

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No.6121 of 2022

Farakka Credit Cooperative Society Ltd. and another

-vs-

The State of West Bengal and others

With

W.P.A. No.14296 of 2021

Farakka Credit Cooperative Society Ltd. and another

-vs-

The State of West Bengal and others

For the petitioners	:	Mr. Dhiman Kr. Sengupta Mr. U.A. Dewan Mr. A. Dewan Mr. S. Saha
For the State	:	Mr. Srijan Nayak Mrs. Rituparna Maitra
For the Co-operative Election Commission	:	Mr. P.K. Roy Mr. Biplob Das
Hearing concluded on	:	19.04.2022
Judgment on	:	05.05.2022

Sabyasachi Bhattacharyya, J:-

1. W.P.A. No.14296 of 2021 has been filed against an order of the Secretary, Co-operative Election Commission, West Bengal (hereinafter referred to as "the CEC") dated August 17, 2021

(communicated on August 27, 2021) in Election Dispute No. 01/CEC of 2021, whereby the Returning Officer of the petitioner no. 1-co-operative society was directed to initiate the election process *de novo*, thereby rendering the erstwhile Board of Directors, of which the petitioner no. 2 was the Secretary, defunct.

2. Learned counsel for the petitioners argues that the impugned decision was passed in an election dispute raised by respondent no. 6, a previous member of the petitioner no. 1-society who had been expelled on charges of misappropriation of funds. It is submitted that a criminal case is also pending against the said respondent on allied charges. Hence, *ex facie*, the charges were levelled as a backlash, to malign the petitioner no. 2 and the erstwhile Board, which had been instrumental in unearthing the defalcations of the respondent no. 6.
3. Secondly, it is submitted, the impugned decision contains no legally tenable reason for superseding a validly elected Board of Directors and, thus, is vitiated in law.
4. Thirdly, learned counsel contends, it was recorded in the impugned decision itself that quorum was reached in the election of the erstwhile Board of Directors, insofar as 92 out of the total 264 members of the co-operative society had cast their votes. Hence, the Secretary, CEC acted *de hors* the law and without jurisdiction in superseding the Board on the vague ground of protecting “the interest of democracy”, in violation of Section 35 of the West Bengal Co-operative Societies Act, 2006 (hereinafter referred to as “the 2006 Act”)

and the West Bengal Co-operative Societies Rules, 2011 (in short, “the 2011 Rules”).

5. It is next argued that the provisions of Rule 40(5) of the 2011 Rules were substantially complied with by the Chairman (Presiding Officer) prior to holding the disputed election and publication of the notice was duly made in leading newspapers in Bengali vernacular having wide circulation in the locality. Learned counsel for the petitioners argues that the principles of substituted service were conformed to while giving such notice.
6. Lastly, it is contended that the election was conducted by the CEC under the supervision of a duly nominated ARO (Assistant Returning Officer) and, hence, there is a presumption of authenticity attached to it, which has not been rebutted sufficiently to supersede the erstwhile Board of Directors.
7. On such grounds, it is submitted, the impugned decision ought to be set aside and, as a necessary consequence, the appointment of Special Officer to conduct the affairs of the society and its elections should also be nullified. Moreover, it is argued, the said appointment, which has been challenged in W.P.A. No.6121 of 2022, was not in consonance with law.
8. At the outset, learned counsel for the respondents submit that, in the meantime, the order appointing Special Officer has been recalled and an Administrator has been appointed to conduct the affairs of the petitioner no. 1-society and its election.

