

03.03.2025
Item M.L./10
AN/Ct. No. 15

WPA 309 of 2025

Swapan Kumar Gole
vs.
State of West Bengal ors.

Mr. Jaydip Kar, Sr. Adv.
Mr. Billwadal Bhattacharyya, Sr. Adv.
Mr. Anish Kumar Mukherjee
Ms. Jyoti Routh
Ms. Megha Dutta
Mr. Tamoghna Pramanick
... for the petitioner

Mr. Kalyan Kumar Bandopadhyay, Sr. Adv.
Mr. Sirsanya Bandopadhyay
Mr. Abdul Hamid
Mr. Arka Kumar Nag
Mr. Rahul Singh
Ms. Amrita Tewari
... for the State

Mr. Srijan Nayak
Ms. Rituparna Moitra
... for Cooperative Election Commission

Mr. P. K. Roy, Id. Sr. Adv.
Mr. Ankit Sureka
Mr. Asis Dutta
... for respondent nos. 3, 4

Mr. Pabitra Charan Bhattacharjee
Mr. Sovan Nayak
... for respondent nos. 13, 14, 15

The petitioner is a member of the Contai Co-operative Agriculture & Rural Development Bank Ltd. (in short, the Bank). He is one of the directors in the Board of Directors of the Bank.

This writ petition was filed, inter alia, with the following prayers:

“a) Dispense with Rule 26 of the Writ Rules framed by the Hon'ble High Court at Calcutta;

b) A writ of or in the nature of Mandamus commanding the respondent authorities and their men, agents and assigns, particularly respondent nos. 4 and 5 to immediately conclude the process of Delegate election in the respondent bank by announcing and/or publishing date and the schedule for ensuing Delegate election in Contai Co-operative Agriculture and development Bank Ltd.;

c) Issue a writ of or in the nature of Certiorari calling upon the respondents and each one of them, their men, agents and assigns to certify and transmit to this Hon'ble Court the records of the case so that conscionable justice may be administered by perusing the same and quashing any decision for not taking steps to conduct and conclude the process pertaining to delegate election in the respondent Contai Co-operative Agriculture and development Bank Ltd.;

d) Rule NISI in terms of prayers (b) and (c) above and to make the Rule absolute if no cause or insufficient cause is shown;

e) Interim order directing the respondent No. 5 to file a report by forthwith declaring the date and the schedule of delegate election in Contai Co-operative Agriculture and development Bank Ltd;

η Interim order directing the respondent authorities to constitute the nominated board consisting of the members of the present Board of Directors of the respondent bank in terms of section 29(7) of the West Bengal Co-operative Societies Act, 2006 till the election is held in the respondent bank;

g) Ad-interim orders in terms of prayers (e) and (f) as above;

h) Orders as to costs;

i) Such further and other order or orders be made and/or direction or directions be given as to this Hon'ble Court may seem fit and proper;"

In view of the aforesaid prayers made in the writ petition, this Court asked the Co-operative Election Commission, West Bengal (in short, the Election Commission) to give the proposed election schedule for

the delegate election of the Bank. Accordingly, the Election Commission in course of hearing produced a tentative election schedule to hold the election on April 20, 2025.

This Court, however, by an order dated February 6, 2025, directed the Election Commission to publish the revised final voter list on February 12, 2025. After addressing the objections, it had received regarding the final voter list published on December 17, 2024.

In course of submission today, it transpired that by a letter dated February 17, 2025, the Election Commission asked the State for nomination of a Special Officer since the tenure of the existing Board is going to expire on March 8, 2025, and in response, by a letter dated February 27, 2025, the State recommended the name of Shri Subrata Gayen, ARCS, Purba Medinipur-II, to function as a Special Officer after expiry of the tenure of the existing board.

In view of the stand of the Election Commission that election of the Bank cannot be conducted before March 8, 2005, this writ petition was heard to address the issue as to whether the existing board of the Bank should be allowed to continue till the election for reconstitution of the board is held by the Election Commission.

Mr. Joydip Kar, learned senior advocate appearing for the petitioner, submits that the Election

Commission has deliberately delayed the election process only with the motive to allow the tenure of the existing board to expire and to appoint a Special Officer at the behest of the State.

Mr. Kar submits that by a letter dated August 17, 2024, the Bank requested the Assistant Registrar of Co-operative Societies to take steps for appointment of a Returning Officer.

