

IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA No. 27006 of 2025

Bikash Rath & Ors.

Versus

Election Commission of India & Ors.

Mr. Sauradeep Dutta

Mr. Madan Mohan Ray

Mr. Himadree Ghosh

.....For the petitioners.

Mr. Soumya Majumdar, Sr. Adv.

Ms. Anamika Pandey

Mr. Ghanshyam Pandey

.....For the respondent nos. 1 to 3.

Mr. Ankit Sureka

Mr. Biplab Dan

.....For the respondent no. 5.

Mr. Harish Chandra Talwar

.....For the respondent no. 7.

Hearing Concluded On : 04.12.2025

Judgment on : 07.01.2026

Krishna Rao, J.:

1. The petitioners have challenged the communication dated 19th September, 2025, issued by the District Magistrate, District Election Officer, District- Medinipur East to the Head of the Office (Manager), Balageria Central Cooperative Bank Limited, Contai Branch, to update of office information and Employee Data for General Election to the West Bengal Legislative Assembly (WBLA) 2026 on the portal *emms.wb.gov.in* for preparation of election personnel database.
2. The petitioners are the employees of the Balageria Central Cooperative Bank Ltd. serving in different categories.
3. The petitioners have raised the issue that the petitioners being the employees of the registered Cooperative Bank, is an autonomous Cooperative Entity governed by its own Bye-laws and an elected management do not fall within any category of authorities, whose employees/staffs may be requisitioned for election duty and consequently, they cannot be summoned or deployed for election related work, and their names cannot be uploaded or included on any Government portal or website for the said purposes.
4. Mr. Sauradeep Dutta, Learned Advocate representing the petitioners submits that the management of the bank is vested in a duly elected Board of Directors, constituted in accordance with its registered Bye-

laws. The final authority of the Bank lies in the General Body of its members assembled in a General Meeting. He submits that Section 17 of the West Bengal Cooperative Societies Act, 2006, confers upon the Bank the status of a body corporate under its registered name, having perpetual succession and a common seal. By virtue of its statutory incorporation, the Bank is empowered to acquire, hold, and dispose of property to enter into contracts in its own name, to institute and defend suits and other legal proceedings and to carry out all acts necessary for attaining its objective.

5. Mr. Dutta further submits that the Bank carries on its banking business under the close regulatory supervision of the Reserve Bank of India and the National Bank for Agriculture and Rural Development (NABARD) and is subject to the provisions of the Cooperative Act and the Rules framed thereunder, as well as the legal requirements contained in the Banking Regulation Act, 1949. He submits that the Bank is a Cooperative Credit Structure Entity as defined under Section 134B of the Act and Section 134C(2) expressly grants such entities full autonomy in all financial and internal matters, personal policy, staffing, recruitment, posting and compensation of employees. He submits that the salaries and other allowances of the petitioners paid out of the funds of the bank as per terms and conditions of the employment.
6. Mr. Dutta submits that the Bank is a registered cooperative body governed by its own Bye-Laws, managed by an elected Board, and is not owned by the State. He submits that the salaries and service benefits

are exclusively paid from the funds of the Cooperative Bank itself and not from the funds of the State or Central Government.

7. In support of his submissions, he has relied upon the judgment in the case of ***Election Commission of India Vs. State Bank of India Staff Association*** reported in ***(1995) Supp (2) SCC 13*** and submits that Article 324(6) of the Constitution of India means that “such staff” whose services may be requisitioned by the Commission must be persons employed by the Central Government or the State Government, and not from statutory Corporation such as SBI. He further submits that the Hon’ble Supreme Court held that the SBI is not a local authority within the meaning of Section 159 of the Act, thus the Cooperative Bank is also not coming under the purview of Local Authority.
8. Mr. Dutta further relied upon the judgment in the case of ***Malda District Central Co-operative Bank Employees Association and Others Vs. Election Commission of India*** in ***WPA No. 10325 of 2024*** passed by the Coordinate Bench of this Court and submits that the banks are not controlled and financed by the Government in a way that makes them equivalent to public authorities for the purpose of Election Commission requisition.
9. Mr. Soumya Mazumdar, Learned Senior Advocate representing the respondent nos. 1 to 3 submits that similar question came up for hearing before the Hon’ble Division Bench of the Gujarat High Court, wherein the Hon’ble Division Bench held that it cannot be said that the

District Cooperative Bank is an institution, establishment or concern which is controlled or financed wholly or substantially by funds provided directly or indirectly, by the Central Government or a State Government. He submits that being aggrieved and dissatisfied with the said order, the Chief Electoral Officer has challenged the said order before the Hon'ble Supreme Court in Petition(s) for ***Special Leave to Appeal No(s). 563 of 2015*** and by an order dated ***10th April, 2017***, the Hon'ble Supreme Court has stayed the operation of the said order and the matter is pending before the Hon'ble Supreme Court.

