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CWP-4715, 5324, 6685, 7127, 7421, 7749 and 5331-2024 (O&M)

The Bathinda Central Cooperative Bank Employees Union (Regd.), Bathinda vs. Election Commission of India and others

Present: Mr. Iqbal Singh Saggu and Mr. Tejveer Singh Saggu, Advocates,
for the petitioner(s)
in CWP-4715, 5324, 6685, 7127 and 5331-2024

Mr. Mohit Sadana, Advocate,
for the petitioner in CWP-7421-2024.

None for the petitioner in CWP-7749-2024.

Mr. Prateek Gupta, Advocate,
for respondent No.1-Election Commission of India.

Mr. Swapan Shorey, DAG, Punjab.

Mr. Ashwani Prashar, Advocate,
for respondent No.7 in CWP No.7127-2024;
for respondent No.6 in CWP-6685 and 4715-2024.

Mr. Gaurav Goel, Advocate,
for respondent No.5 in CWP-5324 and 7127-2024.

Mr. Sukhbeer Singh, Advocate,
for respondent No.6 in CWP-5324-2024.

(Hearing through hybrid mode)

1. The present petitions relate to the requirement of staff of the Cooperative Banks by the Election Commission of India for the purpose of performing election duties in the ensuing Parliamentary Election.

2. Learned counsel for the petitioners at the time of issuance of notice of motion in the present cases had relied on an interim order dated 22.12.2023 passed by the Coordinate Bench in “The Nawanshahr Central Cooperative Bank Employees Union, Nawanshahr vs. State Election Commission Punjab and others”, CWP-29277-2023, which was pertaining to the duties being assigned to employees of the petitioner-Union for conduct of elections of the Zila Parishad/Panchayat Samiti/Gram Panchayat and Municipal Council. On basis of

the above, ex-parte interim relief in the same terms was granted, which was ordered to be continued from date to date of the hearing, however during this period, replies have been filed by the respondents, including an affidavit on behalf of the Election Commission of India.

3. The issue involved herein is subjudice before Hon'ble the Supreme Court, wherein the operation of the judgment, upon which the petitioners are heavily relying on in **Bhavnagar District Cooperative Bank Ltd. and another vs. State of Gujarat and others**, SCA No. 2552-2014 decided on 10.04.2014, has since been stayed in SLP-563-2015, vide order dated 28.04.2017 and leave was granted on 17.08.2021. As such, this Court deems it appropriate to await the authoritative pronouncement thereof, but considering the urgency of the matter and the facts and circumstances of the present cases, is disposing of only the prayer for interim relief at this stage.

4. Learned counsel for the petitioner would *inter alia* submit that in case employees of the Cooperative Banks are deputed, their functioning will come to a screeching halt, there being paucity of staff in the branches. These are not owned, controlled, financed or managed by appropriate authority and thus not covered under Section 159 (2) of the Representation of Peoples of India Act, 1951. It is, after being, registered under the provisions of Punjab Cooperative Societies Act, 1961 and on obtaining a license under the Banking Regulation Act, 1949 that these are running its business and as such cannot be said to be institution, concern or undertaking established by or under the Central, Provincial or State Act. The management of the bank vests in the Board of Directors and thus, cannot be said to be local authority established or incorporated by or under any Act or even Govt. company defined under Section 617 of the Companies Act, 1956. The share capital subscribed by the Govt. in the bank is very negligible, for example, in

Moga Central Cooperative, out of Rs.17.58 crores deposited by the societies, the share capital of Govt. is Rs.3 crores. Support is sought to be drawn from the judgment in **Election Commission of India vs. State Bank of India Staff Assn.**, 1995 Supp (2) SCC 13 and **Bhavnagar District Cooperative Bank Ltd.** (supra).

5. Learned counsel appearing on behalf of the Election Commission of India contends that cooperative banks are authorities under the amended provisions of Section 159 *ibid*, these always run in losses and are being perpetually bailed out by the Govt. upon which they are completely dependent and thus, there is power to requisition their staff. The reliance placed by the petitioners on the judgment relating to unamended Act, 1951, is misplaced and the matter is pending adjudication before Hon'ble the Supreme Court in the case of **Bhavnagar District Cooperative Bank Ltd.** (supra). The Division Bench of Bombay High Court in Writ Petition No. 5761 of 2024, **Pimpri Chinchwad Sahakari Bank, Pimpri, Pune vs. The Election Commission of India, New Delhi and others**, vide order dated 24.04.2024, however, disposed of the matter, keeping the larger issues raised open, the petitioner-Cooperative Bank having accepted the suggestion in view of the affidavit filed on behalf of respondent Nos.2 to 4 urging that the work of the bank would not be affected, as the services were being requisitioned on holidays. The same stand has been taken by Election Commission of India in the affidavit submitted in these proceedings, which takes care of the apprehension of the petitioners of working of the bank being hampered, which was the grievance of the petitioner-Cooperative Bank in the aforesaid case as well. Further the election duty is not by way of punishment, rather will be beneficial for their own elections of the union, as they are being imparted training and will have first hand experience also.

