

**(1983) 08 CAL CK 0019**

**Calcutta High Court**

**Case No:** C.O. No. 6246 (W) of 1983

Abdul Mannan

APPELLANT

Vs

Returning Officer and Others

RESPONDENT

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**Date of Decision:** Aug. 25, 1983

**Citation:** 88 CWN 138

**Hon'ble Judges:** B.C. Ray, J

**Bench:** Single Bench

**Advocate:** R.N. Mitta and B.P. Ghose, for the Appellant; A.K. Basu Choudhury for the Respondents Nos. 1 to 4 and 7. and Jahar Lal De for the Respondents Nos. 5 and 6., for the Respondent

**Final Decision:** Allowed

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### **Judgement**

B.C. Ray, J.

This application is at the instance of petitioner, Abdul Mannan, assailing the validity of the order recalling the declaration of the result of the election under rule 65 by filing the declaration form and also issuing a certificate of election to him stating that he has been duly elected as a member of Joshpur VII Gram Panchayat and praying for appropriate writs commanding the respondents not to give any effect or further effect to the order cancelling the, said declaration of results of the election and declaring respondent no. 5 Ali Sheikh Jahar as elected in his place and stead. There is also a prayer for interim order restraining the respondents from giving any effect or further effect to the impugned memo, dated 3.6.83 annexed as annexure B to the petition. On 29.6.83 after hearing the learned Advocate for the petitioner this Court directed the petitioner to serve copies of the application on all the respondents and an interim order was made restraining the respondents from giving effect to the order annexed as annexure B to the petition in the meantime. Thereafter this matter appeared on 9.8.83 when Mr. S.K. Acharya, Advocate General appeared on behalf of the State respondents and Mr. Jahar Lal De appeared for the private respondents. After hearing the learned Advocate for the petitioner as well as

the learned Advocates for the respondents this Court passed a further interim order restraining the respondents i.e. the elected members from holding the first meeting of the Gram Panchayat which was convened on 10.8.83. It was also directed that the respondent no. 7, the Presiding Officer, will produce before this Court all the ballot papers and also the written order made on the application for recounting at the time of hearing of this application and the application was directed to appear on 23.8.83. After this order was made, it was submitted before this Court by Mr. Rabindra Nath Mitra, learned Advocate appearing on behalf of the petitioner, that an appeal was preferred by the State of West Bengal before the Appeal Bench of this Court against the interim order as mentioned hereinbefore made by this Court. I am constrained to say in this connection and which I think it is the duty of this Court to point out that the interim order that was made on 9.8.83 was made in the presence of the learned Advocate for the State as well as for the other private respondents and practically on concession by all the learned Advocates. However, be that as it may, in that appeal, it has been stated by Mr. Mitra, learned Advocate for the petitioner, that a direction has been given that the application be heard as early as possible not later than Wednesday next i.e. 31.8.83 which is of course a holiday. When this was mentioned this Court in order to do justice in spite of several part heard matters fixed the hearing of this matter today leaving aside the part-heard matters.

2. The only submission that has been pleaded in the writ application is that the election of this Gram Panchayat in question was held on 31.5.83 and the counting of votes was completed on 1.6.83 and immediately after the counting was completed the Presiding Officer (respondent no. 7) Shri Abani Kumar Chandra not only filled in the counting sheets in form no. 19, 19A, 20 and 20A but also declared the results finally by filling up the form no. 22 in accordance with the provision of rule 65 of the Panchayat Rules. It has been further stated in the writ petition that a certificate has been handed over to the petitioner after such declaration and this certificate has been annexed as annexure A to the petition. It is pertinent to mention in this connection that it has also been specifically pleaded in paragraph 7 of the petition that in the said counting Abdus Sattar secured 307 votes and the petitioner secured 301 votes and were placed in the first and second position respectively whereas Ali-Sheikh Jahar (respondent No. 5) secured 299 votes and was placed in the third position. It has been also stated that after the declaration of the result of the Gram Panchayat and while the counting of votes of Panchayat Samity was going on the respondent no. 6 who is the Chairman of Dubrajpur Panchayat Samity appeared at Rampur Polling Station at about 2.30 P.M. on June 1, 1983 and demanded recount of votes of Gram Panchayat. The Presiding Officer did not agree to the said proposal and informed respondent no. 6 that the result has already been finally declared and as such the same cannot reopened. Thereafter it has been alleged that the Presiding Officer and other staff were kept confined at the Block Officer at Dubrajpur till June 3, 1983 and the Presiding Officer was compelled to sign certain documents

