

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No.10325 of 2024

**Malda District Central Cooperative Bank Employees
Association and others**

Vs.

The Election Commission of India and others

With

WPA No. 10270 of 2024

**Mugberia Central Cooperative
Bank employees Association and others**

Vs.

Election Commission of India and others

For the petitioners in
WPA 10325 of 2024 : Mr. Abhimanyu Banerjee,
Mr. Arnab Saha

For the petitioners in
WPA 10270 of 2024 : Mr. Kamal Krishna Pathak,
Ms. Rimpay Mukherjee,
Mr. Narayan Nayak

For the
respondent nos.5 to 6
in WPA 10325 of 2024 : Mr. Amarendra Chakraborty

For the
respondent no.5 in
WPA 10270 of 2024 : Mr. Debashis Sarkar,
Mr. Madan Mohan Roy,
Mr. Haripada Nayak,
Mr. Narayan Nayak

For the
Election Commission
of India : Mr. Joydip Kar,
Mr. Anuran Samanta

Hearing concluded on : 03.05.2024

Judgment on : 10.05.2024

Sabyasachi Bhattacharyya, J:-

1. The petitioner no. 1 is an association of employees of a District Cooperative Bank, representing the interests of such employees, and the petitioner no. 2, its Secretary. The present challenge has been preferred against the appointment of the members of the Association, who are employees of the Co-operative bank, as Polling Officers to do election duty for the ongoing parliamentary election under Section 26 of the Representation of the People Act, 1951 (for short, “the R.P. Act”).
2. Learned counsel for the petitioner argues that the bank has been registered under the West Bengal Cooperative Societies Act, 2006 (hereinafter referred to as “the 2006 Act”).
3. However, it does not come within the purview of Section 159(2) of the R.P. Act which stipulates that the staff of local authorities and universities established or incorporated by under a Central, Provincial or State Act, and/or a Government Company, employees of any other institution, concern or undertaking which is established by or under a Central, Provincial or State Act or which is controlled or financed only or substantially by funds provided directly or indirectly by the Central Government or the State Government, come within the purview of Section 159.
4. In the present case, the bank is not controlled or funded by any Government and as such is not an institution, concern or undertaking within the purview of Section 159(2). In support of such submission, a

judgment rendered in WPA No. 15513 of 2013 is relied upon where, in connection with an election to the Panchayats of the State of West Bengal, this Court had held that the employees of the Bank are not Government employees or Government servants, since the bank is not funded or controlled by any Government.

5. Learned counsel next argues that the appointment under section 26 of the RP Act has been made without any prior requisition under Section 159 of the Act, which is a prerequisite for such an appointment.
6. Thirdly, it is argued that the reliance of the Election Commission of India (ECI) on Section 21 of the Indian Penal Code is misplaced. In such context, learned counsel for the petitioner placed his reliance on *N.K. Sharma Vs. Abhimanyu*, reported at *AIR 2005 SC 4303* and *Rabindra Nath Bera Vs. State of West Bengal*, reported at *(2011) 5 CHN 377*.
7. It is contended that the bank has not been established under a Central or State Act. There is distinction between a body corporate established under such an Act and a body corporate registered/incorporated under an Act. The latter applies to the Co-operative Bank-in-question and as such the arguments of the ECI on that count are not tenable in the eye of law.
8. The provisions of Article 324, it is argued, have to be read with Section 159 of the RP Act and, as such, the reliance on the said Constitutional provision by ECI cannot be accepted.
9. Learned counsel for the respondent no.5, that is the Bank itself, supports the contention of the petitioner and submits that the Bank is

merely *registered* under the 2006 Act and is *not established* under the said Act and/or controlled or funded by any Government.

- 10.** Learned counsel for the ECI argues that Article 324 of the Constitution is a reservoir of powers of the ECI to seek from the Governor of a State, staff from any institution or organization, irrespective of the fetters of Section 159 of the RP Act. Such plenary power, it is argued, is not circumscribed by the provision of the RP Act, which is a statute enacted under the Constitution.
- 11.** The members of the petitioner no.1, it is argued, come within the definition of “public servant” as defined in Section 21 of the Indian Penal Code (IPC). Thus, by application of Article 324(6) of the Constitution, the power of the ECI to requisition such officers for election duty is wide. Learned counsel also argues that the authority of the State to administer and control a co-operative society flow from Articles 243 ZJ, 243 ZL, 243 ZM and 243 ZN of the Constitution.
- 12.** It is further contended that, in the present case, there was a prior requisition under Section 159 read with Article 324 preceding the appointment under Section 26. Thus, there is no irregularity in such appointments.
- 13.** Heard learned counsel for the parties. The RP Act, as evident from its Preamble, is an Act to provide for the conduct of elections to the Houses of Parliament and the State Legislatures, the qualifications and disqualifications of membership of those Houses, corrupt practices and other offences at or in connection with such elections

and the decision of doubts and disputes arising out of or in connection with such elections.

