

SL 10
21.06.2023
d.p.

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

W.P.A 14723 of 2023

**Kashmira Begam Khan and Anr.
-versus
Secretary, West Bengal Election
Commission and Ors.**

**Mr. Sabyasachi Chatterjee
Mr. Omar Faruk Gazi
Mr. Subhajit Saha
Mr. Sandipan Das
Mr. Ankur Sharma
Mr. Sayan Banerjee
Mr. Badrul Karim
Mr. Dipankar Das
...For the Petitioners.**

**Mr. Shamim Ul Bari
...For the State.**

**Ms. Sonal Sinha
Mr. Sujit Gupta
Mr. Sayan Datta
Mr. Soumen Chatterjee
...For the State Election Commission.**

In the present writ petition the petitioners have raised very serious allegations against the Panchayat Returning Officer, who was responsible for accepting the nomination papers from the candidates interested to contest in the Panchayat General Election, 2023.

Specific allegation of the petitioners is that the concerned officer has tampered with the documents filed by the petitioners at the time of submitting the nomination papers.

It has been submitted that both the petitioners are members of the OBC 'A' Category and both the petitioners have certificates issued by the Sub-Divisional Officer, Uluberia.

The petitioner no. 2 submits that the acknowledgement slip for obtaining the OBC 'A' Certificate was submitted before the Returning Officer. The same is mentioned in the check list handed over to the petitioner after filing the nomination papers. Later on at the time of scrutiny, it transpired that in place of the expression OBC 'A' Category it was mentioned SC (W) (Pending).

Learned advocate appearing for the petitioners submit that the receipt of the checklist which was handed over to the petitioners contain a different noting. The noting in the check list given to the petitioners upon acceptance of the document filed at the time of submission of the nomination papers and the records maintained by the Returning Officer does not match with each other.

In respect of the petitioner No.1, tick mark in the check list in the column for disclosing the caste certificate was struck off by a gel pen.

Learned advocate appearing for the petitioners submit that he was present at the time when the nomination papers were scrutinized by the Returning Officer pursuant to the order passed by this Court.

Scrutiny which took place from 9:45 P.M. to 11 P.M. approximately on 20th June, 2023 in the BDO's Office, Uluberia I Block has been videographed.

It has been submitted by the learned advocate appearing for the petitioners that similar incidents have taken place on a number of occasions and an enquiry by an independent authority is called for.

Learned advocate appearing for the State Election Commission submits that the allegation of the petitioners is required to be enquired and without an enquiry it will not be possible for the Commission to take a decision in the matter.

Learned advocate representing the State respondents opposes the prayer for investigation.

As it appears that the allegation of tampering has been brought against an officer who is responsible for conducting the election in a free and fair manner, accordingly, the said allegation is required to be enquired into by a competent independent authority.

The Joint Director of the CBI has been impleaded as respondent No.12 in the instant writ petition.

The Court directs the aforesaid respondent to conduct an enquiry to ascertain the allegations of the petitioners.

Submission has been made by the learned advocates appearing for the State Election Commission and the State respondents that the investigation ought to be conducted by the State authority and not by the CBI.

The aforesaid submission of the respondent authorities cannot be accepted.

As the officer against whom the allegation is made is acting according to the directives of the State respondents and is also responsible for conducting the election in a free and fair manner, it may not be possible for the State agency to act in an independent way.

For the purpose of maintaining independency and transparency in the process of investigation, the Court thinks it fit to direct the CBI to conduct the investigation and file a report before this Court.

The Panchayat Returning Officer, who videographed the entire incident is directed to properly maintain and preserve the footage and the instruments, equipments in which such footage was recorded and all the footage with the recording instruments and equipments from the date and time when the nominations were filed by the petitioners till the time the same was re-scrutinized upon direction passed by the Court shall be handed over the respondent No.12 as and when sought for.

Let the investigation be conducted at the earliest but positively by 5th July, 2023.

A report be placed before this Court on 7th July, 2023.

Let the matter appear on 7th July, 2023.

(Amrita Sinha, J.)