

24.04.2025
Item No
AD 9
Saswata

WPA 8928 of 2025
Sanjay Ghoshal @ Sanjay Ghosal & Ors.
versus
The State of West Bengal & Ors.

Mr. Samim Ahmed
Mr. Arka Maiti
Mr. Aniruddha Singh
Ms. Ambiya Khatun

...For the petitioners

Mr. Srijan Nayak
Ms. Rituparna Maitra

...For the Cooperative Election Commission

Mr. Ankit Surekha
Mr. Biplab Das
Mr. Partha Sarathi Pal

...For the Registrar of Cooperative Societies

Mr. Soumya Majumder, Sr. Adv.
Ms. Sanjukta Dutta

...For the respondent no. 4

Mr. Pantu Deb Roy
Mr. Subrata Guha Biswas

...For the State

1. By consent of the parties, the matter is taken up for final disposal.

2. The present writ petition has been filed, inter alia, alleging irregularity in connection with holding of elections of Calcutta Corporation Cooperative Credit Society Limited. The petitioners are all members of the above cooperative society.

3. Mr. Ahmed, learned advocate appearing for the petitioners by drawing attention of this Court to the elections schedule would submit that from the election schedule, it would transpire that the Assistant Returning Officer has published the schedule for election of 12 directors in the board of the society and has indicated that out of the aforesaid, 2 (two) seats would be reserved for women, while 1 (one) seat will be reserved for Scheduled Tribes/Schedule Castes. No reservations have, however, been earmarked for the constituencies concerning election of delegates which are go to polls at the first instance. In this context, reliance has been placed on Section 32 of the West Bengal Cooperative Societies Act, 2006 (hereinafter referred to as the "said Act") and Rule 33 of the West Bengal Cooperative

Societies Rules 2011 (hereinafter referred to as the “said Rules”) to highlight the fact that the statute provides for reservation, which requires to be earmarked.

4. It is submitted that unless the Returning Officer identifies and provides for reservation of the seats in the respective constituencies at the base level, the entire process may stand vitiated if ultimately, it is found that no candidates are available from amongst the delegates for filling up the reserved seat for directors which are reserved in the manner as indicated hereinabove. This apart, it is submitted that according to the petitioners, the final voters list was briefly put up on the notice board of the society and as such, the petitioners were unable to ascertain whether their names are published in the final voters list. On account of the above, the petitioners could not file their nominations for participation in the election of delegates. It is also submitted that in the instant case the returning officer, for reasons best known to him, has determined only one polling station, though the members of the petitioners are working in different offices all over the city of Kolkata and as such, it would be inconvenient for the members to attend the polling station at one place on one particular date. According to Mr. Ahmed, the petitioners had expressed their grievances by email communications which are addressed to the office of the Election Commissioner. Such email communications according to the petitioners have remained unanswered. In the facts as noted hereinabove, it is submitted that the election cannot be permitted to be proceeded further and this Court should intervene and issue appropriate directions so that corrective measures can be taken by the Election Commission.

5. Mr. Nayak, learned advocate appearing for the respondent no. 2 submits that in this case there has been no irregularity. According to him, the publication of final voters list has been made in accordance with law. The voters list is currently placed

in the notice board of the society. With regard to the contention of the petitioners as regards the election schedule not identifying the reserved seats, it is submitted that at the stage of election of the delegates, there is no scope to reserve the seats. At least the statute does not provide for reservation of the seats of the delegates. According to him as and when the delegates are elected and prior to the election of the directors, appropriate notification shall be published showing the reserved seats. In this context, he has placed in detail the provision of Section 32 of the said Act and Rule 31 of the said Rules. Insofar as the contention of the petitioners as regards fixing of polling station is concerned, he submits that the same is the prerogative of the Election Commission.

6. Mr. Nayak further submits that without admitting the contention of the petitioners made in the petition and in order to bring in fairness, the Election Commission is ready and willing to permit the petitioners to participate in the election process by filing their respective nominations, if they so desire provided the nominations are filed in course of the day.

7. Mr. Majumder, learned Senior Advocate appearing for the respondent no. 4 by placing reliance on an unreported judgment delivered by the Hon'ble Division Bench of this Court on 10th April 2017 in the case of ***The Secretary, West Bengal Co-operative Election Commission v. The Commissioner, West Bengal Co-operative Election Commission & Ors. (MAT 339 of 2017)*** submits that Article 243-ZK of the Constitution of India read with Section 96 of the said Act empowers the Co-operative Election Commission to not only supervise, issue directions and control the preparation of electoral roll but also to conduct election in a manner which it thinks fit and proper. According to him, the scheme of law as noted above would clearly provide that it is the Returning Officer's sole prerogative to decide the venue of holding

the election of a Co-operative Society. As such there is no irregularity in finalizing only one polling station.

8. Mr. Surekha, learned advocate appearing for the Registrar of Co-operative Societies while adopting the submissions of Mr. Nayak submits that the instant writ petition is premature, since at this stage, it cannot be said that the seats that have been reserved, would not be filled by women and by Scheduled Tribes / Scheduled Castes candidates. Having regard thereto, no interference is called for.

9. Heard the learned advocates appearing for the respective parties and considered the materials on record.

10. In order to appreciate the contention of the petitioners, it would be relevant to note down the schedule of election of 12 directors of the board as has been notified by the Assistant Returning Officer on 19th April, 2025. To morefully appreciate the aforesaid, the schedule is extracted hereinbelow:-

NOTICE

Schedule of election of 12 (twelve) directors in the board of the said society, of which 2(two) and 1(one) being reserved for women and SC/ST respectively.

