

**IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
APPELLATE SIDE  
(CIRCUIT BENCH AT PORT BLAIR)**

**Before:**

**The Hon'ble Justice Subrata Talukdar  
and**

**The Hon'ble Justice Hiranmay Bhattacharyya**

**MAT 818 of 2020**

**With**

**CAN 1 of 2020**

**The Secretary, Consumer Cooperative Stores Limited  
Vs.**

**Shri Prem Singh & Ors.**

For the Appellant : Mr. Soumya Majumder  
Ms. Sanjukta Dutta ..... Advocates

For the Respondent : Mr. Krishna Rao... Advocate for  
Respondent nos. 5 to 8

Ms. Anjili Nag  
..... Advocate for  
the Private Respondents/writ petitioners

Heard on : 15.01.2021

Judgment on : 19.01.2021

**Hiranmay Bhattacharyya, J.:**

The Secretary of a Consumer Co-operative Stores has preferred the instant intra court mandamus appeal challenging the order dated December 14, 2020 passed by a learned Single Judge in WPA 10410 of 2020.

By the order impugned the learned Single Judge directed the Andaman and Nicobar administration to appoint an Administrator for

assisting the Deputy Registrar in conducting the election and also to run the day to day affairs of the society until constitution of a newly elected Board.

The facts giving rise to the present appeal are as follows- The writ petitioners claim to be the shareholder members of the Consumer Co-operative Stores (for short the “CCS”) which is registered under the Andaman and Nicobar Islands Co-operative Societies Regulation 1973 (for short the “1973 Regulation”). The writ petitioner claims that the last election was held in June, 2015 and as per the Bye-Laws approved by the Registrar of the Co-operative Societies an election is required to be conducted after every five years. The writ petitioner further claims that the election was scheduled on June 30, 2020 but due to the pandemic the tenure of the committee was extended twice for a period of three months each. The Registrar of Co-operative Societies issued a notice dated November 24, 2020 to the Secretary, CCS asking him to hold the election on December 20, 2020 on the basis of pre-updated list consisting of 19,000 members approximately. The writ petitioners filed the instant writ petition praying for a writ in the nature of certiorari quashing the notice dated November 24, 2020 and a mandamus directing the appellant herein to hold election in terms of the updated list.

The learned Single Judge disposed of the said writ petition directing the Andaman and Nicobar Administration to appoint an Administrator for the purpose of assisting the Deputy Registrar in conducting the election. The learned Single Judge held that the existing Board shall cease to function forthwith and the Administrator shall run the day to day affairs of

the society and shall not take any major policy decision thereunder until constitution of a newly elected Board.

Being aggrieved, the respondent no. 5 in the writ petition, has preferred the instant appeal.

Mr. Soumya Majumder, the learned advocate for the appellant, contended that the last election for constitution of the committee was held in June, 2015. However, due to the pandemic, the tenure of the Board was extended initially up to September, 2020 and thereafter till the end of December, 2020. He further contended that the Board of Directors wrote to the administration as well as the Registrar of Co-operative Societies to allow the eligible voters to cast their votes at the polling stations where their identity and membership will be scrutinised before they cast their votes. Mr. Majumder contended that the Deputy Registrar was justified in issuing the notice dated November 24, 2020 asking the appellant herein to conduct the election on the basis of the pre-updated list subject to condition that the member shall be required to produce identity cards prescribed by the Election Commission of India during the last general election as a proof of their identification.

Mr. Majumder further contended that in view of the pandemic an updated list of members could not be prepared and since the life of the existing committee was till the end of December, 2020, the Deputy Registrar was justified in fixing the date of election on December 20, 2020. Mr. Majumder further contended that the principal objection of the writ petitioners against holding election on the basis of pre-updated list is that

the names of those members in the old list who are dead or unknown can be impersonated. He contended that such objection is without any basis as the members are required to produce the identity cards prescribed by the Election Commission of India at the time of casting their votes as the voting is only by physical casting and there is no provision for proxy voting or casting of votes by postal ballots.

