

11.07.2024

Item No. 40

Ct. no.2

b.r.

WPA 17067 of 2024

Bhagirath Biswas & Anr.

Vs.

The State of West Bengal & Ors.

Mr. Anindya Lahiri
Mr. Samrat Dey Paul
Mr. Asish Chakraborty

.... For the Petitioners

Ms. Sonal Sinha
Mr. Amritlal Chatterjee
Ms. Shabnam Farooqui

... for the State-respondents.

Mr. Ankit Sureka
Mr. Partha Sarathi Pal

... for the Resp. nos. 3 and 5.

Mr. Srijan Nayak
Ms. Rituparna Maitra

... for the Resp. no.4.

Mr. Dhiman Kumar Sengupta
Ms. Sweta Saha
Ms. FarhimMustaque

... for the Proposed Intervenor.

The petitioners claim to be members of the concerned **Co-operative Society**. The principle contention of the petitioners is that while publishing the final voter list for the election of the Co-operative Society which is scheduled to be held on **July 14, 2024** announced by way of newspaper publication dated **June 19, 2024** published on **June 21, 2024, annexure p-11 at page-139** to the writ petition, included the names of several deceased members of the Co-operative Society. As

an example, learned counsel for the petitioners drew attention to **Serial No.77 at page-117** to the writ petition, one **Ganesh Halder** is a dead member and his Death Certificate is available at **Page-143** to the writ petition. Another example is **Serial No.116 at page-118** to the writ petition, the name of the dead member is **Rangalal Halder** whose Death Certificate is at **page-145** to the writ petition. Taking the plea of this illegality in publishing the final voters' list, the learned counsel for the petitioners submit that the election cannot be held with such defective voters list. Learned counsel for the petitioners submit that complaint was lodged in this regard before the **respondent no.4**, who after considering the complaints issued a communication dated **June 25, 2024, annexure p-13 at page-141** to the writ petition, directing the **respondent no.7/Returning Officer** to consider the application and if there is any merits in the said application then to prepare **error free** voter list and proceed for election accordingly. Learned counsel for the petitioners submit that as per the requirement of law, no scrutiny of the members/voters had taken place by the respondent no.7/Returning Officer and/or the appropriate authority.

In view of the above, Mr. Anindya Lahiri, learned counsel for the petitioners submit that there is a serious infirmity in holding the forthcoming election of the Co-operative Society fixed on **July 14, 2024** and an

immediate restraint order is warranted to be passed by this Court from not holding the election on the date without rectifying the voter list by removing the names of the other dead members and without publishing an **error free** voter list.

Mr. Lahiri further submits that there are also inclusion of defaulter members' names in the voter list, which in accordance with law are not permitted to be included in the voters' list.

Mr. Srijan Nayak, learned counsel appearing for the respondent no.4, the Election Commission places a communication dated **June 26, 2024** issued by the respondent no.7 addressed to the Election Commission, the same is taken on record. The communication shows that the complaint lodged by the complainants which were taken up for consideration were of no merit and when the schedule for holding election had already been fixed and published on **June 19, 2024**, the same shall proceed, without any interference by Court.

Referring to **Sub-Regulation 3 (35) of West Bengal Co-operative Election Commission Regulations, 2012** (for short, the said Regulation), Mr. Nayek submits that any dispute relating to election of delegates in any Co-operative Society shall be referred to the Co-operative Election Commission within **thirty days** from the date of arising of such dispute.

He further submits that election being a democratic process and since the entire process has already been completed for holding the election, as already scheduled, no interference is called for at this stage.

On instruction, Mr. Nayek further submits that the petitioners despite receiving notice of hearing did not attend hearing before the jurisdictional Assistant Returning Officer.

