

23.08.2024

Item No. 04

Ct. no.2

b.r.

WPA 18660 of 2024

Sharvan Kumar Roy & Anr.

-Vs.

The State of West Bengal & Ors.

Mr. Srinjoy Das

... For the Petitioners

Mr. Sk. Md. Galib, Sr. Adv.

Ms. Suvasree Ghose

.... For the State-respondent.

Mr. Ankit Sureka

Mr. Biplab Das

.... For the resp. nos.2 and 4.

Mr. Srijan Nayak

Ms. Rituparna Maitra

.... For the Resp. nos. 5 and 6.

Mr. Falguni Bandyopadhyay

Mr. Kamal Krishna Pathak

Ms. Riya Ballav

Mr. Souvik Majhi

.... For the Resp. no.9.

On the urgency pleaded on behalf of the petitioners and in view of the determination being assigned before this Court, this writ petition has been taken up for consideration by publishing the same in the daily cause list.

It is submitted by Mr. Srinjoy Das, learned advocate appearing for the petitioners that though notices have been served upon the respondents but the affidavit of service is not affirmed yet. He undertakes to affirm affidavit of service and file it in course of the day.

Subject to such undertaking, this writ petition has been taken up for consideration.

Mr. Srinjoy Das, learned counsel appears for the petitioners.

Mr. Sk. Md. Galib, learned State counsel, appears for the respondent no.1.

Mr. Srijan Nayak, learned counsel appears for the respondent nos. 5 and 6, the Co-operative Election Commission.

Mr. Ankit Sureka, learned counsel appears for the respondent nos. 2 and 4.

Mr. Falguni Bandyopadhyay, learned counsel, appears for private respondent no.9, the last President of the Co-operative Society.

The said Co-operative Society has been formed after being allotted a plot of land for construction of dwelling flats for its Members. The residential complex has now been constructed in or about **2011**. The flats are allotted to its several members. The petitioners are to such Members who have been allotted their respective flats and are in occupation thereof.

Alleging several mismanagement, illegalities in running the affairs of the relevant Co-operative Society including the allegation of irregularities in fund management, these petitioners lodged complaints before the respondent nos. 2 and 4 and last of such complaint, as submitted by the learned counsel petitioners was

dated **September 1, 2023 at page-25** to the writ petition. Since the respondent nos. 2 and 4 failed to address the complaint, these petitioners filed the previous writ petition being **WPA 23932 of 2023**. By an order dated **October 13, 2023, annexure p-2 at page-32** to the writ petition a Co-ordinate Bench has disposed of the said writ petition directing the **respondent no.2** herein to dispose of the said complaint in the manner and mode as directed therein.

Pursuant to and in terms of the said direction of the Co-ordinate Bench the respondent no.4 by passing a reasoned decision dated **June 22, 2024, annexure p-4 at page-35** to the writ petition has disposed of the complaint and redressed the grievance of the petitioners. On scrutiny of the said reasoned decision dated **June 22, 2024**, it appears that the respondent no.4 has conducted a detailed fact finding enquiry and thereafter recorded its finding with reasons which clearly shows several severe and serious mismanagement and illegalities occurred in running the affair of the Co-operative Society. The fact finding enquiry shows that the family members of the then President including the Secretary himself had received the job for construction of the building, which according to the respondent no.4 was clearly in violation of the relevant statutory provisions. Apart therefrom there are finding of financial irregularities also.

In terms of the impugned notice dated **July 10, 2024, annexure p-6 at page-47** to the writ petition, the election of the Co-operative Society is scheduled on **tomorrow, i.e., August 24, 2024**. Hence the turgency on the part of the writ petitioners to move this writ petition praying for a restraint order not to hold the election of the Co-operative Society.

Mr. Srijan Nayak, learned counsel appearing for the Co-operative Election Commission, submits that by an order dated **May 3, 2024** passed by the appropriate authority under the statute, Special Officer has already then appointed who is now at the helm of affairs of the Co-operative Society. He further submits that Assistant Returning Officer has also been appointed by an order dated **June 21, 2024** to hold the fair and free election of the Co-operative Society. The election has already been announced. The respective dates for carrying out the formalities have already been fixed. He submits that the election may proceed.

Mr. Ankit Sureka, learned counsel appearing for respondent nos. 2 and 4 submits that, from the reasoned decision of the respondent no.4 dated June 22, 2024 several mismanagement and illegalities in running the affairs of the Co-operative Society are apparent. He submits that the Special Officer has already been appointed, he may run the affair of the Co-operative Society so long the illegalities are not redressed as

pointed out by the respondent no.4 in its reasoned decision. The Special Officer may take assistance of the Audit Directorate as provided under the West Bengal Co-operative Societies Act, 2006.

