

(2018) 06 CAL CK 0194
In the Calcutta High Court
Case No : CAN 3521 of 2018, MAT 531 of 2018

Kaliram Das & Ors.

APPELLANT

Vs

Guruprasad Jana & Ors.

RESPONDENT

Date of Decision : 22-06-2018

Acts Referred:

West Bengal Co-operative Societies Rules, 2011 — Rule 40(7)(a)(b), 40(7)(iii), 40(7)(iv)(b)

Citation : (2018) 06 CAL CK 0194

Hon'ble Judges : ARINDAM MUKHERJEE, J; BISWANATH SOMADDER, J

Bench : Division Bench

Advocate : Bikash Ranjan Bhattacharyya, Subir Sanyal, Biswabrata Basu Mallick, Kamal Mishra, Abhijit Basu, Achyut Basu, Rupchan Chakrabarti, Arijit Majumdar, Sonam Basu, Punam Basu, Pradip Kumar Ray, Shraboni Sarkar, Srijan Nayak, Raja Saha, Arindam Mitra

Final Decision : Dismissed

Judgement

Arindam Mukherjee, J.

1. The appeal is at the instance of 40 (forty) persons who were not parties to the writ petition wherein the order impugned dated 6th June, 2018 was

passed. The appellants, being persons aggrieved, obtained leave to file the instant appeal by an order dated 20th June, 2018.

2. The respondents nos. 1 to 33 are the writ petitioners. The respondent no. 34 is the State of West Bengal. The respondent no. 35 is the Registrar of

Co-operative Society, West Bengal. The respondent No. 36 is the Cooperation Directorate, Purba Medinipur. I. The respondent no. 37 is Dwitiyo

Khanda, Jalpai Gram Sabha Samabay Krishi Unnayan Samiti Limited (hereinafter referred as to the said Samiti). The respondent Nos. 38 and

39 are Manager and the Returning Officer of the said Samiti, respectively. The

Returning Officer is the Assistant Registrar of Co-operative Society, Range 1, Purba Medinipur. The respondent nos. 40 and 41 are the District Magistrate, Purba Medinipur and the Sub-Divisional Officer Tamluk Sub-Division, respectively. The respondent no. 42 is the Block-Development Officer Chandipur Block, Purba Medinipur. Respondent No. 43 is the Officer-in-Charge Chandipur Police Station, Purba Medinipur. The respondent nos. 34 to 43 were respondents nos. 1 to 10 in the writ petition, respectively.

3. The writ petitioners in the writ petition, being W.P. 1816(W) of 2018 (Shri Guruprasad Jana and Ors. vs. The State of West Bengal & Ors.), which was filed on or about 25th January, 2018, inter alia, alleged as follows:-

a. A public notice dated 8th January, 2018 was issued for holding the election of the delegates of the â??said Samitiâ? for five constituencies being

Sashiganj, Baishachak, Harikhali, Moupakha and Barahachandi. Total numbers of delegates to be elected were 50. The election was scheduled to be

held on 4th February, 2018.

b. In terms of the said notice the date for distribution of nomination papers was fixed on 15th and 16th January, 2018 whereas the date of filing of

nomination papers was on 17th January, 2018 (between 10.00 a.m and 2.00 p.m). Scrutiny of nomination papers was scheduled on 18th January, 2018.

The date of withdrawal of nomination was fixed on 19th January and publication of list of contesting candidates was on 19th January, 2018 (after 3 pm).

c. The writ petitioners are all eligible to contest the election of the â??said Samitiâ?.

d. On 17th January, 2018 at the schedule time i.e., 10.00 a.m, the writ petitioners went to file their nomination papers but were restrained by the

respondents no.2 to 5 (in the writ petition) and respondents no.35, 36, 37, 38 & 39 in the appeal.

e. On 17th January, 2018 the writ petitioners were told to wait till 1.00 p.m and the nomination papers of some other persons were allowed to be filed

till that time. When the writ petitioners started questioning the conduct of the respondents (in writ petition), the nomination papers of the writ petitioner

nos. 7 and 14 were torn and they were assaulted. Barricades were put up restraining them from filing their nomination papers without assigning any

reason for the same.

f. The writ petitioners made a complaint to the Officers-in-charge of Chandipur Police Station (respondent no.10 in the writ petition) on 17th January,

2018. They also made a complaint to the Co-operation Directorate, Purba Medinipur, Range-1 (respondent no.3 in the writ petition) on 18th January,

2018 but the said respondents failed to take any action.