Subsequently, on August 30, 2024, the Assistant Registrar of Cooperative Societies and Returning Officer, Purba Medinipur-II Range, Contai, appointed Shri Shankar Kumar Pradhan, as Assistant Returning Officer. The Assistant Returning Officer after about one month took charge of the election and submitted a charge report on September 27, 2024.

Thereafter, on November 6, 2024, the Assistant Returning Officer sent a letter to the Chief Executive Officer of the Bank, requesting him to convene a meeting for the delimitation of the area of membership for the election. The Bank took necessary steps and the Assistant Returning Officer on November 28, 2024, issued necessary notifications declaring delimitation into 13 constituencies of the area of membership.

Subsequently, on December 2, 2024, the draft voter list was published. The final voter list was published by the Assistant Returning Officer on December 17, 2024. Thereafter, no steps were taken by

the Returning Officer to hold the election, which compelled the writ petitioner to file this writ petition on January 6, 2025, with the apprehension that the election process is being deliberately delayed with the ill-motive to appoint a Special Officer.

It has further been argued that the Election Commission should have concluded the election immediate after expiry of 25 days from the date of publication of the final voter list on December 17, 2024.

Mr. Kar submits that after the publication of the final voter list, there was no occasion to rectify it further. There is no provision in the applicable Rules which authorises the Election Commission to further correct or rectify the finally published voter list. The Election Commission has deliberately consumed time only to linger the election process in the name of finalisation the voter list, which was finally published on December 17, 2024.

By referring to Section 29(5) (a) of the West Bengal Co-operative Societies Act, 2006 (in short, the Act of 2006). Mr. Kar argues that it was the bounden obligation of the Election Commission to complete the election before the expiry period of the existing board members.

Mr. Kar places reliance upon the judgment reported at **(2006) 8 SCC 352 (*Kishansing Tomar v. Municipal Corporation of the City of Ahmedabad*)** to

argue that Election Commission should not put forward any excuse based on unreasonable grounds that the election could not be completed in time.

Mr. Kar submits that the act of the Election Commission in not conducting the election before the expiry of the term of the board of the Bank constitutes legal malice in law. In support of his submission, Mr. Kar has relied upon a decision of the Karnataka High Court passed in W.P. No.658 of 2025 (*The Primary Agricultural Credit Co-operative Society Ltd., Antarsante H.D. Kote, Mysore District-571125 represented by its President Registered under Karnataka Co-operative Societies Act, 1959 v. the State of Karnataka and Others*) and a judgement reported at **(2010) 9 SCC 437 (Kalabharati Advertising v. Hemant Vimalnath Narichania)**.

Mr. Kar further submits that the respondent authorities cannot take advantage of their own wrong by deliberately delaying the election process and appoint an administrator or special officer when the tenure of the board expires. In support of such submission, Mr. Kar relied upon a judgment reported at **(2024) SCC OnLine SC 840 (Municipal Committee Katra v. Ashwani Kumar)**.

Mr. Kar submits that, in the facts of the case, the Court should allow the existing board to continue its functions till the election is held. He further submits

that a nominated board should form by the existing board members to carry out the functions of the Bank in terms of Section 29(7) of the Act of 2006 till the election is held. He submits that the office bearers of the board and its members are also considered officers of the State within the meaning of Section 4 (47) of the Act of 2006.

In support of such submission, Mr. Kar has relied upon a judgment dated April 26, 2022, passed by a Coordinate Bench of this Court in WPA No.5924 of 2022 (*Ramkrishna Das v. The State of West Bengal*). The attention of this Court has also been drawn to a judgment dated October 11, 2023, passed by another Coordinate Bench of this Court in WPA No.23439 of 2023 (*Shri Subrata Roy v. The State of West Bengal*), in which a learned Single Judge of this Court has held, inter alia, as follows:

“In the instant case as the tenure of the Primary Cooperative Societies expired long back, accordingly, the Directors of the Primary Cooperative Societies lose their opportunity to cast vote for the election of the Directors of the Central Society. The State Government, conveniently, appoints special officers from amongst the employees of the Central Society so that the said special officers can act as per the dictates of the Government. The aforesaid action has shown results as the election to the Central Society has more or less remained uncontested. The purpose of the Government to keep control over the Central Bank appears to have been taken care of.”

