23.12 2021
Sl. No. 05
Sayandeep

**WPA 20705 of 2021**
(Via Video Conference)

Sukumar Bera
Vs.
The State of West Bengal and others

Mr. Abhratosh Majumder,
Mr. Srijib Chakraborty,
Mr. Aditya Mondal
… for the petitioner.

Mr. S. N. Mookherjee, ld. A.G.,
Mr. Anirban Ray, ld. G.P.,
Mr. Raja Saha,
Mr. Nilotpal Chatterjee
… for the State.

Mr. Pratik Dhar,
Mr. Ritwik Pattanayak
… for respondent nos.5-17 & 19.

Mr. Billwadal Bhattacharyya,
Mr. Sayak Chakraborti,
Mr. Anish Kr. Mukherjee
… for respondent no.18.

Mr. P. K. Roy,
Ms. Shraboni Sarkar
… for respondent no.1.

Mr. Ankit Sureka,
Mr. Biplob Das
… for respondent nos. 3.
Mr. Amrit Sinha
….. for the respondent No. 20.

The petitioner is a member of the Board of Directors of the Contai Co-operative Bank Ltd., a body corporate registered under the provisions of the West Bengal Co-operative Societies Act, 1983. The petitioner seeks quashing of an order passed by the Co-operative Election Commission, West Bengal on 15th December, 2021, by which the Commission directed that the election process of the Bank shall be undertaken with immediate effect. The election relates to the Board of Directors of the Bank, the tenure of which is up to 4th February, 2022. The grounds for setting aside of the order passed by the Commission are two-fold; breach of the principles of natural justice and that the Secretary of the Commission did not have jurisdiction to pass the impugned order.

The impugned order is a result of an order of a learned Single Judge of this Court dated 30th November, 2021 passed in WPA 18201 of 2021 (*Contai Co-operative Bank & Anr. vs. The State of West Bengal*), where the Bank was the writ petitioner before the Court. By the said order, the Bank was given liberty to move the Commission for initiating the election process. Directions were issued on the Commission and the petitioners before the Court to prepare for the election within 40 days under the relevant law together with other directions on the Commission in relation to notice of hearing and the procedure to be adopted in the hearing.

Learned counsel appearing for the petitioner points to the conduct of the Secretary of the Commission which resulted in the petitioner being deprived of an effective hearing. Counsel submits that the petitioner was not given an opportunity to make his representation to the Commission in response to the application of the Bank and also submits that the Secretary of the Commission did not have jurisdiction to pass the impugned order.

Learned counsel appearing for the Co-operative Bank and also eleven of the fourteen directors on the Board submits that the petitioner has not faced any prejudice from the impugned order since the tenure of the Board is admittedly till $4^{th}$ February, 2022 and elections had to be held by reason of such. Counsel submits that the petitioner had adequate time to respond to the application of the Bank and chose not to address the merits of the matters in writing to the Commission. Counsel further contends that the principles of natural justice have been complied with since the petitioner was present at the hearing and in any event compliance with the requirement of hearing would be an empty formality.

Learned counsel appearing for the Commission refers to the order passed by the learned Single Judge to urge that there was no direction on the Commission to supply the application or the representation to any of the parties and that the petitioner received notice of the hearing well in advance.

Learned counsel appearing for the respondent no. 18, who is a Director of the Bank relies on the West Bengal Co-operative Societies Act, 2006 to urge that the Co-operative Election Commissioner of the Election Commission is the only person who was authorised to pass the impugned order. Counsel submits that the concerned respondent was not allowed to file a response to the application of the Bank and that the points urged on behalf of the said respondent were not addressed in the impugned order.

Learned Advocate General appearing for the State respondent refers to the order of the learned Single Judge to contend that the intention of the Court was to direct an institutional hearing as opposed to only the Commissioner being directed to hear the parties and pass an order pursuant to such hearing. It is submitted that hearing is not required under the provisions of the 2006 Act before elections are to be held and that the only prejudice shown by the writ petitioner is that the appeal preferred by petitioner and the respondent no. 18 would be rendered infructuous. It is further submitted that all the points taken on behalf of the petitioner and the respondent no. 18 were considered and negated by the Court in the Order dated 30th November, 2021.

