

04. 02.05.2022
Ct. No.06
Tanmoy

F.M.A. 505 of 2020
(M.A.T. 45 of 2019)

Bidjut Roy & Ors.
-Versus-
State of West Bengal & Ors.

With
IA No: C.A.N. 1 of 2019 (Old No: C.A.N. 656 of 2019)

Mr. Krishnendu Banerjee, Adv.,
Md. Idris, Adv.,
Mr. Biswajit Dutta, Adv.

...for the appellants.

Mr. Raja Saha, Ld. Sr. Govt. Adv.,
Mr. Amit Kr. Ghosh, Adv.,

...for the State respondents.

Mr. Srijan Nayak, Adv.,
Ms. Rituparna Maitra, Adv.

...for the respondent Co-operative
Election Commission.

Ms. Susmita Saha Dutta, Adv.,
Mr. Niladri Saha, Adv.

...for the respondent nos. 6, 7, 8 & 9.

By consent of the parties, the appeal and the
connected application are taken up together for hearing.

The Judgment and order dated December 21, 2018
whereby W.P. No. 25989 (W) of 2018 was disposed of, is
under challenge before us.

The writ petitioners had approached the learned
Single Judge being aggrieved by the process of election

that was held on October 28, 2018, for election of Board of Directors of Taldaha Majdia Union Co-operative Large Sized Primary Agricultural Credit Society Ltd.

The principal allegation of the writ petitioners was that the voters' list had been prepared including names of dead persons, as also persons not entitled to vote in the election in question. It was further submitted that the actual process of voting did not take place.

The learned Single Judge disposed of the writ petition by granting liberty to the writ petitioners to file a comprehensive appeal before the Co-operative Election Commission within a period of two weeks from the date of the order. The Election Commission was directed to dispose of the appeal by a reasoned order after giving opportunity of hearing to all parties, in accordance with law. The learned Judge further directed that any decision taken by the new Board shall abide by the decision of the Election Commission.

The appellants/writ petitioners have argued before us that there is no provision for filing appeal before the Co-operative Election Commission. Learned Advocate for the appellants has drawn our attention to the relevant provisions of the West Bengal Co-operative Societies Act, 2006. He appears to be right in saying that there is no provision for appeal.

However, learned Counsel for the Election Commission and the State have drawn our attention to

the West Bengal Co-operative Election Commission Regulations, 2012, which have been framed by the Government of West Bengal in exercise of power under Section 96(8) of the West Bengal Co-operative Societies Act, 2006. Regulation 3 and the sub-clauses thereunder prescribe the procedure for conduct of election of delegates of co-operative societies. Regulation 3(35) of the said Regulations provides that 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. Regulation 4 of the said Regulations reads as follows:

“4. REGULATIONS REGARDING HOLDING OF ELECTION OF THE BOARD OF DIRECTORS OF ANY CO-OPERATIVE SOCIETY HAVING LESS THAN 1000 MEMBERS BY THE CO-OPERATIVE ELECTION COMMISSION:

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 member. 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 3 of the 2012 Regulations, therefore, lays down a detailed and exhaustive procedure for conduct of elections of delegates in any co-operative society from the beginning to the end including challenge to the election process. Regulation 4 says that the same procedure will apply to election of Board of

Directors in a co-operative society having less than 1000 members.

There, therefore, is an alternative statutory remedy available to the writ petitioners/appellants.

The appellants argued that regulation 3(35) referred to above, is beyond the scope of Section 96 of the 2006 Act. We do not think so. In any event, the vires of the regulation is not under challenge before us. Even if Regulation 4 had not been there, we would have held that any dispute regarding election of a Board of Directors of a co-operative society would be adjudicated by the Co-operative Election Commission since, there is no reason why the procedure prescribed for challenging election of delegates in a co-operative society should not apply for challenging election of a Board of Directors of a co-operative society. Delegates are elected in case of a co-operative society having less than 1000 members. A Board of Directors is elected in case of a co-operative society having less than 1000 members. That should not make different procedures applicable for challenging election of delegates and Board of Directors.

In any event, the Writ Court is definitely not well equipped to adjudicate a challenge thrown to the election of the Board of Directors of a co-operative society as the same would necessarily involve factual controversies. The Co-operative Election Commission

would be the proper forum for adjudicating such disputes.

Accordingly, although there may be some incorrect use of nomenclature in the order impugned before us, we are of the view that the conclusion of the learned Single Judge is correct. The writ petitioners/appellants will be at liberty to ventilate their grievance regarding the election in question before the Co-operative Election Commission by way of an appropriate application within three weeks from date. If the same is done, the Election Commission shall decide such application in accordance with law, after giving opportunity of hearing to all concerned parties, without going into the question of time-bar. A reasoned decision will be taken by the Election Commission within eight weeks from the date of receipt of an application from the writ petitioners/appellants.

We have not gone into the merits of the case at all. If the Co-operative Election Commission is approached by the writ petitioners/appellants pursuant to the liberty granted by this order, the Commission shall take an informed decision, in accordance with law.

The appeal being F.M.A. 505 of 2020 and the connected application being IA No: C.A.N. 1 of 2019 (Old No: C.A.N. 656 of 2019) are accordingly disposed of.

Let urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all necessary formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)