

18.03.2021
Item No.3
Crt.No.11
K.B.

**M.A.T. 356 of 2021
with
CAN No. 2 of 2021
with
CAN No.3 of 2021**

**Subhash Chandra Maity & Ors.
-Versus-
Tapas Kumar Ghorai & Ors.**

Mr. Kamalesh Bhattacharyya
Mr. Kamal Mishra
Mr. Abhijit Basu
Mr. Tamal Taru Panda
.... For the Applicants.

Mr. Pabitra Charan Bhattacharyya
Mr. Subhajit Panja
.... For the Respondent Nos.1 to 5.

Mr. Srijan Nayak
Ms. Rituparna Maitra
Ms. Ankit Surekha
..... For the Co-operative Election
Commission/Respondent No.7.

Mr. Pradip Kumar Roy
Ms. Shraboni Sarkar
.... For the Resp. Nos.6,8, 9 and 10.

The instant appeal is at the instance of six members of a nominated Board challenging an order dated February 15, 2021 passed by the Hon'ble Single Judge in WPA 884 of 2021.

By the order impugned the Co-operative Election Commission, the Respondent No.7 herein and the State were directed to conclude the election process of the concerned Co-operative Society by April 19, 2021. The Highest Designated Officer of the concerned Board was

directed to give all assistance to the Co-operative Election Commission for conducting the elections.

The Respondent Nos. 1 to 5 herein filed a Writ Petition being WPA 884 of 2021 praying for holding election to the Board of Directors of the Society. A writ in the nature of prohibition was prayed for prohibiting the Registrar, Co-operative Societies from appointing any nominated Board without following the provisions of Section 36(1) of the West Bengal Co-operative Societies Act, 2006 (for short the 2006 Act).

It was specifically pleaded in the writ petition that the tenure of the Board of Directors expired on July 28, 2020 and the Highest Designated Employee took over charge thereafter. The Highest Designated Employee by a letter dated November 19, 2020 requested the Returning Officer to hold elections at an early date as the Highest Paid Employee was facing difficulties in taking policy decisions.

It was further alleged in the writ petition that on the recommendation of the Hon'ble Local Member of the Legislative Assembly steps are being taken for constitution of a nominated Board for which the writ petitioners were compelled to approach this Court under Article 226 of the Constitution of India.

The ad interim order was prayed for restraining the Respondent Nos.1 to 5 to the writ petition from giving any effect to the steps being contemplated for constituting the

nominated Board on the basis of recommendation of the Hon'ble Local M.L.A .

Mr. Kamallesh Bhattacharyya, Learned Advocate for the appellants, contends that the appellants were nominated as members of the Board of Directors in terms of an order dated January 6, 2021. He contends that since the six months period for appointment of a Special Officer as prescribed under Section 36 of the 2006 Act stood expired, the Registrar of Co-operative Societies is empowered under the Act to nominate the Board of Directors as per Section 29(7) of the 2006 Act. He further contends that the said nominated Board was empowered to exercise all the powers of the Board as per the 2006 Act and to take all steps to constitute the elected Board during this tenure.

He thus contends that it is only the nominated Board who is entitled to take steps for constitution of the elected Board and the Highest Paid Employee has no authority to assist the Co-operative Election Commission in conducting the election. He further contends that the writ petitioners, being aware of the fact of such nomination, intentionally avoided making the nominated Board a party to the writ petition. Thus the Members of the nominated Board were deprived of an opportunity of hearing at the time of hearing of the writ petition. He thus contends that there has been a failure of the principles of natural justice in the instant case insofar as the appellants herein are concerned.

Mr. Nayak, Learned Advocate appearing for the Co-operative Election Commission, contends that pursuant to the order passed by the Hon'ble Single Bench steps have been taken for holding election. He, however, submits that the time period for conclusion of the election process be extended in view of the declaration of the General Election to the West Bengal Legislative Assembly.

Mr. Roy, Learned Advocate appearing for the State, submits that the ARCS after making necessary enquiries and being satisfied with the antecedents of the appellants herein appointed the appellants herein as members of the said nominated Board. He also contends that since the time limit under Section 36 of the 2006 Act for appointment of a Special Officer stood expired in the meantime, the ARCS was within its authority to constitute the nominated Board in terms of the provisions laid down under Section 29(7) of the 2006 Act.

Mr. Pabitra Charan Bhattacharyya, Learned Advocate for the writ petitioners/Respondent Nos.1 to 5 herein contends that the Highest Paid Employee by a letter dated November 19, 2020 requested the ARCS to take steps for holding the election. However, no steps in that regard were taken. On the contrary, the nominated Board was appointed on the basis of a recommendation of the Hon'ble Member of the Legislative Assembly. He further submits that the writ petitioners were not aware of the appointments of the nominated Board as the writ petition was filed on January

8, 2021 and the appellants claim that they were nominated as members of the Board of Directors only on January 6, 2021.

