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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 14808 of 2025

**Shyamal Kumar Singha & ors.
Versus
Registrar, Cooperative Societies & ors.**

Mr. Ritzu Ghosal, Sr. advocate
Mr. Mrinmoy Mohan Barat
Mr. A. Chakraborty
....For the petitioners

Mr. P. K. Ray, Sr. Advocate,
Mr. Ankit Sureka
Mr. Partha Sarathi Pal
Mr. Biplab Das
...For the respondent Nos. 1 & 4

Mr. Srijan Nayak
Mrs. Rituparna Maitra
.....For the respondent No. 2

Mr. Debajyoti Dutta, Sr. Advocate
Mr. Soumyadeep Biswas
....For the respondent No. 3
Mr. Mohit Gupta
Ms. Suparna Dutta
.....For the co-opted director
Mr. Shamit Sanyal
Ms. Priyakshi Banerjee
.... For the added party

1. By an order dated 8th July, 2025 at the interim stage, this Court was, inter alia, pleased to pass the following order.

“Challenging the order dated 26th June, 2025 issued by the Assistant Registrar of Co-operative Society, Cooperation Directorate, Nadia Range Office whereby the membership of the petitioners in the Board of Directors of the respondent No. 3 had been declared to have been seized under Rule 44 of the West Bengal Cooperative

Societies Rules, 2011 (hereinafter referred to as the “said Rules”), the instant writ petition has been filed.

The matter has a chequered history. By an order dated 6th September, 2024 the Assistant Registrar of Cooperative Societies, Corporation Directorate, Nadia Range Office by invoking the powers under Rule 44(1)(e) of the said Rules, had declared the cessation of the membership of the petitioners from the respondent no.3 (in short “said society”). Being aggrieved the petitioners had filed a writ petition before this Court which was registered as WPA 23428 of 2024. By an order dated 17th January, 2025, a Coordinate Bench of the Court was of the view that even in case of cessation of membership having regard to Rule 44(1)(e) of the said Rules, it is essential that the individual concerned is given opportunity of being heard. Further noting that an election of an elected board member can only be challenged on the ground of invalidity of the nomination under the provisions of Regulation 3(35) of the West Bengal Cooperative Election Commission Regulations, 2012 (hereinafter referred to as the “said Regulation”) had set aside the order dated 6th September, 2024.

Being aggrieved the complainant appears to have approached the Division Bench of this Court. By an order dated 13th March, 2025, the Division Bench of this Hon’ble Court without going into the issue as regards the jurisdictional authority of the Assistant Registrar of Cooperative Society to determine dispute in question by

keeping such issue open to be decided by him, had directed the Assistant Registrar of Cooperative Societies to decide all issues raised before him upon affording reasonable opportunity of hearing to the parties. It was further made clear that the aforesaid order should not be construed to be vesting jurisdiction on the Assistant Registrar of Cooperative Societies with the authority to decide such issue if, he does not possess such jurisdiction.

Since then, upon giving an opportunity of hearing to the petitioners by an order dated 26th June, 2025, the Assistant Registrar of Cooperative Societies as noted above while holding that it had the jurisdiction to decide the cause, declared that the petitioners have seized to be the board of directors of the society under Rule 44 of the said Rules and accordingly had directed the cooperative society to take steps in accordance with law. Although, three separate orders have been passed, the orders have been challenged by filing a composite writ petition. Mr. Ghoshal, learned Sr. Advocate appearing for the writ petitioner would submit that it is beyond the competence of the Assistant Registrar of Cooperative Societies to examine the dispute of the nature since according to him the aforesaid is an election dispute within the meaning of Regulation 3(35)(1) of the said Regulation. He would submit that the Assistant Registrar of Cooperative Societies by the order impugned had mechanically recorded that he has jurisdiction notwithstanding in law

he had no jurisdiction to decide on such dispute. Since, he did not retain any authority to pass any order touching the election process, the order passed by him by invoking Rule 44 of the said Rules is bad and is liable to be set aside. Pending hearing he prays for stay of the order dated 26th June, 2025.

Mr. Sureka, learned advocate appearing for the Assistant Registrar of Cooperative Societies would submit that having regard to the observations made by the Division Bench of this Court, the aforesaid decision has been taken. According to him, the petitioner was given ample opportunity of hearing. This is not a case of violation of principles of natural justice. According to him, the matter does not pertain to a dispute under the provisions of Regulation 3(35)(1) of the said Regulation. He further submits that Rule 44 of the said Rules gives an independent authority to the registrar to decide a matter and as such it cannot be said that the Assistant Registrar of Cooperative Societies lacked the authority or jurisdiction to pass an order. The Assistant Registrar of Cooperative Societies has passed the order in accordance with law. No interference is called for.

