

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.A. No.22574 of 2023

RAJNARAYAN BAUL AND OTHERS

-VERSUS-

THE STATE OF WEST BENGAL AND OTHERS

and

W.P.A. No.22410 of 2023

RAMANAND YADAV AND OTHERS

-VERSUS-

THE STATE OF WEST BENGAL AND OTHERS

For the petitioners	: Mr. Samim Ahammed, Adv.,
(WPA 22574 of 2023)	Mr. Arka Maiti, Adv.,
	Ms. Gulsanwara Pervin, Adv.

For the petitioners	: Mr. Subhankar Nag, Adv.,
(WPA 22410 of 2023)	Mr. Avishek Guha, Adv.,
	Ms. Debika Misra, Adv.

For Election Commission : Mr. Srijan Nayak, Adv.,
Mrs. Rituparna Maitra, Adv.

For respondent no.5 : Mr. Ankit Surekha, Adv.,
(WPA 22574 of 2023) Mr. Biplab Das, Adv.

For respondent no.4 : Mr. Ankit Surekha, Adv.,
(WPA 22410 of 2023) Mr. Biplab Das, Adv.

For respondent nos.6 to 39 : Mr. Deepnath Roy Chowdhury, Adv.,
Mr. Vijay Verma, Adv.

For the State : Mr. Ashim Ganguly, Adv.,
Ms. Jyotsna Roy Mukherjee, Adv.

Hearing concluded on : 18.11.2024

Judgment on : 27.01.2025

Kausik Chanda, J.:-

The petitioners, employees of Shyama Prasad Mukherjee Port Trust and members of the Kolkata Port Trust Employees Co-operative Credit Society, challenge the election of the Society held on September 12, 2023, from the publication of the draft voter list to the declaration of results. They assert that the process was marred by arbitrariness, illegality, and violations of natural justice and fair play.

2. The petitioners contend that the publication of the draft voter list on July 31, 2023, provided only a short, two-day window for objections, which was insufficient given the large electorate of over 10,000 members. Objections raised by the petitioners regarding discrepancies in the voter list

were ignored, and the final voter list published on August 7, 2023, did not address any of the concerns, demonstrating arbitrariness and a disregard for fairness.

3. The petitioners further submit that the voter list and the distribution of polling stations were manipulated to suppress the voting rights of certain sections of the electorate.

4. The petitioners argue that on the election day, several irregularities were reported. Election agents appointed by the petitioners were denied entry to polling stations. The petitioners' prayer for security measures, including CCTV installation and CISF deployment, were ignored. Furthermore, physical intimidation, threats, and coercion were reported at polling stations, with voters being forced to vote for certain candidates or being prevented from voting altogether. The transport of ballot boxes to an undisclosed location, without any transparency, further raised doubts about the integrity of the election. Finally, the results were declared without disclosing vote counts for individual candidates.

5. The petitioners also challenge the legality of Regulation 3(35) of the West Bengal Co-operative Election Commission Regulations, 2012, which empowers the Commission to settle election disputes. They argue that this provision exceeds the statutory authority granted to the Commission under Section 96 of the West Bengal Co-operative Societies Act, 2006. Section 96(8) empowers the Commission to conduct elections but does not allow it

to frame regulations for dispute resolution. This regulation, they argue, encroaches upon the judiciary's jurisdiction and violates the separation of powers, a fundamental constitutional principle.

6. The petitioners pray to declare the election process illegal, set it aside, and direct that a fresh election be held under the Court's supervision.

7. On the other hand, the winning candidates submit that the petitioners, who were defeated in the election, filed this writ petition only after the results were declared. It is further submitted that the petitioners had ample time before the election to raise any concerns or objections but chose not to do so, thus forfeiting their right to challenge the election. Their failure to raise issues beforehand and their decision to participate and then challenge the process after their defeat demonstrates their lack of locus to file this writ petition.

8. They deny the petitioners' allegations of violence, polling irregularities. They submit that the election process was conducted peacefully with substantial security in place, including police and Central Industrial Security Force personnel, which led to a high voter turnout of approximately 90%. The petitioners' accusations of violence and irregularities are false, and no substantial evidence has been provided to support such claims. They also dispute the allegations regarding non-

functional CCTV cameras and submit that the relevant regulations do not mandate the use of CCTV cameras at polling stations.

9. It is argued that the petitioners had an available statutory remedy under Regulation 3(35) of the West Bengal Cooperative Election Commission Regulations to resolve any election disputes, but they approached the High Court after the election had been concluded.

10. The said respondents assert that the Election Commission has the authority to resolve disputes, as decided by this Hon'ble Court.

