

18.08.2021
Item No. 12
Crt.No.11
b.r.

**MAT 492 of 2021
with
IA No. CAN 1 of 2021**

***Brijlal Phumbhra*
-vs-
The West Bengal & Ors.**

(Via video conference)

**Mr. Pratik Dhar
Mr. Nishant Shukla
..... For the appellant.**

**Mr. Srijan Nayak
Ms. Rituparna Maitra
Ms. Sraboni Sarkar
..... for the State.**

**Mr. Prodip Kumar Roy
Mr. Santanu Chatterjee
..... for the Respondent No.2./
Co-operative Election Commission.**

**Mr. Aniruddha Chatterjee
Mr. Rajdeep Bhattacharyya
Ms. Anisha Kochar
..... for the Respondents**

**Mr. Siddhartha Mitra
Mr. Swaraj Shaw
..... For the Respondent Nos. 28 to 34.**

Party/parties is/are represented in the order of their
name/names as printed above in the cause title.

Mr. Pratik Dhar, learned Senior Counsel, appears for
the appellant and submits that under challenge in this
appeal is the order dated 11th March, 2020 in the writ
petition being WP 21596(W) of 2019.

It is submitted that although the parties to the writ petition want an election to be conducted in respect of the Housing Co-operative Society to which they claim membership, the process of voting by the seven writ petitioners whose membership is disputed has been irregularly settled by the order of the Hon'ble Single Bench.

Elaborating his arguments, Mr. Dhar submits that the Hon'ble Single Bench directed the Deputy Registrar, Co-operative Societies (*DRCS*) to allow the seven writ petitioners whose membership is disputed to vote in the election process but, disallowed them from contesting as Directors to the Housing Society in the election.

The Hon'ble Single Bench simultaneously allowed the *DRCS* to pass a reasoned order with regard to the validity of the membership of the seven writ petitioners and all other persons who claim to be members through orders of Courts or, on the basis of applications filed before the *DRCS* for clarification.

Mr. Siddhartha Mitra, learned Counsel appearing for the private respondent Nos. 28 to 34, submits that the order of the Hon'ble Single Bench has proverbially placed the cart before the horse.

In other words, the question of voting by members whose membership is disputed can only arise once the *DRCS* has first decided on their eligibility by passing a reasoned order as directed by the Hon'ble Single Bench.

Mr. Aniruddha Chatterjee, learned Counsel appearing with Mr. Rajdeep Bhattacharyya, learned Counsel for the writ petitioners/the private respondents points out that the order impugned in this appeal has been passed on consent of the parties. The consent stands specifically recorded in the opening paragraphs of the order. It is not therefore not open to this Court to permit the parties to deviate from the consent recorded before the Hon'ble Single Bench.

Mr. Srijan Nayak, learned Counsel appears for the State-respondents.

Having heard the parties and considering the materials placed, this Court is of the view that the consent of the parties as noted by the Hon'ble Single Bench *vide* the procedure directed to be followed for casting votes in the election as well as for the exercise to determine genuine members, can be still maintained if the *DRCS* allows the seven writ petitioners and other members whose membership is disputed to cast their votes which may then be kept in a sealed cover.

The *DRCS* will then proceed to pass a reasoned order *qua* the disputed membership and, on the basis of such reasoned orders, the sealed covers of only the qualified members shall be opened and added to the general pool of votes to determine the final result.

The rest of the directions in the order impugned dated 11th March, 2020 remain untouched.

With the above procedural modification which does not affect the substantive nature of the consent of the parties as recorded by the Hon'ble Single Bench, the appeal being **MAT 492 of 2021** and the application being **IA No. CAN 1 of 2021** stand **disposed of**.

Having regard to the discussion above, affidavits are not invited. Allegations made in the appeal therefore are deemed not to have been admitted.

Before concluding this order, it is brought to the attention of this Court that the appeal has been filed after a delay of two days.

Mr. Dhar makes a prayer for condonation of delay although no formal application is filed. The prayer for condonation of delay of two days is not seriously opposed by the other appearing learned Counsel.

In the facts and circumstances of this case, since any further delay in this appeal would result in further delaying the election process, the delay stands condoned.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance with all necessary formalities.

(Jay Sengupta, J.)

(Subrata Talukdar, J.)