner has prompted him to approach the Court by filing the instant writ petition.

The petitioner relies upon the various provisions of the West Bengal Panchayat Elections Rules, 2006 and the circulars/guidelines issued by the State Election Commission in relation to counting and recounting from time to time.

Prayer has been made for conducting an enquiry into the malpractice at the end of the respondent authorities with a further prayer not to give any effect to the result declared in respect of the disputed seat in the Panchayat Samity.

The State Election Commission submits that at the time of initial counting the representatives of all the political parties were present. After counting was over, the petitioner was declared the winner. Though the result was declared after initial counting, certificate was yet to be issued in favour of the returned candidate.

It was thereafter that prayer for recounting was made by the private respondent. By the time the prayer was made, counting for the next tier i.e. the Zilla Parishad started. The private respondent clearly mentioned in his prayer for recounting that he was illegally declared as loser by six votes. The Panchayat Returning Officer took the decision of recounting.

As the counting process of the Zilla Parishad was midway, accordingly, the BDO had to wait till the counting of votes of Zilla Parishad was over. After completion of counting of votes of the Zilla Parishad, the BDO in the presence of the representative of the private respondent initiated recounting of the votes of the Panchayat Samity. Recounting was made under the supervision of the BDO and the Executive Engineer, P.H.E (mechanical) the counting observer and the counting agents of the private respondent who was the candidate supported by the ruling dispensation.

It has been submitted that the counting agents of the other political parties refused to remain present at the time of recounting despite intimation given to them.

At the time of recounting it was noticed that apart from the initial 127 ballot papers which were rejected, an additional number of 192 ballot papers were rejected on account of non-signature of the Presiding Officer.

Because of rejection of additional ballot papers during recounting, the relative position between the contesting candidates changed and it was found that the candidate representing the ruling dispensation won by 105 votes.

The Assistant Panchayat Returning Officer being the hall in-charge where counting of votes was going on has filed a report wherefrom it appears that he was not present at the time of recounting of votes and he was aware of the fact that the petitioner was declared winner by six votes.

Learned advocate representing the respondent no.6 being the candidate subsequently declared as winner submits that the request for recounting was made in proper time and as it was ultimately found that the allegation of the private respondent is correct, accordingly, the result of recounting ought not to be interfered with by the Court.

The respondents contend that the counting guidelines were duly followed at the time of recounting. The respondents pray for dismissal of the writ petition.

I have heard and considered the rival submissions made on behalf of all the parties.

The election in question was a three tier election.

According to the counting sequence prescribed in the counting guidelines, counting is to be taken up tier wise. Counting of one tier shall have to be completed before counting of next tier is taken up. The sequence mentions that counting in respect of the Gram Panchayat shall be taken up first, thereafter the Panchayat Samity and lastly the Zilla Parishad.

Guidelines lay down that a ballot paper shall be rejected if it does not bear the mark and signature of the Presiding Officer. Before rejecting any ballot paper, the counting officer shall allow the candidate or his election agent and counting agent present, reasonable opportunity to inspect the same.

It also lays down that recounting cannot be demanded by a candidate merely because he has been defeated. Specific reason and also the particular round or rounds or particular polling station or part thereof is to be specified for demanding recounting. Recounting may be demanded at the time of preparation of the counting sheet and no demand can be made after the result sheet is completed and signed by the counting officer or the Returning Officer.

According to the guidelines for a Panchayat Samity constituency, the counting officer shall count all the valid votes in the ballot box and record the total number thereof in counting sheets in Form 20 and announce the same. Apart from declaration by the counting officer at the table when the counting sheet is completed, the Assistant Returning Officer in charge of the hall may declare the position after each round of counting on the basis of the result

sheet completed and signed. The Returning Officer may also announce the name of the winning candidate and other particulars from time to time.

It appears from the submissions made on behalf of both the parties that after counting of votes of the Panchayat Samity, result was announced and the petitioner was declared as winner. After declaration of such result and after the counting process of the Panchayat Samity stood completed, counting of votes for the next tier, ie; Zilla Parishad started. It is thereafter that the losing candidate, the private respondent herein, demanded recounting. The moment counting for the next tier started it implies that the counting process of the Panchayat Samity stood closed and concluded. It appears that even though the prayer for recounting was made at a later stage, not at proper time, the Panchayat Returning Officer, in the absence of the Assistant Panchayat Returning Officer being the hall in-charge, took the decision for recounting.

It is very strange to note that in the recounting process as many as 192 additional ballot papers stood rejected though at the time of initial counting 127 ballot papers were already rejected. The additional ballot papers stood rejected in the absence of the counting agent of the candidate who was declared winner after the initial process of counting was over. The petitioner who won by six votes was later declared loser by 105 votes. The same implies that a good number of votes which were initially found to have been polled in favour of the petitioner later stood rejected.