The issues which fall for consideration in the present writ petition are (a) whether the Secretary of the Co-operative Election Commission, West Bengal had jurisdiction to pass the impugned order dated 15th December, 2021; and (b) whether there has been a breach of the principles of natural justice.

<u>a) Whether the impugned order suffers from want of jurisdiction</u>

The argument made on behalf of the petitioner and some of the respondents being the disgruntled Directors on the Board is that the impugned order could not have been passed by the Secretary of the Commission by reason of a lack of authority. The stand taken is that Co-operative Election Commission and the Co-operative Election Commissioner should be read interchangeably and mean one and the same entity. The opposing stand of the Bank, the 11 Directors of the Board and the State is that the Secretary was authorized to pass the impugned order.

The decision as to the lack of jurisdiction must take into consideration the order passed by the learned Single Judge on 30th November, 2021 and the use of the word “Commission” in the said order. The operative part of the order gives liberty to the petitioners to move the “Commission” followed by directions on the Commission with regard to initiating the process of election. The word mentioned is "Commission" and not "Commissioner". There is no indication that the Court intended the Election Commissioner to give the hearing to the exclusion of all other office bearers of the Commission. The only conclusion which can be drawn from the aforesaid is that of an institutional hearing. This view would be buttressed by the representation of the petitioner dated 15th December, 2021 to the Secretary of the Commission complaining of breach of the principles of natural justice. It is also relevant to state that the petitioner did not object to the jurisdiction of the Secretary at the hearing on 14th and 15th December, 2021.

Besides the factual context, Section 96 of the Act does not carve out any exclusive sphere of work for the Co-operative Election Commissioner who has been mentioned in Sections 96(1) and (2). Section 96 also does not specify the work of the Secretary in Section 96(5). In fact Section 96(5) provides that the Secretary would discharge "its" functions thereby meaning the functions of the Commission. Although Section 96(8) lists certain functions of the Commission with regard to the conduct of election, the Commissioner is not given the exclusive power to undertake such work. The West Bengal Co-operative Election Commission Regulations, 2021 notified on 13th April, 2021 is also of no assistance on the point of lack of jurisdiction. In *Kalinga Mining Corporation vs. Union of India & Ors.; (2013)5 SCC 252,* the Supreme Court referred to *Local Government Board v. Arlidge; (1914-15) All ER Rep 1(HL)* to reinforce the legality of institutional hearing. *The Siemens Engineering & Manufacturing Co. of India Ltd. vs. The Union of India & Anr.; (1976)2 SCC 891,* cited on behalf of one of the disgruntled Directors of the Board, is an authority for the proposition that a *quasi judicial* authority is duty-bound to give reasons. *Sarup Singh & Anr. Vs. Union of India & Anr.; (2011)11 SCC 198* is an authority for the proposition that a decree would be treated as *non est* if the Court lacked inherent jurisdiction.

This Court therefore rejects the objection taken on behalf of the petitioner on the point of lack of jurisdiction.

b) <u>Whether there has been a breach of the principles of natural justice</u>

It must be borne in mind that the impugned order of the Commission arose out of an order passed by the learned Single Judge on 30th November, 2021 in WPA 18201 of 2021. By the said order, the learned Single Judge allowed the petitioners to move the Commission with a request to initiate election process in accordance with law. Consequential directions were passed on the Commission. From a reading of the order, it is clear that the Court intended that the entire process of initiating the election by the Commission shall only be upon hearing all the parties who were before the Court. The intention would also be evident from the effect that all the parties were to be given the opportunity to make oral submissions as well as to file a "written version" (as used in the order) of the same before the scheduled hearing.

The issue of breach of the principles of natural justice must be understood in the context of the order of the Court and the admitted sequence of events.