Mr. Majumder further contended that the order of the learned Single Judge directing the Andaman Administration to appoint an Administrator amounts to supersession of the existing committee. He contended that Regulation 27 of the 1973 Regulation provides the grounds for which a committee may be removed as well as the mode of its removal. He contended that an opportunity is to be given to the committee to state its objections against the opinion of the Registrar for supersession of the committee on the grounds mentioned in Regulation 27 of the 1973 Regulation and thereafter pass an order for removal of the committee upon giving an opportunity of hearing. According to Mr. Majumder, the principles of natural justice is inbuilt in the said Regulation. He contended that the appointment of an Administrator is not a natural consequence upon expiry of the life of a committee. He further contended that supersession of a committee is a stigmatic one insofar as the members of the said committee shall be deemed to have acted in a manner prejudicial to the interest of the society or its members.

Mr. Rao, learned advocate, appears for the respondent nos. 5 to 8, i.e. the Andaman and Nicobar Administration. He supported the order passed

by the learned Single Judge and contended that pursuant to such order an Administrator has been appointed. And there is no infirmity in the judgment and order impugned.

Ms. Anjili Nag, the learned advocate for the writ petitioners/respondent nos. 1 to 4 in the instant appeal, supported the order passed by the learned Single Judge. She contended that the life of the erstwhile committee has expired by efflux of time. She contended that in terms of the Bye-Laws, an election is required to be conducted after every five years. The last election was held in June, 2015. The election that was scheduled on June 30, 2020 could not be held due to the pandemic and the tenure of the committee was extended twice for three months each till the end of December, 2020. She contended that since the life of the committee expired, the learned Single Judge was justified in directing the Andaman Administration to appoint an Administrator for the purpose of conducting the election and also to run the day to day affairs of the society until constitution of a newly elected Board. She contended that affording an opportunity of hearing to the members of the committee would lead to a useless formality in the instant case as the members of the committee cannot be said to have suffered any prejudice in the instant case as the life of the Managing Committee has already expired. In support of such contention, Mrs. Nag relied upon a judgment of the Hon'ble Supreme Court of India in the case of *City Montessori School vs. State of U.P.* reported at (2009) 14 SCC 253. Mrs. Nag, in her usual fairness, submitted that an observation may be made by this Court that the direction of the learned

Single Judge that the existing Board shall cease to function forthwith shall not be construed to be a stigmatic one.

We have heard the learned advocates for the respective parties and have perused the materials on record.

The Bye-Laws provide that the members of the Managing Committee, except the nominated members, shall be elected for a period of three years among the members. It has been further provided that if for any reason the election could not be held before the expiry of the tenure of the said committee the life of the Managing Committee may be extended for a further period of three months with the prior approval of the Registrar.

The Bye-Laws of the CCS provides that all the members of the Managing Committee shall vacate their office on expiry of the terms of three years and the extended period of three months, if any, or from the date of constituting the new committee whichever is earlier.

The last election for constitution of the Managing Committee was held in June, 2015. Though in the Bye-Laws, a copy of which has been annexed to the writ petition, it has been provided that the members of the Managing Committee shall be elected for a period of three years, but it is not in dispute, that the said Bye-Laws was subsequently amended and the said period of three years has been enhanced to five years. Thus, the election for constitution of the Managing Committee was scheduled on June, 2020. It is also the admitted position that the tenure of the committee which expired in June, 2020 was extended initially up to September, 2020 and finally till the end of December, 2020.

Though the Bye-Laws provide for one extension of the life of the Managing Committee for a period of three months with the prior approval of the Registrar, but in the instant case it is the admitted position that the life of the Managing Committee was extended twice for a period of three months each. Thereafter the life of the erstwhile Managing Committee stood expired due to efflux of time. Once the original term of five years with two extensions of three months each have expired in the meantime, according to the provisions of the Bye-Laws, all the members of the Managing Committee shall vacate their office upon the expiry of such term. Thus, in view of such specific mandate of the Bye-Laws the members of the Managing Committee do not have any right to claim themselves as the members of such committee after expiry of such term. In other words the members of the Managing Committee cannot continue as members of such committee even after the expiry of the original term and the extension thereof as a matter of right merely by taking advantage of the fact that the election for constitution of the new Managing Committee did not take place.

