

Form No. J(2)

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

Present: **The Hon'ble Justice Reetobroto Kumar Mitra**

W.P.A.24733 of 2025

Susanta Mondal & Ors.

Vs.

The State of West Bengal & Ors.

For the petitioners : Mr. Milon Bhattacharya, Ld. Sr. Adv.,
Mr. Prabir Kumar Mitra, Ld. Sr. Adv.,
Ms. Sulagna Bhattacharyya,
Mr. Victor Chatterjee,
Mr. Pinak Mitra.

For the State : Mr. Ayan Banerjee,
Mr. Sambuddha Dutta.

For the Respondent
No.2 : Mr. Ankit Sureka,
Mr. Biplob Das,
Mr. Asis Dutta.

For the Respondent
Nos.3, 4 & 5 : Mr. Dhiman Kumar Sengupta,
Ms. Farhin Mustaque.

Heard on : 21.11.2025

Judgment dictated
in open Court on : 23.12.2025

Reetobroto Kumar Mitra, J.:-

1. The petitioners are aggrieved by the mode and manner of their removal from the Board of the respondent no. 3.

2. The petitioners were all members of a duly elected Board of the respondent no. 3. The petitioners have been removed from the Board by way of a resolution dated October 19, 2025, requisitioned by the 32 delegates which includes the Board members.

3. Pursuant to such requisition, a general meeting was called upon due to the notice to the petitioners on September 11, 2025.

4. A meeting was held on October 19, 2025, in which the resolution (29 in favour and 12 against), to remove the petitioners from the Board of Directors of the respondent no. 3, was adopted. The petitioners were present in the meeting and had also cast their vote against the resolution.

5. Pursuant to such resolution of October, 19, 2025, the petitioners were informed on 24th October, 2025, that they had been removed from the Board of Directors of the respondent no. 3.

6. These are the admitted facts, which the appearing parties do not dispute.

7. There is one element of dispute in the entire conspectus of facts, that being the number of the members of the Board of the Directors.

8. The petitioners contend that there are 15 members, while the respondent no. 3 contends that there are 17.

9. Mr. Bhattacharjee, learned Senior Advocate, appearing for the petitioners, raised the following points :

- (i) The notice calling for the special resolution indicated only an action under Section 31(1)(b) of the West Bengal Cooperative Societies Act, 2006 (hereinafter referred to as the “said Act”);

(ii) Section 31(1)(b) refers to “no-confidence” against the entire Board and in view of such resolution, being adopted under Section 31(1)(b) of the said Act, the entire Board stood dissolved and not merely the expulsion or removal of the petitioners from the Board.

(iii) Under Section 31(5) of the said Act, the Board stands dissolved immediately upon such resolution being taken, ostensibly for a “no- confidence” motion against the entire Board.

(iv) He further submits that the removal of the petitioners was requisitioned on rather vague terms. Principally that the requisitionists had alleged that the petitioners as Board members had not attended “several meetings”. This he argues is not just vague but falls short of the statutory mandate of six consecutive meetings. Thus, only if a Board member abstains from six consecutive board meetings, he becomes liable to be removed from the Board. He places Rule 44 (f) of the West Bengal Co-operative Societies Rules, 2011 (hereinafter referred to as the said Rules).

(v) He, further, submits that in view of the resolution of October 19, 2025 not being in consonance with the Act and the Rules, is liable to be set aside and the petitioners be reinstated on the Board of Directors.

(vi) Alternatively, he has also submitted that if the resolution is upheld, the entire Board stands dissolved and it would be trite to call for fresh election through the Election Commission.

(vii) The writ petitioner has approached the Court immediately thereafter on October 29, 2025.

(viii) Mr. Bhattacharya has referred to a decision reported in ***Ujjal Mondal Vs. State of West Bengal***, reported in **2013(1) CHN (CAL) 458**.

10. Since the respondents had a point of maintainability of the writ petition as there is an alternative and efficacious remedy available to the petitioners.