4. It appears that 53 candidates filed their nomination papers, out of which 10 were rejected during scrutiny and 3 withdrew, leaving the appellants /

applicants as the only 40 candidates who have validly filed their nomination.

5. The writ petition was filed on or about 25th January, 2018, but the writ petitioners did not make the appellants/applicants as respondents despite of

the fact that the said appellants/applicants were the only contestants and any relief granted to the writ petitioners in their writ petition would adversely

affect the right of the appellants/applicants and the list of contesting candidates have been published by that time. The records reveal that 40 delegates

are to be elected to the â??said Samitiâ?? and not 50 delegates as stated by the writ petitioners in the said writ petition.

6. By an order dated 1st February, 2018 the election of the â??said Samitiâ? scheduled to be held on 4th February, 2018 was stayed till the end of

March , 2018 or until further order whichever was earlier and the respondents were granted liberty to file their respective reports on affidavits when

the matter next scheduled to appear on 6th March, 2018.

7. The West Bengal Cooperative Election Commission (hereinafter referred to as the â??said Commissionâ?) through its Joint Registrar of

Cooperative Societies (H.Q.) as also the Secretary of the Cooperative Election Commission, West Bengal after obtaining extension filed a report in

form of affidavit dated 4th April, 2018 on 4th May, 2018 stating that the writ petitioners did not turn up at the venue to submit their nomination papers

within the scheduled time i.e., 10.00 a.m. to 2.00 p.m. on 17th January, 2018. The report further reveals that 86 (eighty six) nomination papers were

distributed out of which 53 (fifty three) nomination papers were submitted on the date fixed within the schedule time.

8. The learned Single Judge while passing the order impugned recorded the filing of report by way of affidavit by the â??said Commissionâ? and the

denial of the allegations made by the writ petitioners. The learned Single Judge,

neither went into the rival contentions nor decided the appellantsâ??

application for addition of parties but held that since the election had not taken place, for the ends of justice, the 33 (thirty three) writ petitioners be

allowed to file their nomination by 5.00 p.m. on 7th June, 2018. The learned Single Judge further directed the Returning Officer (Respondent no.6 in

the writ petition and respondent no.39 in the appeal) to re-schedule the entire election process after receiving the nominations from the writ petitioners

in accordance with the West Bengal Co-operative Societies Act, 2006 (hereinafter referred to as the 2006 Act).

9. The appellants / applicants through their advocate submitted that the election process had commenced with the issuance of the notice dated 8th

January, 2018. The writ petitioners have not challenged the said notice dated 8th January, 2018. The writ petitioners were not prevented by the

appellants / applicants. The allegation of preventing the writ petitioners from filing their nomination is against the Manager of the â??said Samitiâ? and

the Returning Officer who is an officer of the State Government. Having regard to the fact that the said Commission in its report in form of affidavit

has categorically stated that the writ petitioners did not turn up on 17th January, 2018 between 10.00 a.m and 2.00 p.m, the election process should not

have been interfered with and the writ petitioners ought not to have been believed and as a consequence the question of allowing the writ petitioners to

file their nominations and reschedulement of the election cannot and does not arise. The impugned order allowing the writ petitioners to file their

nomination on 7th June, 2018 and re-scheduling the election is an order which cannot be legally sustained. The appellants/applicants further submitted

that the report in the form of affidavit filed by the â??said Commissionâ? though was noticed by the learned Single Judge but the contents thereof and

in particular, the statement that the writ petitioners did not turn up on 17th January, 2018 to file their nomination was not considered. As a government

employee, the Returning Officer had no interest in the election of the â??said Samitiâ? for which he will prevent the writ petitioners from filing the

nomination.

10. The writ petitioners appearing through their advocate insist that they were prevented from filing the nomination and as such they should be allowed

to contest the election by filing their nomination papers as has been allowed by

the order impugned. The writ petitioners relies on Rule 40(7)(a) and (b) of the West Bengal Co-operative Societies Rules, 2011 (hereinafter referred to as 2011 Rules) and further contends that no prejudice will be caused if they are allowed to file the nomination since the election has not yet been held. The writ petitioners therefor supported the order impugned and submitted that they should be allowed to participate in the election as their nomination has been accepted pursuant to the passing of the order impugned.

11. The advocate appearing on behalf of the â??said Commissionâ? apart from relying upon the report in form of affidavit filed before the learned Single Judge submits that pursuant to the order impugned, the Returning Officer has accepted the nomination papers of the writ petitioners and have re-scheduled the election process and the election of the said Samiti is scheduled to be held on 24th June, 2018.