Rule 27 of the 1973 Regulations empowers the Registrar to remove the committee by an order in writing after giving the committee an opportunity to state its objections. Since in the instant case the life of the erstwhile committee expired due to efflux of time and the life of a committee cannot be deemed to be extended automatically upon expiry of its term, there is no question of removal of the said committee.

As the Managing Committee cannot be said to be in existence after expiry of its life by efflux of time, there is no necessity to comply with the requirement of giving an opportunity to the members of the committee to state its objection as provided in Regulation 27 of the 1973 Regulations. Such right to raise an objection is available only in case of supersession/removal of the committee.

Regulation 27 of the 1973 Regulation also empowers the Registrar to order fresh elections of the Committee and to appoint Administrators for the purpose of management of the affairs of the society. Regulation 27 empowers the Administrator to exercise all or any of the functions of the committee or of any officer of the society and take all such actions as may be required in the interest of the justice.

Thus, Regulation 27 contemplates appointment of an Administrator for the purpose of conducting the elections as well as to manage the affairs of the society when the office of the Managing Committee becomes vacant.

It is an admitted position that election for constitution of the Managing Committee is long overdue. The same is to be conducted at the earliest. An election is to be conducted on the basis of a list of bona fide members having a right to cast vote. Such list undoubtedly has to be an updated one and it is inconceivable that an election is to be conducted on the basis of a pre-updated list. The old list may contain the names of persons who are either dead or have become ineligible to vote otherwise. There may also be cases where some persons have become members after the date of publication of the last updated list. Only the persons whose

names are included in the list of members are permitted to cast their vote in the election. Such persons who, though eligible to cast their vote in the ensuing election, may not be allowed to cast their vote as their names do not appear in the pre-updated list. Thus, in order to ensure a free and fair election and to protect the voting rights of the members of the CCS the list of the members who are entitled to vote in the ensuing election is required to be updated and an election can be held only on the basis of such updated list.

An identity card issued by the Election Commission of India may be a valid document to prove the identity of a person entitled to vote in the general election but the same is not a substitute of a voters' list or an Electoral Roll in respect of a constituency. The names of the persons eligible to vote in the general election in a particular constituency are enrolled in the electoral roll. Only the persons whose names are appearing in the electoral roll are allowed to cast their votes. The identity card is the document to prove that the identity of the person entitled to cast his vote. A person whose name appears in the Electoral Roll of a particular constituency in the General Elections cannot cast his vote in another Constituency merely because an Identity Card has been issued by the Election Commission of India in his favour. Thus, the requirement of production of identity cards prescribed by the Election Commission of India during the last general election cannot be a substitute of an updated voter list as an updated voter list is a pre-requisite for conducting any election including the election of the instant CCS.

The appellant herein being the Secretary of the CCS, for reasons best known to him, chose not to appear before the learned Single Judge at the time of hearing of the writ petition.

The learned Single Judge in the facts and circumstances of the instant case, thought fit that an Administrator be appointed for conducting the election and for running the day to day affairs of the society until constitution of a newly elected Board. Since we have already held that an election has to be held on the basis of an updated list, we are of the view that the learned Single Judge was justified in the instant case in directing the Administrator to ensure that the list of members is updated until the date of issuance of a fresh notification for election.

Now, let us deal with the judgment relied upon by Mrs. Nag. In *City Montessori (supra)* it was held that the court despite opining that the principle of natural justice was required to be followed may however decline grant of a relief on the premise that the same would lead to a useless formality or, that the person concerned in fact did not suffer any prejudice. The said judgment has no manner of application to the facts of the instant case as in the instant case we have held that there is no requirement of an opportunity of hearing to be given to the members of the erstwhile committee as the life of such Committee stood expired by efflux of time and the Committee was not removed by an order in writing by the Registrar.