9. Learned counsel for the respondents argue that, contrary to Clause 75 of the Bye-laws of the society, which provide for 9 general members of the Board of Directors, along with 2 women and 1 from the Schedule Castes/Tribes, in total 12 members, the erstwhile Board consisted of 13 members.
10. Section 4(10) of the 2006 Act defines “by-law” and Section 20(2) provides that the function of every co-operative society shall be regulated by its bye-laws, subject to the provisions of the 2006 Act.
11. Section 20(2) of the 2006 Act, it is submitted, provides that, subject to the provisions of the Act, the function of every co-operative society shall be regulated by its bye-laws.
12. The respondents justify the impugned decision by referring to Section 3(ii) of the 2006 Act, which speaks of co-operative societies being democratic organisations.
13. The publication of notice was not in consonance with law, it is argued, and the Presiding Officer, without adhering to the modes of service as provided in Rule 40(5) of the 2011 Rules, directly resorted to publication in a single newspaper not having wide circulation in the area.
14. The writ petition is not maintainable, it is contended, since all election disputes pertaining to co-operative societies in West Bengal are to be referred to the CEC.
15. The *locus standi* of the writ petitioner no. 2 to litigate on behalf of the society is also disputed since, after the impugned supersession, he is no longer a Secretary of the Board.

16. That apart, learned counsel for the respondents argue, the petitioner no. 2 and other Board members had been office-bearers for two consecutive terms and, as such, are debarred under Section 32(6)(a) of the 2006 Act from contesting further in the elections.
17. Upon considering the arguments of parties and materials on record, the *locus standi* of petitioner no. 2 to move the writ petition cannot be disputed on the strength of his membership of the co-operative society, which makes him sufficiently interested to challenge alleged irregularities committed in respect of the society.
18. It is categorically denied by the petitioner no. 2 that he, or any of the other erstwhile Board members, had been an office-bearer for two consecutive terms, although they might have stood for the elections. In fact, there is nothing on record to prove that the petitioner or any of the other members of the erstwhile Board of Directors had ever been elected as an office-bearer of the society twice.
19. As far as the present dispute is concerned, the same pertains to the supersession of a validly elected Board, allegedly without due process of law and in contravention of the 2006 Act. Hence, the scope of the writ petition is not restricted merely to an 'election dispute' to confer exclusive jurisdiction on the CEC to decide. It is well-settled that the power of judicial review under Article 226 of the Constitution of India is not absolutely barred in the event the principles of Natural Justice are violated and/or an authority acts *de hors* its powers as conferred by law and in an arbitrary manner.

20. A mere glance at the impugned order dated August 7, 2021 reveals that no reason whatsoever was given for the supersession of the erstwhile Board, apart from a cursory reference to “justice, equity and good conscience” and “the interest of democracy”. After it is stated in the impugned decision that “... the following Reasoned Order is passed:”, no reasons, whatsoever, follow. The “reasoned order” referred to is mere lip-service.
21. Under Section 35 of the 2006 Act, the State Government may, by notification *stating reasons therefor*, supersede the board, only on the specific grounds stipulated in Section 35(1A) of the said Act. However, in the present case, no such exercise was undertaken at all.
22. As far as the alleged irregularities in the election of the erstwhile Board are concerned, such allegations are not substantiated at all.
23. First, the impugned decision itself records that *quorum was attained*, since 92 members out of the total 264 attended the meeting, which is in consonance with the law, which stipulates one-third as the quorum. Even thereafter, on the vague and illusory grounds of “justice, equity and good conscience” and “interest of democracy”, the elected Board was merrily superseded.
24. Secondly, the impugned order itself sets forth the due process in which the election was held under the supervision of the Assistant Returning Officer with necessary police arrangement, in obedience of the order dated January 14, 2021 passed by a co-ordinate Bench of this court in W.P.A. No.11352 of 2020.
25. The election was, in fact, held under the aegis of the CEC itself.