Mr. Dutt, learned senior advocate appears on behalf of the respondent no.3. He submits that there is no irregularity in the order passed by the Assistant Registrar of Cooperative Societies. According to him, three delegates have already been co-opted as directors. No interference is called for.

Mr. Nayak, learned advocate representing the Cooperative Election Commission would submit that the issue as to whether a particular delegate will be retained as director is not within the domain of consideration of the Cooperative Election Commission, as such, he also supports the order.

Heard the learned advocates appearing for the respective parties and considered the materials on record. Prima facie, it would transpire that on the basis of a complaint, the order dated 26th June, 2025 has been passed.

Though Mr. Sureka, learned advocate representing the Registrar of Cooperative Societies by placing before this Court three several communications all dated 7th May, 2025 would submit that the gist of the complaint was made over to the petitioners, the fact remains that the petitioners were not favoured with the complaint based on which the order impugned had been passed. Let copies of the documents as placed before this Court by the learned advocate as noted above, be taken on record.

I have, however, called for and examined the original complaint dated 12th June, 2024. From the perusal of the complaint I, however find that the primary allegations in the complaint is with regard to the petitioners not being eligible for filing of nomination papers for election of directors for the cooperative society as per the provisions of Section 32 of the said Act and

consequentially their directorship is illegal and they are liable to be disqualified. In this context, it would be relevant to extract the relevant portions of the complaint filed by the complainants dated 12th June, 2024.

“All those said Directors namely Shyamal Kumar Singha, Bijan Kumar Saha and Nilima Samadder were not eligible to file any nomination paper for the Election of Directors in the NDCCCH ltd. As per provision of 32 (West Bengal Co-operative society Act). The Directorship in the NDCCB Ltd. are absolutely illegal and liable to be disqualified and their Directorship are to be ceased in terms of Rules 44E of West Bengal Co-operative Service Rules and in terms of rule 44 of Sub-Clause 2 of the West Bengal Co-operative Service Rules on the time when the disability concerned refer to such rule 1 occurs.”

Upon perusal of the aforesaid complaint it is apparent and clear that the matter pertains to a challenge to filing of nomination by the petitioners. Ordinarily, without a challenge to the acceptance of the nomination by the Cooperative Election Commission, no independent challenge to the same can be maintained. Having regard thereto, the provisions of Regulation 3(35)(1) of the said Regulation ought to have been invoked. I, however, notice that the Assistant Registrar of Cooperative Societies by relying on Rule 44 of the said Rules has proceeded to declare that the petitioners have ceased to be directors of the Cooperative Society. In this context, it would be relevant to extract Rule 44 of the said Rules.

“44. Cessation of Membership of a Board – A director shall cease to hold office if he-

(a) dies or

(b) resigns his office, or

(c) is removed by the general meeting from Directorship, or

(d) loses membership of the society which he represents in the Board or the Society whose representative he is, loses membership of the other society, or

(e) becomes subject to any disqualification which debars him from seeking election as a Director, or

(f) if he fails to attend six consecutive meetings of the Board;

Provided that these provisions shall also be applicable in case of a nominated and co-opted director.

(2) The cessation of Directorship shall be deemed to occur at, and be effective from the time when the disability concerned, refer to in sub-rule (1) occurs.”

From the above it is amply clear that there is no scope for an enquiry to decide on the issue of validity and/or invalidity of nomination by invoking the provisions of Rule 44 of the said Rules. Prima facie, therefor, the Assistant Registrar of Cooperative Societies has exceeded his jurisdiction in proceeding to assuming jurisdiction in the matter especially having regard to the nature of complaint. However, at this stage, having regard to the disclosure made by Mr. Dutta that three delegates have already been co-opted in furtherance of the aforesaid order dated 26th June, 2025, I only propose to stay the above order for the time being with a further direction upon the petitioners to serve a notice on the co-opted directors.

Considering the fact that the co-option has taken place in hot haste notwithstanding the pendency of the writ petition, I am of the view that no major decision of the

Cooperative society including induction of any new member or representing the co-opted members as directors shall take place, till the matter is taken up for consideration next by this Hon'ble Court.

Having regard to the fact that the copies of the complaint have been made over to the Court today, I am of the view that the complainants identified in the complaint, if they happen to be the members of the said society, should also be notified of the proceedings by the petitioners.

List this matter for further consideration under the same heading in the daily supplementary list on 15th July, 2025”.

2. Since then, when the matter came up for further consideration, this Court had granted leave to the petitioners' advocate-on-record to incorporate the names of the complainants as parties to the writ petition.
3. Although, Mr. Sanyal learned advocate had appeared on behalf of the complainants and had undertaken to file Vakalatnama on behalf of all complainants, today Mr. Sanyal would submit that Vakalatnama has been filed only in respect of the respondent no.5.
4. The matter has since been taken up for final consideration. On the basis of arguments advanced by the advocates for the parties, I find that the following issues emerge for consideration:-
 1. Whether the Registrar, Cooperative Societies was competent to decide the complaint dated 12th June, 2024?