The application of the Bank made on 1st December, 2021 was received by the Commission on 2nd December, 2021. The Commission fixed a hearing on 14th December, 2021 at 12 noon. On 14th December, 2021, the Commission was informed that the writ petitioner did not receive a copy of the Bank's application as on that date and hence was not in a position to make arguments or to file his written submissions. Learned advocate appearing for the petitioner sought for an adjournment and a copy of the application filed by the Bank. A prayer was also made for an opportunity of filing a written version to such application within two weeks from 14th December, 2021. Copies of the application of the Bank were handed over to the learned advocate appearing for the petitioner on 14th December, 2021 and the hearing was concluded on that day. After conclusion of hearing, the date of the next hearing, which was initially fixed on 16th December, 2021 at 3.30 P.M., was changed to 15th December, 2021 at 12 noon. The parties concerned were informed of the changed date of hearing by e-mail.

In the record of the proceedings of hearing held on 15th December, 2021, the reason for the change of date is recorded as the Secretary being on leave on 16th December, 2021. The Minutes also record that a written submission was filed by the Bank before the Commission on 15th December, 2021 and that a prayer was made on behalf of the petitioner for further time till 17th December, 2021 for filing a written version against application of the Bank.

The Secretary considered the arguments made on behalf of the parties and disposed of the representation of the Bank by holding that since the tenure of the Board of Directors is ending on 4th February, 2022, the election process should be undertaken with immediate effect.

The proceedings lead to the inevitable conclusion that the petitioner was deprived of a fair hearing. The reason for this view are as follows. The petitioner, as all other parties before the Court, was to be given an effective opportunity of responding to the application made by the Bank not only in the form of oral arguments but also by way of written submissions. The records of the proceedings make it evident that the petitioner did not receive the application before the first date of hearing i.e. $14^{th}$ December, 2021. The petitioner's prayer for adjournment was rejected and the next meeting was fixed two days from $14^{th}$ December i.e. on $16^{th}$ December, 2021. The date was however changed to one day before the scheduled date i.e. $15^{th}$ December, 2021. On such date, the prayer for adjournment for filing a written representation was disallowed by the Commission ostensibly for the purpose of complying with the directions passed by the Court on $30^{th}$ November, 2021. The records show that a written submission was filed by the Bank on $15^{th}$ December, 2021. Significantly, on that day, the reason for the date being brought forward is different from the reason mentioned on $14^{th}$ December, 2021.

There is no ostensible reason for rejecting the petitioners' prayer of adjournment of two days ($15^{th}$ to $17^{th}$ December) for filing a written version to the representation of the Bank as directed by the Court particularly when the Bank had filed a second submission on that very day i.e. $15^{th}$ December, 2021. There is also no reason evident from the proceedings that could justify holding the second hearing on the very next day of the first hearing, when the petitioner complained of not receiving the application of the Bank.

The manner in which the proceedings were conducted raises a suspicion that the proceedings were conducted in unseemly haste. Administrative expediency at the expense of due process must be supported by a solid basis either in law or the attendant facts. It should also be added that opportunity of hearing means an adequate and effective hearing; not a hearing which is incomplete or appears to be so to the person who is a party to the decision.

'Useless formality'

The question of useless formality urged by learned counsel on behalf of the Bank and eleven of the fourteen Directors rests on the premise that hearing need not be given when it would simply be an idle formality. (*Ref: State of U.P. vs. Sudhir Kumar Singh; (2020) SCC Online SC 847, Ashok Kumar Sonkar vs. Union of India & Ors.; (2007) 4 SCC 54* and *Canara Bank & Ors. vs. Debasis Das & Ors; (2003) 4 SCC 557*. In the present case however, the question of 'useless formality' does not arise since the hearing was directed to be given by an order of Court. The Bank and the Commission accepted the order and did not challenge the same on the ground of the Commission not being required to provide a hearing for initiating the election process. The point as to the hearing being a useless formality is thus considered and rejected.

‘No prejudice’

The argument advanced on behalf of the Bank and the respondent supporting the Bank is that the petitioner is required to show prejudice caused by the impugned order for taking the plea of breach of the principles of natural justice. The issue cannot be seen from such a simplistic perspective and must be woven into the facts of the present case. The prejudice must be seen in the context of the petitioner being a Director on the Board of the Bank who is presently in the minority and has raised contentious legal issues on the eligibility and powers of the Board.

