
(2012) 09 CAL CK 0091
In the Calcutta High Court
Case No : Writ Petition No. 19849 (W) of 2012

Sunirmal Chakrabarty

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 05-09-2012

Acts Referred:

West Bengal Co-operative Societies Act, 2006 — Section 96(8)

Citation : (2013) 1 CHN 535

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : Bikash Ranjan Bhattacharya and Samim Ahammed, for the Appellant;

Judgement

Biswanath Somadder, J.—Affidavit-of-service filed in Court today be kept on record. In spite of service, the State respondents are unrepresented.

2. On the prayer of the learned advocate representing the petitioners, the names of the petitioner Nos. 2 to 5 are directed to be struck out from the cause-title of the writ petition. The writ petition shall now survive with the petitioner No. 1 as the sole petitioner.

3. The petitioner is a member of Electro Urban Cooperative Credit Society Limited. In the instant writ petition, the petitioner challenges the memo dated 29th August, 2012, issued by the Secretary, Cooperative Election Commission, West Bengal, and the consequential notice dated 30th August, 2012, which has been issued by six Assistant Returning Officers, who were entrusted for holding the election of Electro Urban Cooperative Credit Society Limited.

4. According to the petitioner, the entire procedure for holding of elections of a cooperative society is governed under the provisions of the West Bengal Cooperative Election Commission Regulations, 2012 (for short, the 2012 Regulations). It is submitted on behalf of the petitioner that the scheme of the said 2012 Regulations does not contemplate adjournment of election, once the schedule is announced, save and except in case of emergent situations, as

provided under Regulation 24. According to the petitioner, the provisions of Regulation 24 are attracted only on the date of holding of elections and as such, there was no justifiable reason for the Secretary, Cooperative Election Commission, West Bengal, to have issued the memo dated 29th August, 2012, addressed to the Special Officer/Assistant Returning Officer, requesting for postponement of the election. The consequential notice dated 30th August, 2012, according to the petitioner, could not have been issued by the Assistant Returning Officers since Regulation 24 is not attracted.

5. Perusing the impugned memo dated 29th August, 2012, it appears that the Commissioner of Cooperative Election Commission, West Bengal, was out of station and was accompanying the Hon'ble Chief Minister of West Bengal to the districts of Nadia and Murshidabad on the date of issuance of the impugned memo, and, therefore, the Secretary, Cooperative Election Commission, West Bengal, could not discuss the issues relating to the demand of certain sections of the members of the society, until his return to Kolkata. As such, the Special Officer/Assistant Returning Officer was requested to take up the issue with the Returning Officer, Kolkata Range, regarding the postponement of the election.

6. From a copy of the impugned memo dated 29th August, 2012, which is annexed to the instant writ petition, being annexure "P-8" at page 89, it appears that the Special Officer appointed by the Government of West Bengal, in respect of Electro Urban Cooperative Credit Society Limited, endorsed the following notice at the bottom of the impugned memo dated 29th August, 2012:

This is to inform to all members of the Society that please refer to the above mentioned memo. of Cooperative Election Commission, West Bengal, signed by the Secretary, which will speak for itself. In this regard further instruction will be communicated by The Returning Officer, Kolkata, regarding postponement of Election.

7. The impugned memo dated 29th August, 2012, as well as the notice endorsed at the bottom of the impugned memo by the Special Officer on 29th August, 2012, itself, is an example of sheer non-application of mind on the part of some officers of the State Government. It seems that the Secretary, Cooperative Election Commission, West Bengal, was quite oblivious of the statutory obligations, which are manifest from the provisions of the West Bengal Cooperative Election Commission Regulations, 2012. The provisions of the West Bengal Cooperative Election Commission Regulations, 2012, have been brought into effect upon exercise of powers conferred by sub-section (8) of section 96 of the West Bengal Cooperative Societies Act, 2006, for conducting of election in cooperative societies in West Bengal. Sub-section (8) of section 96 of the West Bengal Cooperative Societies Act, 2006 empowers the Cooperative Election Commission, West Bengal, to make rules, regulations and procedures for-

(a) the conduct of election;

(b) the preparation of electoral roll for the election;

- (c) fixing the date, place and manner of election;
- (d) fixing the date and manner of publication and declaration of the results of the election;
- (e) fixing the cost of holding of election of a Cooperative Society and the manner of assessing and realization of such cost;
- (f) symbols that may be used for election by the candidates.

8. The scheme of the 2012 Regulations postulates a rigid, almost inflexible process for holding of elections by the various cooperative societies in West Bengal Regulation 24 of the 2012 Regulations, which provides for adjournment of poll in emergencies, does not contemplate any such situation, as stated in the impugned memo dated 29th August, 2012, for the purpose of postponement of elections of a Cooperative Society. The provisions of Regulation 24(i) of the 2012 Regulations, reads as follows:

(24) Adjournment of poll in emergencies.- (i) If at an election the proceedings at any polling station or at the place fixed for the poll are interrupted or obstructed by any riot or open violence, or if at an election it is not possible to take the poll at any polling station or such place on account of any natural calamity, or any other sufficient cause, the Presiding Officer for such polling station or the Returning Officer having jurisdiction over such place, as the case may be, shall announce an adjournment of the poll to a date to be announced later, and where the poll is so adjourned by a Presiding Officer, he shall forthwith inform the Returning Officer concerned.

9. A bare glance at the above provision of law also makes it quite clear that adjournment of election is only possible on the date when the election proceedings are being held and only in case of such emergent situations, as provided under the provision of Regulation 24(i) of the 2012 Regulations. The consequential notice dated 30th August, 2012, has been issued in line with the impugned memo dated 29th August, 2012, and while issuing such notice, the Assistant Returning Officers never took into consideration the provisions of the 2012 Regulations - especially Regulation 24 - which is the relevant Regulation that is attracted for the purpose of adjourning an election in case of an emergent situation.

10. In such circumstances, as stated above, this Court directs the Special Officer of the Government of West Bengal appointed in respect of Electro Urban Cooperative Credit Society Limited to ensure that the elections of delegates of the Electro Urban Cooperative Credit Society Limited are held as per the schedule published earlier, i.e., on 15th September, 2012. However, the result of the elections shall be kept in abeyance until further orders of this Court. Let this writ petition appear for further consideration under the same heading three weeks hence.