S/L 14
02.08.2021
Court. No. 19
GB

W.P.A. 12033 of 2021

Sukumar Bera
VS
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Aniruddha Chatterjee,
Mr. Kushal Chatterjee,
Mr. Aditya Mondal.
... for the Petitioner.

Mr. Jaydip Kar,
Mr. Billwadal Bhattacharyya,
Mr. Anish Kumar Mukhjeree.
... for the Respondent no.3.

Mr. Pratick Dhar,
Mr. R. Pattanayak,
Ms. Cardina Roy.
... for the Respondent No.6 to 12.

Mr. Anirban Mitra,
Mr. Srijan Nayak,
Ms. Rituparna Maitra.
... for the State.

The writ petition has been filed by one of the Directors of the Board of the Contai Cooperative Bank Limited.

At the outset Mr. Dhar, learned senior advocate appearing on behalf of the requisitionists, the respondent nos.6 to 12 raise the point of maintainability of the writ petition. According to Mr. Dhar, the writ petitioner lacks the locus to file the writ petition. The impugned notice dated July 22, 2021 is for the removal of the Chairman of the Board of Directors. It is contended that the writ petitioner is not the Chairman and not likely to be affected by any resolution that may be passed at the meeting to be held on August 3, 2021 at 4.00 p.m. According to Mr. Dhar, the person aggrieved would be the Chairman himself. The Chairman has chosen to stay away from the Court even though a notice was served upon him. Thus, Mr. Dhar submits that this writ petition should be dismissed as the same is not maintainable at the instance of a third party not likely to be affected by the impugned resolution.

Mr. Jaydip Kar, learned Senior Advocate for the bank and Mr. Aniruddha Chatterjee, learned Advocate for the petitioner submit that the petitioner has the right to challenge any decision of the Board of which he is one of the directors.

First, the Court decides the point of maintainability of the writ petition at the instance of the writ petitioner. Admittedly, the petitioner is one of the directors of the Board. The decision cited by Mr. Dhar in the matter of Lufta Begum and Anr. –versus- State of West Bengal and Ors. reported in 2006 SCC OnLine CAL 538, is not applicable in the facts of this case, inasmuch as, in the decision of Lufta Begum (supra), this Court held that once the Pradhan had been removed, but had not approached this Court, it meant that the Pradhan had accepted his removal and a writ petition filed by a member after the removal of the Pradhan, without the Pradhan throwing any challenge to such removal, would be of no consequence. In this case, one of the directors filed the writ petition challenging a requisition brought by the other members of the Board. According to the writ petitioner, the requisition was brought in violation of the provisions of Rule 51(3) of the West Bengal Cooperative Societies Rules, 2011.

This writ petition thus stands on a different footing. The petitioner as one of the directors, approached this Court alleging infraction/violation of law and rules by other members of the Board, in calling the meeting for removal of the Chairman. I am of the view that the writ petition is maintainable. It would have been a different situation had the motion for removal of the Chairman been carried through. In such a situation, the person aggrieved by the removal would have to challenge the process of removal.

The contention of the petitioner is that the notice impugned before this Court dated July 22, 2021, suffers from two major defects. One that the notice was issued in violation of the order of this Court. It is urged that an Hon'ble Division Bench of this Court passed an order in MAT 120 of 2021, directing that the composition of the Board of the Contai Co-operative Bank, should remain as it was, prior to the issuance of a notice dated January 8, 2021, by the State Government.

Mr. Pratick Dhar, learned Senior Advocate for the respondents Nos. 6 to 12 submits that the expression 'Board' has been defined to mean the Board of Directors or the governing body of the bank and the composition of the Board of Directors will not change, even if the Chairman is removed in accordance with law.

According to Mr. Chatterjee, once the Division Bench directed that the composition of the Board should not change and should remain as it was prior to the issuance of the notice dated January 8, 2021, no requisition meeting can be held for removal of the Chairman. The Chairman shall continue in office as long as the Division Bench's order remains operative.

By a notice dated January 8, 2021, the State Government nominated a member to the Board of Directors of the bank, in exercise of power under Rule 34(2) of the West Bengal Cooperative Societies Rules, 2011.