6. Learned State counsel submits that the administrative control over the Cooperative Banks is by the State Govt. through the Registrar of Cooperative Societies and that of the banking operation is with the Reserve Bank of India under Banking Regulation Act, 1949. He produces copy of office memo dated 29.04.2024, issued by Special Chief Secretary (Cooperation), Punjab to substantiate the aspect of share capital of government infused in the Cooperative Banks to maintain the CRAR and that the said subscription is to the tune of Rs.515.90 crores, besides order dated 18.01.2024, whereby the officers of the Indian Administrative Services were nominated as Members of the Board of Directors and also Chairman of the State Cooperative Bank under Section 26(2)(a) of the Punjab State Cooperative Societies Act, 1961 by the Governor of Punjab and even the Managing Director of Punjab State Cooperative Bank is appointed, belongs to the aforesaid service and even the Managing Directors of all District Cooperative Banks are appointed by the State Government. He prays for time to place on record more documents, besides filing an additional affidavit with regard to the share capital and financial support being rendered to all the Cooperative Banks by the Govt.

7. Learned Counsel appearing for the Cooperative Banks echoed the submissions advanced on behalf of the petitioners.

8. The arguments of either side have been heard.

9. Considering the history attached to the submissions as sought to be canvassed in these cases, this Court on numerous previous occasions, had granted interim relief in favour of the petitioner-Unions of the Cooperative Bank employees, as and when they were being required for election duties, however by the time, the said petitions would be taken up for hearing, the election process

already stood culminated, rendering the same infructuous, the issue thus, remained undecided.

10. Even if its taken that the petitioners have a *prima facie* case, yet the other two ingredients for interim relief are absent, as neither the balance of convenience leans in their favour nor there is any loss much less irreparable being caused to the employees, their primary grievance of paucity of staff and the functioning of the Bank getting disrupted has already been taken care of, by Election Commission of India, by substantially minimizing their deployment to the maximum possible extent, in strict adherence to the instructions and provisions of law, as undertaken in the affidavit dated 22.04.2024, submitted on its behalf, in view of which, this Court had even during the course of last hearing put it to the learned counsel for the petitioners to obtain instructions, however, they did not relent and chose to remain stubborn. The relevant paras of the said affidavit read thus:

“4. That the deponent is bound by the instructions dated 07.06.2023 (Annexure R-1) and undertakes to abide by the same while requisitioning staff and employees of the petitioners.

5. It is also stated that the limited training of the staff, for the Elections to be held on 01.06.2024, will be held only for 02 days before the Elections i.e. 05.05.2024 (Sunday) and 25.05.2024 (Saturday) for a period of 8 Hours from 9 AM to 5 PM in 2 shifts and their services would be utilized on the date of poll i.e. 01.06.2024 which happens to be a paid holiday as per section 135 B of RP Act 1951.”

11. Engaging in election duty is akin to fulfilling a solemn duty that each citizen owes towards the nation, analogous to participating in a festival celebrating the democratic principles upon which our society is founded. Serving in election duties ensures the smooth functioning of the electoral process, safeguarding the

fundamental right of every citizen to choose their representatives. Just as legal documents serve as pillars of order and justice, so does participation in election duty uphold the rule of law and the sanctity of democratic institutions. This duty being in national interest outweighs the personal.

12. Though the petitioner-Unions are seeking to espouse the cause of its employees, yet it is the individual grievances of the employees who are to undergo training for being put on election duty in the forthcoming parliamentary elections, therefore this aspect of their right to file and maintain these petitions also require consideration in view of the judgments that either side wishes to place reliance on and also as to the rights, duties and grievances that come within the purview, which can be taken up by the employees-Union. Needless to say that when the elections of Union/employees associations are held, at that time also they would be spending much more time than is required by the Election Commission of India.

13. Section 159 *ibid* as interpreted in the judgment in **State Bank of India Staff Assn.** (supra), itself has undergone a metamorphosis, inasmuch as, the same stands amended vide Act No. 12 of 1998, w.e.f. 23.12.1997, whereby its ambit has been widened to include more authorities, staff of which can be made available for election work.

14. The law is way too settled by now as held in **CCE vs. Dunlop India Ltd.**, (1985) 1 SCC 260, **State of Rajasthan vs. Swaika Properties**, (1985) 3 SCC 217, **Shiv Shankar vs. Board of Directors, U.P.SRTC**, 1995 Supp (2) SCC 726 and **State of U.P. vs. Visheshwar**, 1995 Supp (3) SCC 590, that interim relief if allowed should not amount to granting the final relief. Reiterating the above, in **State of U.P. and others vs. Ram Sukhi Devi**, (2005) 9 SCC 733, Hon'ble the Supreme Court again had an occasion to deal with a similar issue as to whether the Court should grant almost the final relief by way of interim measure, wherein it

was observed that, "...Time and again this Court has deprecated the practice of granting interim orders which practically give the principal relief sought in the petition for no better reason than that of a *prima facie* case having been made but, without being concerned about the balance of convenience, the public interest and a host of other considerations." Further held that, "...No basis has been indicated as to why learned Single Judge thought the course as directed was necessary to be adopted. Even it was not indicated that a *prima facie* case was made out though as noted above, that itself is not sufficient. We, therefore, set aside the order passed by learned Single Judge as affirmed by the Division Bench and without expressing any opinion on the merits of the case we have interfered primarily on the ground that the final relief has been granted at an interim stage without justifiable reasons..."

15. In wake of the aforesaid, the interim orders passed on 07.03.2024 in CWP-4715-2024, 13.03.2024 in CWP-5324 & 5331-2024 and 02.04.2024 in CWP-6685 & 7127-2024 stand vacated.

16. Admitted.

17. To be listed after the decision by Hon'ble the Supreme Court.

18. It is clarified that the observations made hereinabove are meant only to dispose of the prayer for interim relief and shall have no bearing on the merits of the case.

19. Photocopy of the order be placed on the files of the connected cases.

(AMAN CHAUDHARY)
JUDGE

30.04.2024

Hemant