12. The advocate appearing for the State submits that the photocopies of the nomination papers annexed to the writ petition are incomplete. Some of them are not even signed. It is therefore, difficult to conceive that the writ petitioners carried the complete set of nomination papers for filing the same on 17th January, 2018 within the schedule time. He further submits that there are major inconsistency between the complaint made to the Officer-in-charge of Chandipur, Police Station (respondent no.43 in the appeal) as also that made to the Co-operative Directorate (respondent no.3 in the writ petition and respondent no.36 in the appeal) with the statement in paragraphs 14 and 15 of the writ petition. As such, the writ petitioners should not be believed that they actually went to file their nomination papers on 17th January, 2018 and were prevented. No reliefs should be granted to the writ petitioners.

13. On perusal of Rule 40 (7)(iii) of the 2011 Rules, it is clear that every nomination paper shall be presented either (a) in person or (b) through authorized agent or (c) by registered post to the Chairman of the society or any other officer duly authorized in that behalf by the board of such society.

14. If the writ petitioners were prevented from filing their respective nomination papers, the writ petitioners could have sent the same by registered post to the Chairman of the â??said Samitiâ? or any other officer duly authorized

in that behalf. No attempt was made by any of the writ petitioners to adopt such right as conferred by the rules. On the contrary, the writ petitioners alleging to have been prevented, went to the police authority to register their grievances. No time appears to have been noted by the police authority in the complaint lodged by the writ petitioners. It is, therefore, difficult to ascertain when the writ petitioner actually went to the police station to lodge the complaint on 17th January, 2018. On inquiry from Court it is submitted by the advocate for the writ petitioners that the writ petitioners had gone to the police station on or about 6.00 p.m on 17th January, 2018.

In the complaint letters there is no mention of the nomination papers of the writ petitioners nos.7 and 14 being torn though such allegation is in the writ petition. The torn copies of nomination papers of the said writ petitioners nos.7 and 14 has neither been produced nor photocopies thereof has been annexed to the writ petition. There is also no statement in the writ petition qualifying that the torn copies were either retained or thrown away. Though neither the writ Court nor the Appellate forum considering an appeal arising out of a writ petition can be a fact finding Court, but the probabilities can be weighed considering the allegations and counter-allegations as stated above. In view of the inconsistency between the complaints and the pleadings, incomplete nomination papers and the stand taken by the said Commission, we are inclined not to accept the version of the writ petitioners. That apart 33 persons being prevented at a time by the Manager of the said Samiti and the Returning Officer is also a matter of suspect.

15. It is a well-settled principle that interference to the election process after the same has been set to motion is sparingly done and that too, in extreme cases. The writ petitioners not having challenged the notice dated 8th January, 2018, by which the election process was set to motion cannot be allowed to upset the election process on the allegations of having been prevented from filing the nomination paper, which allegation, in any event, is difficult to accept. Moreover, in the instant case the writ petition having not actually filed their nomination papers nor having sent the same through registered post â?" being a right available to them under the 2011 Rules â?" cannot be allowed to file their nomination papers on the basis of their allegation particularly in view of the provisions Rule 40(7) (iv) (b) of the 2011 Rule.

16. In our considered opinion, the election process neither could have been stayed nor could have been directed to be held on a rescheduled scheme

after allowing the writ petitioners to file their respective nomination for the reasons as discussed above. We therefore hold that the order impugned

being the final order in which the interim orders have merged is not sustainable.

17. Even if the election has not taken place that is for orders passed by this Court which as held by us are not sustainable. There can be as such no

question of re-scheduling the election by allowing the writ petitioners to file their nomination papers and contest in such re-scheduled election.

18. In the circumstances as observed hereinabove, we set aside the order impugned and direct the election of the â??said Samitiâ? to be held on a re-

scheduled date to be fixed by the said Commission on the basis of the nominations which has been filed on 17th January, 2018 and found valid. The

electoral list for holding such election will be that prepared for holding the election of the â??said Samitiâ? on 4th February, 2018. This has to be done

as there has been a change in circumstances after the order impugned was passed as noted hereinbefore.

19. The appeal is therefore allowed and the writ petition being W.P 1816(W) of 2018 (Sri Guruprasad Jana & Ors. Vs. The State of West Bengal &

Ors.) stands dismissed. However, there shall be no order as to costs. Urgent photostat certified copy of this judgment and order, if applied for, be

supplied to the parties on priority basis.