He further contends that the members of the said nominated Board did not take any action prior to filing of the writ petition exerting their authority as the members of the nominated Board. He further contends that the said nominated Board claims to have taken charge only on January 18, 2021, i.e. after the filing of the writ petition. Mr. Bhattacharyya further contends that no action could be taken for appointment of a nominated Board in exercise of powers under Section 29(7) of the 2006 Act without first taking any steps under Section 36 of the 2006 Act. He further submits that the elected Board is to be constituted at the earliest for the purpose of management of the affairs of the Co-operative Society and the Hon'ble Single Judge was thus justified in directing holding of the Election.

We have heard the Learned Advocates for the parties and have considered the materials on record.

For the purpose of effective adjudication of the dispute involved in the instant appeal the following provisions of the 2006 Act are extracted.

“29 Annual general meeting. -

(7) If the election as referred to in the [third proviso to sub-section (1A) of section 35 or in sub-section (2) of section 36] cannot be held owing to an order of any court or for any other reasons or if the directors of the board

elected in a general meeting cannot function owing to an order of any court or for any other reasons, or if the elected directors of the board resign simultaneously, the Registrar may constitute a board of directors from amongst the members or delegates or representatives of the Co-operative society in conformity with section 32 and the constituted board shall elect its office-bearers from amongst themselves:

Provided that the board, so constituted, shall function till the directors or the board elected under this section assume charge.]

[36. Expiry of term of board and appointment of special officer. – (1) *Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, where election of the board of directors of any Co-operative society has not been held within a period of thirty-six months from the date of their election where such election was held before the date of commencement of this Act or within a period of sixty months from the date of their election under sub-Section (1) of Section 29 of this Act, the Directors of the Board of such Co-operative society shall be deemed to have vacated society shall be deemed to have vacated their offices immediately on expiry of the period of thirty-six months from the date of their election where such election was held before the date of commencement of this Act or sixty months from the date of their election under sub-section (1) of section 29 of this Act,*

as the case may be, and the State Government shall, thereupon by notification, appoint special officer from amongst its officers for managing the affairs of the Co-operative society for a period not exceeding six months from the date of such expiry of the period.:

Provided that in case of a Co-operative society carrying on the business of banking, the provisions of this clause shall have the effect as if for the words “six months”, the words “one year” had been substituted.

(2) The special officer appointed to manage the affairs of such Co-operative society shall arrange for conduct of elections within the period specified in sub-section (1) and handover the management to the newly elected board.

(3) If an elected board of directors can not be reconstituted within the terms of the special officer, he shall be removed from office by the State Government and thereupon the provision contained in sub-section (7) of section 29 shall be followed.”

The writ petitioners/respondent Nos.1 to 5 claim to have been elected as Directors on 28.07.2015.

It is not disputed that tenure of the erstwhile elected Board expired on July 28, 2020. It further appears from the record that the Highest Paid Employee by a letter dated November 09, 2020 requested the concerned ARCS to hold the elections. However no election was held.

The State Government also did not take any steps for appointment of a Special Officer in terms of the provisions laid down under Section 36 of the 2006 Act upon expiry of the tenure of the erstwhile elected Board.

Section 36 of the 2006 Act starts with a *non-obstante clause*. It provides that notwithstanding anything contained elsewhere in the 2006 Act or, in any other law for the time being in force, where election of the Board of Directors of a Co-operative Society has not been held within a period of 36 months from the date of their election where the election was held before the commencement of the 2006 Act or within a period of 60 months from the date of their election under Section 29(1) of the said Act, the directors of the board of such Co-operative Society shall be deemed to have vacated their offices immediately on expiry of the period of such term and the State Government shall thereupon by notification, appoint Special Officer from amongst its officers for managing the affairs of the Co-operative Society for a period not exceeding six months from the date of expiry of such period.

Sub-section 2 of Section 36 states that such Special Officer shall arrange for conduct of elections and hand over the management to the newly elected Board.

Sub-section 3 of Section 36 states that if an elected Board of Directors cannot be reconstituted within the term of the Special Officer, he shall be removed from the office by the State Government and thereupon the provisions

contained in Sub-section 7 of Section 29 shall be followed. The nonobstante clause appearing in Section 36 of the 2006 Act must mean that Section 36 of the 2006 Act has overriding effect over Section 29(7)..

In the instant case, the tenure of the erstwhile Board stood expired on July 28, 2020. After the tenure of the erstwhile Board expired no steps were taken for appointment of a Special Officer. A nominated Board was appointed in exercise of the powers under Section 29(7) of the 2006 Act by an order dated 06.01.2021, i.e. within the period of 6 months of the expiry of the term of the erstwhile Board.