Mr. Ankit Sureka, learned counsel appearing for respondent nos. 3 and 5 has made over a bunch of documents before this Court today. The said bunch of documents, are taken on record. In the bunch there is a notice dated **January 5, 2024** issued by the Assistant Returning Officer inviting objections with regard to the draft voter list prepared. The time and venue for receiving objection were also mentioned therein. It was also mentioned that after the schedule time and date is over, in terms of the said notice dated January 5, 2024, no further objection shall be received and entertained by the authority. The bunch further discloses the complaint lodged by the petitioners dated **March 7, 2024** with the names of the deceased members. The bunch further discloses the hearing notice dated **March 15, 2024** issued upon the petitioners. The bunch further discloses an order passed by jurisdictional Assistant Returning Officer dated **March 29, 2024**, *inter alia*, Serial Nos. 22, 31,33, 48,51, 65,68, 82,84,100, 102,110 and 111 there

under show the names of the petitioners and after considering their complaint, the authority came to a specific finding that no evidence was made available in support of their respective claims and accordingly the complaints were rejected/dropped.

Mr. Sureka, learned counsel further submits that the entire election process cannot be stalled on the basis of a complaint lodged by two members of the Society, whose complaints have already been taken care of and decided by the jurisdictional Assistant Returning Officer. The writ petition is also a belated writ petition and no interim order can be passed at this belated stage, when the election is scheduled on July 14, 2024.

Mr. Dhiman Kumar Sengupta, learned counsel appearing for one **Bodhiswar Biswas** seeks to intervene in the writ proceeding, though no intervention application is on record. However, he submits that his client has been allegedly described as a dead member by the petitioners but in fact he is alive and seeks to contest the election.

After considering the rival contentions of the parties and upon perusal of the materials on record, it appears to this Court that, the election of the Co-operative Society is fixed on July 14, 2024 after causing necessary newspaper publication.

The record submitted to this Court by Mr. Ankit Sureka, learned counsel appearing for respondent nos. 3 and 5, at least, *prima facie*, shows that the complaints

lodged by the petitioners have been considered and rejected on the ground that no supportive material was made available before the jurisdictional Assistant Returning Officer who decided the complaints. The final voter list was published on **March 30, 2024** and the petitioners filed this writ petition on or about **July 2, 2024**.

Holding an election of a Co-operative Society is a democratic process. Unless a gross and glaring illegality or mala fide with an unimpeachable evidence is established beyond any reasonable doubt before the Court, In holding the election process, a Court shall seldom interfere with the election process.

In the facts of the instant case, at least from the records placed on behalf of the respondent nos. 3, 4 and 5 it is seen that the objection raised by the petitioners with regard to the existence of the names of deceased members in the voter list were considered by the jurisdictional Assistant Returning Officer and since no supportive materials was made available, the complaints/objections were rejected/dropped. Inasmuch as, to consider the rival contentions of the parties including the facts whether the petitioners attended the hearing or not and as the members who alleged to be deceased are actually died or not required to be decided on a detail fact finding enquiry, which is also not the job of the writ Court. A Writ Court shall not cause a roving

and fishing enquiry. The said **Sub-Regulation 3 (35) of the said 2012 Regulation** gave ample authority to the Election Commission to deal with such issues.

In view of the foregoing reasons and discussions, this Court is of the view that, the cause of the petitioners raised through this writ petition cannot be entertained by this Writ Court for stalling the forthcoming election process of the Co-operative Society, which is scheduled on **July 14, 2024**. There shall be no fetter or restraint in any manner, in holding the forthcoming election of the Co-operative Society in accordance with law.

However, if the petitioners raises a dispute before the **respondent no.4** within a period of **two weeks** from today in terms of **Sub-Regulation 3 (35) of the said 2012 Regulation**, the same shall be decided by the **respondent no.4** in accordance with law after granting an opportunity of hearing to the petitioners and the other interested/related parties by passing a reasoned order in accordance with law as expeditiously as possible.

The jurisdictional Returning Officer and the jurisdictional Assistant Returning Officer shall render all necessary assistance to the Election Commission, if called for and produce all relevant records and documents before it.

It is made clear that this Court has not gone into the merits of the rival contentions of the parties raised

before this Court with regard to the correction/rectification of the voter list.

This order shall also not create any right or equity in favour of the petitioners, in the event the petitioners are found not be eligible to succeed to their claim strictly in accordance with law.

It is, however, made clear that after the election is complete the result shall be published and the new Board of Directors shall take charge and formation of such Board of Directors and their further functioning and action shall abide by the result of the decision of the Election Commission, if disputes are raised before it.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

With the above observations and directions this writ petition, **WPA 17067 of 2024** stands **disposed of**, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)