- 14.** Thus, conduct of election is one of the primary components of the Act, which is a Central legislation, the *vires* of which has not been set aside at any point of time.
- 15.** Section 21 of the IPC, on the other hand, defines the term 'public servant' within the context of the provision of the IPC itself and cannot be extended to a different statute which operates in a different field altogether. The IPC is a consolidating statute, collecting the different penal laws pending at the juncture of its promulgation.
- 16.** In any case, the Twelfth Clause of Section 21 of the IPC, in sub-clause (b) thereof, includes every person in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a government company as defined in Section 617 of the Companies Act, 1956. Thus, in any event, such definition corresponds almost exactly to Section 159(2) of the RP Act.
- 17.** Section 159(2) mentions several authorities for the purpose of sub-section (1). Sub-Section(1) provides that such authorities shall, when so requested by the Regional Commissioner appointed under Article 324(4) or the Chief Electoral Officer of the State, make available to any Returning Officer such staff as may be necessary for the performance of any duties in connection with an Election. The very mention of Article 324(4) in Section 159 makes it abundantly clear that Article 324, at least with regard to the limited component of the Officers who can be appointed under the said Article, has to be read in conjunction

with Section 159 of the RP Act. Constitutionality, it is well-settled, has to be presumed in respect of a statute enacted by the legislature in its wisdom. Thus, it cannot be said that Article 324 overrides Section 159 of the RP Act. Rather, a harmonious and correct construction would be that the powers exercisable under Article 324 by the ECI are circumscribed by Section 159 of the RP Act, which is a specific statute inter alia for the purpose of conduct of elections, insofar as the persons who can be appointed for the purpose of election by the ECI is concerned.

- 18.** No material has been produced on behalf of the respondents to show that the concerned Bank is a co-operative society either controlled or financed, wholly or substantially, by funds provided directly or indirectly by either Central Government or the State Government. Rather, the respondent no. 5-bank itself argues to the contrary.
- 19.** Nor is it the case of anybody that the respondent no. 5-bank is a local authority or university or a Government company as defined respectively in sub-clauses (i), (ii), (iii) of sub-section (2) of Section 159 of the RP Act.
- 20.** The remaining sub-clause of Section 159 (2), that is sub-clause (iv), stipulates that staff from any other institution, concern or undertaking established by or under a Central, Provincial or State Act or controlled or funded by the Central or a State Government can be appointed for the purpose of an election.
- 21.** Coming back to Article 324 of the Constitution, sub-clause (6) of the said Article provides that the President of India or the Governor of a

State shall, when so requested by the ECI, make available to the ECI or to a Regional Commissioner “such staff as may be necessary for the discharge of the functions conferred on the” ECI by Clause (1).

- 22.** Clause (1) of Article 324 provides that the superintendence, direction and control of the preparation of the electoral roles for and the conduct of all elections to Parliament and to Legislatures of States and of election to the offices of Presidents and Vice-Presidents held under the Constitution shall be vested in a Commission referred to in the Constitution as the Election Commission.
- 23.** Thus, Article 324 vests general power on the ECI, under the authority of the Constitution, to request the Governor of a State to make available to it such staff as may be necessary for the discharge of its functions. However, in view of the discussions above, the same does not provide anything about the nature of the employees and/or the institutions from which the employees shall be drawn.
- 24.** We do not operate in a totalitarian state and, as such, it cannot be held that the Government has blanket power over any and every institution or concern or undertaking operating under the Sun within the territory of India for any purpose whatsoever, unless so stipulated specifically in the Constitution or any specific law. For the limited purpose under discussion, thus, Article 324 has to be read in conjunction with Section 159 of the RP Act.
- 25.** The reliance placed by the ECI on Articles 243 ZJ, 243 ZL, 243 ZM and 243 ZN is entirely besides the point since those contain the general contours of the administration and control of the State over

co-operative societies. Such 'control' does not automatically make any and every co-operative society an institution "established by or under" a Central, Provincial or a State Act.

- 26.** In *Dalco Engineering Private Limited vs. Satish Prabhakar Padhye and others*, reported at AIR 2010 SC 1576, which is also been referred to by the petitioner, the Supreme Court observed by relying on a previous judgment delivered in *S.S. Dhanoa Vs. Municipal Corporation, Delhi and others*, reported at (1981) 3 SCC 431 that there is a distinction between a corporation established by or under an Act and a body incorporated under an Act.
- 27.** In *N.K. Sharma (supra)*, while considering Section 21 of the IPC, the Supreme Court also sanctioned such distinction as observed In *Dalco Engineering (supra)*. In *Rabindra Nath Bera's* case, the same proposition was reiterated.
- 28.** In WPA No. 15513 of 2023, this Court had, while considering the case of the present co-operative bank itself (although in connection with a Panchayat Election of the State) had thoroughly discussed the relevant provisions of law and had arrived at the finding that the State is neither a majority shareholder nor has any financial role to play in the respondent no. 5-bank. Thus, the bank is not controlled, financed, aided or run by the State Government, although the consideration there was under Section 6 of the West Bengal State Election Commission Act, 1994.