11. On behalf of respondent no. 5, who is the Cooperative Development Officer and Special Officer of the Kolkata Port Trust Employees Cooperative Credit Society Limited, submits that the elections were conducted in accordance with the applicable regulations of the West Bengal Cooperative Election Commission, 2012. Regarding the petitioners' submission on CCTV cameras, it is submitted that the CCTV cameras installed in 8 constituencies were under the control of third parties, and their placement could have infringed on voter secrecy. On the issue of election agents, respondent no.5 denies that any of the petitioners applied for the appointment of election agents in accordance with Regulation 3(12)(ii) of the West Bengal Cooperative Election Regulations, 2012.

12. Finally, regarding the authority of the Election Commission to resolve disputes, it is submitted that there are several orders of this Hon'ble Court

confirming the Election Commission's jurisdiction to deal with election-related disputes.

13. On behalf of respondent no.4, it is submitted that the election process, including polling, counting of votes, and the declaration of the result, was duly completed on 13th September 2023. A total of 1215 votes were cast, yet only fourteen persons have raised grievances by filing the present writ petition.

14. The election process was carried out in accordance with the regulations governing cooperative elections, and the final voter list was published on 7th August 2023. There was no irregularity in the publication of the voter list or in the conduct of the election. The petitioners did not follow the procedure for the appointment of election agents as outlined under Clause 3(12)(ii) of the West Bengal Cooperative Election Commission Regulation, 2012. Instead, they submitted the forms for appointing their election agents on 11th September 2023, just one day before the election, which is not in compliance with the prescribed timelines. Regarding the issue of CCTV cameras, it is submitted that the West Bengal Cooperative Election Commission Regulations do not provide for the installation of CCTV cameras during elections, nor do they mandate the appointment of polling or counting agents.

15. Furthermore, the petitioners did not submit the names of their election agents for verification by the Assistant Returning Officer, and this

omission undermines their claim. Only fourteen petitioners out of 1215 voters have raised objections, while nearly 1200 voters have accepted the election result.

16. The petitioners' claim is also barred by the principle of alternative remedy. As per Clause 3(35)(i) of the West Bengal Cooperative Election Commission Regulation, 2012, any election dispute must be referred to the Cooperative Election Commission within 30 days from the occurrence of the dispute. Since the petitioners did not avail themselves of this alternative remedy, the writ petition is not maintainable.

17. To argue that the election process, once commenced, should not be interfered with by the courts, reliance is placed on the judgments passed in MAT 339 of 2017, W.P.A (P) 570 of 2022, and WPA 19263 of 2024, by this Court.

18. After hearing the respective parties, I find no merit in these writ petitions. The factual allegations made by the writ petitioners with regard to the election in question have been seriously disputed by the respondents. These factual disputes cannot be decided in this writ petition. The petitioners unsuccessfully contested with the election and they have filed the writ petition only after the results were declared. The petitioners could have challenged the final voter list soon after its publication but chose not to do so.

19. The petitioners could not have expected the CCTV cameras to be installed at the time of election since the West Bengal Cooperative Election Commission Regulations, 2012, does not mandate installation of CCTV camera.

20. With regard to the allegations regarding election agent also I find no substance. The petitioners did not appoint any election agent in terms of Clause-3(12)(ii) of the West Bengal Cooperative Election Commission Regulations, 2012, which authorised them to appoint an agent at the time of submission of nomination paper. They submitted the forms for the nomination only one day before the election. Therefore, I am not in a position to accept the allegations regarding appointment of election agent.

21. In my view, the petitioners could have availed the statutory remedy under Regulation 3 (35) of the West Bengal Cooperative Election Commission Regulations, 2012, for adjudication of the disputes as raised in this writ petition.

22. The challenge with regard to the varies of the said regulations cannot be entertained by this Court since a Coordinate Bench of this Court in W.P. No.26043(W) of 2014 (*Safiul Islam v. State of W.B.*) has held that resolution of disputes arising out of an election would come within the ambit of conducting the election and declaration of election results. The relevant part of the said judgment is quoted below:

“There is no specific provision empowering the Commission to constitute a dispute resolution

body. In my opinion, resolution of disputes arising out of an election would come within the ambit of conducting the election and declaration of election results. An election dispute is primarily concerned with result of the election, though the dispute may originate from various stages of the election process including preparation of electoral roll, eligibility of the candidates, verification of the eligibility criteria of the candidates, actual holding of election through voting and counting of votes. Disputes arising out of any of these matters would be consequential or incidental to these matters. Unless there is express legislative provision specifying the mode or manner for dealing with such dispute, then resolution of such dispute also would come within the duty of conducting an election. Conclusion of such dispute would have direct impact on result of the election process. I do not find any substance in the submission of the petitioner on this count.”

23. In view of the aforesaid, I am not inclined to entertain these writ petitions. Accordingly, W.P.A. No.22574 of 2023 and W.P.A. No.22410 of 2023 are dismissed.

24. The respondents shall take all necessary steps for reconstitution of the society based on the election result declared on September 13, 2023, within the period of one month from the date of communication of this order.

25. Urgent certified website copy of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)