Sl. No.	Particulars	Date(s)	Time	Place/venue	Name & post of assigned person
1.	Publication of first voters list of valid members	19.04.2025	1.00 pm	on the notice board of the society at its registered address	ARO
2.	Filing of Nomination papers and application for symbols (optional)	21.04.2025, 22.04.2025 & 23.04.2025	12 noon to 3 pm	At the registered office of the society	ARO/Authorized person
3.	Scrutiny of nomination papers	25.04.2025	1.00 pm	At the registered office of the society	ARO
4.	Publication of list of valid nominations	26.04.2025	After Scrutiny is over	On the notice board of the society at its registered address	ARO
5.	Last date of withdrawal of candidature	26.04.2025	Before 3 pm	At the registered office of the society	ARO/Authorized person
6.	Publication of list valid candidates after withdrawal with allotment of symbols	26.04.2025	After 3 pm	On the notice office of the society	ARO
7.	Election of directors by ballot, if required	18.05.2025	10.00 am to 2 pm	Jai Hind Bhawan Community Hall, The Kolata Municipal Corporation, 41, Keightst Road, Patnapura, Kolata- 700025.	ARO/Polling Personnel
8.	Counting of voters	18.05.2025	After polling is over		
9.	Declaration of result	18.05.2025	After Counting is over		

Note : All, including eligibility criteria for nomination, shall be followed as per W.B.C.S. Act, 2006, W.B.C.S. Rules, 2011, W.B.C.E.C. Regulations, 2012 & Bylaws of the cooperative society.

Sd/-19.04.2025
(SHANKAR KUMAR SHOME)
Assistant Returning Officer

11. As would appear from the above, although the above schedule highlights that 2+1 seats have been reserved for women and Scheduled Tribes / Scheduled Castes candidates

respectively, the seats which are reserved have not been identified. Considering the rival contention of the parties, it would be necessary to ascertain as to whether at the base level of holding election of delegates, it would be necessary to provide for reservations of 3 seats. To morefully appreciate the same, relevant provision of Section 32 of the said Act as regards reservation of seats is extracted hereinbelow:

“32. Management of Co-operative Societies – (1) *There shall be a board of directors for every Co-operative society to manage its affairs and the board shall consist of such number of directors as may be specified in the by-laws of the Co-operative society. The directors shall be included in the board in the following manner to constitute it –*

(a) by election of directors in accordance with the provisions of section 29 from amongst the members or delegates or representatives of the Co-operative society:

Provided that the number of directors to be elected by the members of a Co-operative society shall not be less than six or more than [twenty one] :

Provided further that where the number of members of Co-operative society is less than twelve, the number of directors shall not be less than three or more than six.

[Provided also that one seat shall be reserved for the Scheduled Castes or the Scheduled Tribes and two seats for women on board of every Co-operative Society consisting of individuals as members and having members from such class or category of persons.]

.....”

12. This apart, as rightly pointed out by Mr. Ahmed, Rule 33 of the said Rules which is required to be taken into consideration is also extracted hereinbelow”-

“33. Framing of regulation by the Board of election of delegates. – *The Board shall make regulation to provide for all matters relating to:-*

(i) The manner of nomination and election of delegates;

(ii) The total number of delegates to be elected and area, section, constituency or category in accordance with rule 31.”

13. Considering the above and noting that there is a statutory requirement to keep one seat reserved for

Schedule Caste or the Schedule Tribe and two seats for women on board, and as submitted by the advocates for the parties that the society consists of individuals as members and is having members of the above class or category of person, I have no doubt in my mind that at the base level of election of delegates, unless seats are reserved for SC/ST and for women, it would be leaving the election process to a chance for having the seats of directors being filled up by the reserved category candidates. It may happen that while electing the directors there may be no SC/ST and women candidates available amongst the elected delegates. In my view, the election process cannot be left to the chance of a seat being filled up by a reserved candidate especially considering the statutory requirement. Having regard thereto, I am of the view that the Election Commission ought to have appropriately published the schedule for holding election by indicating total number of delegates to be elected and area, section, constituency or the category in accordance with the provision of Rule 31 of the said Rules. While doing so, having regard to the third proviso of Section 32 of the said Act, the Election Commission was also obliged to provide for reservation at the base level for the election of delegates for ensuring statutory compliance.

14. In the light of the above, I cannot accede to the stand taken by Mr. Nayak that the reservations shall be notified after the delegates are elected. For reasons as noted above, the writ petition also cannot be said to be premature.

15. The election schedule thus, to the extent the same does not conform with the reservation of seats at the base level and the identification of the constituencies where

delegates are to be elected, stands vitiated. The Election Commission is thus directed to publish a revised schedule from the stage of final publication of the voter lists by indicating the reserved and non-reserved category of the delegates with identification of the area/constituency which is kept reserved within a period of 7 days from the date of communication of this order.

16. So far as the powers of the Returning Officer in deciding the venue of the polling station is concerned, considering the judgment delivered in the case of ***The Secretary, West Bengal Co-operative Election Commission*** (*supra*), there is no scope to interfere with the direction issued by the Returning Officer to hold the election at a particular polling station. As such, the petitioners' contention in this regard is rejected.

17. With the above directions and observations, the writ petition is disposed of.

18. This Court has decided the writ petition only on the issues argued by the petitioners. It is made clear that this Court has not considered the other reliefs as sought for by the petitioners.

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

(Raja Basu Chowdhury, J.)

Later

After the aforesaid order was passed, Mr. Nayak prays for stay of the order. Having considered the same, the prayer for stay is refused.

(Raja Basu Chowdhury, J.)