- 29.** Having said so, what is relevant in the said judgment is that the issue being discussed was whether the petitioner-bank is a State-controlled entity, which was held in the negative.
- 30.** As observed above, even in the present case, such issue has not been re-opened by the respondents either. Thus, the bank cannot be said to be one controlled, partially or wholly, or financed by any Government.
- 31.** Section 159 (2) (iv) has been harped upon much by the ECI. Therefore, the limited issue remaining to be examined is whether the bank is one established by or under a Central, Provincial or State Act.
- 32.** Even apart from the judgments cited by the petitioner and discussed above, where a distinction was drawn between an institution *established* under such an Act and other concerns *registered or incorporated* under the Act, it is evident that the present bank does not come within the purview of the same merely by the fact that it was registered under the 2006 Act.
- 33.** It would be fruitful to refer to Section 14 of the 2006 Act, which speaks about Co-Operative Societies which may be registered, in this context. Sub Section (1) of Section 14 of the 2006 Act, under which the respondent no.5-bank has been registered, provides that subject to the provisions of the said Act and Rules, a Co-Operative Society *established* with the object of social and economic betterment of its members in their common interest through self-help and mutual aid in accordance with the co-operative principles and facilitating the operation of such Co-Operative Society including a Co-Operative Society formed by division of an existing Co-operative Society or by

amalgamation or re-organization of two or more Co-operative Societies with the approval of the members *may be registered under this Act* with limited liability.

- 34.** Thus, establishment of the society, even as per Section 14(1), which is the provision for registration, precedes the act of 'registration'. Hence, by no stretch of imagination can it be construed that the societies registered under the Act are "established by or under a Central or, provincial or State Act".
- 35.** The establishment of the society is not by any Act, Central or State governing co-operative societies but is independent of such statutes. Only after such establishment takes place, the registration which is required under the 2006 Act takes place. Registration merely subjects such societies to the rigours and the benefits of the statute. However, the act of establishment itself is neither by, nor under, the statute.
- 36.** Hence, the argument of ECI that the co-operative bank where the employee-members of the petitioner no. 1 work is a concern established by or under such an Act is untenable in the eye of law.
- 37.** If the logic of the ECI was to be accepted, by the same analogy, government companies need not have been separately mentioned in Section 159 (2) (iii), since otherwise, every company, merely by virtue of incorporation and registration under the Companies Act, 1956 or the Companies Act, 2013, would be deemed to be established by or under the said Act.
- 38.** Hence, the separate mention of a Government company in Section 159 of the RP Act as well as in Section 21 of the IPC are clear inbuilt

indicators which, as tools of internal aid of construction of the said statutes, unerringly point towards the fact that co-operative societies in the context of the 2006 Act are not concerns or undertakings or institutions established by or under the said Act. It is an admitted position that respondent no.5 is registered under the 2006 Act and thus, the ratio above applies squarely to it.

- 39.** In view of the above discussions, this Court is of the view, in clear and unambiguous terms, that the Co-Operative bank for which the members of the petitioner no.1-Association work does not come within the purview of Section 159 of the RP Act and, consequentially, the employees of the said bank cannot be requisitioned or appointed within the powers exercised by the ECI either under Article 324 of the Constitution of India or under Section 159 of the RP Act for the conduct of elections.
- 40.** The observations above apply to both the writ petitions which were taken up together for hearing due to identity of the issues involved.
- 41.** Accordingly, WPA No. 10325 of 2024 and WPA No. 10270 of 2024 are allowed on contest, thereby setting aside the requisition and appointment of the members of the petitioner no.1-Associations, working respectively for the Malda Districts Central Cooperative Bank and the Mugberia Central Cooperative Bank respectively. Consequential orders shall be passed and/or due steps shall be taken by the respondent-Authorities to ensure that the employees of the said Banks are not requisitioned or appointed under the RP Act for the purpose of any Parliamentary Election in future.

42. However, since the members of the petitioners have already been deployed in the ongoing election process, withdrawing them from election duties at present would lead to hampering the election process and as such, the above observations shall be given effect to only from the next elections.
43. Insofar as the present ongoing election process is concerned, the requisitions/appointments of the members of the petitioner-Association shall be deemed to be valid, in order to ensure that the ongoing Parliamentary Elections are not affected.
44. There will be no order as to costs.
45. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)