

THE HIGH COURT OF TRIPURA

A G A R T A L A

W.P(C) No. 98 of 2015

Petitioners :

1. Sri Balaram Urang,

Son of Late Shri Shib Charan Urang, Village-Indurail, P.O-Indurail, PS-Panisagar, North Tripura.

2. Md. Ashab Ali,

S/o. Late Nachir Ali, resident of West Padmabil, P.O. Padmabil, Jalabazar, P.S-Panisagar, North Tripura.

3. Shri Jitendra Sabdakar,

S/o. Late Mahendra Sabdakar, Village-West Padmabil, PO-Padmbil Nutun Bazar, P.S-Panisagar, North Tripura.

4. Shri Ramesh Chandra Nath,

S/o. Late Rajani Nath, South Padmabil, P.O. Padmabil Jalabazar, P.S-Panisagar, North Tripura.

5. Md. Muchabbir Ali,

S/o. Late Khurshid Ali, Resident of North Padmabil, P.O- Padmabil, Jalabazar, PS-Panisabgar, North Tripura.

By Advocates :

Mr. A. K. Bhowmik, Sr. Advocate.

Ms. A. Banik, Advocate.

Respondents :

1. The State of Tripura,

Represented by the Secretary to the Government of Tripura, Revenue Department of Co-operation, Government of Tripura, New Capital complex, P.O-Kunjaban, P.S-East Agartala, District-West Tripura.

2. Janamangal PACS Ltd.,

Represented by the Manager, Uttar Padmabil, PO-Padmabil Jalabazar, PS-Panisagar, North Tripura.

3. Election Officer,

Jonamangal PACS Ltd. Uttar Padmabil, P.O-Padmabil, Jalabazar, P.S-Panisagar, North Tripura.

4. The Registrar of Co-operative Societies,

Government of Tripura, Palace Compound, Agartala, P.O-Agartala, West Tripura.

5. Shri Anil Kanta Das,

S/o. Late Digendra Chandra Das, resident of village North P:admabil, P.O-North Padmabil, P.S-Panisagar, District-North Tripura.

6. Shri Dipak Kumar Nath,

S/o. Darika Nath, resident of village South Padmabil, PO-Padmabil, P.S-Panisagar, District-North Tripura.

7. Md. Farid Uddin,

S/o. Makbul Ali, resident of village North Padmabil, P.O-North Padmabil, P.S-Panisagar, District-North Tripura.

8. Shri Chungmun Thang Halam,

S/o. Joydeb lal Halam, resident of village Noyagang, P.O-Indurail, P.S-Panisagar, District-North Tripura.

9. Shri Rengak Manik Halam,

S/o. Mangal Bhum Halam, resident of village Indurail, P.O-Indurail, P.S-Panisagar, District-North Tripura.

By Advocates :

Mr. A. S. Lodh, Addl. G. A.

Mr. J. Majumder, Adv.

B E F O R E

**THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON'BLE MR. JUSTICE S. C. DAS**

Date of hearing : **26th August, 2015.**

Date of Judgment & Order : **14th October, 2015**

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER

(Deepak Gupta, C.J.)

The following interesting preliminary issue arises in this writ petition:

"Whether a dispute relating to the elections of the members of the Executive Committee of a Co-operative Society is referable to the Registrar

under Section 92 of the Co-operative Societies Act, 1974 or not?”

[2] The petitioners by means of this writ petition have prayed for issuance of a writ for quashing elections of respondents 5 to 9 as members of the Executive Committee of the Janamangal Primary Agricultural Society Ltd. (for short, Janamangal PACS Ltd.).

[3] The undisputed facts are that pursuant to the notification dated 28.01.2015 elections for filling up the posts of the Executive Members of the Managing Committee of the Janamangal PACS Ltd., North Tripura were held on 27.02.2015. The nominations were to be filed on or before 18.02.2015 and the withdrawal of nominations were to be done latest by 20.02.2015.

