In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No. 15513 of 2023

Malda District Central Cooperative Bank Employees Association and others
Vs.
The State of West Bengal and others

For the petitioners	:	Mr. Arnab Saha, Mr. Abhimanyu Banerjee, Ms. Roshni Kalam
For the State Election Commission	:	Ms. Sonal Sinha, Mr. Tarun Kumar Chatterjee, Mr. Sujit Gupta, Mr. Sayan Datta, Mr. Soumen Chatterjee
For the Respondent nos.9 and 10	:	Mr. Amarendra Chakraborty
Hearing concluded on	:	26.07.2023
Judgment on	:	02.08.2023

Sabyasachi Bhattacharyya, J:-

1. The petitioner no.1 is an association of the employees of the Malda District Central Cooperative Bank, a cooperative bank formed under the West Bengal Cooperative Societies Act, 2006 (hereinafter referred to as, "the 2006 Act").

2. The members of the petitioner no.1-Association were deputed in polling stations for the Panchayat Elections which was concluded recently in West Bengal. As per Section 6 of the West Bengal State Election Commission Act, 1994 (for short, "the 1994 Act") and the Panchayat Laws, as well as the Handbook for Returning Officers issued by the West Bengal State Election Commission, polling personnel for the Panchayat Elections were to be deployed from among employees of the Central and State Governments as well as local bodies and primary schools and colleges, working under the State Government.

3. The moot question which arises for consideration in the present case is whether the Malda District Central Cooperative Bank (in brief, "the Bank") comes within the purview of Government-run institutions, which would bring its employees within the fold of Section 6 of the 1994 Act, for the purpose of deputation in polling stations.

4. The Bank, which has been arrayed as respondent no.9, has filed a short report on the query of Court as to whether the Bank is Government aided and/or run under Government control, either on the administrative or on the financial side.

5. With the report, the Bank has also annexed its audited accounts, primarily the schedule of its balance-sheet and profit and loss accounts.

6. Apart from citing provisions of the West Bengal Cooperative Societies Rules, 2011 (hereinafter referred to as, "the 2011 Rules"), it is disclosed in the Bank's report that, as per audited financial statements of the Bank as on March 31, 2023, the Government of West Bengal holds 55,480 shares of Rs.100 each, totaling to Rs.55.48

lakh, in the Bank. Other shareholders, together, hold 9,82,030 shares of Rs.100 each, totaling to Rs.9,82.03 lakh. The total share capital of the Bank is Rs.1037.51 lakh.

7. A glance at the schedule of the balance-sheet and profit and loss accounts of the Bank does not indicate any noticeable influx of finance directly from the Government.

8. The shareholding pattern overwhelmingly indicates that the State is not a majority shareholder of the Bank by any stretch of imagination.

9. Hence, it cannot be said that the Bank is either Government aided or is financially controlled by the Government of West Bengal to such an extent that it falls within the purview of Article 12 of the Constitution of India.

10. Admittedly, the Central Executive Officer (CEO) of the Bank is nominated by the State Government.

11. Rule 56(1) of the 2011 Rules provides that a Government Officer, when deputed to the service of a cooperative society under Section 53 of the 2006 Act, shall be called the Chief Executive Officer or by whatever designation called.

12. Sub-rule (2) of Rule 56 stipulates that, subject to such conditions as the State Government may impose, the CEO, “under control of the Board and the Chairman”, shall, in the conduct of the business of the Society, exercise certain powers such as having control over the employees of the society, to sanction leave, the impose any punishment or to suspend them and to institute, defend and conduct legal proceedings and enter into compromise or arbitration with creditors and debtors of the society.

13. Rule 56 lays down the functions of the CEO more elaborately, which includes key functions like receiving all moneys on behalf of the society, operating bank accounts, negotiating bills of exchange, paying costs and management and working expenses, etc.

14. A composite reading of Rules 56 and 57 indicate that the CEO exercises important functions in the society. However, the lifeblood of the powers of a CEO deputed by the State Government is encapsulated in the phrase "under control of the Board and the Chairman".

15. Hence, as important as the role of the CEO is in the regular functioning of a society, the same is circumscribed by the control of the Board and the Chairman.

16. The powers and duties of the Board of the Cooperative Societies are enumerated in Rules 52 and 53 of the 2011 Rules. The powers and duties of the Chairman and the Vice Chairman are stipulated in Rule 54.

17. A composite perusal of Rules 52 to 54 with Rules 56 and 57 shows that the control exerted by the Board and the Chairman on the CEO is all-pervasive.