prepared by respondent no. 6. It has also been pleaded that due to all this pressure the Presiding Officer was compelled to sign the documents prepared by respondent no. 6. The petitioner was served with a memo no. 1956-58 dated June 3, 1983 and Memo No. 1959-61 dated June 3, 1983 by the Returning Officer and Block Development Officer, Dubrajpur, Birbhum, wherein it has been stated that the result declared in favour of Abdul Mannan be treated as cancelled and Ali Sheikh Jahar who is respondent no. 5 is the elected candidate from Joshpur VII Gram Panchayat Constituency. It is this memo which has been annexed as annexure B to the writ petition has been challenged in this writ petition on the ground inter alia that after the final declaration of the result and filling up of form no. 22 and also the issuance of certificate to the petitioner that he has been duly declared elected as a member of the Gram Panchayat from the aforesaid Constituency the Presiding Officer loses his jurisdiction or in other words he has got no power under the provision of rules 64 and 65 of the Panchayat Election Rules 1974 to make an order for recounting if such an application is made and to recount the votes as has been stated in the aforesaid memo (annexure B to the writ petition). It has therefore been submitted that this order contained in the said memo, is liable to be cancelled and set aside and appropriate direction should be made to the authorities concerned not to give effect to the said memo and also to the subsequent statement of the Presiding Officer that the respondent no. 5 has been elected from the said Gram Panchayat instead of the petitioner as has been declared by issuing the certificate of election to the petitioner.

3. It appears that Mr. Amal Kumar Basu Choudhury has entered appearance on behalf of the State respondents nos. 1 to 4 and 7. Though Mr. Basu Choudhury has not filed the power yet he states before this Court that he will file the power in course of this week. Mr. Jahar Lal De has appeared for the private-respondents nos. 5 and 6 by filing power. In view of the elaborate arguments advanced on merits both on behalf of the petitioner as well as on behalf of the State respondents and also the private respondents nos. 6 and 7 fair play and justice and also equity demand that this application should be heard finally and disposed of. Of course it has been submitted on behalf of the private respondents nos. 5 and 6 that some allegations have been made in the writ application for which he requires some time to file an affidavit. I make it clear that the question or the vital issue that falls for consideration and/or decision by this Court in the writ application does not require the consideration of the allegations of facts contained in the petition. Therefore, I am constrained to hold that for the ends of justice the prayer made on behalf of the respondents nos. 5 and 6 cannot be allowed because of the well-known principle that unusual delay in disposal tantamounts to denial of justice and more so because as I have stated hereinbefore no injustice will be caused as I have stated clearly that to decide the pivotal question raised in this application does not, in my opinion, require any investigation of any facts besides the facts that have appeared from the relevant records produced before this Court on behalf of the Presiding Officer, the

respondent no. 7, by the learned Advocate for the State respondents, Mr. Amal Kumar Basu Chowdhury. Therefore, I proceed to dispose of the entire matter for the ends of justice.

4. Mr. Mitra, learned Advocate on behalf of the petitioner has submitted that the impugned order, mentioned in Annexure "B" to this petition, made by the Presiding Officer, the respondent No. 7, is in utter contravention of the provisions of Rule 64 read with Rule 65 of the Panchayat Election Rules, 1974 inasmuch as after the results have been declared by filing up Form No. 22 and also issuing Certificate of election in Form No. 24 to the petitioner, the Presiding Officer has got no jurisdiction nor any power under the aforesaid Rules to entertain any application for recounting and also to consider the same and to recount the votes and to declare another person, i.e. in this case respondent No. 5 as elected setting aside the earlier declaration made in favour of the petitioner. It has been further submitted by Mr. Mitra in this connection that the application for recounting that is alleged to have been filed by the respondent No. 5 on 1st June, 1983, after the declaration of the Results, was illegally entertained by the respondent No. 5 in utter violation of the provisions of Rule 64 Sub-Rule 4 of the said Rules, even assuming for the argument's sake that such an application for recounting is entertainable, because no reason whatsoever has been recorded by the Presiding Officer while entertaining this application and making an order for recounting. It has, therefore, been submitted that the order that has been made by the Presiding Officer for recounting and also the result that has been declared on its basis, as mentioned in the Memo being Annexure "B", is also arbitrary and illegal being in utter infringement of the mandatory procedures prescribed by Rule 64 read with Rule 65 of the said Rules.

