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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 10748 of 2025

Ashima Saha & Anr.
Versus
The State of West Bengal & Ors.

Mr. Milon Chandra Bhattacharjee, Sr. Advocate
Ms. Sulagna Bhattacharya
... For the petitioners.

Mr. Somnath Ganguli
Ms. Kalpita Paul
... For the State

Mr. Srijan Nayak
Ms. Rituparna Maitra
... For the Cooperative Election
Commission.

Mr. Ankit Sureka
Mr. Biplob Das
Mr. Partha Sarathi Pal
... For the respondent nos. 2 and 3.

Mr. K. K. Pathak
Mr. Souvik Maji
... For the respondent no. 9.

1. Affidavit of service filed in Court today is taken on record.
2. The present writ petition has been filed, inter alia, praying for a direction upon the West Bengal Cooperative Election Commission to hold and complete the election of Board of Directors of the respondent no.4, Akansha Cooperative Housing Society Limited (hereinafter referred to as the “said society”).
3. It is the petitioners’ case that though the Returning

Officer and Joint Registrar of Cooperative Societies had appointed Assistant Returning Officer by office memo dated 18th February, 2025 and though the Assistant Returning Officer had proceeded with election process by publishing the schedule for holding election of Board of Directors of the said society, ultimately the election process has not been concluded as per the schedule inasmuch as, the Assistant Returning Officer appointed for holding the election of the said society by communication in writing dated 17th April, 2025 has sought for clarification from the Returning Officer and the Joint Registrar of Cooperative Societies regarding scope and effect of the reservation policy provided for in Section 32 of the said Act in the light of non-availability of Schedule Caste/Tribe Community members.

4. Records would reveal that by letter dated 23rd April, 2025 the Secretary, West Bengal Cooperative Election has duly clarified that the election of Board of Directors must be concluded having regard to the Circular dated 17th July, 2017.
5. Mr. Bhattacharjee, learned senior advocate representing the petitioners would submit that the said society comprises a total number of eight members out of which two members cannot be considered as voters as they do not reside within the said society. He would further submit that in the said society though two (women) members are available, there is no member

from the Scheduled Caste/Tribe community and as such, it is difficult to fill up the post reserved for them. This apart, he would submit that since the society comprises of less than twelve members, the Board of Directors should be constituted with four members in terms of clause 47 of the bye-laws which provides for only four elected Directors.

6. Mr. Nayak, learned advocate representing the West Bengal Cooperative Election Commission by referring to the provisions contained in Section 32 of the West Bengal Cooperative Societies Act, 2006 (hereinafter referred to as the “said Act”) would submit that there is no scope for any dispute. According to him the 3rd proviso to Section 32 (1)(a) makes the position amply clear.

7. Mr. Pathak, learned advocate representing the respondent no.9 although would agree with regard to the scope of filling up seats for the elected Board of Directors reserved for Scheduled Caste and Scheduled Tribe members from ordinary members since there is no such member in the society, he would, however, submit that insofar as constitution of Board of Directors is concerned, the same should be constituted with six members, since the unamended bye-laws which do not provide for reservation specifies that there shall be four elected Directors. Thus, in order to give effect to the circular dated 17th July, 2017 which

provides for reservation, and considering the fact that only the seat for the women members can be reserved in the present fact scenario, the composition of the seat for the Directors should be six in number.

8. Having heard the learned advocates appearing for the respective parties, I find that the issue falls for consideration in the present writ petition is whether (a) in absence of any Scheduled Caste/Tribe being a member of the society whether the reserved seat meant for Scheduled Caste/Tribe, having regard to the Circular dated 17th July, 2017 is required to be filled up by ordinary member; (b) whether the bye-laws of the society having not been amended, the reservation reflected in the Circular dated 17th July, 2017 would require inclusion of additional director in Board especially having regard to the number of directors provided for in the bye-laws.
9. On the first issue, I may note that Section 32(1)(a) of the said Act makes the position amply clear. To morefully appreciate the same, the relevant provision of Section 32(1)(a) of the said Act 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 of delegates or representatives of the co-operative society;

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

Provided further that where the number of members of cooperative 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 Cooperative Society consisting of individuals as members and having members from such class or category of persons].

10. From the 3rd proviso of Section 32(1)(a) it would be clear that reservation for women and SC and ST is only applicable to the society comprising members in the category of women and SC/ST category and not otherwise. Since, the society in question does not have members from SC and ST community, there can be no reservation for such category.

11. On the second issue, I find that admittedly the bye-laws of the said society inter alia provides for the manner of constitution of board which is morefully reflected in clause 47 of the bye-laws. To morefully appreciate the same, the relevant clause is extracted hereinbelow:-

“47. The Chairman the Vice-Chairman and other members of the board of directors shall from the date of Registration of the society to the first General meeting of the society, be the persons appointed or elected as Chairman, Vice-Chairman and members of the committee which, constituted under the bye-laws, shall have elected Directors”.

12. Thus, according to Mr. Pathak, since the bye-laws has not been amended, the reservation is deemed to include two additional Directors in the Board in addition to the Directors provided for therein. In this context, I may note that the provisions of Section 32 in itself embodies the maximum number of Directors in a cooperative society which has less than twelve members. Admittedly, in the aforesaid society I find that there are eight members. Thus, the provisions contained in Section 32(1)(a) 2nd proviso in my view is applicable. The respondent no.9 cannot be permitted to take advantage of the society not complying with the provisions of the said Act and cannot claim that since

the bye-laws had not been amended, the above reservation is in addition to the existing Board of Directors provided for in the bye-laws. In ordinary course, members of the society ought to have amended the bye-laws to make the same to be in consonance with the said Act.

13. Having regard thereto, the reservation as provided for and noting that the legislature being conscious of the position that in a cooperative society having less than twelve members, the society may choose to retain not less than three Directors and not more than six Directors and the maximum reservation as per Section 32 being limited to three Directors, and the members of the society having agreed to retain the number of Directors to 'four', I am of the view that the reservation provided for in Circular dated 17th July, 2017 should be included in the number of the Directors as provided for in clause 47 of the bye-laws and not de hors thereto. If, I am to accept the contention of Mr. Pathak, then to give effect to the reservation policy three additional Directors (two reserved for women and one reserved for SC/ST), would be necessary which would render the same contrary to the statute as in such case the total number of Directors of the society would become seven (four + three). As such, I am unable to accept the contention of Mr. Pathak.

14. Since, the election process has already commenced, I am of the view that the election process should be brought to a logical conclusion by publishing a revised election schedule from the stage the same is incomplete. In this regard, appropriate direction may be issued by the Secretary, Cooperative Election Commission or its delegate at the earliest.
15. With the above observations and directions the writ petition is disposed of.
16. Since no affidavit-in-opposition has been called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.
17. There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)