18. Another important indicator is provided in Rule 59 of the 2011 Rules, which provides the procedure in case of difference of opinion between the Board and the CEO on any matter concerning the affairs of the society. The limited power of the CEO in case of such a difference is to record his views in the minute book and to refer the matter to the Registrar; but the decision of the Board shall be final and binding upon him, if not otherwise directed by the Registrar in writing, after obtaining approval from the State Government.

19. Hence, the limited scope were the opinion of a CEO may prevail is when his reference to the Registrar obtains an approval of the Registrar as well as the State Government within 45 days from the date of the reference of the matter to the Registrar. However, such a case is exceptional and the usual norm is that the decision of the Board prevails.

20. In the present case, the CEO, who is the *ex officio* director of the Bank, has been deputed by the Government, but the Bank has an elected Board of Directors. Out of the said Board of Directors, there is one Government nominee director, who is hopelessly outnumbered by elected directors, since there are a total of eleven elected directors and two co-opted directors.

21. Rule 63 of the 2011 Rules is also required to be looked into, in order to ascertain the full dimension of the power of a State nominee in the Board. A glance at the same indicates, in crux, that the State nominee, even if he or she has a dissent, can only note a deviation from the Government Policy, but has no direct role to play in the decision-making process, even if the Board deviates from a Government Policy.

22. Thus, on a composite reading of the entire provisions of the Rule, even where the Board has a State Government nominee and a Government deputed CEO, the role of the State Government is minimal, apart from certain scope of interference in fringe-situations. Otherwise, neither the State Government nor the Central Government has any role to play or control over the functioning of cooperative societies. If a contrary interpretation is to be drawn, every cooperative society in West Bengal would be directly under State control, which is not the intended position of law.

23. Thus, even taking into account the deputation of the CEO and Board member by the State Government, it cannot be said that the State has any executive control or administrative control over the Bank at all.

24. Insofar as finance is concerned, as already discussed, the State does not actively aid the Bank, nor has a majority shareholding in the Bank. Thus, the State Government does not have financial control over the Bank either.

25. Moving on to the parent Act, Section 2(2) of the 2006 Act stipulates that, save as otherwise expressly provided in the Act, the State shall not interfere in the management and operation of the cooperative societies and shall recognize cooperative societies as democratic institutions owned, managed and controlled by members for their economic and social betterment, operating their business based on mutual aid and cooperative principles.

26. Section 3 enumerates the cooperative principles, including voluntary membership in the society, irrespective of caste, creed, race and religion, democratic control by the members, members holding share capital and distribution of the economic results so as to avoid one member gaining at the expense of the other, autonomy and concern for communities.

27. The said principle, embodied in Section 2(2) combined with Section 3 of the 2006 Act, are the very antithesis of State control. The only discordant note is in Section 23 of the 2006 Act, which provides that if the State Government is of opinion that in order to secure profit management of any Central Cooperative Bank, it is necessary to do so, the State Government may make a scheme for amalgamation of the bank with any other similar bank.

28. However, such a scheme has to be by an order published in the Official Gazette stating the specific reasons therefor. Such an exercise on the part of the State Government is an exception and does not come within the purview of regular functioning.

29. Again, sub-section (3) of Section 23 of the 2006 Act envisages that an order of amalgamation made by the State Government shall not be made unless a copy of the proposed order, including the Scheme, is sent to the transferor bank and transferee bank calling upon them to invite objections or suggestions from the members, creditors and depositors thereof and to submit such objections and suggestions together with the own suggestions and objections of the bank to the State Government, which would be considered by the State Government and might stimulate modifications in the proposed order.

30. Thus, it is seen that sufficient checks and safeguards circumscribe such interference by way of amalgamation, on the decision of the State

Government, which cannot, thus, be said to be a regular control by the State Government in the functioning of the co-operative society.

31. In the instant case, the State is neither a majority shareholder, nor has any financial role to play in the Bank.

32. Hence, a detailed scrutiny of the law and the facts of the present case indicate that the Bank is not controlled, financed, aided or run by the State Government for the purpose of coming within the purview of Section 6 of the West Bengal State Election commission Act, 1994 or other *pari materia* statutes.

33. Hence, it cannot but be observed that the deputation of employees of the Malda District Central Cooperative Bank, for election duty in polling stations for the Panchayat elections, is *de hors* the law and cannot be sanctioned.

34. Since, in the recently concluded Panchayat Elections, employees of the Bank have already performed polling duties, which could not be helped since the present challenge was made in close proximity to the election, the said deployment cannot be reversed.

35. However, it is hereby held that the State Government does not have any jurisdiction or authority to depute employees of the above named Bank for election duty in polling stations in respect of Panchayat polls.

36. WPA No.15513 of 2023 is disposed of accordingly, in the light of the above observations.

37. There will be no order as to costs.

38. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)