5. Mr. Basu Chowdhury, learned Advocate for the State respondents, has submitted by referring to the report that has been sent by the respondent No. 7, the Presiding Officer on 1st June, 1983, to the Returning Officer that the Presiding Officer in consideration of the prayer of the respondent No. 5, that there is a marginal difference, arranged for recounting and after recounting he found the candidate Ali Saikh Jahar, respondent No. 5 secured more votes than the petitioner and as such he was declared to be the winning candidate in place of Abdul Mannan and it has been stated that he has been submitting a Certificate of election for furnishing the same in favour of Ali Saikh Jahar. It has further been submitted by Mr. Basu Chowdhury in this connection that since an application for recounting has been filed on the same day immediately after the result was declared, the respondent No. 7 has not acted illegally in entertaining the application and in passing the order for recounting and in declaring the respondent No. 5 as duly elected.

6. Mr. De, learned Advocate on behalf of the respondent Nos. 5 and 6, has submitted by referring to the provisions of Sub-Rule 5 of Rule 64 and also Sub-Rule 6 of the said Rule that the Presiding Officer, respondent No. 7 did not act illegally or in contravention of the provisions of these Rules in entertaining the application and

passing an order for recounting and in declaring the respondent No. 5 as elected in place of the petitioner in supersession of the earlier declaration made by him in favour of the petitioner. It has further been submitted that in view of the provisions contained in Sub-Rule 5 of Rule 64, the Presiding Officer has been vested with the power of amending the counting sheets in Form Nos. 19, 19A, 20 and 21A, as the case may be, to the extent as is necessary after such recounting.

7. After hearing the contentions advanced by the learned Advocates for all the parties and on a consideration of the records that has been produced before this Court by Mr. Basu Chowdhury, specially the declaration of results in Form No. 22, the counting sheets in Form 19, 19A, 20 and 21 I am constrained to hold that this application is bound to succeed for the reasons stated hereinbelow. It is the admitted position which is not denied by any of the parties in the present petition that the election of this Panchayat in question was held on 31st May 1983. It is also not denied that the counting took place in the morning of 1st June, 1983 and immediately after the completion of counting of votes, the Presiding Officer, respondent No. 7, filled in the counting sheets in Forms 19, 19A as required under Rule 64, Sub-Rule 1 of the Panchayat Election Rules, 1974. It appears from the said counting sheets in Forms 19, 19A, 20 and 21A, which was in the sealed cover and opened at the direction of this Court, that the said Forms were duly filled in by Sri A.K. Chandra, the Presiding Officer, after the counting was completed on 1st June, 1983, and it appears from the said counting sheets that respondent No. 5 obtained 298 votes and the petitioner obtained 301 votes. It also appears from the declaration of results in Form No. 22 which has been duly filled up and signed by the said Presiding Officer, respondent No. 7, that from Jashpur Gram Panchayat VII constituency Abdus Sattar as well as the petitioner Abdul Mannan were declared as elected in accordance with the provisions of Rule 65 of the said Rules. It is clearly provided in Rule 65 of the said Rules that immediately after signing the declaration of results in Form No. 22, the Presiding Officer has to hang up one copy of such Form in the Polling Station and send the other copy to the Returning Officer concerned who will inform the District Panchayat Election Officer, State Panchayat Election Officer, the State Government, the results in Poll. The State Government shall cause the name of the candidate to be published in the Gazette. This clearly shows that after declaration of the results by filling in Form 22, the Presiding Officer, loses his jurisdiction to entertain any application for recounting and also to consider the same. It will also be clear from the provisions of Sub-rule 6 of Rule 64 which clearly provides that after the announcement of the total number of votes polled by each candidate under Sub-Rule 1 or 5 the Presiding Officer shall complete the signing of the counting sheets in Forms 19, 19A, 20 and 20A, as the case may be, and no application for recounting shall be entertained thereafter. It has been urged on behalf of the respondents nos. 5 and 6 by Mr. De, learned Advocate, by referring to the provisions of Sub-rule 5 of Rule 64 and, more particularly, Clause (b) of Sub-Rule 5 that power has been given to amend the counting sheets in Forms 19,

19A 20 and 20A. That after recounting, if there is any change in the result, the Presiding Officer can amend the counting sheets in Forms 19, 19A, 20 and 20A. But this submission is not a correct submission as the recounting has to be made and the application for such recounting has to be entertained before the final declaration of results by completing the resulting sheets in Form No. 21 and signing the declaration form in Form No. 22 and in issuing the Election Certificate.