As such, we are unable to accept the contention of Mr. Kamalesh Bhattacharyya, Learned Advocate appearing for the appellants that steps were taken under Section 29(7) of the 2006 Act only after expiry of the six months period mentioned in Section 36(1). Even otherwise the preconditions for constitution of the nominated Board of Directors as laid down under Section 29(7) are not satisfied in the instant case.

The order dated January 6, 2021 passed by the Registrar of Co-operative Societies, West Bengal is therefore a nullity in the eye of law as the same was passed without following the provisions laid down under the 2006 Act.

The respondent nos. 1 to 5 herein approached the writ court alleging that steps are being taken for constitution of a nominated Board of Directors as per the

recommendation of the local MLA. The Hon'ble Single Judge by an order dated January 22, 2021 directed the Learned Advocate for the State to take instructions as to the veracity of the letter at Page 19 of the writ petition. It appears from a copy of the said letter dated November 19, 2020 issued by the local Hon'ble MLA that the ARCS forwarded the copy to the Inspector of Co-operative Societies under Memo dated 11.12.2020.

On February 15, 2021, when the writ petition came up for hearing, the Learned Advocate appearing on behalf of the State submitted that no appointment has taken place in terms of the letter dated November 19, 2020 being Annexure P-3 at Page 19 of the writ petition. In the writ petition the power to constitute a nominated Board under Section 29(7) of the 2006 Act was challenged but the Hon'ble Single Judge was justified in not entering into such issue in view of the submission of the Learned Advocate for the State that no such appointment took place. The Hon'ble Single Judge was, thus, pleased to hold that during the interregnum period no appointment shall take place on the basis of the letter dated November 19, 2020. In view of such facts it cannot be said that the writ petitioners/respondent nos. 1 to 5 herein intentionally avoided to make the appellants herein as party to the writ petition.

The appellants claim that the Registrar of Cooperative Societies by an order dated 06.01.2021 constituted a nominated Board of Directors and they are the

members of such Board. It further appears from the records that the Inspector of Co-operative Societies by a notice dated 08.01.2021 notified that a meeting of the pre-approved Nominated Board of Directors will be held on 18.01.2021 for election of the office bearers of the said society. Such facts were not disclosed even by the Learned Advocate for the State before the Hon'ble Single Judge. No documents have been produced before this Court for this Court to hold that the writ petitioner had knowledge of such facts.

The fact of expiry of the tenure of the erstwhile Board and that no Special Officer was appointed upon expiry of such period are not in dispute. Thus, the Hon'ble Single Judge was justified in disposing of the writ petition on the basis of submissions of the Learned Advocates for the parties without inviting affidavits.

The issue relating to constitution of a nominated Board has cropped up in the instant appeal. Materials placed before this Court, which are on record, are sufficient for this Court to decide such issue. As such this Court, being the Appellate Court proceeded to decide the same on the basis of materials placed instead of remanding the matter to the Hon'ble Single Judge. Since the issue raised in the instant appeal revolves on a point of law, affidavits were not invited and the parties made their submission being aware of the issue involved in the appeal.

Since this Court has already held that the order dated 06.01.2021 is a nullity in the eye of law, no right can be said to have accrued in favour of the appellants herein claiming to be the members of the nominated Board. As such the appellants cannot be said to have suffered any prejudice for not being impleaded as a party to the writ petition.

The appellants claimed that the nominated Board of Directors has to take steps for constitution of an elected Board of Directors. The writ petitioners/ respondent nos. 1 to 5 also claimed that an election is to be held for constitution of the Board of Directors of the Society. Thus, it is not disputed by the parties that a Board of Directors is to be constituted upon holding election.

The only dispute raised in the instant appeal is whether the appellants or, the Highest Paid Employee, is authorised to assist the Co-operative Election Commission.

It is evident that no Special Officer was appointed. There is also no existence of any validly Constituted Board. As such the highest designated officer of the Society is entitled to manage the affairs of the Co-operative society and assist in the matter of holding election.

This Court is of the view that for the reasons as aforesaid, the appellants claiming to be the members of the nominated Board do not have any manner of right to interfere with the process of election to be conducted by the Co-operative Election Commission.

The Highest Paid Employee shall render all assistance to the Co-operative Election Commission as directed by the Hon'ble Single Judge.

This Court is of the considered opinion that the order impugned does not suffer from any infirmity.

MAT 356 of 2021 stands **dismissed** without any order as to costs.

Accordingly, the applications being **CAN 2 of 2021** and **CAN 3 of 2021** are **disposed of** accordingly.

All concerned parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Hiranmay Bhattacharyya, J.)

(Subrata Talukdar, J.)