The arguments of the appellant/bank before the Division Bench was that the Contai Cooperative Bank was a Cooperative Credit Structure Entity and was guided by the provisions of Chapter XIIIA of the West Bengal Cooperative Societies Act, 2006 (hereinafter referred to as the said Act).

Chapter XIII-A deals with special provisions applicable to Co-operative Credit Structure Entities. Section 134A provides that the provisions of chapter XIII-A shall have overriding effect over anything contrary or inconsistent in the said Act or Rules. Section 134B deals with the definition of Co-operative Credit Structure Entities. The bank contended that it came within the said definition. Section 134C(2) provides that the bank shall have autonomy in certain cases. The relevant portion is quoted below:-

> "(2) A Co-operative Credit Structure Entity shall have autonomy in all financial and internal administrative matters including the following areas:-
> (a) interest rates on deposits and loans;

> (b) borrowing and investments;
> (c) loan policies and individual loan decisions;
> (d) personnel policy, staffing, recruitment, posting and compensation to staff;
> (e) internal control systems, appointment of auditors and compensation for the audit:"

Thus, having considered these provisions of law, the Division Bench arrived at a prima facie conclusion that the State Government not having been able to prove subscription to the share capital of the bank, would not be entitled to send a nominee to the Board and the Board of the bank would remain, as it was prior to the decision of the State Government to send the nominee.

The question was whether the provisions of Section 32(1)(b) of the said Act shall have any application in view of Section 134A of the said Act. Section 32(1)(b) is quoted below:-

> "(b) where the State Government has-
> (i) subscribed to the share capital of a Co-operative society; or
> (ii) guaranteed the principal and interest in respect of debentures issued by a Co-operative society; or
> (iii) guaranteed the principal and interest in respect of loans and advances to the Co-operative society; or
> (iv) assisted the Co-operative society with loans and grants out of its own fund, the State Government or any authority specified by it may nominate one person on the board or change them or fill up any casual vacancy of a nominated member;"

The Hon'ble Division Bench came to a prima facie finding that in the absence of any proof that any of the conditions set out above had been fulfilled or in the absence of proof that the share capital had been subscribed by the State Government, the State Government was jurisdictionally barred from appointing a nominee to the Board of Directors of the bank. The Division Bench referred to Sections 134(A), 134(B) and 134(C). Thus, the Division Bench was of the opinion that the State Government should be injuncted from nominating any person in the Board of the bank and passed an order directing that the composition of the Board of Directors would be as was existing before January 8, 2021, that is, before the nomination was made by the State Government.

Section 32 of the said Act provides for management of the co-operative societies. Thus the manner in which the Board of Directors will be elected has been prescribed by law. The composition of the Board would be as per Section 32(1)(a). In the facts of the appeal, the Division Bench directed that the composition of the Board would remain as it was.

What had fallen for the decision before the Division Bench was whether the State Government was entitled to have a nominee or representation in the Board and in that context the Division Bench held that the composition of the Board would not change, which meant that the State Government would not have the right to put a nominee in the Board of the bank in terms of the Section 32(1)(b).

A judgment is a precedence for what it decides. The judgment cannot be read as a statute and must be read as a whole. A meaningful reading of the entire decision of the Division Bench would show that the direction to maintain the composition of the Board would mean that the representation of the State Government in the Board was stayed by the Division Bench. The compensation of the Board as prescribed under Section 32(1)(a) ought not to change as per the order of the Division Bench.

The right of the members to bring a requisition against the Chairman of the Board under Rule 51 of the West Bengal Co-operative Societies Rules, 2011 is not affected by the decision of the Division Bench, with respect. The Chairman is a member of the Board of Directors elected in terms of Rule 36 of the Rules of 2011. He will continue to be a Director even if he is removed as a Chairman. A Chairman is elected by the members of the Board and can enjoy the position as a Chairman as long as he has the confidence of the members who have elected him. The function of the Chairman, inter alia, is to preside over the meetings of the Board and as such, even if the Chairman is removed from the office, the essential composition of the Board will not change. Thus, the first point raised by Mr. Chatterjee that any requisition meeting brought by the Board of Directors for removal of the Chairman would amount to violation of the order of the Hon'ble Division Bench, with due respect, is not accepted.

