

15.07.2021
Court No. 19
Item no.8
Sn

WPA No. 11215 of 2021

Hemanta Karu @ Hemanta Kumar Karu and
Anr. Vs. The State of West Bengal and Ors.

(via video conference)

Mr. Udaynarayan Betal
....for the petitioners

Mr. Prosenjit Mukherjee
Mr. Saptatshi Chakraborty
..for the respondent no.8

Mr. Arghya Kamal Das
..for the respdts 11-13

Mr. Srijan Nayak
Mr. Partha Sarathi Pal
Ms. Neelam Singh
..for the State

Mr. Ankit Surekha
Ms. Rituparna Maitra
..for the Election Commission

The petitioners have raised a dispute with regard to the nomination of the respondent nos. 10, 11 and 13 for the post of directors in the Board of the Co-operative Society. The challenge is to the list published of candidates for election to the Board of Directors by the three Assistant Returning Officers dated June 29, 2021. The petitioners are claiming to be members of Boinchi CADC Berela Sech 'O' SKUS Limited which is a registered Co-operative Society.

It is the contention of the petitioners that Section 32(7)(g) of the West Bengal Co-operative Societies Act, 2006 (hereinafter referred to as the

said Act) provides that no member of the co-operative society shall be eligible to be elected to the Board, if he received any salary from the Co-operative Society. Reliance is placed on the answer to the queries made under the Right to Information Act, by the Secretary of the Co-operative Society, wherein it has been stated that Jiban Kumar Ghosh, Kashinath Ghosh, Vaktipada Ghosh and Dhananjoy Biswas of Boinchi CADC Berela Sech "O" SKUS Limited had received wages/honorarium from the Co-operative Society.

According to Mr. Betal, these respondents are disqualified to be elected to the Board of Directors and their nomination should be set aside by this Court. The list of candidates published by the Assistant Returning Officer should be quashed.

Mr. Mukherjee, learned advocate for the respondent no.8 submits that the writ petition is not maintainable in view of the existence of an alternative remedy. He further submits that none of the persons, who have been nominated for the election to the Board, received salary from the Co-operative Society but were paid honorarium and as such they were eligible for appointment to the Board in the up-coming election.

Mr. Srijan Nayak, learned Advocate appearing on behalf of the State respondents submits that Section 96 of the West Bengal Co-operative Societies

Act, 2006 read with the West Bengal Co-operative Election Commission Regulations, 2012 (hereinafter referred to as the said Regulation) empowers the Co-operative Election Commission, West Bengal to conduct and supervise the election of delegates as also the election of Board of Directors. According to Mr. Nayak, the dispute must be raised before the Commission.

Mr. Surekha, learned Advocate appearing on behalf of the West Bengal Co-operative Election Commission submits that Section 96, sub-sections (8)&(9) read with Regulation 4 of the Election Regulations clarifies the position, inasmuch as, the procedure for holding election of delegates shall apply mutatis mutandis for election of Board of Directors of a Co-operative Society, where the membership is more than 1000.

Both Mr. Nayak and Mr. Surekha urge that only in case of co-operative Societies where the membership is less than 1000, the election of directors are done directly but in cases where the membership of the co-operative society exceeds 1000, the same procedure shall be followed for election of the Board of Directors as is followed for election of delegates. Reference is also made to Rules 31, 34, 35 and 36 of the West Bengal Co-operative Societies Rule, 2011. This Court also takes note of

the provision of paragraph 35 of Regulation 3 of the Regulations which provides that any dispute relating to election of delegates of any co-operative society shall be referred to the Co-Operative Election Commission within 30 days from the date of arising of such dispute.

Regulation 4 further clarifies that the procedure for holding election of delegates of the co-operative society as specified in Regulation 3 of the said Regulations, shall apply *mutatis mutandis* for holding election of the Board of Directors of such co-operative society.

Although Mr. Betal has argued that only in case of membership of co-operative societies below 1000, the Election Commission shall have the power to conduct and supervise the election of the Board of Directors, but not in case of election to the Board of Directors for co-operative societies having more than 1000 members, such contention is not accepted by this Court.

Regulation 4 has two parts. The first part dealing with election of Board of Directors of co-operative societies having less than 1000 members and the second part dealing with holding of election of Board of Directors in such co-operative societies which have more than 1000 members. The Regulation should be read as having two parts:-

- “As per section 96 of the West Bengal Co-operative Societies Act, 2006 the Co-operative Election Commission has been constituted which shall conduct and supervise the entire process of election of Board of Directors of co-operative societies having less than 1000 members.
- The procedure for holding election of delegates of co-operative societies as specified in regulation no.3 of these Regulations shall apply *mutatis mutandis* to holding of election of the Board of Directors of such co-operative societies.”

Regulation 4 has made the provision of Regulation 3 with regard to election of delegates applicable *mutatis mutandis* in case of election of Board of Directors of co-operative societies having more than 1000 members. Moreover, the acceptance of nomination papers, scrutiny of those papers, publication of the list, fixing of dates have all been done by the Assistant Returning Officers appointed by the Commission under Regulation 3(1)(i). I have no hesitation to hold that the election of Board of Directors should also be supervised and conducted by the Co-operative Election Commission.

A conjoint reading of Section 96(1) of the said Act and Rule 40(1) of the West Bengal Co-operative Societies Rules, 2011, would show that all elections of a co-operative societies shall be conducted by the Commission. Such is the intention of the legislature. The provisions of Section 96(1) of the said Act is quoted below:-

“The State Government shall constitute a Co-operative Election Commission (hereinafter referred to as the Election Commission) and shall appoint a person to be the Co-operative Election Commissioner of the Election Commission for the [superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to a registered Co-operative society] in West Bengal.”

Rule 40(1) of the said Rules is quoted below:-

“40. Procedure for holding election in a General Meeting in some cases-

(i) unless the State Government constitutes the Co-operative Election Commission under the provision of section 96, the election of Director and office bearers of all co-operative societies under the Fifth Schedule of the Act shall be held in the manner specified in this rule.”

Rule 40(1) provides that unless the State constitutes a Co-operative Election Commission, the election of Directors and office bearers will be under Fifth Schedule of the Act. In this case, as there is a Commission and the Assistant Returning Officers are still involved with the election process, the contentions of the petitioners are not accepted.

I do not find any reason to interfere in this writ petition. In my view, the West Bengal Co-operative Election Commission is the authority before whom such dispute should be raised. There being an alternative forum under the law for raising any

dispute with regard to any election in the co-operative society. The petitioners are directed to approach the Commissioner, the respondent No.7, in accordance with law within 48 hours. The allegations of ineligibility of the respondent nos. 10, 11 and 13 to be elected as directors in the Board of the Co-operative Society on various grounds including the ground of receiving wages from the said Co-operative Society, shall be considered by the Commissioner, West Bengal Co-operative Election Commission in accordance with law.

This writ petition is disposed of directing the Commissioner, West Bengal Co-operative Election Commission to consider the allegations raised in the writ petition. The writ petition shall be treated as the objection.

The petitioners including the respondent nos. 10, 11 and 13 and all concerned shall be given a hearing and appropriate order shall be passed by the respondent no. 7. Such objection shall be disposed of before the date of election of the Board of Directors as has been notified. The decision of the Commissioner shall be final and must be communicated before the election to all concerned.

This writ petition is thus disposed of.

There will be however no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)