Mr. Falguni Bandyopadhyay, learned counsel appearing for the respondent no.9, the last elected President of the Co-operative Society submits that his client has already filed a review under **Section 148(1) of the 2006 Act**, which is pending. He further submits that the allegations raised by the petitioners pertain to 2011 at the time of construction of the building. The petitioners filed the previous writ petition only in 2023. He further submits that the petitioner no.1 as an assignee/transferee of the erstwhile Member, namely, Tarun Kumar Roy has obtained the flat and is in occupation thereof. The Co-operative Society itself has several allegations against the first writ petitioner. The writ petitioner no.2 is also a subsequent transferee in respect of her dwelling flat. He further submits that election may be proceeded.

Per contra, learned counsel for the petitioners has denied and disputed the impugned submissions made on behalf of the respondent no.9 and submits that the second writ petitioner is the direct allottee of her membership and the flat in respect of the said Co-operative Society.

After considering the rival contentions of the parties and upon perusal of the materials on record, it appears to this Court that, after causing the detailed fact finding enquiry, the respondent no.4 has passed its reasoned decision dated June 22, 2024. On the face of it, the said reasoned decision reveals existence of several mismanagement, illegalities including irregularities with regard to the fund of the Co-operative Society caused by the then Board of the Co-operative Society at the relevant point of time. This relevant point of time for the purpose of this writ petition is extremely important. The construction was held in 2011 or even slightly thereafter in 2012. The petitioners lodged their complain on the basis whereof, the Co-ordinate Bench took cognizance of the issue in the previous writ petition was of **September 1, 2023 at page-25** to the writ petition. The order of the Co-ordinate Bench was of 2023 when the Co-ordinate Bench directed the respondent no.4 to cause an enquiry. However, the incident relates back to 2011-2012.

The law is trite that the election being a democratic process when is challenged before a Writ Court, the Writ Court first has to examine the entire facts and circumstance under which the holding of election is under challenge. A Writ Court shall be slow to proceed while passing a restraint order on an election process.

In the instant case, admittedly the incidents had started happening since **2011-12**. The writ petitioners

lodged its complaint lastly in September 2023. The first writ petitioner has become transferee of the membership of one Tarun Kumar Das only in the year 2020, as this Court has been informed by the learned counsel for the petitioners. The second writ petitioner is there since 2017, as this Court has been informed by the learned counsel for the petitioners. Whereas the incidents of mismanagement alleged in 2011-12.

For the foregoing reasons and discussions, this Court is of the firm view that the holding of election is not to be interfered with.

The Co-operative Society shall proceed to hold its election as scheduled on **August 24, 2024** and shall also publish the result of the election but such result shall not given any effect until the irregularities and mismanagement as held by the respondent no.4 in its reasoned decision dated June 22, 2024 is totally redressed. The result of the election shall be kept in the record of the respondent no.4 but in abeyance.

The Special Officer already appointed on the Co-operative Society shall take immediate assistance of the Co-operative Audit Directorate to probe into the illegalities pointed out by the respondent no.4 in its said reasoned decision but positively shall commence such process within **two weeks** from the date of communication of this order. The said audit investigation in every respect shall commence and shall be completed positively within a

period of **three months** from the date of its commencement.

So long the illegalities pointed out by the respondent no.4 are not completely redressed in accordance with law in every respect, the Special Officer shall hold his office to run the management and affairs of the society.

It is further clarified that if any Member who shall be elected as a Member of the Board of the Co-operative Society against whom the illegalities are found by the respondent no.4 and if ultimately is established in accordance with law, such Member shall be disqualified to hold the office of the Co-operative Society and necessary steps shall be taken by rest of the Members of the Board in accordance with law against the Member.

After complete redressal of the illegalities as pointed out in the said reasoned decision dated June 22, 2024 passed by the respondent no.4, the Special Officer shall file a detailed report covering every aspect of the Co-operative Society relating to the running of management and affairs of the Co-operative Society during his/her tenure and shall submit the same to the Board of the Co-operative Society at the time of handing over of charge and then only he shall be discharged completely from his obligations.

For the purpose of carrying out the direction made herein the tenure of the Special Officer shall accordingly

and suitably be extended by the respondent no.1 in accordance with law.

It is made clear that when the review proceeding filed by the respondent no.9, as recorded above, shall be taken up for consideration by the respondent no.4, the same shall be decided on its independent merit and the respondent no.4 shall not be influenced by any observation made by this Court but shall dispose of the same as expeditiously as possible in accordance with law.

At the time of audit to be held by the Special Officer with the assistance of the Audit Directorate as directed above, the petitioners and the persons alleged with illegality in the said reasoned order shall be granted an opportunity of hearing.

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 18660 of 2024** stands **disposed of**, without any order as to costs.

Considering the urgency involved in this writ petition, the learned advocate on records for the parties shall be at liberty to communicate the gist of this order to the parties to the writ petition.

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

(Aniruddha Roy, J.)