

Constitutional Writ

Present:

The Hon'ble Mr Justice Jayanta Kumar Biswas

Judgment on 27.08.2010

W.P. No.18105 (W) of 2010

Durgapur Projects Limited Workers' Association & Anr.

-vs-

State of West Bengal & Ors.

Points:

Scope of Writ-Whether writ can be entertained challenging the notice issued in terms of r.29 of the West Bengal Cooperative Societies Rules, 1987- West Bengal Cooperative Societies Act, 1983- S.95-Constitution of India Art 226

Facts:

The petitioners are questioning the steps taken by the Presiding Officer, D.P.E.C.C.S./D.P.E.M.C.S./D.B.S.W.S. who issued a notice in terms of r.29 of the West Bengal Cooperative Societies Rules, 1987 notifying election programme on the basis of a defective voters' list and putting illegal condition in the Nomination form.

Held:

With the disputes the petitioners were supposed to go to the Registrar of the Cooperative Societies in terms of provisions of s.95 of the West Bengal Cooperative Societies Act, 1983 and the rules framed thereunder; and they could seek interlocutory order.

Para 6

Mr Binoy Kumar Panda, advocate, for the petitioners. Mr Subroto Banerjee, advocate, for the respondents.

The Court:- Mr Panda, counsel for the petitioners in this art.226 petition, submits that in view of the extreme urgency he has to move this assigned matter, though it is not on the day's list for which the petitioners are not at fault. He has said that notice was given to all the respondents, and that affidavit-of-service has been filed. Counsel for the State has appeared.

2. The petitioners are questioning the steps taken by the Presiding Officer, D.P.E.C.C.S./ D.P.E.M.C.S./D.B.S.W.S. who issued a notice dated August 4, 2010 at p.22 in terms of r.29 of the West Bengal Cooperative Societies Rules, 1987.

3. By the notice dated August 4, 2010 an election programme was notified. It was mentioned in the notice that election would take place on August 28, 2010 and August 29, 2010, and that votes would be counted and results would be published on August 29, 2010 itself.

4. Mr Panda has submitted that on the basis of a defective voters' list steps have been taken for holding election in which a substantial number of members of the petitioners are not eligible to contest or vote because of an illegal condition put in the Nomination Form, a copy whereof is at p.42.

5. Mr Banerjee, counsel for the State, submits that it is doubtful whether the petitioners can maintain the challenge on behalf of their members who may be members of the Cooperative Societies. None appears for the other respondents.

6. With the disputes the petitioners were supposed to go to the Registrar of the Cooperative Societies in terms of provisions of s.95 of the West Bengal Cooperative Societies Act, 1983 and the rules framed thereunder; and they could seek interlocutory order.

7. Appreciating this legal position Mr Panda has submitted that the petitioners will go to the Registrar immediately, but that they need an interim protection until their matter is taken up by the Registrar for consideration on an urgent basis.

8. In view of the above-noted situation, I think it will be appropriate to dispose of the petition giving suitable directions. For these reasons, I treat the petition as on the day's list and dispose of it ordering as follows.

9. The petitioners will be free to file their dispute case under s.95, and if they file the dispute case by next Monday, then by next Tuesday the Registrar shall consider and make appropriate order in the connected interlocutory application, if any.

10. Till next Wednesday no further steps shall be taken for holding the elections in terms of the notice dated August 4, 2010. While considering the question of interlocutory order, the Registrar shall not feel influenced in any manner whatsoever by this interim order.

11. No costs. Certified xerox.

(Jayanta Kumar Biswas, J.)