10. Mr. Mazumdar submits that the judgment relied by the petitioner in the case of ***Malda District Central Cooperative Bank Employees Association (supra)*** has not considered the order passed by the Hon'ble Supreme Court dated 28th April, 2017 wherein the Hon'ble Supreme Court in the similar matter had stayed the operation of the order passed by the Hon'ble Division Bench of the Gujarat High Court in the case of ***Bhavnagar District Cooperative Bank Ltd. & Anr. (supra)***.
11. The preamble of the Representation of People Act, is an Act to provide for the allocation of seats in, and the delimitation of constituencies for the purpose of elections to the House of People and Legislatures of States, the qualifications of voters at such elections, preparation of electoral rolls, the filling of seats in the Council of States to be filled by representatives and the matters connected therewith.

- 12.** Sections 159(2) of the Act mentioned several authorities for the purposes of sub-section (1). Sub-section (1) provides that such authorities shall, when so requested by the Regional Commissioner appointed under Article 324(4) or the Chief Electoral Officer of the State, make available to any returning officer such staff as may be necessary for the performance of any duties in connection with an election. The mentioning of Article 324(4) in Section 159 makes it clear that Article 324, at least with regard to the limited component of the officer who can be appointed under the said Article has to be read in conjunction with Section 159 of the Representation of the People Act. It cannot be said that Article 324 overrides Section 159 of the Representation of the People Act. The power exercisable under Article 324 by the Election Commission of India are circumscribed by Section 159 of the Representation of the People Act, which is specific statute for the purpose of conduct of elections, in so far as the persons who can be appointed for the purpose of election by the Election Commission of India is concerned.
- 13.** Section 159(2)(iv) stipulates that staff from any other institution, concern or undertaking which is established by or under a Central, Provincial or State Act or which is controlled, or funded by the Central or State Government can be appointed for the purpose of an election. Article 324(6) of the Constitution of India provides that the President of India or the Governor of a State, shall, when so requested by the Election Commission of India, make available to the Election

Commission of India or to a Regional Commissioner, such staffs as may be necessary for the discharge of functions conferred on the Election Commission of India by Clause 1. Clause 1 of the Article 324 provides that the superintendence, directions and control of the preparation of the electoral rolls for, and the conduct of, an election to the Parliament and to the Legislature of every States and of elections to the offices of Presidents and Vice-President held under the Constitution shall be vested in a Commission referred to in the Constitution as Election Commission.

14. In the case of ***Election Commission of India vs. State Bank of India Staff Association***, the Hon'ble Supreme Court held that:

“19. We have already extracted clause (6) of Article 324 which empowers the Election Commission to request the President, or the Governor of the State concerned to make available such staff as may be necessary for it to carry out its duty under clause (1). Such a provision was necessary for the obvious reason that since the Election Commission has to hold elections at intervals it is not required to maintain a huge staff at considerable expense to the exchequer and therefore the power to seek on request such staff as is necessary came to be engrafted in the Constitution itself.

20. We assume that the powers of the Election Commission under Article 324 are plenary. Therefore, the Election Commission may issue any direction in the matter of conduct of elections. But the question is, in the garb of conduct of elections, can the Election Commission usurp the power not vested in it? This will depend on the understanding of clause (6) of Article 324. For the conduct of elections when the Election Commission makes a request to the President or the Governor to make available the staff they are obliged to provide the services. What is the meaning of “such staff”?