2. Whether the complaint partakes the character of an election dispute?
 3. Is the order dated 26th June, 2025 passed by the Assistant Registrar valid?
 4. What relief/reliefs are the parties entitled to?
5. Having heard the learned advocates appearing for the parties, I notice that Mr. Nayak, learned advocate appearing on behalf of the respondent no.2 would submit that the power of the election commission does not bring within its sweep the complaint raised by the complainants since the election process is long over. According to him, if a complaint is made during the pendency of election process, the Cooperative Election Commission, West Bengal having regard to the scope of West Bengal Co-operative Election Commission Regulations, 2012 (hereinafter referred to as the “said Regulations”) is competent to adjudicate upon the disputes. Independent of the above, he has placed reliance on the provisions of the West Bengal Cooperative Societies Rules, 2011 (hereinafter referred to as the “said Rules”) and has attempted to highlight the fact that declaration as regards cessation of membership of a board is within the jurisdiction and competence of the Registrar. In addition he would submit that as to whether a person is a member of the society or can continue as a Director does not fall within the domain and/or jurisdiction of a Cooperative Election Commission to decide as an election dispute.
6. Mr. Dutta, learned senior advocate representing the respondent no.3, on the other hand, would submit that

the Court cannot keep its eyes shut to the illegality committed by the petitioners. Admittedly, a complaint has been lodged by Mr. Sanyal's client. Such complaint has to be adjudicated. There cannot be any wrong without a remedy. The candidature of the Directors though elected being vitiated by reasons of the illegality committed by them cannot be permitted to continue. In support of his aforesaid contention, he has placed reliance on the judgment delivered by the Hon'ble Supreme Court in the case of ***State of Punjab v. Davinder Pal Singh Bhullar and Ors.***, reported in **AIR 2012 SC 364**. He would submit that if the initial action is bad, all consequential steps should be rendered nugatory. By relying on the judgment delivered by the Hon'ble Supreme Court in the case of ***Vipulbhai Chaudhary v. Gujarat Cooperative Milk Marketing Federation Limited and Others*** reported in **(2015) 8 SCC 1**, he would submit that if the rules are silent on a particular exercise of jurisdiction, it is for the Court to bridge the gap and provide for adequate safeguards and/or measures for exercise of jurisdiction by such authorities.

7. Mr. Ray, learned senior advocate representing the respondent nos. 1 to 4 would submit that unlike the provisions of the Representation of the Peoples Act, 1951 which provides for declaring the election to be void, that too by a High Court, no such provision has been provided for in the said Regulations and having regard thereto, the only option available to the petitioners is to seek remedy

before the Registrar by invoking the provisions of Rule 44 of the said Rules.

8. Mr. Sanyal would, however, submit that he is interested to having his complaint adjudicated rather than suffering from the legal tangles. Admittedly, there is a cause which prompted the complainants to raise a complaint. Though, such complaint has been adjudicated, unfortunately, a jurisdictional issue has once again been raised. If this Court is of the view that the Registrar does not have the jurisdiction, appropriate remedy thereof should be provided. On the issue that if the initial action is bad, all subsequent steps stand vitiated, he has placed reliance on the judgment delivered by the Hon'ble Supreme Court in the case of ***Devendra Kumar v. State of Uttaranchal and Ors.***, reported in **(2013) 9 SCC 363**.
9. Mr. Gupta appears for the co-opted directors and would contend that the co-option is valid.
10. Having heard the learned advocates appearing for the respective parties, I may note that this Court has already taken a *prima facie* view that on the basis of the complaint made by the complainants as noted above, Rule 44 of the said Rules cannot have any application. However, upon the parties having argued the matter, this Court has reconsidered the same taking note of the objection raised both by Mr. Nayak and Mr. Ray, learned advocates representing their respective clients and has found that the determination of the above issues also revolves on the scope of Regulations 3(13) and (14) of the

said Regulations. To morefully appreciate the same, such provisions are extracted hereinbelow.

“(13) On the day following next the date fixed as the last date for the receipt of nomination papers, the Returning Officer/Assistant Retuning Officer shall take up the scrutiny of the nomination paper. The proposer and the seconder, besides the candidate/election agent, may be present at the time of scrutiny.

(14) (i) The Retuning Officer/Assistant Returning Officer shall examine the nomination papers and decide all objection which may be made at the time of scrutiny and may, either on such objection or on its own motion, after such summary enquiry, as the Returning Officer/Assistant Returning Officer may consider necessary, reject any nomination paper on sufficient ground;

Provided that the nomination of a candidate shall not be rejected merely on the ground of an incorrect description of his name or of the name of his proposer or seconder or of any other particulars in regard to the candidate or his proposer or the seconder as entered in the list of members if the identity of die candidate, proposer or seconder, as the case may be, is established.