The Court fails to understand as to how as many as 192 ballot papers were counted as valid votes at the time of initial counting even though the said ballot papers allegedly did not bear the distinguishing seal and signature of the presiding officer. Had the counting been fair at the very first stage, the result of recounting would not have made any difference. It appears that only after final declaration of result, the prayer for recounting was made.

According to Rule 91 (1) of the West Bengal Panchayat Elections Rules, 2006, after completion of counting the Presiding Officer shall record in the counting sheet the total number of votes polled in favour of each candidate and announce the same. According to Rule 91 (2) after such announcement has been made, the Presiding Officer shall give a little pause when a candidate or his agent may apply in writing for recount of votes either wholly or in part stating the grounds on which he demands such recount. According to Rule 91 (3) if there is no demand for recount during the aforesaid pause, the Presiding Officer shall sign the completed counting sheets and no demand for recount shall be entertained thereafter.

In the instant case, prayer for recounting appears to have been made after the final result was declared and petitioner was held as the winner. It does not appear that the prayer for recounting was made in proper time, during the pause, and as such, it was improper for the Panchayat Returning Officer to accept such prayer which was filed at a belated stage.

As per the counting guidelines, before rejecting any ballot paper, the counting officer shall allow the candidate or his election agent and counting agent present, reasonable opportunity to inspect the same. In the present case, neither the candidate nor his agent was present at the time of recounting. The candidate and his agent possibly left the counting centre after learning that he was declared the winner. Without affording any opportunity to the winning candidate to inspect the ballot papers, as many as 192 votes ought not to have been rejected. Recounting the votes in the absence of the winning candidate, amounts to violation of the principles of natural justice embedded in the guidelines. Manipulation of result, as alleged by the candidate, cannot be ruled out. Transparency and fairness in the process of counting/recounting ought not to be compromised in any manner whatsoever.

If the contention of the respondent authorities has to be accepted, then there cannot be finality of result declared after counting is over. A losing candidate can raise issue anytime. The Returning Officer ought to have acted strictly in accordance with the prescribed rules. The said officer failed to appreciate the very purpose of the 'pause' before declaration of result. If prayer for recounting is not made during the pause, then law bars acceptance of such prayer and the result that has been declared has to be taken as final. Issuance of election certificate may take a bit of time, but that does not mean that the result of the election, after declaration, may be reopened again to the prejudice of the elected candidate and especially in his absence.

On account of recounting there has been a massive shift in the number of rejected votes. The Court is not in a position to ascertain as to whether the result of the initial counting was proper or the result of the recounting. The mandate of the electors is reflected through the votes polled by them. It is the duty of the counting officers to count the polled votes properly. Valid votes ought not to be rejected and the invalid ones ought not to be counted. The votes polled cannot be counted over and over again. There has to be an end; a finality has to be reached.

The Court is not convinced with the manner in which the recounting took place. There is absolutely no sanctity in the process of recounting. The same does not appear to have been conducted in accordance with the prescribed law. Neither the counting sequence nor the prayer for recounting was in conformity with the statute. The petitioner strenuously contends that the BDO, on his own initiative, took up the decision to recount. The conduct of the BDO does not appear to be fair, rather it appears that the said officer instead of acting in an unbiased manner, took up the cudgel to bat in favour of the candidate supported by the ruling dispensation.

The Court is conscious of the fact that the result of the election was declared on 11th July, 2023 and Board of the panchayat has been constituted by now and the effect of this judgment will result a change in the body of the panchayat. Despite noticing the above, the Court is constrained to interfere in the present case because non-interference will be perpetrating gross injustice to not only the concerned candidate i.e. the petitioner, but also to the electors who cast their votes for the said candidate.

The Hon'ble Supreme Court in the matter of ***Election Commission of India vs. Ashok Kumar & Ors.*** reported in **(2000) 8 SCC 216** held that the validity of the election must fall so as to be a ground available for avoiding an election and depriving the successful candidate of his victory at the polls. The result of the election insofar as it concerns a returned candidate shall be set aside for any non-compliance of the statutory provision subject to such non-compliance also satisfying the requirement of the result of the election having been shown to have been materially affected insofar as a returned candidate is concerned. The action of the Election Commission is open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

The very concept of democracy in electing a candidate through a free and fair election process appears to have been blown to the wind. If the same is allowed to continue then democracy will be at stake. The faith of the electors on the system will start weaning giving rise to corruption and breakdown of the democratic process. There can be no alternative to a free, fair and transparent election process, starting from the first to the last step. For the sole purpose of upholding the laws relating to elections, the result of recounting ought not to be given effect to. The result of initial counting ought to be treated as final declaration of result.

In view of the above, the recounting cannot be treated as a valid one and the result of recounting cannot be given effect to. The Commission is directed to treat the result of initial counting as valid and immediately issue the election certificate in favour of the petitioner by treating him as the returned candidate.

The writ petition stand disposed of.

No costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)