

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 4327 of 2022

Uttam Kumar Hota & Ors.

-vs.-

The State of West Bengal & Ors.

Mr. Ajay Debnath,
Mr. Asit Kumar De,
Mr. Sujit Saha,
Mr. Devranjan Das
...for the petitioners

Mr. S.N. Mookherjee,
Mr. T.M. Siddique,
Mr. Raja Saha,
Mr. Debasish Ghosh
...for the State

Mr. P.K. Roy,
Mr. Joydeep Roy
...for the respondent nos. 2 and 4

Mr. Srijan Nayak,
Ms. Rituparna Maitra,
Mr. Ankit Sureka,
Mr. Biplob Das
...for the Co-operative Election
Commission

At the inception, learned counsel appearing for the Co-operative Election Commission takes a preliminary objection as to the maintainability of the writ petition. By placing reliance on Regulation 3(35)(i) of the West Bengal Co-operative Election Commission Regulations, 2012, learned counsel contends 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. As such, it is contended that since a statutory authority has been vested with power to decide the dispute, this Court ought not to exercise concurrent jurisdiction under Article 226 of the Constitution of India.

Learned counsel appearing for the respondent nos. 2 and 4 submits that the allegations made on facts in the writ petition are incorrect and disputes those.

In reply, learned counsel appearing for the petitioners argues that Regulation 3(35) of the 2012 Regulations ought to be read with Regulation 2(26) and (29). In view of such provisions, it is argued, it is the duty of the Returning Officer to forthwith report the matter to the Co-operative Election Commission, if there is an incident of booth capturing and destroying of ballot papers, etc. at the time of election. Despite the petitioners having complained before the Returning Officer on the date of election itself, that is, on February 20, 2022, no such reference was made by the Returning Officer to the knowledge of the petitioners; even if made, such reference was never answered by the Co-operative Election Commission. As such, it is argued that the Co-operative Election Commission has failed to do his duty in the matter.

However, a conjoint perusal of sub-regulations (26), (29) and (35) clearly indicates that the scopes of operation of the said provisions are certainly different. Sub-regulations (26) and (29) envisage some irregularities, as mentioned in the said sub-regulations, if perpetrated in the perception of the Returning Officer, as the pre-requisite of the Returning Officer reporting the matter to the Co-operative Election Commission, whereas sub-regulation 35 independently provides for any dispute relating to election of delegates in any co-operative society to be referred to the Co-operative Election Commission within thirty days from the date of arising of such dispute.

In the present case, although the petitioners had lodged complaints on the date of election itself with the Returning Officer, there might have been umpteen reasons why the Returning Officer was not of the opinion that such irregularities had taken place and, as a result, did not report the matter to the Co-operative Election Commission. Without going into conjectures and surmises on such question, what is evident from the records is that the petitioner has a remedy, in view of the dispute squarely relating to election of delegates of a co-operative society, to refer the matter to the Co-operative Election Commission.

Since the writ petition was affirmed and filed on March 08, 2022, that is, within thirty days of the

election, which was held on February 20, 2022, the limitation period stipulated for a challenge under sub-regulation (35) of Regulation 3 has not been exceeded when the writ petition was filed. Since the writ petition has filed obviously on a *bona fide* misconception that this Court, under Article 226 of the Constitution of India, might have jurisdiction under the power of Constitutional review, limitation could not be construed to have run during the period of pendency of the writ petition.

Hence, W.P.A. No. 4327 of 2022 is disposed of by granting the petitioner liberty to refer the dispute, as raised in the present writ petition, to the concerned Co-operative Election Commission.

It is made clear that the limitation period of thirty days, as contemplated in Regulation 3(35) of the 2012 Regulations, shall be deemed to commence from today.

It is also made clear that, this Court has not entertained the rival contentions of the parties on the merits of the allegations and it will be open to the Co-operative Election Commission to decide the dispute, as raised before it, independently and in accordance with law, as expeditiously as possible, preferably within two months from the date of reference.

Needless to say, whatever action is taken in the meantime on the basis of the disputed elections shall be

subject to the decision of the Co-operative Election Commission.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)