- 26.** Nothing has been established to impeach the validity of such election. In the impugned order, no irregularity of the erstwhile Board was disclosed or even indicated.
- 27.** Although it appears from the photocopy of the communication dated April 20, 2021 by the Chairman of the society to the Registrar of Co-operative Societies that the names of 13 persons as the Board of Directors was sent, it is clearly seen that the thirteenth member, namely, Malati Mandal Ghosh, was a Panchayat Samity Nominee and, as such, was not an elected Director.
- 28.** As far as the notice of election is concerned, Rule 40(5)(i) clearly provides three modes of service of the notice of the general meeting – by local delivery upon proper receipt, by post under certificate of posting or by publication through press. It is unambiguously provided that the notice can be sent “in one or more” of the said modes and the Rule uses the conjunction “or” to segregate the three modes from each other, thereby clearly leaving ample scope for service through any one or more of the said modes. Hence, no additional explanation is required to be furnished to justify sending the notices by publication through press, that too, in two Bengali vernacular newspapers of fairly wide circulation.
- 29.** As stated in the affidavit-in-reply of the petitioners in W.P.A. No.14296 of 2021 to the opposition of the respondent no. 6, there were 12 candidates in the election of the erstwhile Board for the 12 vacant posts. Accordingly, in terms of Rule 40(11) of the 2011 Rules, all the 12 candidates were declared elected and the Assistant Returning

Officer (ARO) duly issued certificate to each of them on February 21, 2021.

- 30.** Allegations and counter-allegations are levelled by the petitioners and the respondent no. 6, being the complainant, namely Delawat Hossain, against each other in respect of alleged misappropriation of funds by respondent no. 6 on the one hand and alleged mismanagement and illegal activities by the erstwhile Board of Directors on the other.
- 31.** However, any allegation against the erstwhile Board is conspicuously absent from the impugned order of supersession.
- 32.** Rather, it is noteworthy that a previous Notification dated December 26, 2019 issued by the Joint Secretary to the Government of West Bengal, Co-operation Department, was challenged in a writ petition, bearing W.P. No.1197 (W) of 2020 which was disposed of by a co-ordinate Bench of this court vide order dated February 6, 2020, thereby setting aside the impugned order of supersession but directing the election of the society to be conducted within two months from the date of appointment of the ARO.
- 33.** Although several complaints were lodged and a criminal case is pending against the respondent no. 6, an Order dated November 13, 2020 was issued by the Joint Secretary directing reinstatement of respondent no.6, Manager (under suspension), which was challenged in W.P.A. No.11352 of 2020. Vide Order dated January 4, 2021, the co-ordinate Bench stayed the reinstatement order until disposal of the writ petition or until further orders, whichever was earlier, and further

restrained Delawat Hossain, the respondent no. 6, from coming near the precincts of the society.

34. Be that as it may, there is no justification, rhyme or reason at all for the impugned order by the Secretary of the CEC to supersede the validly elected erstwhile Board.
35. As such, **W.P.A. No.14296 of 2021 is allowed**, thereby setting aside the impugned Order of the Secretary, CEC, West Bengal dated August 17, 2021 (communicated on August 27, 2021) in Election Dispute No. 01/CEC of 2021, whereby the Returning Officer of the petitioner no.1-co-operative society was directed to initiate the election process *de novo*, thereby rendering the erstwhile elected Board of Directors, of which the petitioner no. 2 was the Secretary, defunct.
36. The members of the erstwhile Board of Directors, with the petitioner no. 2 as its Secretary, are hereby restored to their said posts and respective designations.
37. Consequently, **W.P.A. No.6121 of 2022 is allowed** as well, removing and setting aside the appointment of the Administrator nominated for conduct of the affairs and election of the petitioner no. 1-society (who has, in the meantime, replaced the erstwhile Special Officer as per the submission of counsel for the respondents), who shall hand over the charge of the affairs of the society to the hereby-reinstated Board of Directors at the earliest, preferably within a fortnight from date.
38. The reinstated Board of Directors, with the petitioner no. 2 as the Secretary, shall, thereupon, conduct the affairs of the society in a transparent manner and shall initiate the process of election for the

new Board of Directors expeditiously in due time, under the aegis of the Co-operative Election Commission, West Bengal.

39. It is, however, made clear that the merits of the allegations and counter allegations made against and by respondent no. 6 vis-à-vis the society and its functioning have not been entered into.
40. There will be no order as to costs.
41. Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(**Sabyasachi Bhattacharyya, J.**)