8. In this case, as I have stated hereinbefore, that not only the counting was completed and the counting sheets in Forms 19, 19A, 20 and 20A has been filled up and signed by the Presiding Officer on 1st June, 1983, but also the Presiding Officer declared the results and signed the declaration in Form 22, as will appear from Form 22 signed by him and it was kept in the sealed cover produced before this Court. In such circumstances the natural conclusion follows that the application for recounting dated 1st June, 1983 and which has been produced before this Court must have been filed before the Presiding Officer after the results were finally declared in accordance with the provisions of Rules 64 and 65 of the Panchayat Election Rules. Moreover no reasoned order has been made as mandatorily required under the provisions of Sub-Rule 4 of Rule 63 Which gives a mandate that an order has to be made in writing containing the reasons thereof. It is important to mention here that the words "containing the reasons thereof" has been substituted by Notification No. 13225/Panch dated 12th November, 1977. Therefore this substitution has been made not for nothing and the intention of the framers of the Rule is quite clear that a reasoned order has to be made specifically recording the reasons which weighed with the presiding officer and impelled him to make an order of recounting. This has also not been done. Moreover, as I have said already, that after the final declaration of results and the filling up of Form 22, the Presiding Officer became functus officio and he has neither any jurisdiction nor any authority under these rules to entertain any application for recounting and to make any order whatsoever on such application for recounting. Therefore, I am constrained to hold that the order that has been made subsequent to the declaration of the final declaration of results and issue of the certificate of election to the petitioner, who was declared as a successful elected candidate of the Gram Panchayat in question from the aforesaid constituency and also the filling in the Form of declaring results in Form 22, the entertaining of application for recounting and the making of the order for recounting and the passing of the order revising his earlier order declaring the petitioner as duly elected member from the said constituency of the said Gram Panchayat, in question, are wholly illegal, invalid, inoperative, without jurisdiction and void and as such the same cannot be given effect to, it is also pertinent to mention in this connection that a curious thing appears, which also this Court is bound to take notice of. In the alleged declaration of results by filling up Form No. 21, alleged to have been submitted by the respondent no. 7, there is no date mentioned when this Form was filled up by the Presiding Officer, respondent No. 7. Moreover this shows that the respondent no. 5 secured 301 votes and the petitioner

secured 300 votes which is wholly contrary to the results that has been made and entertained in the counting sheets in Form No. 19 which contains elaborate picture of the counting. This clearly shows that the subsequent result in the alleged Form No. 21, does not represent the true state of affairs. However as I have already held that the Presiding Officer, respondent no. 7, after the declaration of the results of the Gram Panchayat in accordance with the provisions of Rule 64 read with Rule 65 of the Panchayat Election Rules, 1974, totally loses jurisdiction to entertain any application for recounting and making any order whatsoever on such application. That being the legal position, as I have said already, whatever action has been taken by the respondent no. 7 subsequent to the final declaration of results in Form No. 22 and also the issuance of the election certificate to the petitioner who has been declared elected in the constituency in question in Form No. 24, the impugned order in Annexure "B" to this petition is wholly without jurisdiction and invalid and also illegal. For the reasons aforesaid this application succeeds and I direct for issuance of a writ of Mandamus commanding the respondents to forbear from giving effect to the impugned Memo. No. 1956-58 dated 3.6.83 issued by the Presiding Officer, respondent No. 7 as mentioned in Annexure "B", as well as the Memo. No. 1959-61 dated 3rd June, 1983 issued by the said respondent no. 7 and also from declaring and/or giving any effect and/or proceeding in any manner whatsoever, on the basis of the purported declaration in favour of respondent no. 5. Let a writ in the nature Of Certiorari be issued commanding the respondents to quash, cancel and set aside the impugned order contained in the aforesaid Memos annexed as Annexure "B" to this petition. There will be no order as to costs.

In the facts and circumstances of the case, I do not find any justification for granting any stay of operation of the order.