11. Mr. Bhattacharjee, has also addressed on this issue and submitted as under :

a) Section 37 of the said Act empowers the Registrar to summon the concerned office bearers whether the Chairperson or the Chief Executive with such agenda and within such time as may be specified in the direction. In the instant case, no such order or direction has been passed by the Registrar on account whereof the question of an alternative or efficacious remedy being available to the petitioners is fairly redundant;

b) He has also submitted that Section 37 of the said Act is a mandatory provision and the use of the term “may” has to be construed as a ‘shall’ to give a harmonious interpretation to the provision of the said section while reading the statute;

c) In so far as the alternative remedy under Section 102 of the Act is concerned, there is no dispute between the parties which falls within the domain of Section 102. Hence, Section 102 is not an alternative or efficacious remedy available to the petitioners.

12. Mr. Sengupta appearing for the respondent Nos.3, 4 and 5 has made the following submissions;

i) The efficacious remedy urged by him was not in respect of Section 37 of the said Act but really under Section 102 of the said Act;

ii) Section 37 of the said Act is a provision which becomes operative only after the Registrar has engaged and taken steps thereunder as specified in the statute. There has been no reason for the Registrar to engage in the instant matter;

iii) The disputes between the petitioners and the respondent Society are nothing but private disputes in the realm of Section 102 of the said Act;

iv) He has further submitted that the steps taken for removal of the petitioners were urgent as the petitioners were repeatedly absent from the Board meetings, which was an impediment for the Board to function efficaciously;

v) He further submits that Rule 44(f) of the said Rules, does not require a resolution to be adopted. The moment a member of the Board is absent for six consecutive Board meetings, the provision is automatic and does not require any resolution to be adopted for removing such errant Director;

vi) He has further submitted that after the removal on of the petitioners from the Board, the vacancies have been duly filled up on November 14, 2025.

13. Mr. Sureka appearing for the respondent No.2 has made the following submissions, in addition to adopting the submission of Mr. Sengupta, which may be summarized as under;

i) Section 31(1)(b) of the said Act under which the removal of the petitioners was undertaken does not merely refer or relate to a no-confidence motion against the entire Board. It also relates to reconstitution of the Board. Hence, removal of directors entails reconstitution and thus, squarely falls within the ambit of the Section 31(1)(b). Thus, the removal of the petitioners was rightly requisitioned under Section 31(1)(b) of the said Act;

ii) Section 31(3) of the said Act relates to a situation where the entire Board is dissolved upon a no-confidence motion against it being passed or adopted. However, the provision does not give or provide for a situation where some of the errant Directors have been removed from the Board.

14. I have heard learned Counsel for the parties and considered the decision relied upon by Mr. Bhattacharya, learned Senior Counsel for the petitioners. I have also perused the records of the case.

15. It is true that Section 37 of the said Act may not be applicable in the facts of this case and the question of availability of an alternative and efficacious remedy vis-a-vis Section 37 of the said Act is not germane. However, one cannot brush aside the provision of Section 102 of the said Act which specify that in the case of a dispute between the members regarding the management nor business or affairs of a Co-operative Society, the provision of Section 102 of the said Act are attracted.

16. In the present case, the provision of Section 102 of the said Act could have been applied, had the petitioners accepted the same. However, since the petitioners have argued that there is no dispute in the realm of

private dispute and not covered by Section 102 of the said Act, I am not inclined to hold that the writ petition is not maintainable. The self imposed restriction of alternative and efficacious remedy, cannot be applied in the present factual conspectus and the pure question of law involved in this case.

17. It is not in dispute that the petitioners were removed on October 19, 2025 upon a duly requisitioned meeting by 32 members, both delegates and members of the Board in a special general meeting.

18. The special general meeting was attended by all the eight petitioners who had duly cast their votes in such meeting. There is not an iota of objection from the petitioners in the meeting as will appear from a copy of the minutes which has been produced in Court and is kept on record, that the petitioners objected to the meeting being conducted under Section 31(1)(b) of the said Act read with Rule 44(c) of the said Rules.

19. The only provision in both the Act and the Rules which relates to removal of Directors is contained in Rules 44 and 45 of the said Rules. Rule 44 of the said Rules deals with cessation of membership of a Board and provides substantive grounds of such cessation. Rule 45 is a procedural aspect which lays down the procedure to be adopted to effect removal of a member of the Board.

20. The six Clauses which have been set forth in Rule 44 of the said Rules as grounds for cessation of membership of a Board member are self-explanatory. All the grounds enunciated in the said Rules are such that, it is obvious that the cessation will take effect immediately on the occurrence of such event. For example, if a member dies, there is no other procedure

to adopt or undertake to ensure his cessation. Similarly, resignation from office or failure to attend six consecutive meetings does not require any further act or action on behalf of the Board for ensuring removal or cessation of Directorship. Therefore, there is no reason why 44(c) of the said Rules should be construed differently which specifies “is removed by the general meeting from Directorship.”