As we have already held that the erstwhile Managing Committee is no longer in existence and the same was not removed by the Registrar, the apprehension of the appellant that the appointment of an Administrator

amounts to a stigma upon the members of the Committee is without any basis.

For the reasons as aforesaid we are of the view that the impugned judgment and order does not suffer from any infirmity warranting interference by us in an intra-court mandamus appeal. There is no merit in the instant appeal.

Accordingly, **MAT 818 of 2020** is **dismissed** thereby affirming the order dated December 14, 2020 passed by the learned Single Judge in WPA 10410 of 2020. In view of dismissal of the appeal, the application being CAN 1 of 2020 has become infructuous and the same is also disposed of.

Since we are informed that an Administrator has already been appointed by the Lieutenant Governor, Andaman and Nicobar Island, the said Administrator is directed to perform the duties as indicated in the order dated December 14, 2020 keeping in view the time period indicated by the learned Single Judge in the order dated December 14, 2020 for completion of the election process.

There shall be, however, no order as to costs.

Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

**(Hiranmay Bhattacharyya, J.)**

**Subrata Talukdar, J:**

I am in respectful agreement with the reasons discussed by my Ld. Brother in his judgement and order and concur with his conclusions. I also take this opportunity to add a few lines.

Regulation (for short “Regn.”) 27 of the Regulations (supra) speaks of *supersession* of committee. The grounds for *supersession* are stated in Regn. 27(1). The action which the Registrar of Cooperative Societies may take pursuant to an act of supersession are connected with the conjunction *and* to Regn. 27(1) by way of incorporating Regn. 27(1)(a) and 27(1)(b).

Relevant for this discussion are also Regn.27(3) and Regn.27(4) of the said Regulations which respectively speak of the powers of the Administrator that cover *all or any of the functions of the committee subject to the control of the Registrar and, at the expiry of his term of office arrange for the constitution of a new committee.*

For the complete benefit of this discussion it will be useful to reproduce below Regn. 27 (1), (1)(a), (1)(b), (3) and (4) (supra):-

*“27. Super-session of committee:- (1) If, in the opinion of the Registrar, the committee of any co-operative society persistently makes default or it is negligent in the performance of the duties imposed on it by this Regulation or the rules or bye-laws, or commits any act which is prejudicial to the interest of the society or its members, the Registrar may, after giving committee an opportunity to state its objections, if any, by order in writing remove the committee; and*

*(a) Order fresh election of the committee; or*

*(b) Appoint one or more administrators, who need not be members of the society, to manage the affairs of the*

*society for such period not exceeding one year as may be specified in the order which period may at the discretion of the Registrar, be extended from time to time, so however, that the aggregate period does not exceed three years.*

*(2) .....*

*(3) The administrator shall, subject to the control of the Registrar and to such instructions as he may from time to time give, have power to exercise all or any of the functions of the committee or of any officer of the society and take all such actions as may be required in the interest of the society.*

*(4) The Administrator shall, at the expiry of his terms of office, arrange for the constitution of a new committee in accordance with the bye-laws of the society.*

*(5) .....”*

Having regard to the true content and intent of Regn. 27 (supra), there can be little doubt that the power to appoint an Administrator under Regn. 27(1) can be exercised when a committee is persistently in default or negligent in the performance of its duties. The persistent default and/or negligence in the performance of its duties is coterminous with the official tenure of the committee and, cannot apply to a committee which is functioning on extension.

In other words, the primary argument advanced by Ld. Counsel for the appellant that Regn. 27(1) could not be invoked against the erstwhile committee is of little consequence when the committee itself is devoid of any vested right to claim a defence against the invocation of Regn. 27(1).

Accordingly, the judgement and order of the Hon'ble Single Bench dated 14<sup>th</sup> December, 2020 suffers from no infirmity and deserves no intervention. The appeal fails.

All parties to act on a server copy of this judgement and order duly collected from the official website of the Hon'ble High Court, Calcutta.

**(Subrata Talukdar, J.)**