According to Mr Dushyant Dave we should refer to Article 310 which talks of a member of Civil Service (in contradistinction to Defence Service of the Union or the State), holding office during the pleasure (durante bene placito) of President or the Governor. Obviously "such staff" can only mean that staff which is under the control of the President or the Governor concerned and not any staff over which they do not exercise control. It could mean only that staff on which the President or the Governor, as the case may be, would be in a position to exercise disciplinary powers should they refuse the President's or Governor's directive. Although the Constitution-makers did not say the Union or the State Governments but only the President or the Governor, it is obvious they would have to act consistently with Articles 74(1) and 163(1), respectively. Therefore, on a request by the Election Commission the services of those government servants who are appointed to public services and posts under the Central or State Governments will have to be made available for the purpose of election. When the Constitution came into force the services of these officers were readily available. Of course, there were also local authorities and the services of the employees of the local authorities were also available. That is why Section 159 of the 1951 Act provides that on request from the Regional Commissioner or the Chief Electoral Officer of the State, the local authority of the State shall make available to any Returning Officer such staff as may be necessary to carry out the duties in connection with an election.

21. *It is important to note that their services came to be made available as Returning Officers and Assistant Returning Officers under Sections 21 and 22 of the 1951 Act introduced by Amendment Act 47 of 1966. Barring the services of these officers does the Election Commission have power to requisition the services of any other person? The argument of the appellant is based on several sections of the 1950 and 1951 Acts. We have referred to the relevant provisions of the two Acts hereinbefore.*

22. *Merely because the provisions of the two Acts require that they must be officers of Government or local authority, unlike in the case of*

officers falling under Section 26 of 1951 Act, it does not, in our opinion, follow that the services of the officers of the State Bank of India could be requisitioned. Section 26 of the 1951 Act is not a source of power at all. It does not, in any manner, enable the Election Commission to draft in the services of officers other than officers of Government and local authority. To draw inspiration from these sections to support an argument that the services of any person could be drafted for the purpose of election is untenable. May be, to conduct the elections many polling stations are set up. Consequently, the services of many persons may be required. May be, the Election Commission may draw the minimum staff from the banks to ensure that the banking business is not disrupted but the question here is of power and not discretion. If there is power it may be exercised with circumspection and minimum staff may be requisitioned but if there is no power the question of the mode of its exercise will not arise at all. It is a question of existence of power and not the manner of its exercise.”

15. The Balageria Central Cooperative Bank Ltd. is a registered cooperative body governed by its By-Laws and managed by an elected Board and is not owned or controlled by the State. The functions of the bank are an autonomous private organization within the cooperative sectors. The salaries and service benefits of the employees of the bank are paid exclusively from the funds of cooperative bank itself and not from any fund of the State or Central Government.
16. Mr. Mazumdar relied upon the order passed by the Hon'ble Supreme Court in the case of **Chief Electoral Officer, Gujarat State (supra)** dated 28th April, 2017 wherein the Hon'ble Supreme Court has stayed the operation of the order passed by the Hon'ble Division Bench of the Gujarat High Court in the case of **Bhavnagar District Cooperative**

Bank Ltd. & Anr. (supra) dated 10th April, 2014 wherein the Hon'ble Division Bench of the Gujarat High Court held that the District Cooperative Bank cannot be said that the District Cooperative Bank is an institution, establishment of concern which controls of finance wholly or substantially by funds provided, directly or indirectly, by the Central Government or the State Government. The Hon'ble Supreme Court in its order dated 28th April, 2017, has simply passed an order of stay of the operation of the order dated 10th April, 2014 without considering the judgment passed in the case of **Election Commission of India (supra)** wherein the Hon'ble Supreme Court has held that the Election Commission may issue any direction in the matter of conduct of elections. For conduct of elections when the Election Commission makes a request to the President or the Governor to make available the staffs, they are obliged to provide the services. Such staffs can only mean that staffs which is under the control of the President or the concerned Governor and not any staff over which they do not exercise control. It could mean only that staff on which the President or the Governor, as the case may be, would be in a position to exercise disciplinary power should they refuse the Presidents or Governor's directive.

17. In the present case, admittedly, the petitioners are the employees of Balageria Central Cooperative Bank Ltd. which is an autonomous body in the cooperative sector which does not fall within any of the categories

enumerated in Article 324(6) of the Constitution of India, Section 26 or Section 159 of the Representation of the People Act.

18. In view of the above, the notice issued by the respondent no. 6 to the respondent no. 8 dated 19th September, 2025, directing to upload the details of the employees of the cooperative banks including the petitioners on the portal *emms.wb.gov.in* is set aside and quashed.

19. WPA No. 27006 of 2025 is allowed. No order as to costs.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)