

(1998) 11 GAU CK 0027

In the Gauhati High Court

Case No : Civil Rule No. 513 of 1996

Rashamoy Das and Others

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 26-11-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Tripura Co-operative Societies Rules, 1974 — Rule 61(3)

Citation : (1999) 1 GLT 89

Hon'ble Judges : P.C. Phukan, J

Bench : Single Bench

Advocate : M.K. Bhowmik and A.B. Choudhury, for the Appellant; U.B. Saha, B.B. Deb and B. Bhattacharjee, for the Respondent

Judgement

P.C. Phukan, J.—I have heard Mr. M. Kar Bhowmik, learned Counsel for the Petitioner, Mr. U.B. Saha, learned Govt. Advocate for the State-Respondent and Mr. B.B. Deb, learned senior counsel for the private Respondents.

2. On 21.8.96, the Respondent No. 5 appointed by the Respondent No. 2 Registrar of Co-operative Society, Govt. of Tripura, as an Administrator of the Respondent No. 3 Udaipur Matshyajibi Samabaya Samity issued a notification (Annexure A/1-A) informing the Members of the Society that a General Meeting would be held on 27.9.96 for electing 10 (ten) members of the Executive Committee. This notification was presumably issued under Rule 61(3) of the Tripura Co-operative Societies Rules, 1976 (hereinafter called the Rules) framed under the Tripura Co-operative Societies Act, 1974. The relevant portion of the Election Schedule appended to this notification is extracted below:

1. List of names of members will be notified in the Notice Board of the Society office at 10 A.M. on 30.8.96.

2. Objection against the published notification on list of members, if any, may be informed in writing from 31.8.96 11 A.M. to 5.9.96 2 P.M. to the Election Officer

of the Society and after hearing, the final list will be published/notified on 6.9.96 in the Notice Board of the Society.

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5. Nomination forms duly filled in to be submitted to the Election Officer at the Society Office on 13.9.96.

6. The validity of the nomination forms will be scrutinised on 16.9.96.... Any objection of candidates on the validity of Nomination papers will be submitted with all necessary documents in writing on that day and time. The final list of Nomination papers submitted by the candidates will be notified on that day....

3. As per sl.2 above, on 6.9.96 the Respondent No. 4 the Election Officer published the final voters list (Annexure-2/A).

4. As per sl. 5, on 13.9.96 as many as 34 members of the Society (Petitioner Nos. 1 to 10 and Respondent Nos. 6 to 29) filed their nomination papers.

5. As per sl. 6 on 16.9.96 the Respondent No. 4 Election Officer after scrutiny rejected all the 34 nomination papers issuing the following notification (Annexure-3/A):

NOTIFICATION

It is hereby notified that after scrutiny of 34 Nomination papers received in this office that Nomination Form No. 1 to 12 and 27 to 34 are rejected due to non-mentioning of the number of Members and Nomination Form No. 13 to 26 are rejected due to non-mentioning of classification of members, though received written objection from the candidates.

6. The nomination papers Nos. 13 to 26 included those filed by the Petitioners. These nomination papers were rejected "due to non-mentioning of classification of members". On the very next day of such rejection, the Petitioner No. 1 on behalf of himself and other Petitioners submitted a representation (Annexure-4) to the Respondent No. 4, Election Officer.

7. Unable to get any relief, the Petitioners have come up before this Court with the instant writ petition praying that the notification dated 16.9.96 (Annexure-3) rejecting their nomination papers be declared arbitrary, illegal and unconstitutional, and praying further that the Petitioners be declared elected.

8. Only the private Respondent No. 14 on behalf of himself and Respondent Nos. 15 to 21 and 24 filed an affidavit-in-opposition stating that the Respondent No. 4 Election Officer rightly rejected the nomination papers filed by the Petitioners for not mentioning whether they were nominal members or sympathiser members or Class "Kha" share holder members or class "kha" share holder members in sl. 2 of nomination Form X which requires the candidate to mention his "membership No. (with classification, if any)."

9. In my opinion, the above expression "classification, if any" necessarily implies

that there may be Societies with members not classified into two or more classes, and without any nominal member and sympathiser member as defined in Clauses (b) and (c) respectively of Section 2(21) of the Act and ineligible for being elected as members of the Committee vide Section 66(1) (f) of the Act, and without any "Kha" class share (purchasable only by Tripura Government) holder member and only with "ka" Class share (purchasable by persons living within the area of operation of the Society) holder member, in which case classification of Members need not be mentioned, there being only one class of members and no nomination paper can be rejected on the ground of non-mentioning of classification.

10. Now, whether the Respondent No. 3 is a Society having only "Ka" class share holder members is a question of fact. There is nothing on record before me to decide this question. That being so, I dis-allow the Petitioners' prayer that the impugned notification dated 16.9.96 (Annexure-3) so far as it relates to rejection of their nomination papers be declared arbitrary, illegal and unconstitutional. Moreover, in this case an adequate alternative remedy was available to the Petitioners u/s 92 of the Act providing for referring such a dispute by either of the parties to Registrar of the Co-operative Societies for decision. True, the existence of an alternative remedy is not an absolute bar to the maintainability of the writ petition under Article 226 of the Constitution. But where an adequate alternative remedy is available, the High Court exercising writ jurisdiction will not go into the disputed question of facts, the resolution whereof would require going into the evidence of which sufficient materials is not in the record of the writ petition (Hari Shankar and Others Vs. U.P. State Electricity Board and Another, ; Dr. (Miss) E. Sharma Vs. The State of Assam and Others,).

11. The grant of the Petitioner's further prayer that they, having filed valid nomination papers, be declared elected is out of question, because for election of 10 members of the Committee, more than 10 (34 to be precise) nomination papers were filed, and since all these nomination papers were rejected, the election scheduled to be held on 27.9.96 was not held.

12. Now, we are at the end of the year 1998. Much water has flown in the river Howrah since the nomination papers filed by the Petitioners were rejected by the impugned notification dated 16.9.96 (Annexure-3). Even if this notification is set aside, there is no question of holding election of 10 members of the Committee from amongst the 34 members who filed nomination papers about 2 years ago and on the basis of the voters list published two years ago. During the period of two years some of the members of the Respondent No. 3 Society might have ceased to be members, and some new persons might have been admitted to membership qualified to participate in the Election and/or eligible for being elected as members of the Committee necessitating preparation of a fresh list of members on Roll, fresh hearing of objection, preparation and publication of final list, filing of fresh nominations, objections, scrutiny and acceptance or rejection with reasons recorded in writing for rejection, if any, and publication of the list of

valid nominations.

13. In view of the above and the imperative need to restore democratic functioning in the Respondent No. 3 Co-operative Society, the Respondent Nos. 1,2,4 and 5 are directed to take immediate steps for holding election of the members of the Committee in a General Meeting to be convened at the earliest by issuing a fresh notification of the General Meeting appending the Agenda and the new Election Schedule containing necessary information and in accordance with the provisions of the Tripura Co-operative Societies Act, 1974, the Rules framed thereunder and the Bye-laws of the Respondent No. 3 Society.

The writ petition is disposed of accordingly.

No costs.