[4] The case of the petitioners is that they duly submitted their nomination forms before the respondent No.3 on 18.02.2015 and the nominations were accepted as per the rules. But later, on the same date the respondent No. 3 returned all the nomination papers filed by the petitioners with a note that forms were incomplete. The petitioners thereafter preferred writ petition being W.P(C) No.70 of 2015 for quashing of the order rejecting their nomination papers. On 25.02.2015 the learned Additional Government Advocate made a submission that the impugned order had been withdrawn and the petitioners were permitted to contest the elections. Therefore, the petition was disposed of as having become infructuous and the respondents were directed to ensure the allotment of symbols to the petitioners by 26.02.2015.

[5] In this writ petition, the petitioners have also prayed that since they were permitted to contest the election at the last stage they were

prejudiced and the elections should have been rescheduled. The petitioners contend that the election have not been fair in as much as the private respondents were given 1(one) week's time to canvass for votes since the symbols were allotted to them on 20th February, 2015 whereas the symbols were allotted to the petitioners only on 26th February, 2015 and they did not get 7(seven) days time to solicit votes. The petitioners had sought re-scheduling of the election but the election were not rescheduled and hence the petition.

[6] A preliminary objection has been raised on behalf of the State that the petitioners have an alternative efficacious remedy of approaching the Registrar in terms of Section 92 of the Co-operative Societies Act, 1974 (for short, the Act). The opening portion of Section 92 of the Act reads as follows:

"92(1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, elections of the office bearers, conduct of general meetings, management or business of a society, other than a dispute regarding disciplinary action taken by a society or its committee against the paid servant of the society or of the Liquidator of a society, shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated, or by a creditor of the society, to the Registrar of decision, if both the parties thereto are one or other of the following, namely:- ***"**

It is contended on behalf of the State that this is a dispute touching the elections of the office bearers and therefore, is referable under Section 92 hereinabove.

[7] On the other hand, it is contended on behalf of the petitioners that the members of the Managing Committee are not office bearers and therefore, the dispute does not relate to office bearers and is not referable under Section 92 of the Act.

[8] The committee of a society is defined in Section 2(5) of the Act which reads as follows:

"2(5) "committee" means the committee of management, or other governing body , by whatever name called, to which the management of the affairs of a society is entrusted;"

Therefore, the committee which is managing the affairs of the society whether called 'managing committee' or 'governing body' is the committee to which elections have been held.

[9] The term 'Officer' has been defined under Section 2(23) of the Act and reads as follows:

"2(23) "Officer" means a person elected or appointed by a society to any office of such society according to its bye-laws; and includes a chairman, vice-chairman, president, vice-president, managing director, manager, secretary, treasurer, member of the committee, and any other person elected or appointed under this Act, the rules or the bye-laws, to give directions in regard to the business of such society;"

[10] Section 65 of the Act deals with the committee, its powers and functions and reads as follows:

"65(1) The management of every society shall vest in a committee, constituted in accordance with this Act, the rules and the bye-laws, which shall exercise such powers and perform such duties as may be conferred or imposed respectively by this Act, the rules and the bye-laws.

(2) Notwithstanding anything contained in any provision of this Act, rules or bye-laws, election of the members of a committee shall be by secret voting method in the manner prescribed."

[11] The Tripura Co-operative Societies Rules, 1976 (as amended upto January 5, 2013) {for short, the Rules} have been framed pursuant to the powers vested under the Act. Rule 61 deals with the election of members of the committee by the general body of a society and Rule 62 deals with the

election of the President, Vice-President, Treasurer or any other officer by whatever name designated. Rule 61(15) and Rule 62(9) read as follows:

"61(15) The President of the society shall take custody of the ballot papers and shall preserve them for three months from the date of the poll. The ballot papers and other records relating to the election shall be secured in a container which shall be affixed with the seal of the society and of the candidates who desire to affix their seals. They shall be destroyed after the said period of three months, if no dispute relating to or in connection with that election is referred to the Registrar."

"62(9) The ballot papers and other records shall be secured in a container which shall be affixed with the seal of the society and of the candidates who desire to affix their seals and they shall be preserved for three months from the date of election. They shall be destroyed after that period, if no dispute relating to or in connection with the election is referred to the Registrar."

