

S/L 6
24.08.2022
Court. No. 19
GB

WPA 18108 of 2022

Hrishikesh Maity
VS
The State of West Bengal & Ors.

*Mr. Billwadal Bhattacharyya,
Mr. Suryaneel Das,
Mr. A.K. Mukherjee,
Mr. Amrit Sinha.*

...for the Petitioner.

*Ms. Rituparna Maitra,
Mr. Biplab Das.*

...for the State.

*Mr. Srijan Nayak,
Mr. Ankit Sureka.*

...for the Co-operative Election Commission.

Mr. Madan Mohan Roy.

...for the Respondent No.4.

*Mr. Soumen Dr. Dutta,
Ms. Arpita Kundu.*

...for the Respondent No.6.

Affidavit-of-services filed in Court today, be kept with
the record.

The petitioner has two-fold challenges. That the
induction of the respondent no.6 as a member of the
Dublabari Tangramari Samabay Krishi Unnayan Samiti
Limited (hereinafter referred to as the 'said society') was
illegal and was facilitated by the said society through
fraudulent means.

The petitioner has specifically stated that by
tampering the society's records, the society had shown that
the respondent no.6 had adequate money deposited in his
account, to be inducted as a member. The next challenge is
that, by virtue of the induction of the respondent no.6 as a
member, the society intended to send the respondent no.6 as
a delegate for election of the Board of Directors of Balageria

Central Co-operative Bank Limited. The said society like other similar credit societies is a member of the Balageria Central Co-operative Bank Limited and the election of the Board of Directors of the bank would be held amongst the delegates, who were sent up by the society. The petitioner seeks an injunction, restraining the respondent no.6 from participating in the election process due to be held on August 28, 2022.

The learned advocate for the petitioner has pointed out several overwriting in the records of the society in order to establish that the allegation of tampering and overwriting, etc. were genuine.

The learned advocate for the bank submits that the election of the Board of Directors has been fixed and preparations have been made. As such, the dispute between the society, the respondent no.6 and the petitioner cannot be a reason to stall the entire election.

The learned advocate for the respondent no.6 submits that the original passbook maintained by the said respondent with the society would indicate that the said member had adequate deposit to qualify as a member under Section 134C of the West Bengal Co-operative Societies Act, 2006. He further submits that just before three days from the scheduled date of the election of the Board of Directors of the Balageria Central Co-operative Bank Limited, such prayer for an injunction upon the respondent no.6 should not be entertained by the Court. It is submitted that the membership of the respondent no.6 was decided in 2020.

The petitioner being one of the members of the society was well-aware of the membership of the respondent no.6. That the decision to send the respondent no.6 as a delegate was taken sometime in July, 2022, but there was no challenge to either the membership of the respondent no.6 or the decision to send up the respondent no.6 as a delegate for the election of the Board of Directors of the Bank. It is further submitted that the nomination of a delegate is a dispute and the provision of Sub-Regulation 35 of Regulation 3 of the West Bengal Co-operative Election Commission Regulation, 2012 was not exhausted by the petitioner.

Mr. Nayak, learned advocate for the Election Commission submits that none of the allegations, which have been made in the writ petition are amenable to writ jurisdiction. First of all, the dispute with regard to induction of a member, is a dispute covered by Section 102 of the West Bengal Co-operative Societies Act. Secondly, the process of election has been continuing for a long time since July, 2021, but the petitioner did not raise such issues till very recently. That the final voters' lists was published on August 1, 2022 and the petitioner was all along aware of the membership of the respondent no.6.

The learned advocate for the State adopts the submission of the Election Commission.

Admittedly, the petitioner is a member of the society. The petitioner raised objection with regard to the induction of the respondent no.6 as a member of the society. The petitioner has alleged collusion between the society and the

respondent no.6. As the society did not take any steps with regard to the alleged induction of the respondent no.6 as a member, the dispute between the petitioner and the society arose. As such, this Court is of the view that the petitioner must file a dispute case before the concerned Assistant Registrar of the co-operative society. If such dispute is raised, the same shall be decided in accordance with law, within a period of three months from date.

With regard to the election of the delegates, this Court finds that in this particular case, there was no election of the delegates, but there was a nomination. The final voters' list was published on August 1, 2022 and the date for acceptance of the nomination paper was August 11, 2022. The petitioner shall raise a dispute in terms of the provisions of law before the Election Commission and such dispute shall be decided expeditiously.

In view of the fact that the process of the election has been going on for a while and the petitioner as a member had already approached the authorities with regard to the alleged membership and nomination of the respondent no.6 as a delegate and was aware of all the steps that had been taken to hold the election on August 28, 2022, it would not be wise for the Court to stall the election. Moreover, the remedy of the petitioner being before the appropriate forum/authority under the Act, the petitioner ought to have exhausted his remedies under the special statute.

The petitioner will file a dispute case with regard to the induction of the respondent No.6 as a member of the

society under Section 102 of the Act before the concerned Assistant Registrar of Co-operative Society. The petitioner shall raise the dispute with regard to the election nomination of the respondent No.6 before the Election Commission.

The election of the Board of Directors of the respondent no.4 shall be held, the result shall be published, but the election of the respondent no.6 (in case the respondent no.6 is successful) shall be subject to the decision of the concerned ARCS as also the Election Commission. If, ultimately in the dispute case the petitioner is successful, then the entire process of induction of the respondent no.6 as a member, his nomination as a delegate and his ultimate election shall automatically stand null and void. In case, the Election Commission finds that the nomination of the respondent no.6 as a delegate was not in accordance with law, then the nomination of the respondent no.6 as a delegate and/or election of the respondent No.6 in the Board of Directors of the bank, shall automatically stands cancelled.

All the factual observations made in the writ petition are prima facie and shall not have any impact in any of the proceedings.

The petitioner will raise the dispute case in accordance with law, forthwith. All the interested parties will be heard and a reasoned order shall be passed.

Accordingly, the 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.)