

Ct. 05
Item Nos.16 & 19
22.12.2021
(suvendu)

WPA 20817 of 2021

Nani Gopal Jana & Anr.
Vs.
The State of West Bengal & Ors.
With

WPA 20844 of 2021
Pradipta Paria & Ors.
Vs.
The State of West Bengal & Ors.

[Via Video Conference]

Mr. Pabitra Kr. Bhattacharya
Mr. Monoranjan Jana
Mr. Sanjay Saha
.....for the petitioners

Mr. Arindam Chattopadhyay
Ms. Lipika Chatterjee
.....for the State
(WPA 20844 of 2021)

Mr. Supriyo Chattopadhyay
Mr. Debashis Sarkar
.....for the State
(WPA 20817 of 2021)

Mr. Biswaroop Bhattacharya
Mr. Madan Mohan Roy
.....for the respondent no.3

Affidavit of service filed on behalf of the
petitioner in WPA 20817 of 2021 is taken on record.

The petitioners are aggrieved by a Notice
dated 26th November, 2021 with regard to election of
delegates to the concerned Co-operative Society. By

the said Notice issued by the Assistant Returning Officer, the schedule of elections as well as the guidelines for election of the delegates were indicated.

Learned counsel appearing for the petitioners takes a point of jurisdiction with reference to Regulation 3 (ii) which provides that the Returning Officer shall prepare and publish the complete time schedule for holding election. According to counsel, it is only the Returning Officer who could have issued the impugned Notice and the Assistant Returning Officer cannot undertake any of the acts which are included in the impugned Notice as would also be evident from Rules 31 and 32 of the West Bengal Co-operative Societies Rules, 2011. Counsel points to the irregularities with regard to the division of area of a society for election of delegates as well as the representation under Regulation 31 (1)(b).

Learned counsel appearing for the Co-operative Society submits that the writ petition cannot be entertained by reason of an alternative remedy provided under the relevant Notification.

Learned counsel appearing for the State refers to an order of a coordinate Bench where the issue of alternative remedy was taken note of. The order of the coordinate Bench in WPA 11215 of 2021 is of no assistance to the State since the said order

was passed in respect of the election of directors in the Board of a Cooperative Society and referred to a different set of provisions altogether.

Upon hearing learned counsel, this Court is of the view that the Notification of the Co-operative Election Commission, Government of West Bengal, dated 13th April, 2012 named as the West Bengal Co-operative Election Commission Regulations 2012 provides for alternative remedy under Regulation (35) thereof. Under Regulation (35), any dispute relating to election of delegates in any Co-operative Society shall be referred to the Co-operative Election Commission within thirty days from the date of arising of such dispute. In the present case, the dispute arose on 26th November, 2021 with the publication of the Notice for election of delegates to the concerned Co-operative Society. The petitioners have thirty days from such date to go before the Appellate Forum which is till 25th December, 2021.

This Court is hence of the view that the petitioner should first avail of the alternative remedy as provided under the Notification before approaching the writ Court.

With regard to the issue of the Assistant Returning Officer not having the authority to issue the impugned Notice, Regulation (3) (4) of the 2012 Notification provides that every Assistant Returning

Officer shall be competent to perform all or any of the functions of the Returning Officer as may be assigned to him by the Returning Officer, subject to the control of the Returning Officer. The delegation of the work appears to have been given to the Assistant Returning Officer on 23rd September, 2021 by the Returning Officer.

The other factual issue of the petitioners not being given nomination papers also points to a dispute as contemplated under Regulation (35) of the 2012 Regulations.

The materials on record do not indicate any of the three conditions which are necessary to be established for a writ Court to waive the argument of an alternative efficacious remedy.

In view of the above reasons, WPA 20817 of 2021 and WPA 20844 of 2021 are disposed of with a liberty to the petitioners to approach the Appellate Forum under the 2012 Regulations within the time mandated thereunder. The designated forum shall decide the dispute by passing a reasoned order upon hearing all concerned parties within the time frame under Regulation (35) and in the manner prescribed therein.

The prayer for restraint on the respondents from acting in terms of the impugned Notice is rejected since the impugned Notice is of 26th

November, 2021 and the writ petition was filed on 20th December, 2021 and the election is due to be held tomorrow, i.e. on 23rd December, 2021.

WPA 20817 of 2021 and WPA 20844 of 2021 are disposed of in terms of the above.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Moushumi Bhattacharya, J.)