[12] The main issue is "whether members of the Executive Committee would also be covered under the terms of office bearers as referred to in Section 92 of the Act".

[13] The term 'officer' has been defined in Section 2(23) of the Act. This is an inclusive definition. The word 'officer' has been defined to mean a person elected or appointed by a society to any office of such society according to its bye laws. This is the first part of sub Section (23). Therefore, as per this opening portion of Section 2(23) of the Act any person elected or appointed by a society to any office or society according to its bye-laws is an Officer. The Managing Committee under Section 2(5) has the powers to manage the affairs of the society. Therefore, we are of the view that the members of the committee would also be officers within the meaning of Section 2(23) of the Act. We are fortified in taking this view because the second part of the Section 2(23) which is an inclusive definition clearly states that the word 'officer' shall include amongst others member of the committee and any other person elected or appointed under this Act, the Rules or the

bye-laws to give directions in regard to the business of such society. The members of the Managing Committee are persons elected or appointed under the Act and they have also have the power to give directions with regard to the business of such society being members of the committee under Section 2(5) of the Act and we are clearly of the view that such members are officers within the meaning of Section 2(23) of the Act.

[14] In Section 92 of the Act the word used is 'officer bearer' and not 'officers'. It is contended by Sri A. K. Bhowmik, learned senior counsel that 'office bearer' means only President, Vice-President, Secretary, Treasurer and does not mean the members of the Managing Committee.

[15] We are already analyzed the provisions of Section 2(5) and Section 2(23) of the Act. Rule 61(15) provides that the President of the Society shall not destroy the records of the elections for a period of 4(four) months and shall destroy after 3(three) months only if no dispute relating to or in connection with that election has been referred to the Registrar. Therefore, Rule 61(15) of the Rules contemplates the reference of the dispute relating to the elections to members of the committee to the Registrar. Rule 62(9) also has a similar provision but this relates to election of President, Vice-President etc. by the committee.

[16] The committee members are elected by the general body whereas the President, Vice-President, treasurers etc. are elected by the committee. Rule 62(1) reads as follows:

"61(1) The election of President, Vice-President, Treasurer or any other officer by whatever name he is designated shall be by ballot in the manner specified in this rule."

Relying upon this rule, it is contended by Mr. Bhowmik that only the President, Vice-President, Treasurer are office-bearers. We are unable to accept this contention. When we read the definition of officers in Section 2(23) of the Act it clearly indicates that members of the committee are also officers. Therefore, they hold an office and any persons holding an office is an officer. Section 92 of the Act quoted hereinabove is very widely worded. Any dispute touching the constitution, elections of the office bearers, conduct of general meetings, management or business of a society or its committee is referable for decision to the Registrar except for dispute relating to disciplinary action. The members of the committee, any petitioners are all members of the society. The dispute is between the members of the society. It touches the elections of the office bearers of the society and, therefore, the appropriate remedy before the petitioners is to approach the Registrar.

[17] In view of the above discussion, we accept the preliminary objection raised on behalf of the State and hold that a dispute relating to the elections of the members of the Executive Committee of a Co-operative Society is referable to the Registrar under Section 92 of the Act.

[18] The petitioners had approached this Court and at that time the law on this point was not very clear. Therefore, while rejecting the petition of the petitioners on the ground that they have an alternative efficacious remedy available to them we direct that if the petitioners file a petition before the Registrar within 30(thirty) days from today, he shall entertain the same and shall not dismiss the same on the ground of limitation. It is further directed that keeping in view the nature of dispute which is totally legal in

nature based on the record and for which virtually no evidence has to be led, the Registrar shall dispose of the entire matter within 2(two) months of the filing of the petition. The private respondents 5 to 9 are represented before this Court by Mr. J. Majumder. The petitioners and the private respondents are directed to appear before the Registrar on 25th November, 2015 so that no further time be wasted for serving the respondents.

[19] Petition is disposed of in the aforesaid terms. No order as to costs.

JUDGE

CHIEF JUSTICE