

24.06.2024
Item Nos.4 & 5
PG/KS
Ct. No.1

W.P.A (P) 570 of 2022
With
I.A. No. CAN 2 of 2024

Jitendra Nath Mallick & Ors.
Versus
The State of West Bengal & Ors.
With
W.P.A. 15957 of 2024

Rabindra Nath Thakur
Versus
The State of West Bengal & Ors.

Mr. Soumen Kr. Dutta
Mr. Subham Dutta
Mr. Sk. Sayan Uddin.....for the Petitioners
(W.P.A (P) 570 of 2022)

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Mr. Sayak Chakraborti
Mr. Wrickbrata Roy
Mr. Tamoghna Pramanick
.....for the Petitioner
(W.P.A. 15957 of 2024)

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Mr. Debangshu Dindafor the State
(W.P.A (P) 570 of 2022)

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.....for the State
(W.P.A. 15957 of 2024)

Mr. Srijan Nayak
Mr. Ankit Surekha.....for the respondents 3 to 6
(W.P.A (P) 570 of 2022)

Mr. Srijan Nayak
Mrs. Rituparna Maitra
.....for the respondent nos.3 to 4
(W.P.A. 15957 of 2024)

Mr. Pratik Dhar, Sr. Adv.
Mr. Ritwik Pattanayak.....for the respondents 8, 9 & 10
(W.P.A (P) 570 of 2022)

Mr. Pratik Dhar, Sr. Adv.
Mr. Ritwik Pattanayak.....for the respondent nos.7 to 9
(W.P.A. 15957 of 2024)

Mr. P. K. Roy

Mrs. Rituparna Maitra
Mr. P. S. Pal

.....for the respondent nos.5 to 6
(W.P.A. 15957 of 2024)

Mr. Sayak Chakraborti
Mr. Wrickbrata Roy.....for the applicant in
I.A. No. CAN 2 of 2024

(W.P.A (P) 570 of 2022)

Mr. Billwadal Bhattacharya
Mr. Ashish Kumar Mukherjee
Mr. Surayneel Das
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(W.P.A (P) 570 of 2022)

In Re.: W.P.A. 15957 of 2024

1. This writ petition in W.P.A. 15957 of 2024 was filed praying for issuance of a writ of certiorari to quash the proceedings dated 2nd May, 2024 in connection with the objections raised by the writ petitioner being Dispute Case No.06/CEC of 2024 and to withdraw the said order dated 2nd May, 2024. Essentially, the challenge is to the voter list on the ground that a few of the voters are no more and despite the same, their names figured in the list of valid voters in the voter list prepared by the Election Commission.
2. In a public interest writ petition in W.P.A.(P) 570 of 2022, the Court had taken cognizance of the entire matter and on 18th April, 2024, the following order was passed:-

“1. We have heard the learned advocates for the parties. Reference may be made to the order dated 4th January, 2024, which reads as follows:

“By this Public Interest Litigation writ petitioners seek for direction upon the respondents particularly the Election Commissioner, the

Secretary of the Election Commission and the Assistant Returning Officer to forthwith take all steps to start and complete election of the delegates and Board of Directors of Contai Cooperative Bank Limited by taking note of the direction issued in the earlier writ petition. Though the directions were issued from time to time in various writ petitions and a draft voter list was published and thereafter a final voter list was published and the election was also held on 03.04.2022 till date the election process has not commenced.

Considering the passage of time, this Court issues the following directions and the Court will monitor the progress of the matter.

The Special Secretary of the respondent Bank shall furnish a comprehensive list of valid members of its roles to the Election Commissioner within fifteen days from date and upon receipt of the same the same the Election Commissioner/Assistant Returning Officer shall scrutinise the same and publish a draft voter list within fifteen days from the date on which the membership list is received from the Special Officer of the Cooperative Bank. In the notification publishing the draft voter list it should be clearly indicated that persons having objections to the draft voter list are entitled to submit the same. The time limit for fifteen days may be given for submitting such objection. Thereafter the objection should be considered and the final voter list shall be drawn and placed before this Court for direction.

List the matter on 22nd February, 2024.”

