
(2017) 07 CAL CK 0039
In the Calcutta High Court
Case No : 983 of 2017

Sathi Jana & Ors.

APPELLANT

Vs

Uttam Bera & Ors.

RESPONDENT

Date of Decision : 17-07-2017

Acts Referred:

Citation : (2017) 07 CAL CK 0039

Hon'ble Judges : Biswanath Somadder, Sankar Acharyya

Bench : DIVISION BENCH

Advocate : Atarup Banerjee,?Abu Sohel,?Dhiman Kumar Sengupta,?Sweta Saha,?Srijan Nayak,?Raja Saha,?Bibek Jyoti Basu,?Joyee Maiati,?D. Mazumder,?T.M. Siddiqui,?Joytosh Majumdar

Judgement

1. Let the report in the form of an affidavit filed in Court today on behalf of the Secretary, West Bengal

Co-operative Election Commission, being the respondent no. 11, be taken on record.

2. By consent of the parties, the appeal is treated as on day's list and taken up for consideration along with the connected application.

3. The appeal arises out of a judgment and order dated 21st April, 2017, passed by the learned Single

Judge in W. P. 11785 (W) of 207 (Uttam Bera & Ors. vs. The State of West Bengal & Ors .).

4. The appellants before us were not parties to the writ proceeding. In terms of an order dated 28th June,

2017, passed in CAN 5655 of 2017, this Court granted leave to the appellants to prefer the instant appeal

against the judgment and order dated 21st April, 2017.

5. According to the learned advocate appearing on behalf of the appellants, his clients' specific case is

that on the date of affirmation of the writ petition, i.e., on 13th April, 2017, his clients had already been

declared as elected and by the time the writ petition was taken up for consideration before the learned Single

Judge, i.e., on 21st April, 2017, a certificate of being elected as delegate of the concerned cooperative society

was already issued by the concerned Returning Officer. He submits that in such circumstances, the learned

advocate who represented the concerned Returning Officer ought to have brought this to the notice of the

Court before the order was passed on 21st April, 2017.

6. In order to ascertain the factual position, a report in the form of an affidavit was called for from the

respondent no. 11 in terms of our order dated 28th June, 2017.

7. The report in the form of an affidavit filed in Court today reveals that although the writ petition was affirmed on

13th April, 2017, but the same was served in the office of the Cooperative Election Commission only on 18th

April, 2017. The matter was taken up by the learned Single Judge thereafter and the same was disposed of on

21st April, 2017. It has been specifically stated by the respondent no. 11 in paragraph 3(e) of the affidavit that

the Election Commission virtually did not get sufficient time to make an enquiry or to ask for a report from

the concerned Assistant Returning Officer within a span of two days. But the Cooperative Election

Commission gave instructions to the learned advocate appearing for it that any order passed by the Hon"ble

High Court in the writ petition regarding the election, the Election Commission will abide by such direction.

It has been further stated in paragraph 3(f) of the affidavit that on 21st April, 2017, when the writ petition was

taken up for hearing, the writ petitioners did not serve a copy of the writ petition upon the concerned

Assistant Returning Officer, although he was made party to the writ proceeding. The specific statements

made by the respondent no. 11 in paragraphs 3(g) and (h) of the affidavit reads as follows: -

" g) It is further stated that the then ARO was one M Rahaman who was made a party in the writ petition being respondent no. 6 in person and as per the information of the Cooperative Election Commission, no copy of writ petition was served upon him and therefore, the Cooperative Election Commission after receiving the writ petition on 18th of April, 2017 got only two days time i.e. 19th April and 20th April and the matter was disposed of on 21st April, 2017. As such the Election Commission could not collect any Report from the concerned Assistant Returning Officer through subsequently, he was replaced by another Returning Officer. h) I say that the Election Commission could not collect any report within two days i.e. 19th April and 20th April, 2017 regarding the developments in the election process."

8. It is patently evident from the facts which are now on record that Uttam Bera and others, being the

writ petitioners, had obtained the order dated 21st April, 2017 from the learned Single Judge without even

serving a copy of the writ petition upon the concerned Assistant Returning Officer who was respondent no. 6

in the writ proceeding. As such, the order of the learned Single Judge was obtained by the writ petitioners

behind the back of the principal respondent who was primarily responsible for conducting the election of the

concerned Cooperative Society. That apart and in any event, it is a matter of record that as on 21st April,

2017, the election of delegates to the concerned Cooperative Society had already taken place and the

appellants before us had been elected unopposed.

9. In such circumstances as stated above, the impugned judgment and order passed by the learned

Single Judge is liable to be set aside and is accordingly set aside. The writ petition is also liable to be

dismissed and stands accordingly dismissed.

10. The writ petitioners shall pay costs assessed at 200 G.Ms., to be deposited within a week from date

with the State Legal Services Authority for being kept earmarked for its utilization by the Mediation and

Conciliation Committee of the High Court.

11. List this matter one week hence, only for the purpose of ascertaining compliance of this Court's order

in respect of payment of costs.

12. Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the

parties.