Mr. Kalyan Kumar Bandopadhyay, learned senior advocate appearing for the State, on the other hand, submits that after the expiry of the tenure of the board members, which is five years, they cannot continue for even a single day. Mr. Bandopadhyay submits that any direction to extend the tenure of the board beyond the five-year period will be contrary to the scheme of the Act of 2006. A Writ Court cannot issue a mandamus which is contrary to the statutory scheme. In support of this submission, Mr. Bandopadhyay has relied upon the following judgments of the Supreme Court reported at **(1951) SCC 1024 (*State of Orissa v. Madan Gopal Rungta*)**, **(2010) 11 SCC 694 (*State of West Bengal v. Subhas Kumar Chatterjee*)** and **(1995) Supp 3 SCC 199 (*Hope Textiles Ltd. v. Union of India*)**.

Mr. Srijan Nayak, learned advocate appearing for the Election Commission, on the other hand, submits that there are sufficient and justified reasons for not holding the election during tenure of the existing board.

Mr. Nayak submits that even after publication of final voter list on December 17, 2024, several objections were received by the Commission from various parties concerning the final voter list. The Commission intended to review these objections and publish a revised final voter list. Accordingly, a revised final voter list was published on February 12, 2025, in compliance

with order dated February 6, 2025, passed in this matter.

Mr. Nayak further places on record a report filed by the concerned Returning Officer to argue that the election process for the Delegates of the Bank cannot proceed without completing key tasks. These include updating the final electoral roll, requisitioning polling venues, securing polling personnel, and ensuring police personnel are available for law and order during the election process.

Additionally, due to the ongoing Madhyamik and Higher Secondary examinations, the requisitioning of venues and police personnel during these periods will be difficult.

To appreciate the controversies involved in this case, it is necessary to take note of the following statutory provisions under the West Bengal Cooperative Societies Act, 2006.

“Section 4- Definitions. – In this Act, unless there is anything repugnant in the subject or context, –

....

(47) “Officer” includes a chairman, vice-chairman, secretary, joint secretary, assistant secretary, treasurer, director of a board and managing director, general manager, deputy general manager, assistant general manager, development officer, chief executive, deputy manager, assistant manager, field executive officer, and any other person appointed and authorized by the board to give direction relating to the affairs of the Co-operative society and also includes a Government Officer appointed under section 33 and Special Officer

appointed under section 36 or an administrator appointed by the State Government or the Registrar under section 34 to manage the affairs of the Co-operative society;"

.....

"29. Annual general meeting. –

.....

(7) "If the election As referred to in the third proviso to sub-section (1A) of section 35 or in sub-section (2) of section 36 cannot be held owing to an order of any court or for any other reasons or if the directors of the board elected in a general meeting cannot function owing to an order of any court or of for any other reason, or if the elected directors of the board resign simultaneously, the Registrar may constitute a board of directors from amongst the members or delegates or representatives of the Co-operative Society in conformity with section 32 and the constituted board shall elect its office-bearers from amongst themselves:

Provided that the board, so constituted, shall function till the directors of the board elected under this section assume charge."

.....

"35. Suppression and suspension of board and interim management. –

[(1) Notwithstanding anything contained in this Act or in any other law for the time being in force, no board shall be superseded or kept under suspension for a period exceeding six months:

Provided that in case of a Co-operative Society carrying on the business of banking, the provisions of this section shall have the effect as if for the words "six months", the words "one year" had been substituted.]

(1A) " If the State Government is of the opinion that

.....

(i) has made persistent default; or

(ii) is negligent in the performance of its duties; or

(iii) has committed any act prejudicial to the interests of the Co operative Society or its members; or

(b) the constitution or function of any Co-operative Society has come to a stalemate, or

(c) the Co-operative Election Commission has failed to conduct election in accordance with the provisions of this Act,

the State Government may, by notification stating reasons therefor, supersede the board and the directors of such board shall forthwith vacate their offices and by the said notification the State Government shall appoint one of its officers to manage the affairs of the Co-operative Society who shall be called the administrator, for the period specified in sub-section (1):

.....”

