

30.08.2023
Item No.01
Court No.6.
S. De

M.A.T. 1677 of 2023
With
I.A. No. CAN/1/2023

Suvra Kumar Banerjee & Anr.
Vs
Eastern & North-East Frontier Railway Co-
operative Bank Limited & Ors.

Mr. Soumya Majumder,
Mr. Tilak Mitra,
Mr. Barun Chatterjee,
Mr. Abhik Sarkar, ...for the appellants.

Mr. Ayan Banerjee,
Ms. Debasree Dhamali,
...for the Bank/respondent nos. 1&4.

Mr. Srijan Nayak,
Mr. Biplab Das,
Mr. Ankit Surekha,
...for the respondent no.2.

By consent of the parties the appeal and the connected application are taken up together for hearing.

This appeal is directed against a judgment and order dated August 28, 2023 whereby the writ petition of the appellants being WPA No.20893 of 2023 was dismissed by a learned Single Judge of this Court.

The appellants approached the learned Single Judge with the grievance that they being aspiring candidates to contest the election as delegates of Eastern and North-Eastern Frontier Railway Co-Operative Bank Limited, filed their nomination papers. A list of candidates was published on August 22,

2023, wherein the names of the appellants appeared. On the next day i.e. August 23, 2023, yet another list of candidates was published wherein the names of the appellants did not figure. The appellants immediately approached the learned Single Judge by way of a writ petition. The learned Judge dismissed the writ petition on the ground that the bank in question cannot be treated as 'State' and as such is not amenable to the writ jurisdiction. The learned Judge also noted that an alternative remedy under Section 84 of the Multi-State Co-operative Societies Act, 2002, is available to the writ petitioners. The learned Judge observed that dismissal of the writ petition will not stand in the way of the petitioners to approach the appropriate forum in accordance with law.

Being aggrieved, the writ petitioners are before us by way of this appeal.

Mr. Mitra, learned advocate appearing for the appellants/writ petitioners says that the election is scheduled to be held tomorrow (August 31, 2023). The names of the appellants have been wrongly removed from the final list of candidates. The grounds mentioned for removal of the names of the appellants from the final list are not valid grounds in law.

Mr. Nayek, learned advocate appearing for the Returning Officer and Joint Registrar of Co-operative Societies, says that the nominations of the appellants

were filed beyond the last date and time and that too through a third person namely Smt. Monjulika Mukhopadhyay and not by the candidates in person. Hence, the final list of candidates does not include the names of the appellants.

Mr. Mitra, in reply, says that the ground submitted from the bar does not find space in the final list wherefrom the names of the appellants have been removed.

We do not think it necessary to decide the question as to whether or not the writ petition is maintainable against the Co-operative Bank. Since we find that there is an alternative remedy in the form of arbitration prescribed under Section 84 of the 2002 Act, we are in agreement with the view of the learned Single Judge that the appellants should first exhaust such remedy. We are not unmindful of the fact that availability of an alternative remedy is not a complete bar to the maintainability of a writ petition. However, ordinarily, the writ Courts do not interfere where an alternative remedy is available to the writ petitioner.

Mr. Mitra, says that arbitration will take some time and in the mean time the election will be held and the result will be published rendering the arbitration proceedings infructuous. The appellants do not have to worry on that score. We make it clear that if the appellants succeed in the arbitration, the entire

election procedure in connection with the two concerned constituencies being MTR/C/1, MTR/C/3 shall stand set aside and a fresh election will be held in respect of those two constituencies.

In the event the appellants take recourse to the alternative remedy of arbitration, we direct the Central Registrar of Co-Operative Societies to ensure that the arbitration proceedings are concluded within one month from the date of communication of this order by the appellants to the Central Registrar of Co-operative Societies. The arbitrator to be appointed by the Central Registrar of Co-operative Societies shall also abide by the time schedule indicated in this order.

No useful purpose will be served by keeping the appeal pending.

Since we have not called for affidavits, the allegations contained in the stay application are deemed not to be admitted by the respondents.

MAT 1677 of 2023 is disposed of along with the application being I.A. No. CAN/1/2023.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)