

D/L
Item No. 02
04.03.2024
KOLE

**MAT 328 of 2024
With
IA CAN 1 of 2024**

**Amit Ghosh
-Vs.-
The State of West Bengal & Ors.**

*Mr. Subir Sanyal,
Mr. S. Chatterjee,
Mr. S. Mukherjee,
Mr. A. Ghosh,*

...for the appellant.

*Mr. Lalit Mohan Mahata,
Mr. Ziaul Haque,*

...for the State.

*Mr. Saptangsu Basu, Sr. Adv.
Mr. A. Kr. Chakraborty,
Mr. S. Mohan Ghosh,*

...for the respondent nos. 4, 5 and 6.

*Mr. Srijan Nayek,
Mrs. Rituparna Maitra,*

...for the respondent no. 7.

*Mr. Samal Krishna Pathak,
Mr. Souvik Maji,*

...for the present Board of Director.

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

A judgment and order dated January 19, 2024, whereby the appellant's writ petition being WPA 810 of 2024 and a connected application being IA CAN 1 of 2024 as also a contempt application being CPAN 82 of 2024 filed by the writ petitioner, were disposed of by a learned Judge of this Court, is the subject matter of challenge in this appeal.

The matter pertains to a Cooperative Society. Notification for holding of election of the Society was published on December 8, 2023. With the grievance that

the election was sought to be held in a manner contrary to the provisions of the applicable law, the present appellant and some other persons connected with the Society approached the learned Single Judge by filing WPA 28602 of 2023. By an order dated December 22, 2023, the learned Judge disposed of the writ petition with the following observations and directions:-

“In view of the above, the instant writ petition is disposed of by directing the Assistant Returning Officer being the respondent no. 3 herein to consider and decide the representation filed by the petitioners in accordance with law after giving reasonable opportunity of hearing to all the necessary parties at the earliest but positively by 27th December, 2023.

The aforesaid respondent is directed to take a decision in the matter and communicate the same to the parties. If remedial measures are required to be taken, the same shall be immediately taken by the respondent no. 3.

If it appears that the election is being sought to be conducted without following the due provision of law, then it will be open for the aforesaid respondent to stall the election till the proper process is adopted.

Liberty is granted to the petitioner to forward the copy of the representation to the aforesaid respondent at the time of communicating the order of the Court.

The aforesaid respondent shall act on the basis of the order that is available in the server duly downloaded from the official website of this Court.”

Pursuant to the aforesaid direction, a hearing was held before the Assistant Returning Officer who passed an order on December 27, 2021 which reads as follows:-

“As per hearing the following decision was taken-

- (i) *Gokul maity, Swapan Sanki, Pradip Das and Puspall Kumar Samanta filled nomination papers. Therefore, the petitioners except Amit Ghosh admit the election procedure.*
- (ii) *For the interest of public and for establishing democracy the date of election is short for two days from the final list of voter list.*
- (iii) *No other defects is found. Therefore, Election to Delegates of Biplabi Kshudiram S.K.U.S. Ltd. should be held on 31.12.2023.”*

Election was duly held. Gokul, Swapan and Pradip being three out of the four writ petitioners in the earlier round of litigation, contested the election and lost. Challenging the order of the Assistant Returning Officer dated December 27, 2023, the present appellant approached the learned Single Judge in this round of litigation. The appellant herein had also filed a contempt petition, as indicated above, for alleged violation of the learned Single Judge’s earlier order dated December 22, 2023. The successful candidate filed an application for intervention before the learned Judge.

The learned Judge took up for hearing all three matters, i.e., the writ petition, the intervention application and the contempt application and disposed of the same by the impugned order, with the following observations and directions:-

“Learned advocate representing the Election Commission submits that the draft voter list was published on 9th November, 2023 and notification for election was published on 8th December, 2023. The petitioner lodged his objection at a very delayed date. The hearing was conducted as per the direction passed by this Court. None but the petitioner objected to the process of election. It has been submitted that as the

election is over, accordingly, the issue is to be treated as an election dispute and the same ought to be adjudicated by the Election Commission.

Learned advocate representing the applicant that is the elected candidate submits that the election certificate was issued in favour of the winning candidates after the process of counting on 31st December, 2023. It has been submitted that all members are aware of the result of the election.

Upon hearing the submission made on behalf of the parties and on perusal of the materials on record it appears that there are several disputed question of facts involved in the present case. The same cannot be adjudicated in the instant writ proceeding.

The aggrieved party will be at liberty to approach the Cooperative Election Commission in accordance with the West Bengal Co-operative Election Commission Regulations, 2012.”

Being aggrieved, the writ petitioner has come up by way of this appeal, in so far as the impugned order pertains to the writ petition and the intervention application.

Mr. Sanyal, learned Senior Counsel, representing the appellant says that the order of the Assistant Returning Officer passed on December 27, 2023, cannot be sustained. It is a completely unreasoned order. It merely contains the *ipse dixit* of the Assistant Returning Officer. That order must be set aside.

Mr. Basu, learned Senior Advocate, appearing for the Society and its office bearers and Mr. Pathak, learned Advocate, appearing for the successful candidate, in unison say that the relief for which the appellant had approached the learned Single Judge has become inappropriate with the

passage of time. The result of the election has been declared. New Board has been formed. New office bearers have also been elected. At this point of time the only remedy open to the appellant, if at all, is to approach the Election Commission raising an election dispute.

Having considered the rival contentions of the parties, we are inclined to agree with Mr. Basu and Mr. Pathak. Today, the fresh Board is functioning. We are not inclined in the present proceeding to pass an order which will set at naught the entire election process and constitution of the fresh Board along with appointment of new office bearers. Disputed questions of fact may also be involved as observed by the learned Single Judge. We are of the considered opinion, it will be appropriate for the appellant, if he is so advised, to raise an election dispute before the Cooperative Election Commission in accordance with law. If such dispute is raised within two weeks from date, the same shall be decided by the Cooperative Election Commission on merits, in accordance with law, by passing a reasoned order, within a period of two months from the date of filing of the complaint by the appellant before the Election Commission. The successful candidate shall be made a party to such complaint. Copies of the complaint shall be made available contemporaneously with the filing thereof to the Society and its Chairman and as also the successful candidate, who will be entitled to file their response to the complaint within two weeks thereafter. The Election Commission shall decide the dispute on the basis of the material produced before it by the

parties, in accordance with law. Further action may be taken by the Election Commission depending on the order that it passes on the complaint that may be lodged by the appellant herein.

We have not gone into the merits of the disputes between the parties. The Election Commission shall, if a complaint is made, decide the same with independent application of mind.

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

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(M. V. Muralidaran, J.)