

02. 28.03.2024
Court No.6
(Tanmoy)

MAT/598/2024

**COOPERATIVE ELECTION COMMISSION WEST BENGAL AND ORS.
VS
MANIK LAL JANA AND ORS.**

**WITH
IA NO: CAN/1/2024**

Mr. Kishore Dutta, Ld. AG,
Mr. Srijan Nayak, Adv.,
Ms. Rituparna Maitra, Adv.

...for the appellants.

Mr. Billwadal Bhattacharyya, Adv.,
Mr. Anish Kumar Mukherjee, Adv.,
Mr. Suryaneel Das, Adv.,
Mr. Chiranjit Pal, Adv.

...for the respondent/
writ petitioner.

Mr. Lalit Mohan Mahata, Ld. AGP,
Mr. Prasanta Bihari Mahata, Adv.

...for the State.

Mr. P.K. Roy, Adv.,
Mr. Ankit Sureka, Adv.,
Mr. Biplab Das, Adv.

...for the respondent nos. 3-4.

Affidavit of service filed in Court today be kept with
the records.

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

A judgment and order dated March 4, 2024,
whereby the writ petition of the respondent no.1 herein
being WPA 5419 of 2024, was disposed of by a learned
Judge of this Court, is the subject-matter of challenge in
this appeal at the instance of some of the respondents in
the writ petition.

It appears that being aggrieved by election of the
respective primary Co-operative Society not being held,

the writ petitioner approached the learned Single Judge. By an order dated February 29, 2024, the learned Judge recorded that the election of the said Society was scheduled on February 25, 2024, however, the same has been postponed and a direction has been passed by the Secretary, Co-operative Election Commission, on February 24, 2024, directing rescheduling of the election. Learned Advocate representing the Co-operative Election Commission was directed to take instructions and intimate the Court about the rescheduled date of election.

When the matter again came up before the learned Single Judge on March 4, 2024, the learned Judge recorded the following order:-

“The Assistant Returning Officer Tajpur SKUS Ltd., Nandigram has forwarded instruction that the election has been rescheduled and fixed on March 31, 2024.

It is made clear that the election shall be conducted and concluded on March 31, 2024 irrespective of the fact whether the Model Code of Conduct comes into play or not.

The police shall provide all necessary assistance and cooperation at the time of conducting the election.

The writ petition stands disposed of.”

Being aggrieved by the aforesaid order, the Co-operative Election Commission and some of its Officers have come up by way of this appeal.

Mr. Dutta, learned Advocate General representing the appellants, says that the appellants have no intention of delaying the election of the Society. On October 11, 2023, on two writ petitions being WPA

23439 of 2023 (*Sri Subrata Roy & Ors. v. The State of West Bengal & Ors.*) and WPA 23657 of 2023 (*Kamalesh Chakrabarti & Ors. v. The State of West Bengal & Ors.*), a learned Single Judge had passed an order effectively directing that the election of all the primary Co-operative Societies should be completed within six months from the date of the order i.e., April 11, 2024. Learned Advocate General says that there are about 1000 primary Co-operative Societies under the Central Co-operative Society out of which 548 are active. Out of the 548 Societies, election of about 300 has already been concluded. This would show that the appellants have no intention of delaying the matter.

However, after the impugned order was passed, on or about March 16, 2024, the model code of conduct came into operation. That has created certain constraints for the appellants, including logistic problems. It may not be possible to conduct the election on March 31, 2024. The date for completion of the election of the respondent Society should be extended.

Mr. Bhattacharyya, learned Advocate representing the respondent/writ petitioner, challenges the maintainability of this appeal. Drawing our attention to the orders dated February 29, 2024 and March 4, 2024 (impugned order), he says that in effect the order impugned is a consent order. The learned Judge merely recorded the instruction placed before the Court on

behalf of the appellants that the concerned election has been scheduled to be held on March 31, 2024. This appeal does not lie.

We are inclined to agree with Mr. Bhattacharyya. We do not think this appeal is maintainable. It is in the nature of a consent order. Section 96(3) of the Code of Civil Procedure, 1908 would not permit such an appeal.

The appellants say that they should be allowed to approach the learned Single Judge with an application for review or modification of the order dated March 4, 2024, in view of the changed circumstances. We do not think any such liberty from us is necessary. If they have the right in law to do so, they are at liberty to do so.

The appeal being MAT 598 of 2024 and the connected application being IA No: CAN/1/2024 are disposed of without being entertained on merits.

Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Supratim Bhattacharya, J.)