21. Once a Director is removed by the general meeting from Directorship, his cessation is immediate. This has also been reiterated as a procedure in Rule 45(1)(a) of the said Rules. The only challenge to a removal under Rule 44(c) can be the procedure of Rule 45(1)(a) has not been followed. This is not in dispute or challenge in the present case.

22. The special general meeting, duly requisitioned by the delegates and members of the board with a substantial majority, decided to remove the petitioners from the board. The petitioners, having attended such meeting and cast their votes without objecting to the procedure adopted or to the fact that the meeting was requisitioned under Section 31(1)(b) of the Act, now cannot challenge the same on the technical ground that the notice did not specify the application of Rule 44(c) of the Rules. Rule 44(c) merely states one of the grounds that will result in cessation of membership of the board.

23. It is also important to note here that the requisition did not specify and rightly so that the petitioner had not attended six consecutive meetings. Had it specified such number, the requisition would have been otiose as Rule 44(f) specifically provides for cessation on that ground. The

requisitionists had made a statement that the Board was not being able to function efficaciously as the petitioners did not attend several meetings.

24. Section 31(1)(b) of the said Act cannot be narrowed or read down to mean that a special general meeting would only be called for a no-confidence motion against the entire Board. The phrase preceding such adoption of resolution is as under;

“31. *Special general meeting.*(1) xxxxxx

xxx xxx xxx xxx

(b)where at least one-third of the members or delegates or representatives of the Co-operative society place before the board a requisition in writing for discussion and decision on a specific object including a call for adoption of resolution in a special general meeting for no-confidence against the board or its reconstitution before the expiry of the full term of five years”

and the succeeding portion refers to reconstitution of the Board as well. Clearly, a special general meeting may be called for other objects which have to be specified and for no-confidence against the Board or its reconstitution. Thus, a removal under Rule 44(c) of the said Rules, would qualify as a reconstitution of the Board under Section 31(1)(b) of the said Act.

25. The only dispute on facts related to the member of Directors on the Board, 15 as contended by the petitioners, 17 as contended by the respondent No.3. In answer to this query from the Court, Mr. Sengupta has handed over a copy of the amended by laws, which is kept on record,

wherefrom it appears at Clause 30 (3)(4) that there were 17 members on the Board.

26. The petitioners, eight in number, were not a majority on the board, which consists of 17 members. Consequently, it cannot be held that the expulsion of the petitioners from the board of directors of respondent no. 3 resulted in the dissolution of the board. The eight posts which fell vacant have also been subsequently been filled up on November 14, 2025, which has not been challenged by the petitioners.

27. It is clear that the special general meeting had been duly requisitioned and was held upon due notice to the petitioners, all of whom attended. The petitioners while attending the meeting had not opposed or objected to the mode and manner in which the resolution was adopted.

28. The procedure adopted by the respondents was in consonance with the provisions of the said Act and the said Rules.

29. Since Section 31(1)(b) of the Act cannot be construed to mean that a special general meeting can be called only for a vote of no-confidence against the entire board, it is clear that the requisition by which the petitioners were removed falls within the meaning of the term reconstitution of the board. Hence, the meeting was rightly requisitioned, and the decision of the majority members must be respected and upheld.

30. The decision relied upon by Mr. Bhattacharya in ***Ujjal Mondal*** (supra) relates to a panchayat matter in the context of a no-confidence motion. Further, the challenge therein was to the appointment of an individual to the office of "Pradhan." The issue decided concerned a motion of "no- confidence" against the Pradhan. The facts and

circumstances of that case are materially different from those in the present case. The facts of the said case are separate and distinct, and its findings cannot be superimposed upon the facts of the present case, as they are in no manner applicable.

31. In view of the aforestated discussions, I hold that the resolution requisitioned and adopted in the special general meeting expelling and/or removing the petitioners from the Board of the respondent No.3 is valid and is thereby upheld.

32. With the aforestated directions, the writ petition is dismissed.

33. There shall be no order as to costs.

34. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Reetobroto Kumar Mitra, J.)