

17.01.2025
Sl. No.10
Ct. No.15
S.A.

WPA 23428 of 2024

Shyamal Kumar Singha & Ors.
-vs-
State of West Bengal & Ors.

Mr. Pranit Bag
Mr. Mrinmoy Mohan Barat
Mr. Anousko Das
...for the petitioners

Mr. Amal Kumar Sen
Mr. Lal Mohan Basu
...for the State

Mr. Srijan Nayak
Mrs. Rituparna Maitra
...for Cooperative Election Commission
Mr. Soumyadeep Biswas
...for respondent nos.7 & 8

Mr. Ankit Sureka
Mr. Biplab Das
Mr. Partha Sarathi Pal
...for respondent nos. 2, 6, 7 & 9
Mr. Shamit Sanyal
...for respondent no.10

The writ petitioners challenge an order dated September 6, 2024, issued by the Assistant Registrar of Co-operative Societies, Cooperation Directorate, Nadia Range Office, whereby their board membership in the Nadia District Central Co-operative Bank Limited was "ceased" under Rule 44(1)(e) of the West Bengal Co-operative Societies Rules, 2011. The common ground for the cessation of their membership was the allegation that the petitioners had been nominated to contest the election for the position of a board member by the individuals who lacked the authority to make such nominations.

To better understand the reasoning behind the impugned order dated September 6, 2024, the relevant portion of the order is quoted below:

“Whereas the following facts are revealed from the said inquiry report.

- i) *Sri Shyamal Kumar Singha, presently director and vice chairman of the NDCCB Ltd. who has been nominated/delegated from Joykrishnapur SKUS Ltd. under Chakdaha Development Block and his nomination as delegate was signed by Manoranjan Halder, Ex-chairman of the society on 14.07.2023 whose term/period as chairman was from 25.09.2016 to 24.09.2021.”*
- ii) *Sri Bijan Kumar Saha who was delegated from RBC Saraswat Mandir ECCS Ltd. and the said ECCS Ltd. registered on 19.08.2016 and audit completed upto 2022-23, after that no BOD election has been done for constitute of new BOD. Sri Bijon Kumar Saha was the chairman of the first Board of the said ECCS Ltd.*
- iii) *Smt. Nilima Samaddar who was delegated from Basundhara WCCS Ltd and now BOD member of NDCCB Ltd. But during inquiry, it has been noticed that the said WCCS Ltd deposited its share money amounting to Rs.2000/ on 13.12.2023 through form no.668.*

Vide memo no.1583 dated 16.08.2023, the Additional Registrar of Cooperative Societies (ST Credit) informed that as per those above noted facts the concerned Directors have attracted Rule 44(1)(e) of the WBCS Rules 2011.

Hence, in pursuance of rule 44(1)(e) of the WBCS Rules read with amendment, the undersigned do

hereby ceased the membership of the board of Nadia District Central Cooperative Bank Ltd of (i) Sri Shyamal Kumar Singha, (ii) Sri Bijan Kumar Saha, (iii) Smt. Nilima Samaddar.

*Sd/- (illegible)
Assistant Registrar of Cooperative
Societies
Cooperation Directorate, Nadia
Range Office”*

On behalf of the petitioners, it has been argued that Rule 44(1)(e) of the West Bengal Co-operative Societies Rules, 2011 could not have been invoked in this case, as it specifically pertains to the cessation of membership when a board member becomes subject a disqualification after his election. It was further contended that, in issuing the impugned order, the relevant authority failed to adhere to the fundamental principles of natural justice. The petitioners were not served with a show cause notice nor afforded an opportunity to be heard. Additionally, the enquiry reports upon which the impugned order was based were not provided to the petitioners. Even if, for the sake of argument, it is assumed that the impugned order was issued under Section 141 of the West Bengal Co-operative Societies Act, 2006, the principles of natural justice would still require the authority to give the petitioners a fair hearing.

On the other hand, the State respondents argue that Rule 44(1)(e) of the Co-operative Societies Rules,

2011 was correctly invoked in this case. It is also asserted that Section 141 of the West Bengal Co-operative Societies Act, 2006 has no applicability to the facts of this case. According to the respondents, when a membership is ceased under Rule 44(1)(e), the cessation is automatic and takes effect immediately upon the issuance of the order, thereby negating the need to comply with the principles of natural justice.

