

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 27577 of 2022

Ashok Chandra Dora

Petitioner

Mr. Digambara Mishra, Advocate

-versus-

***Election Officer, Bolangir District
Central Cooperative Bank Ltd. and
others***

.... Opp. Parties

Mr. Harmohan Dha, Advocate
(For State Cooperative Election Commission)

**CORAM:
JUSTICE K.R. MOHAPATRA**

Order No.

**ORDER
27.10.2022**

2.
 1. This matter is taken up through hybrid mode.
 2. Petitioner in this writ petition seeks to assail the order dated 12th October, 2022 (Annexure-7) passed by the Election Officer, District Central Cooperative Bank Limited, Balangir (hereinafter referred to as 'the Election Officer') rejecting nomination of the Petitioner for Committee Member in respect of Zone No.7 of the Balangir District Central Cooperative Bank Limited (hereinafter referred to as 'the Bank'). The Petitioner also prays for a direction to the Election Officer to allow him to participate in the election process as per notification under Annexure-1.
 3. The sole grievance of the Petitioner, as submitted by Mr. Mishra, learned counsel that the nomination of the Petitioner was rejected on the ground that there was no order of stay of Surcharge Proceeding on the date of filing of the nomination papers. It is his submission that assailing the order passed in

surcharge proceeding, the Petitioner has filed TA Case No.8 of 2022 before the Cooperative Tribunal. The Tribunal considering the case of the Petitioner, vide order dated 18th January, 2022, directed stay operation of order dated 22nd December, 2021 passed by the Presiding Officer-cum-Assistant Auditor General, Cooperative Societies, Balangir Audit Circle, Balangir under Surcharge Proceeding No.35 of 2020 till the next date. The said interim order was continuing till 1st August, 2022. But due to transfer of the Judicial Member of the Cooperative Tribunal, the said post is lying vacant for which the interim order could not be extended. However, the Petitioner is filing applications for extension of interim order on each date of posting of the appeal. The appeal is at present posted to 15th November, 2022 for hearing. Similarly, one Laxman Kumar Meher has also filed TA Case No.2 of 2022, which is being heard analogous to the appeal of the Petitioner.

3.1 In the appeal filed by said Laxman Kumar Meher, the Tribunal, vide order dated 12th January, 2021, directed stay of the order dated 15th December, 2021 passed by the Presiding Officer-cum-Assistant Auditor General Cooperative Societies, Balangir Audit Circle, Balangir in Surcharge Proceeding No.31 of 2020 till the next date. The said order was also continuing till 1st August, 2022 and similar applications are being filed for extension of the interim order in his appeal. Said Laxman Kumar Meher is also a candidate in respect of Zone No.15 of the Bank. In the instant case, while accepting his (Meher's) nomination holding that the interim order is continuing, nomination of the Petitioner has been rejected on the ground that the Petitioner

could not produce any material showing continuance of the interim order dated 18th January, 2022.

4. It is the submission of Mr. Mishra, learned counsel for the Petitioner that in the case of Laxman Kumar Meher also the interim order is not continuing since 1st August, 2022 and his appeal, i.e., TA Case No.2 of 2022 is also posted to 15th November, 2022 for hearing. When in a similar circumstance, the Election Officer accepted the nomination of said Laxman Kumar Meher, he should not have rejected the nomination of the Petitioner. It is further submitted that due non-availability of the judicial member, the Petitioner is not in a position to move an application for extension of interim order before the Tribunal. He is also not in a position to move ED No.175 of 2022, which has been filed by the Petitioner assailing the rejection of his nomination. Hence, this writ petition has been filed.

5. Mr. Dhal, learned counsel appearing for the State Cooperative Election Commission submits that the nomination of said Laxman Kumar Meher was accepted rejecting objection filed under several grounds on several grounds including the pendency of Surcharge Proceeding. Even if the finding with regard to continuance of the interim order in TA No.2 of 2022 is not taken into consideration, still then, nomination of said Laxman Kumar Meher can be treated to be valid in view of order of accepting his nomination in respect of Zone No.15 as at Annexure-8. Thus, case of the Petitioner is not similar to said Laxman Kumar Meher. He, therefore, prays for dismissal of the writ petition.

6. Although the Petitioner assailing the order under Annexure-7 has already filed a Dispute before the Cooperative Tribunal in ED No.175 of 2022, but due to absence of the Judicial Member, the Petitioner is not in a position to move the same.

7. In that view of the matter, this Court entertains the writ petition.

8. Considering the rival contentions of learned counsel for the parties and on perusal of records, this Court finds that in both the appeals, i.e., respective appeals of the Petitioner as well as Laxman Kumar Meher, interim order is not continuing since 1st August, 2022. But, one of the grounds of acceptance of nomination of said Laxman Kumar Meher is that the interim order passed in TA Case No.2 of 2022 filed by him is continuing. But, the nomination of the Petitioner was rejected on the ground that interim order passed in the appeal filed by the Petitioner, is not continuing. Hence, the Petitioner has a genuine grievance to be considered by the Election Officer of the Bank.

9. In that view of the matter, the impugned order under Annexure-7 is set aside and the matter is remitted back to Opposite Party No.1-Election Officer of Balangir Central Cooperative Bank Limited-cum-Additional District Magistrate, Balangir for fresh consideration of the nomination paper of the Petitioner giving opportunity of hearing to the parties concerned.

9.1 Since the date of election is scheduled to be held on 30th October, 2022, this Court is of the considered opinion that the

objection to the validity of the nomination of the Petitioner should be considered prior to that.

10. Mr. Mishra, learned counsel for the Petitioner undertakes to produce a copy (downloaded/certified) of this order before the Election Officer-Opposite Party No.1 by tomorrow. In such event, the Election Officer-Opposite Party No.1 shall do well to intimate the objector(s) and take a decision on the validity of the nomination paper of the petitioner by 29th October, 2022 giving opportunity of hearing to the parties concerned. It is made clear that this Court has not expressed any opinion on merit of the case of the Petitioner.

11. The writ petition is disposed of accordingly.

12. As requested, a copy of this order shall be handed over to Mr. Dhal, learned counsel appearing for the State Cooperative Election Commission to make arrangements to communicate the same to Opposite Party No.1.

Issue urgent certified copy of the order in course of the day.

(K.R. Mohapatra)
Judge