

Item No. 5

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

17.10.2023
Ct-24

WPA 18135 of 2023
Goutam Choudhuri & Anr.
v.
The Union of India & Ors.

Mr. Kishore Mukherjee
... for the petitioners.

Mr. Kumar Jyoti Tewari
... for the respondent nos. 1 & 4.

Mr. Shreeyash Lalit
Mr. Ramendu Agarwal
... for the respondent no. 3.

Mr. Arnab Ray
... for the respondent no. 5.

The election of South Eastern, South-East Central and East Coast Railway Employees' Cooperative Credit Society Limited, a Society registered under the Multi State Cooperative Societies Act, 2002, is long due. The election of the said Cooperative Society got held up for various reasons, one of which is an order passed by the learned 3rd Additional Civil Judge (Junior Division), Alipore in TS No. 1652 of 2021.

The process of election commenced in compliance of the direction passed by the Nagpur Bench of the Bombay High Court on September 30, 2019 in WP 5525 of 2018 in the matter of Mr. Mahesh, son of Sriram Khobragade & Ors. v. The Union of India, through its Secretary, Department of Agriculture, Cooperation and Farmers Welfare, Ministry of Agriculture and Farmers Welfare & Ors. directing steps be taken for conducting

the elections for constituting the new Board of Directors in terms of Section 45 of the Multi State Cooperative Societies Act, 2002.

In compliance of the order passed by the Hon'ble Court, the Senior Personnel Officer (HQ) and the Returning Officer fixed the date of holding the election of delegates. The said notice dated November 26, 2021 was the subject matter of challenge in TS No. 1652 of 2021.

The Learned Civil Judge, by order dated December 22, 2021, restrained the defendants from giving effect to the notice for election and also restrained the defendants from conducting the election. The interim order of injunction is subsisting till date.

According to Section 84 of the Act of 2002, any dispute arising in connection with the election of any officer of a Multi State Cooperative Society is to be referred to arbitration. The provisions of the Arbitration and Conciliation Act, 1996 is to apply to all arbitrations under the Act.

Section 84(1)(b) of the aforesaid Act refers of disputes which mentions that notwithstanding anything contained in any other law for the time being in force, if any dispute (other than a dispute regarding disciplinary action taken by a Multi State Cooperative Society against its paid employees or an industrial dispute as defined in Clause 2 (k) of the Industrial Disputes Act, 1947) touching the constitution, management or business of a Multi State Cooperative Society arises between the Multi State Cooperative Society or its Board, between a member, past members and persons claiming through a member, past member or deceased member and the Multi State Cooperative Society, its Board or any officer,

agent or employee of the Multi State Cooperative Society or liquidator, past or present, such dispute shall be referred to arbitration.

Section 117 of the Act of 2002 bars jurisdiction of Courts in respect of the issues mentioned therein.

Section 117(3) mentions that save as provided in the Act, no decision or order made under the Act shall be questioned in any Court.

In the instant case, the Nagpur Bench clearly held that the election is to be conducted and steps pursuant to the order passed by the Hon'ble Court were to be taken.

An application under Order 7 Rule 11 CPC has been filed at the instance of the Society and its Board on February 14, 2022 and the same is yet to be disposed of. Though, the application was taken up for hearing, but the hearing is yet to be concluded.

It appears from the relevant laws applicable in the instant case that the Civil Court ought not to have entertained the issue at all as the same was in connection with an election dispute of the Society. The Civil Court might have been misled to exercise jurisdiction.

It is very clear from Section 84 of the Act of 2002 that the dispute is to be referred to arbitration. The process of election was kick-started by the order of the Hon'ble Nagpur Bench. It was absolutely erroneous and improper for the Ld. Civil Judge to assume jurisdiction and stall the entire process. The stay order passed by the learned Court below has a cascading effect because of which the Board of the Society cannot be constituted.

The election of the Society was held last in the year 2010 and the Board of Directors expired in the year 2015. The election is liable to be held in accordance with the provisions of the Act and in compliance of the direction passed by the Nagpur Bench without any further delay.

The Principal Chief Personnel Officer, South Eastern Railways by a communication dated December 28, 2021 has communicated to the Chief Manager of the Society that in view of the interim order passed by the Learned Court below, the election schedule has been cancelled with the approval of the competent authority.

It appears that the members of the Cooperative Society may have certain issues with regard to the election. As all issues in connection with the election is arbitrable and is to be decided by the Arbitrator, it will be open for the plaintiffs in the pending title suit being TS No. 1652 of 2021 to raise their grievances/demands before the Arbitrator who will decide the same in accordance with law.

It has been submitted by the learned advocate representing the Board that the Returning Officer Sri Jaydip Sengupta who was engaged for conducting the election has since been transferred. Accordingly, the Central Registrar of Cooperative Societies is directed to take steps for appointing fresh Returning Officer for conducting the election. The election shall be conducted and concluded positively within a period of six months.

The time limit of six months is specified as it has been submitted by the learned advocates representing the respective parties that the Society is a huge one with

several members and the process of conducting the election may not be complete within the prescribed period of ninety days.

Learned advocate representing the respondent no. 3 raises an issue with regard to the maintainability of the writ petition.

Reliance has been placed on the judgment delivered by the Hon'ble High Court at Delhi in the matter of **Sushil Kumar v. Central Registrar of Cooperative Societies & Ors.**, reported in **2022 SCC Online Del 2088** wherein the Court was of the opinion that the concerned Cooperative Society being Northern Zone Railway Employees Thrift and Credit Society Limited is governed by the Multi State Cooperative Societies Act, 2002. The Cooperative Society is neither substantially financed nor funded by the Government. The Society is not administratively controlled by the Government either. There is no dominant or overriding power that the Government may be recognized to wield over the affairs of the Cooperative Society.

The Government neither exercises control over the management of the Society or in the formulation of policy and, accordingly, the test of 'deep and pervasive control' is not fulfilled. The Court was of the opinion that the Cooperative Society does not discharge any public function and as such the writ petition against such a Society could not be maintainable.

Reference has been made to several other judgments on the same issue.

It is made clear that this Court is entertaining the writ petition to a very limited extent to ensure that the election of the Society may not be delayed further as the

Society is without a valid Board since 2015. The current Board is merely carrying on functions till a new Board is elected. Such a Board cannot take important policy decisions on behalf of the Society. For smooth and proper functioning of the Society, the election is imperative and the election ought to be conducted and concluded within the time limit specified hereinabove.

The writ petition stands disposed of.

The supplementary affidavit filed on behalf of the respondent no. 3 is taken on record.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

Sh

(Amrita Sinha, J.)