“Section 36- Expiry of term of board and appointment of special officer

(1) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, where election of the board of director of any Co-operative Society has not been held within a period of thirty-six months from date of their election where such election was held before the date of commencement of this Act or sixty months from the date of their election under sub-section (1) of section 29 of this Act, as the case may be, and the State Government shall, thereupon by notification, appoint special officer from amongst its officers for managing the affairs of the Co-operative Society for a period not exceeding six months from the date of such expiry of the period :

Provided that in case of a Co-operative Society carrying on the business of banking, the provisions of this clause shall have the effect as if for the words "six months", the words "one year" had been substituted;

(2) The special officer appointed to manage the affairs of such Co-operative Society shall arrange for conduct of elections within the

period specified in sub-section (1) and handover the management to the newly elected board;”

Section 29 (7) can be invoked only when (a) the election could not be held due to an order of any Court, or for any other reason, or (b) if the Board of Directors cannot function owing to an order of any Court, or for any other reason, or (c) if the elected Directors of the Board resign simultaneously. In such eventualities, the Registrar has the authority to constitute a Board of Directors from among the members or delegates or representatives of the Cooperative Society in conformity with Section 32.

A bare reading of the Section 35 (c) of the Cooperative Societies Act, 2006, makes it clear that the said provisions can be invoked when the tenure of the Board is yet to expire and the Election Commission has failed to conduct the election.

In such eventualities, the State Government has the discretion to appoint administrator, superseding the Board. However, such exercise of power must be backed by a duly notified valid reason.

On the other hand, it is apparent that Section 36 can be invoked when the tenure of the Board has expired. Section 36 does not contemplate a “failure” on the part of the Election Commission to hold the election

in due time. For any reason, if the election is not held and the term of the board members expires, the appointment of a Special Officer by the State from its officers to manage the affairs of the society is imperative, leaving no scope to extend their tenure beyond the period of five years from the date of their election.

In the present case, the State, however, has decided to invoke Section 36 of the West Bengal Cooperative Societies Act, 2006, by appointing of a Special Officer, as is apparent from the order dated February 27, 2025.

In the facts of this case, it must be held that there is no scope to apply Section 35 or Section 29 (7) of the Act of 2006.

The term “legal malice” or “malice in law” has been explained by the Supreme Court in case reported at **(2010) 9 SCC 437 (Kalabharati Advertising v. Hemant Vimalnath Narichania)** in the following words:

“Legal malice

25. The State is under obligation to act fairly without ill will or malice— in fact or in law. “Legal malice” or “malice in law” means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the

part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for “purposes foreign to those for which it is in law intended”. It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts. (Vide ADM, Jabalpur v. Shivakant Shukla [(1976) 2 SCC 521 : AIR 1976 SC 1207] , S.R. Venkataraman v. Union of India [(1979) 2 SCC 491 : 1979 SCC (L&S) 216 : AIR 1979 SC 49] , State of A.P. v. Goverdhanlal Pitti [(2003) 4 SCC 739 : AIR 2003 SC 1941] , BPL Ltd. v. S.P. Gururaja [(2003) 8 SCC 567] and W.B. SEB v. Dilip Kumar Ray [(2007) 14 SCC 568 : (2009) 1 SCC (L&S) 860] .)”

I am of the view that a mere failure to hold the election in due time may not necessarily always constitute a malice in law.

The report of the Assistant Returning Officer filed before this Court may be summarised as follows:

The Co-operation Directorate, Purba Medinipur II Range, Contai, Purba Medinipur, is responsible for overseeing the election processes of 865 societies. Within these societies, 465 are currently without an elected Board of Directors (BOD), which has led to a backlog in election procedures. The Co-operation Directorate, under the guidelines of the Co-operation Election Commission of West Bengal (CEC.WB), is aiming to complete all elections by March 31, 2025.

The election for Contai CARD Bank Ltd. is part of this larger election cycle, with a target date of completion

by the end of March 2025. The Assistant Returning Officer for Contai CARD Bank Ltd. was appointed on August 30, 2024, and assumed charge on September 27, 2024. He, like others in the region, is responsible not only for the election of the bank but also for the elections of other societies in the jurisdiction.

The total number of voters for the Bank is 58,146, with 13 constituencies covering 13 blocks within the jurisdiction. The election will require the recruitment of approximately 900 polling staff, who will be drawn from the district administration and other ranges under the Co-operation Directorate. Additionally, the election will require 13 polling venues, one for each constituency, to ensure smooth execution. In light of the scale of the election, a significant number of police personnel will also be necessary to maintain law and order during the election process.

A petition was filed by some members of the Bank on December 26, 2024, requesting an update to the final electoral roll. In response, Respondent No. 5 was directed by this Court to update the electoral roll by January 31, 2025. The final voter list was subsequently published on February 12, 2025. However, the Assistant Returning Officer was on medical leave from December 26, 2024, to December 31, 2024, during which the petition was received. Despite this leave, the electoral roll

was eventually updated as per the directions of this Court.

