

HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.323/2021

Sukh Sagar Jala Sramik Samabay Samity Ltd.

..... *Petitioner(s)*.

- Vs. -

The State of Tripura and 6 Ors.

..... *Respondent(s)*.

For Petitioner(s) : Mr. P Roy Barman, Sr. Advocate,
Mr. Samarjit Bhattacharjee, Advocate.

For Respondent(s) : Mr. Mangal Debbarma, Addl. Govt. Adv.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

_O_R_D_E_R_

30/4/2021

Heard Mr. P Roy Barman, learned senior counsel for the petitioner and Mr. M Debbarma, learned Additional Government Advocate for the respondents-State, appearing on advance copy for final disposal of the petition.

2. This petition is filed by Sukh Sagar Jala Sramik Samabay Samity Ltd., a society, registered under Tripura Co-operative Societies Act, 1974(*hereinafter to be referred to as "the Society"*). The petitioner has challenged an order dated 13th April, 2021 passed by the Election Officer by which the Election Officer has declared that the election of the Board of Directors of the said Society which was scheduled on 5th May 2021, is

postponed due to the situation arising out of the spread of corona virus in the State.

3. Briefly stated the facts are, that the election of the Board of Directors of the Society had last taken place on 11th May, 2016 and that is how the present elected body was constituted. The tenure of the Board of Directors so elected being 5 years, the term would expire on 11th May, 2021. In consonance with the Tripura Co-operative Societies Act, 1974 (*hereafter to be referred as "the Co-operative Societies Act"*) and Tripura Co-operative Societies Rules, 1976 (*hereafter to be referred as "the said Rules"*), the Society had also made preparations for fresh election for the Board of Directors of the Society. The Registrar of Co-operative Societies had appointed respondent No.6 as the Election Officer for conducting such elections. After crossing various stages of filing of nomination, scrutiny of the nominations etc. as per the election programme declared by the Election Officer, the voting would be placed on 5th May, 2021. However, in the meantime, since the number of corona positive cases started rising in the State, the respondent No.6 has passed the impugned order on 13th April, 2021 and in which, as noted above, he has decided to suspend the election. This decision the Society has challenged in this petition.

4. Learned counsel for the petitioner took me through the provisions of the Co-operative Societies Act and the rules made thereunder to contend that

the Election Officer has no such power of suspending the election. He submitted that if the new elected body is not installed before 11th May 2021, there is a possibility of an administrator being appointed by the Registrar of the Co-operative Societies. Such decision, therefore, could not have been taken by the Election Officer who is merely appointed for the purpose of carrying out the process of election.

5. On the other hand, learned Additional Government Advocate Mr. Mangal Debbarma submitted that looking to the extraordinary situation prevailing in the State on account of spread of corona virus, the Election Officer has taken a *bona fide* decision which requires no interference.

6. With respect to the purpose behind passing the impugned order, I cannot have any serious quarrel. However, if one peruses the statutory framework for conduct of the elections of the Co-operative Societies, it would immediately become clear that the Election Officer was not authorized to take such a decision on his own. I would elaborate on this aspect a while later, however at this stage, it may be noted that if the impugned order is passed by an authority which is not empowered to do so, the order would be without jurisdiction and therefore, liable to be set aside.

7. Section 67 of the Co-operative Societies Act provides that the members of the Committee of a Society shall hold the office for such term

not exceeding 5 years as may be prescribed in the bye-laws. After the term of office, the Committee shall handover the charge of the office of the Committee to newly elected Committee forthwith. This Section thus brings in the requirement of periodic elections for the Co-operative Societies. Sub-section (i) of Section 74 of the Co-operative Societies Act, empowers the Registrar of Co-operative Societies to appoint an Administrator under certain circumstances. As per sub-section (ii) of Section 74, the Administrator so appointed would act subject to the control of the Registrar and under his instructions.

8. The procedure for conduct of the elections of the Cooperative Societies is laid down in detail in Rule 61 of the said Rules. Clause (a) of sub-rule (1) of Rule 61 provides that the election of members of the Committee of a Society shall be held in the manner prescribed thereafter. Clause (b) of sub-rule (1) of Rule 61 provides that the Registrar or any Officer authorized by him shall appoint one or more Election Officers as may be necessary for conducting the election of Committee members and election of President, Vice-President or any other office bearer of the Society. This Rule casts various duties on the Election Officer for proper conduct of such elections. For example, under sub-rule (6), the Election Officer who received the nomination papers would maintain a register in which such nominations shall be entered. At the expiry of the time specified

for receipt of nomination papers, Election Officer shall draw a line indicating that the nomination is closed. He would also examine as to how many nominations are valid and dispose of the objections, if any, received by him against the validity of nominations. Under sub-rule (7), he would publish the list of valid nominations. Under sub-rule (8) he would permit a candidate to withdraw his nomination. As per sub-rule (17) of the Rule 61, he would also supervise the counting of the votes.

9. It can thus be seen that under Rule 61, the Election Officer that may be appointed by the Registrar of Co-operative Societies, has important functions to carryout for proper conduct of the election of the Committee and other office bearers of the Co-operative Societies. However, his role is confined to carry out such elections in proper manner as provided under the statute. He cannot assume any further powers of cancellation or suspension of the election for any reason whatsoever. Such powers are not vested in him either by express language used in the provision or by necessary implication.

10. This, however, does not mean that the Registrar of Co-operative Societies does not enjoy such powers. This authority who is vested with important functions and powers under the Co-operative Societies Act is empowered to appoint an Election Officer for conduct of the elections of the Co-operative Societies. He would thus have inherent powers to postpone or

cancel the elections of the Co-operative Societies if emergent situation so demands. In the present case, such powers have not been exercised by the Registrar of the Cooperative Societies but by the Election Officer appointed by him for conduct of the elections. As noted, the duties and responsibilities of the Election Officer were confined to smooth functioning of elections in terms of Rule 61 of the said Rules. He assumed the power of suspension of the election which was not vested in him. For such purpose, subject to the observations made above, impugned order dated 13th April, 2021 is quashed. Nothing stated in this order would prevent the Registrar of Co-operative Societies from taking a proper decision with respect to conduct of the ensuing election of the petitioner Co-operative Society on 5th May, 2021.

Petition is disposed of accordingly. Pending application(s), if any, also stands disposed of.

(**AKIL KURESHI**), CJ