2. Pursuant to the directions contained therein, after inviting objections by publishing a notice in seven dailies and based on the said list furnished by the Special Officer, the Election Commission has taken up the matter. They have published

notification and as of now, the new voter list has been drawn and published.

3. The learned advocate appearing for the Election Commission submitted that in terms of statute, 180 days is the time fixed within which the election can be conducted and the same will be adhered to and the only indulgence prayed for by the Election Commission is that the notification for the election would be issued immediately after 4th June, 2024.

4. In the light of the above, there will be a direction to the Election Commission to issue the notification for election on 10th June, 2024. With regard to the individual objections, which are raised before the Election Commission, the same shall be dealt with in accordance with law.

5. In order to monitor the progress, list the matter on 17th June, 2024.

6. In terms of the directions issued earlier, the list of valid voters was brought before this Court in a sealed envelope and the same is returned to the learned advocate for the Election Commission without opening the same.”

3. In terms of the above order, a direction was issued to the Election Commission to deal with the individual objections, which have been raised before the Commission in accordance with law. A direction was also issued to the Commission to issue notification for election on 10th June, 2024.
4. In terms of the said direction, the Election Commission has taken up the complaints, which appeared to be seven in number and the complaint of the writ petitioner/ Rabindra Nath Thakur was also taken into consideration. When the matter was fixed for hearing by the Election Commission on 20th February, 2024, the writ petitioner did not appear. Subsequently,

another notice was issued by the Commission on 22nd April, 2024 fixing the date of hearing on 2nd May, 2024. Notice was also served on the writ petitioner by an e-mail on 22nd April, 2024 and through special messenger on 30th April, 2024 but, the writ petitioner/ Rabindra Nath Thakur was represented by his counsel before the Commission on 2nd May, 2024. The objection raised by the writ petitioner was considered and it has been held by the Commission that the advocate appearing for the writ petitioner could not substantiate the allegation and accordingly, the complaint was closed.

5. The total number of voters is stated to be 82000 and more than 120 delegates are to be elected. The election notification has been published in terms of the above direction in the public interest writ petition on 10th June, 2024 and intimation notice has also been published on the very same day in several newspapers on 11th June, 2024, which are having wide circulation. Thus, the election process has commenced and the question would be as to whether the writ petition can be entertained.
6. This legal issue is no longer *res integra*. The earliest view is that of the decision of the Hon'ble Supreme Court in ***N. P. Ponnuswami Vs. Returning Officer*** reported in ***AIR 1952 SC 64***, wherein it was held that once the election process starts, it would not be proper

for the Courts to interfere with the election process. Similar view was taken in the judgment of ***Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha Vs. State of Maharashtra*** reported in ***(2001) 8 SCC 509***. The aforementioned decisions have been followed by the Hon'ble Supreme Court in paragraph 16 of the decision of ***Shaji K. Joseph Vs. V. Viswanath & Ors.*** reported in ***(2016) 4 SCC 429***.

7. In any event, the petitioner in his complaint before the Commission has submitted the names of six persons, who are stated to have been dead. Out of the six persons, verification was done and the name of one of the persons namely Alak Bhusan Mitra, Serial No.2998, Member No. 5992 has been deleted.
8. Therefore, it is not a case, the objection was not considered, rather it is a case, where the writ petitioner was unable to substantiate his claim. Now the petitioner comes forward with a case stating that there are several other persons, who are also dead.
9. These issues cannot be adjudicated, at this juncture as the election process has already commenced. There are sufficient checks and balances in the entire election process and in any event, the names of six persons, who are stated to be dead, can hardly cause any impact since the total number of voters are stated to be more than 82,000.

10. Therefore, we find no ground to grant any relief sought for in the writ petition.
11. Hence, W.P.A. 15957 of 2024 stands dismissed.
12. No costs.
13. In the event, there is any other writ petition concerning the present election process, the same shall be listed before this Court and the Registry is directed to take note of this direction.

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14. The directions issued in the order dated 18th April, 2024 has been complied with and the election notification has been issued on 10th June, 2024 published in the various newspapers having wide circulation on 11th June, 2024. Therefore, let the election proceed in terms of the notification.
15. Let the matter go out of the list.
16. Liberty is granted to the parties to mention for inclusion in the list after the elections are over.
17. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)