

(2024) 10 CAL CK 0026
In the Calcutta High Court
Case No : MAT 240 Of 2024

Ismail Mondal & Ors

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 03-10-2024

Acts Referred:

West Bengal Panchayat Act, 1973 — Section 73

Citation : (2024) 10 CAL CK 0026

Hon'ble Judges : Joymalya Bagchi, J;Gaurang Kanth, J

Bench : Division Bench

Advocate : Uday Sankar Chattopadhyay, Rajashree Tah, Trisha Rakshit, Aishwarya Datta, Bidisha Chakraborty, Mahammed Reajul, Lalit Mohan Mahata, Gagabandhu Roy, Sonali Sinha, Shabnam Farooqui

Final Decision : Dismissed

Judgement

Joymalya Bagchi, J

1. Appellants had contested the Gram Panchayat Election held in 2023 for various Sansads in Beraberi Gram Panchayat. It is pleaded in the writ petition during counting process held on 11th July, 2023, scuffling occurred at various tables. As a result, representatives of the appellants and other candidates left the spot. This had polluted the democratic process and infringed the fundamental right of the appellants to free and fair election. Accordingly, appellants prayed for cancellation of the election to Sansad No.IX-11, corresponding to Booth No.61 and Serial No.11, Sansad No.VIII-10, corresponding to Booth No.62 and Serial No.10, Sansad No.XIV-16, corresponding to No.56 and Serial No.16, and Sansad No.XIII-15, corresponding to Booth No.57 and Serial No.15 of Beraberi Gram Panchayat

2. Mr. Chatterjee for appellants contend videography produced before the Hon'ble Single Judge clearly depicts unruly behaviour which compelled the representatives of the appellants to desert the counting hall. Counting proceeded

behind their back. Accordingly, he prays for fresh election.

3. Learned Advocates for Election Commissioner and State submit appellants ought to have availed the alternative remedy and filed an election petition under Section 79 of the West Bengal Panchayat Act before the competent Civil Court.

4. We have considered the rival versions of the parties. Free and fair election is a basic structure of the Constitution. It is incumbent upon respondent-State Election Commission to see there is a level playing field for all candidates and free and fair election is thereby ensured. Materials on record show scuffling and violence during counting. It is contended videograph produced before the Hon'ble Single Judge demonstrates representatives of some of the candidates left the counting hall. Whether these unsavory incidents had impacted the counting and interfered with the election process are disputed questions of fact which require to be tried on evidence. Appellants did not invoke the more efficacious alternative remedy and challenge the election process through an election petition before the competent Civil Court.

5. Under such circumstances, we do not find any error in the impugned order wherein the Hon'ble Single Judge was not convinced that an egregious case of the highest order is made out where the writ Court may interdict the election process and direct re-election.

6. Accordingly, we are not inclined to interfere with the impugned order.

7. Accordingly, appeal is dismissed.

8. Consequently, connected application is also dismissed.

9. There shall be no order as to costs.

10. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.