

16.02.2022
Court No.13
Item No.6
AP

WPA 1367 of 2022

Biman Debnath

Vs.

Institute of Company Secretaries of India and Ors.

(Through Video Conference)

Mr. Abhratosh Majumder
Mr. Sirsanya Bandopadhyay
Mr. Arka Kumar Nag

... For the Petitioner.

Mr. S. Pal Choudhuri

... For the Respondents.

Supplementary affidavit filed in court today be kept with the record.

The short question to be decided as to whether or not the 317th meeting of the Eastern India Regional Council of the Institute of Company Secretaries of India held on 27th December, 2021 was in accordance with applicable rules and the Statute.

The brief facts of the case are that by 316th meeting of the Eastern India Regional Council of the Institute of Company Secretaries of India held on 18th December 2021, it was resolved that the meeting for electing office bearers to the Regional Council for the year 2022 would be held on 27th December 2021. The meeting was to be held in a hybrid mode both virtually and physically.

A development took place thereafter. The existing Chairman, Sudhir Kumar Banthiya had to vacate office for pending disciplinary proceedings. The post of chairman, therefore, becomes vacant.

The Regional Council could not understand as to how next meeting would be held. Clarifications were sought from the ICSI headquarters regarding the 317th meeting of the EIRC and how to conduct the same in the absence of a chairman. It was clarified by the ICSI headquarter that the meeting could be held on 27th December 2021 as scheduled nominating an interim chairman.

The said email was dispatched and received on 27th December 2021 at about 1 pm. An attempt was made to circulate the same. The procedure was objected to by the writ petitioner by reference to the Company Secretaries Act 1982.

On the 27th of December 2021 one Rajesh Mittal was proposed as chairman of the meeting. The writ petitioner's objections were not addressed. It is not clear from the meeting as to whether there was any formal objection from any other corner to the nomination of office bearers. What is absolutely clear is that the writ petitioner had objected to the entire procedure being adopted. No voting appears to have taken place.

This Court has carefully considered the provisions of the aforesaid regulations and the Company Secretaries Act, 1980.

The Eastern India Regional Council comprises of a chairman, a vice-chairman, a secretary, a treasurer and other members. Regulation 92 prescribes the procedure for election and conduct of business of the council i.e.

the governing body of the ICSI. Regulation 120 prescribes that the provisions applicable to the conduct of business by ICSI shall apply to the regional council, *mutatis mutandis*.

Regulation 92 of Company Secretaries Regulation 1982 is set out hereinbelow:-

“92. Chairman of the Council.-

At all meetings of the Council, the President, and in his absence the Vice-President shall be the Chairman; in the absence of both, the members present shall elect one of the their number to be the Chairman of meeting.

Provided that, at the first meeting of any Council the President of the outgoing Council, or in his absence its Vice-President, shall act as the Chairman until such time a President is elected under the provisions of sub-section (1) of section 12.

Provided further that in the absence of both the President and the Vice president of the outgoing Council the members of the Council present shall elect one of the member to be the Chairman of the meeting until such time a President is elected under the provisions of sub-section (1) of section 12.”

A plain reading of the aforesaid regulation would indicate that in the absence of the president (read ‘chairman’) of outgoing council the vice-president (read ‘vice-chairman’) would conduct, discharge the responsibilities of the office of president.

It is, therefore, clear and explicit since the chairman had demitted office for disciplinary proceedings the vice-chairman being the writ petitioner should have chaired the meeting and discharged all functions of the chairman.

The interpretation sought to be given to support the argument that the election of interim chairman calls within the power conferred under Regulation 119 Sub-clause (2) cannot be accepted. The said provisions are applicable after the first election and constitution of regional council any office or post becomes vacant and there is no other specified person in the regulations to take over the responsibility of such vacant office.

The said regulation cannot come to the aid of the council in justifying their actions in appointing interim chairman/president.

The election of a formal chairman afresh in the 317th meeting was, therefore, improper and incorrect and cannot be countenanced.

The election of chairman as recorded in the said minutes, also does not appear to be clear and unequivocal. Since the constitution and conduct of the meeting was itself opposed by the writ petitioner, it cannot be said that the decisions in the meeting have been unanimous. Given such objection a formal vote on the resolution would have been warranted.

Suffice it to say that the procedure adopted in the conduct of the 317th meeting was erroneous. The meeting

and its resolutions thereunder, therefore, particularly the election of all office bearers shall stand quashed and set aside.

This Court directs that a meeting afresh should be held for the purpose of electing office bearers for the post of the Eastern India Regional Council of the Institute of Company Secretaries on 25th February 2022 at 11 am at the same venue.

No fresh notice need be served on any of the members. The agenda of this meeting would essentially be the agenda carved out and specified in the 316th meeting.

In view of the above, the writ petition is disposed of.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)