Before the election of delegates can take place, several logistical and administrative tasks must be completed. These include the requisitioning of polling and counting venues in the 13 constituencies under the Contai and Egra Sub-Division, recruitment of polling personnel, and the deployment of police forces to maintain law and order. These tasks are further complicated by the upcoming Madhyamik and Higher Secondary examinations in West Bengal, which are scheduled between February 10, 2025, and March 18, 2025. The examination schedules pose significant challenges, as requisitioning venues and police personnel during these periods is expected to be difficult due to competing demands on resources.

Moreover, 13 additional AROs are required for the delegate election of the Bank. The shortage of available officers is a key concern. Many officers have already been assigned to other societies within the jurisdiction, and election dates for these societies have already been scheduled. The notification of elections for other societies is imminent, and all upcoming dates for these elections have been filled. Furthermore, an order from the Secretary of the Chief Election Commissioner, West Bengal, dated December 31, 2024, directs that the

elections for all cooperative societies in the jurisdiction of the Contai Range be completed on a sequential basis.

The ARO for the Bank (Respondent No. 5) is nearing retirement, which adds another layer of complexity to the process. The appointment of additional AROs is essential to expedite the election process, as the current ARO may not be able to carry out the duties for an extended period due to retirement.

Given the significant number of voters (58,146) in the Bank and the logistical challenges involved, the process for preparing and completing the delegate election will also require considerable time and resources.

In conclusion, considering the challenges related to the election process, including the need for updated electoral rolls, requisitioning polling venues and personnel, and the impact of competing demands such as the Madhyamik and Higher Secondary examinations at least two more months are required to complete the election of the Bank.

From the stand disclosed by the Election Commission, it is apparent that the Election Commission could not conduct the election due to administrative and infrastructural constraints and also for the intervening Madhyamik examination and the Higher Secondary Examination.

A Writ Court, while exercising judicial review over an administrative decision, should not normally reassess the ground realities require to be dealt with by an administrative authority in discharging its statutory functions. Burden lies heavily upon the petitioner to make out a case of “legal malice” or “malice in law” by demonstrating that the act of the authority is deliberate and with an oblique or indirect object.

The Election Commission ought to have conducted the election in due time as has been mandated by the Supreme Court in ***Kishansing Tomar*** case. I am, however, of the view that the facts of the case may demonstrate failure on the part of the Election Commission to discharge its obligation to conduct the election in due time, but this is not an act done wrongfully or willfully without reasonable or probable cause.

I also find justification in the submission of Mr. Nayak that on many occasions, this Court as well as the Supreme Court directed the Election Commission to further scrutinise the finally published voter list, for which the Commission felt it necessary in this case also to consider the objections placed before it to further scrutinize the finally published voter list.

I do not approve the appointment of an officer, who is also entrusted with the duty to conduct the election

of the Bank, to discharge the function of a Special Officer.

I, however, cannot accept the argument of Mr. Kar that the existing board members of the Bank can be appointed as a Special Officer under Section 35 of the Act of 2006, since they are the officers of the State within the meaning of Section 4 (47) of the Act. A bare reading of Section 4 (47) makes it absolutely clear that the office bearers of the Board including the Directors, and the officers of the society are the “officers” within the meaning of Section 4 (47) of the Act of 2006. An officer of the State Government can only be said to be the “officer” within the meaning of Section 4 (47) of the Act of 2006, only when he has been entrusted to discharge the functions and duties of a society being appointed under Sections 33, 34, and 36 of the Act of 2006.

There is no scope to appoint anyone other than a State Government officer to act as a Special Officer under Section 36 of the Act of 2006.

In view of the aforesaid, the appointment of Mr. Subrata Gayen, the Assistant Registrar of Cooperative Societies, Range II, Purba Medinipore, by the letter dated February 27, 2025, is set aside.

The present Chief Executive Officer of the Bank, who is a State Government Officer, is appointed as the Special Officer of the Bank for a period of one month.

I am, however, not inclined to accept the election schedule proposed by the Election Commission. The election must be completed soon after the Madhyamik and Higher Secondary Examination are over. I, therefore, direct the Election Commission to complete the election within one month from date, making suitable modifications in the proposed election schedule.

The Special Officer will assume his function immediately after expiry of the tenure of the existing Board.

Accordingly, WPA 309 of 2025 is disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Kausik Chanda, J.)