(ii) The Returning Officer/Assistant Returning Officer shall give all reasonable facilities to the contesting candidates or their Election Agents to

examine all the nomination papers for satisfying themselves about the correctness of their scrutiny.

(iii) The Returning Officer/Assistant Returning Officer shall endorse on each nomination paper its decision and if the nomination paper is rejected, shall record in writing the reasons for such rejection.”

11. From a perusal of the aforesaid, it would transpire that it is the obligation of the returning officer to scrutinise the nomination papers and to decide any objection made in connection therewith. It is, however, true that unlike the Representation of Peoples Act, the provisions of Regulation 3(35) of the said Regulations do not lay down specific procedure for declaring an election to be void, however, having regard to the scope of the language used in Section 96(1) of the said Act, the entire superintendence, direction and control of not only preparation of electoral role but also the conduct of all elections to a cooperative society vests in Cooperative Election Commission, West Bengal. In this context, it may be noted that prior to the said Regulations being framed under Section 96 of the said Act, election was conducted as per Rule 40 of the said Rules. The State Government has since, as per Section 96 constituted the Cooperative Election Commission, West Bengal. The Cooperative Election Commission has been authorised to decide any dispute relating to election of delegates and directors as the case may be. As such, in my view, Regulation 3(35) of

the said Regulations brings within its sweep not only the issues as regards filing of nomination but all issues which may, inter alia, lead to a dispute in relation to election of delegates of a cooperative society. If any contrary interpretation is accepted then the very object of having the dispute adjudicated through the machinery provided under the said Regulations would be rendered nugatory. Having regard to the scope of Regulation 4 of the said Regulations, I am of the view that since, the procedure for holding election of delegates of the cooperative society has been specified in Regulation 3 of the said Regulations applies *mutatis mutandis* for holding election of the Board of Directors of the cooperative society, the aspect of deciding the dispute as provided for in Regulation 3(35)(i) would also equally apply.

12. However, still the larger question that falls for consideration is with regard to the scope and power of a Registrar of a Cooperative Society to investigate into the matter. As rightly pointed out by Mr. Ghosal, learned advocate representing the petitioners that ordinarily, an enquiry by a Registrar is provided for under Section 100 of the said Act; the qualification of the membership of a board is statutorily mandated in Rule 42 of the said Rules while nomination of a cooperative society to another cooperative society is mandated in Rule 43 thereof. Although, the Registrar has the power to declare that a particular member has ceased as a member of the board, in my view, such power consequent upon the said

Regulations being framed and notified, cannot interfere with the power of the Cooperative Election Commission to decide and adjudicate on a dispute, as in this case, which stems from the very filing of nomination in relation to election. The previous power which the Registrar enjoyed in terms of Rule 40 of the said Rules is no longer available after the said Regulations have been framed.

13. There can be no doubt that a person who is otherwise not qualified to continue as a member of the board cannot be permitted to continue as a member of the board, however, having regard to the nature of challenge made by the complainants which has already been extracted hereinabove, I am of the view that the aforesaid cannot be termed to be a challenge as regards cessation of membership of the board, rather the same is a challenge in relation to the election of the members as Directors. Consequentially, the assumption of jurisdiction by Assistant Registrar of Cooperative Societies by accepting the matter especially having regard to the nature of complaint does not appear to be proper. I am of the view that the decision of the Registrar of Cooperative Societies effected vide order dated 26th June, 2025 exceeds his powers. The same cannot be sustained and the same is accordingly set aside. Insofar as the judgments relied on by Mr. Dutta in the case of ***Davinder Pal Singh Bhullar*** (*supra*) and ***Devendra Kumar*** (*supra*), I find that the legal position in this regard is well-settled. If the initial action is not in consonance with law, all subsequent proceedings

would fail, however, the same cannot also justify the action of the Assistant Registrar of Cooperative Societies to pass the aforesaid order.

14.It is also equally well settled that what cannot be done directly should not be permitted to be done indirectly. At the same time, the complainants cannot be rendered remediless.

15.Having regard to the peculiar facts noted above, I am of the view that the Cooperative Election Commission, West Bengal should be directed to hear out the disputes raised by the complainants being the added respondents herein, vide complaint dated 12th June, 2024 by treating the same as a dispute within the meaning of Regulation 4 of the said Regulations by making the provisions of Regulation 3(35)(i) of the said Regulations applicable.

16.It is expected that the aforesaid dispute shall be resolved by the Cooperative Election Commission within a period of 10 weeks from the date of communication of this order upon giving a reasonable opportunity of hearing to the parties.

17.The added respondents shall, however, be at liberty to file a short petition incorporating all subsequent developments within two weeks from date.

18.The issues raised in the petition are accordingly answered.

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

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.)