

S/l.9
30.11.2021
Court. No. 19
GB

WPA 18201 of 2021

Contai Co-operative Bank Limited & Anr.

Vs.

The State of West Bengal & Ors.

(Through Video Conference)

Mr. Pratik Dhar

Mr. Ritwik Pattanayak

...for the Petitioners.

Mr. Pradip Kr.Roy

Ms. Shrabani Sarkar

Mr. Ankit Sureka

... Election Commission

Mr. S.N. Mookherjee..ld.A.G.

Mr. Anirban Ray..ld.G.P.

Mr. Raja Saha

Mr. Nilotpal Chatterjee

...for the State

Mr. Abhratosh Majumder

Mr. Srijib Chakraborty

..for the Respondent No.7

Mr. Billwadal Bhattacharyya

Mr. Anish Kr. Mukherjee

Mr. Amrit Sinha.

..for the Respondent No.8

The petitioners are the co-operative society and the present chairman of a co-operative society. The petitioners are registered under the West Bengal Co-operative Societies Act, 2006.

It is the contention of the petitioners that the term of the existing Board of Directors of the co-operative shall expire on February 4, 2022. A prayer has been made before this Court for a direction upon the Co-operative Election Commission to appoint a returning officer for holding the election of the Contai Co-operative Bank Limited.

According to Mr. Dhar, learned Senior Advocate, the provision of law allows five years term to the Board and the term of the Board will expire soon. The Commission has not started preparation for the election process, at least by preparing the electoral roll.

According to Mr. Dhar, there are two stages of election of a co-operative society. First, election of delegates are held and thereafter, the office bearers are elected from such delegates. The entire process of the election is conducted by the Co-operative Election Commission, West Bengal. The apprehension of Mr. Dhar is that the unnecessary delay on the part of the Commission shall result in the dissolution of the Board by efflux of time and, thereafter, the co-operative will function without a Board which will result in mal-administration and mismanagement, in the absence of proper leadership.

Mr. Dhar further submits that unless the Commission starts the preparation now, the statutory period available for doing the works necessary in the preparation of the election, cannot be complied with.

Mr. Majumder, learned Senior Advocate, appearing on behalf of the respondent no.7 submits that the mandatory prayer made by Mr. Dhar for appointment of a returning officer shall prejudice the pending litigation before the Hon'ble Division Bench being WPA(P) 225 of 2021. Mr. Majumder refers to prayer 'e' of the writ petition and submits that the question before the Hon'ble Division Bench also

touches a point as to whether the co-operative society shall be managed by the existing Board of Directors or by an Administrator appointed in accordance with law. Thus, he prays that this matter should not be entertained at this stage.

Mr. Bhattacharya, learned advocate appearing on behalf of the respondent no.8 adopts the submission of Mr. Majumder and further submits that ad interim prayer for appointment of an Administrator, pending the hearing of the Public Interest Litigation before the Hon'ble Division Bench shall be rendered negated if any order is passed by this Court directing the Commission to hold the election.

Mr. Ray, learned Government Pleader submits that the question before the Hon'ble Division Bench in the Public Interest Litigation is whether the Banking Regulation Act as amended in 2020 shall come into operation with regard to the Constitution of the Board of Directors of the Contai Co-operative Bank Limited. He next submits that in the background of such a prayer, a further prayer for appointment of an Administrator has been made, as the bank has not allegedly abided by the amended provisions of the Regulation Act, 1949. He also submits that the appeal pending before another Division Bench with regard to the composition of the Board, does not have any nexus with the present prayer, inasmuch as, the appeal court had directed that the composition should not be changed in view of the alleged interference of the State Government by sending a

nominee to the Board contrary to the provisions of the West Bengal Co-operative Societies Act, 2006.

Mr. Roy, learned advocate appearing on behalf of the Election Commission submits that the writ petition is premature and should be dismissed. According to Mr. Roy, the petitioners have never approached the Commission with any prayer for initiation of the process of election. He further submits that the law gives the Commission time to start the process and complete the process and there is nothing on record to show that the Commission has failed and neglected to abide by the Statute.

Having considered the rival contentions of the parties, this Court finds that the petitioners have not yet approached the Commission with any prayer and there has been no denial of the rights of the petitioners by the Commission as yet.

The proceeding pending before the Hon'ble Division Bench in the Public Interest Litigation is on a question of dissolution of the present Board, which is allegedly carrying on operating, contrary to the provisions of the Banking Regulation Act, 1949. In this background, appointment of an Administrator has been prayed for. It is for the Hon'ble Division Bench to decide whether application of the Banking Regulation Act, 1949 was compulsory with regard to the constitution of the Board of the Contai Co-operative Bank Ltd. The point touches primarily the qualification of the Board members. The other appeal is with regard to the

nominee of the state government in the Board. Starting the election process will not have any bearing on the pending litigations inasmuch as, the life of the Board still continues for two more months, unless the Division Bench directs otherwise.

Thus, I do not find any reason not to allow the petitioners liberty to move the Commission with a request to initiate election process in accordance with law. However, as there are several respondents in this litigation and several matters are pending before different courts, this Court feels it is only fair that while disposing of the application to be filed by the petitioners with a request to the Commission for starting the election process, all the respondents and Board members must be heard and allowed to file their written version as also make oral submissions.

It is expected that if the petitioners make the representation within a period of three days, the same shall be disposed of by the Commission upon hearing all the parties to this litigation within two weeks thereafter. The commission has 40 days time to make the preparation for the election as per law.

The notice of hearing shall be given by the Commission, 48 hours in advance to the petitioners as also the respondent nos. 7 and 8. Notice shall also be sent to the individual Board members by the petitioner No.2 and the commission informing them about the hearing and all the parties will be at liberty to appear before the Commission

and make their respective submissions. The names of the individual Board members shall be supplied by the learned advocate on record for the petitioner to Mr. Sureka, learned advocate for the Election Commission.

This order shall not prevent the petitioners from approaching the Hon'ble Division Bench with the prayers in this writ petition with regard to the appointment of a returning officer for the election process to start.

This Court has not gone into the merits of the case at this stage.

In view of the observations, this writ petition is disposed of.

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)