Now the court proceeds to decide on the validity of the impugned notice dated July 22, 2021, by which the Board fixed August 3, 2021 for holding the meeting for removal of the Chairman by invoking the provisions of Rule 51(3) of the Rules of 2011.

The Chairman is an office-bearer of the Board elected under Rule 36 of the said Rules. According to Rule 45(2) of the said rules an office-bearer may be removed from office by a resolution of the Board at a meeting specially convened for the purpose. A special meeting of the Board is convened under Rule 51 of the Rules. Rule 51 is quoted below:-

> "51. Requisition meeting of Board.- (1) One third of the Directors may requisition a special meeting of the Board by giving seven clear working day's notice.
> (2) The requisition shall specify the object of the meeting and shall be signed by the Directors requisitioning and shall be delivered at the office of the society.
> (3) If the Secretary or any other person performing the duties of the Secretary does not convene the meeting within seven clear working days from the date of receipt of the requisition, a notice of seven clear working days signed by the Directors requisitioning specifying the object and the date, time and place of the meeting shall be sent to all the Directors and accordingly the meeting shall be held. The Secretary or the person performing the duties of the Secretary or the Chief Executive in whatever name is called or any person under whose custody the books, documents papers etc. in respect of the meetings or the Board are kept, shall place those books documents etc. in the requisition meeting.
> (4) At such requisition meeting no business other than that specified in the requisition shall be transacted and if there is no quorum within half-an-hour from the time appointed, the meeting shall stand dissolved."

The petitioner brought the requisition on July 5, 2021. The secretary issued a notice dated July 9, 2021 convening a meeting on July 20, 2021. This was beyond seven clear working days. Such notice was challenged before this Court by a writ petition being WPA 11663 of 2021. As the meeting was cancelled by the secretary on July 19, 2021, the writ petition was disposed of on July 20, 2021, but without any decision on the merits or the maintainability of the writ petition.

Being aggrieved by the cancellation of the requisition meeting, the requisitioinists, who are represented by Mr. Dhar issued the notice on July 22, 2021, for holding the meeting for removal of the Chairman on August 3, 2021 on the ground that the secretary had failed to convene the meeting and the requisitionists could convene the meeting upon giving seven days notice.

In this case, the secretary cancelled the meeting by holding that the members were divided on the issue, leaving the rest to the discretion of the directors. Rule 51(3) provides that if the secretary does not convene the meeting within seven clear working days from date of receipt of the requisition, a notice of seven clear working days signed by the directors shall be sent to the directors and the meeting shall be held. In the meantime, almost a month has lapsed from the date of requisition. The requisition was brought, the secretary issued a notice to convene the meeting on July 20, 2021, the secretary failed to convene the meeting within seven clear working days. Thereafter, the meeting was cancelled. There are procedural irregularities. The requisitionists did not challenge the order of cancellation but instead sought to revive the cancelled requisition dated July 5, 2021 by fixing August 3, 2021 as the date for holding the meeting for removal of the director. The time period prescribed under Rule 51(3) had already expired even when the meeting was called by the secretary. Mr. Jaydip Kar, learned Advocate submits that the requisition cannot be kept alive beyond the period prescribed by the rules.

It is true that the Board/requisitionists cannot be deprived of their rights prescribed by the statute. The institution should run on democratic principles. The Chairman is elected by the members of the Board. The Board can remove the Chairman in accordance with law. The entire matter has been handled in such a way by the secretary that the right of the Board under the law, to remove the Chairman has been denied.

Under such circumstances, this writ petition is disposed of by setting aside the requisition and the notice subsequently issued by the requisitionists dated July 22, 2021 without deciding the merits of the claims and counter-claims of the parties. The requisitionists shall have the liberty to bring fresh requisition in terms of the provisions of the statute and the said requisition shall be reached to its logical conclusion in terms of the provisions of the West Bengal Cooperative Societies Act, 2006 and Rules framed thereunder, by adhering to the time frame prescribed by law.

The writ petition is disposed of.

There will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)