To toy with the question whether affording an effective hearing to the petitioner would have resulted in a different outcome would be to subvert the rules of fair procedure altogether. The right to a fair hearing embodied in the twin pillars of natural justice is the rule; the exceptions are no prejudice, idle formality and post-decisional hearing. Treating the exceptions as the rule in a factual context where a person has been denied a proper hearing without any reason assigned for such would challenge the very edifice holding up the justice delivery system.

In the considered view of this Court, the principles of natural justice must be seen as an end in itself where each and every person who is a part of the decision-making process believes that justice has been done regardless of the outcome. The satisfaction of the person who may be on the receiving end of an adjudication assumes relevance particularly where the procedure undertaken appears to be wanting in fairness. The requirement of showing prejudice is an exception which must be sparingly used in tandem with idle formality only where the facts are either admitted or establish estoppel, acquiescence and the like (Ref: *Sudhir Kumar Singh*). In *Sohan Lal Gupta & Ors. vs. Asha Devi Gupta & Ors.; (2003) 7 SCC 492*, the Supreme Court referred to a causation of prejudice resulting from violation of the principles of natural justice and referred to *Managing Director, ECIL vs. B. Karunakar; (1993) 4 SCC 727)* to opine that the issue of whether a person has suffered prejudice is a disputed question which must be addressed by a competent court. In *Ashok Kumar Sonkar vs. Union of India (2007) 4 SCC 54* the Supreme Court relied on the oft-quoted line that the principles of natural justice cannot be put in any straitjacket formula and must be seen with circumstantial flexibility. The Supreme Court also made a distinction between cases where no hearing at all was given and those involving a mere technical infringement of the principle. In the facts of that case the selection of the appellant was itself illegal as the appellant was ineligible for being considered for appointment. On the other hand, in *Ashok Kumar Sonkar* itself, the Supreme Court referring to *Aligarh Muslim University vs Mansur Ali Khan; (2000) 7 SCC 529)* noted that the "useless formality" theory is an exception. In *Municipal Committee, Hoshiarpur vs. Punjab State Electricity Board & Ors.; (2010) 13 SCC 216*, the Supreme Court held that non-observance of natural justice itself amounts to a prejudice and proof of that prejudice is not required at all in some cases. The Supreme Court also restricted the application of the empty formality rule to admitted and undisputed facts where only one conclusion is possible. In *Canara Bank*, the Supreme Court considered cases where a post-decisional hearing can obliterate the procedural deficiency of a pre-decisional hearing. (Ref: *Charan Lal Sahu vs Union of India; AIR 1990 SCC 1480)* .

The above cases point to a clear direction of committing to the principles of natural justice and the processes which reinforce the right to a fair hearing. The exceptions can never be the norm where the breach would lead to prejudging the issue. The principles assume a greater significance where the deprivation of the right to a fair hearing is coupled with an absence of procedural fairness. The fact of procedural impropriety as would appear from the records in the present case calls for greater circumspection; the adjudicating authority must show that an effective hearing was given to the person who complains of its breach. In the facts as presented before this Court, the procedural improprieties including the denial of a complete representation to the petitioner warrant revisiting the order of the Commission and an effort to set things right. The present case is also not a case of undisputed facts, estoppel or acquiescence.

In view of the above reasons, this Court is persuaded to hold that there has been a breach of the principles of natural justice. The defence of "useless formality" and "no prejudice" cannot salvage the procedural infirmities vitiating the hearing and the order.

WPA 20705 of 2021 is accordingly allowed and the impugned order of the Commission dated 15th December, 2021 is set aside.

The Commission is directed to give four days time to the petitioner to file its written response to any application or representation made by the Bank. It is made clear that all parties before the Court would have a right to file their complete written response/objection/representation/notes before the hearing is given by the Commission but within the time directed. The Commission shall give a hearing to all the parties on 28th December, 2021 at 12 noon. The parties shall not take any plea of non-service or seek adjournment. The Commissioner is also requested to comply with the timelines under the Act and the Rules, and the outer limit of the tenure of the Directors on the Board.

WPA 20705 of 2021 is disposed of in terms of the above.

It is made clear that this Court has not gone into the merits or any of the contentious issues raised by the parties.

**(Moushumi Bhattacharya, J.)**