During the hearing, the learned advocates for the respondents did not argue that the impugned order was passed under Section 141. Thus, no further discussion on this provision is required.

In this case, Rule 44(1)(e) of the West Bengal Co-operative Societies Rules, 2011 has been invoked, which stipulates the cessation of a board membership when a member becomes subject to a disqualification. Rule 44 is quoted below:

“44. Cessation of membership of

a board –

(1) 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.”*

What disqualifies an individual from seeking election as a director must be understood in the context of the qualifications set forth under Rule 42 of the West Bengal Co-operative Societies Rule, 2011 and Section 32(7) and (8) of the West Bengal Co-operative Societies Act, 2006, which are quoted below:

“42. Qualification for membership of board – (1) *No member of a cooperative society, other than that of a student cooperative society shall be qualified to be elected or appointed as director unless he has attained the age of nineteen years on the first date of filing nomination.*

(2) No member of a cooperative society shall be eligible to stand for election as a Director unless he is a member of the society for a continuous period of twelve months before the first date of filing nomination and not otherwise disqualified under the Act or the rules to stand for election.

(3) No nominated member or representative or delegate in any cooperative society shall be qualified to be appointed or elected as an office bearer if he is otherwise debarred from contesting for any post of or being elected as an office bearer.”

“32. Management of co-operative societies.–

.....

(7) No member of a co-operative society shall be eligible for being elected on the board and continued on the Board if –

- (a) he has been adjudged by competent court to be insolvent or of unsound mind;
- (b) he has been convicted by a court of any criminal offence including moral turpitude or of any offence under this Act and sentenced to fine or imprisonment or both;
- (c) he holds any office of profit in the cooperative society;

Provided that a member of an industrial cooperative society composed of artisans or workmen or of a transport

cooperative society composed of persons who live on manual labour, skilled or unskilled or of an engineers' cooperative society or of a cooperative society established by tribals in receipt of salaries or wages from such category including labour and service cooperative societies shall be eligible for being elected on the board of the respective category of cooperative society;

(d) he has any interest in any business of the kind carried on by the cooperative society;

(e) (i) he is an individual, and is in default of payment of loans or price of goods received by him on credit from the cooperative society on the date of filing nomination or on the date of election, as the case may be;

(ii) he is an individual representing a cooperative society which is in default of payment of more than forty per cent of loans or price of goods received by it on credit from the cooperative society in relation to the board to which the election relates on the date of filing nomination or on the date of scrutiny, as the case may be;

(f) he has a direct or indirect interest in any agreement or contract to which the cooperative society is a party;

(g) he received any salary from the cooperative society except member of such societies which provide employment;

(h) Member disqualified under proviso to sub-section (4) of section 31.

(8) No person at any time hold office as a director of the board in more than –

(a) four primary cooperative societies;

(b) two central cooperative societies; and

(c) two apex cooperative societies.”

The invocation of Rule 44(1)(e) in this case was based on the allegation that the petitioners' nominations were invalid because the individuals who nominated them were not competent to do so. This is not a disqualification under Rule 42 or Section 32(7)

& (8). Therefore, this does not constitute a valid ground for the cessation of a board member's membership under Rule 44(1)(e). Therefore, I find that the cessation of the petitioners' membership could not have been lawfully carried out under Rule 44(1)(e) of the Co-operative Societies Rules, 2011.

The petitioners contend that they should have been given an opportunity to respond to the allegations, and that the enquiry report upon which the impugned order was based should have been provided to them.

Even in cases of cessation of membership under Rule 44(1)(e), it is essential that the individual concerned be given an opportunity to be heard, as such an action imposes significant consequences of removal from the board. Therefore, in the present case, compliance with the principles of natural justice was unavoidable.

The petitioners were elected as board members following a proper election process. If their election is to be challenged on the grounds that their nominations were invalid, such a challenge should have been made under Rule 3(35) of the West Bengal Election Commission Regulations, 2012. However, the time limit for invoking this provision has now expired.

Accordingly, impugned order dated September 6, 2024, is set aside.

The petitioners are immediately restored to their positions as board members.

WPA 23428 of 2024 is allowed.

Urgent certified photocopy of this order, if applied for, be supplied to the parties on compliance of usual legal formalities.

(Kausik Chanda, J.)