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WPA 2743 of 2021
With
IA No. CAN 1 of 2021

Swapan Bhowal & Ors.
-vs-
The State of West Bengal & Ors.

Mr. Uday Shankar Chattopadhyay

.... For the petitioner

Mr. Tapan Kumar Mukherjee,
Ms. Tuli Sinha
... For the State

Mr. Abhishek Halder,
Mr. Arkaprava Sen
.... For the respondent no.14

The writ petitioners challenged an order dated January 19, 2021, passed by the Joint Secretary, Department of Commerce, Industries and Enterprises, Government of West Bengal. By the said order it was communicated to the Secretary of Bandel Elite Academy (respondent no. 14) to remove the impasse created in the operation of the said society, namely Bandel Elite Academy due to the sub-judice matters. The department was of the opinion that the regular matters of the society related to the polytechnic institute were to be jointly administered by the President and the Secretary of the

society in the public interest, especially to protect the future of the students and the staff until a new committee is formed and the Court cases are finally disposed of.

It was also directed to submit regular monthly returns to the Registrar of Firms, Societies and Non-Trading Corporation, West Bengal along with the earnings and expenditure statement which should be jointly signed by the President and the Secretary of the society.

It appears that before I proceed to examine the propriety of the said order the brief facts involved in this case may be noted. The relevant polytechnic institute is run by a society, namely Bandel Elite Academy registered under West Bengal Societies Registration Act, 1961.

Respondent nos.13 and 14 are the President and the Secretary of the said society. The petitioners are members of the said society. The said society has 14 members including respondent nos.13 and 14. There were disputes amongst the members with regard to the management of the society. Respondent no.14 lodged an FIR against some members of the society including the petitioners alleging huge defalcation by them. An investigation was carried out by the police. Petitioner nos. 1 and 2 were arrested. Petitioner no.3 obtained an anticipatory bail from this Court on October 17, 2021. He was restrained from entering the jurisdiction of Mogra

Police Station, where the polytechnic is situated.

The petitioners also lodged an FIR against respondent no.14 and some staff of the polytechnic which was also registered by the relevant police station.

Mr. Chattopadhyay, learned advocate for the petitioner submits that order dated January 19, 2021, has been passed without jurisdiction. The society is a private body and the State has no jurisdiction to interfere with the functioning of the society. The college has no separate governing body. The society functions as governing body of the College.

He further submits that on an earlier occasion respondent no.14 filed a writ petition before this Court against an order dated September 14, 2014, passed by the District Magistrate, Hooghly, restraining him from acting as a part of the governing body and from taking part in any affairs of the college until further order. By an order dated December 12, 2019, passed in the said writ petition a part of the order of the District Magistrate was set aside. The Bench held that a statutory authority can act only on the basis and to the extent of jurisdiction conferred by the statute. The order of the District Magistrate was, therefore, not sustainable.

Mr. Chatterjee submits that same ground the order impugned in the writ petition should be quashed, since

the State has the common authority of the jurisdiction to interfere with the functioning of a duly registered society under the West Bengal Societies Registration Act, 1961.

Mr. Halder, learned advocate representing respondent no. 14, on the other hand, submits that order dated January 14, 2020, was within the competence of the State. He traces the jurisdiction of the State to pass such an order to Section 23 of the West Bengal Societies Registration Act, 1961.

He refers to a letter of complaint dated September 14, 2020, addressed to the Registrar of Firms, Societies and Non-Trading Corporation and submits that since the said Registrar in response to such complaint declined to take any steps on the ground that he has no *locus standi* to enter into the affairs of the college. Such stand of the said Registrar compelled respondent no.14 to lodge a complaint before the Joint Secretary, Department of Commerce and Industries, Government of West Bengal by a letter dated October 1, 2020. Mr. Halder submits that in terms of Section 23 (1) of the Act of 1961, by a letter dated November 23, 2020, an enquiry was directed to be conducted by the State into the affairs of the society by the Registrar of Firms, Societies and Non-Trading Corporation, West Bengal.

Thereafter the order impugned has been passed in

terms of Section 23 (6) of the West Bengal Societies Registration Act, 1961. Mr. Halder submits that the said Section authorises the State to pass necessary orders for the larger public interest. He submits that the said order was passed to clear the impasse. The State has rightly passed the order to protect the interest of the students of the polytechnic and the society as well.

He further submits that since as per bye-laws of the society, the cheques of the societies can be signed by the President, Secretary and the Treasurer. Since petitioner no.3, who is the Treasurer of the society, has been debarred from entering the polytechnic, the President and the Secretary should be allowed to run the society as directed by the State in the impugned order.

Mr. Tapan Kumar Mukherjee, learned senior advocate for the State supports the order impugned saying that the order was passed by the State keeping in mind the deadlock created in the functioning of the society and for the protection and the interest of the students. He further submits that when the society is running in a manner detrimental to the interest of the students, the State decided to interfere. The order was passed with a *bona fide* intention and as such the same should not be interfered with.

I am of the view that the order of the Joint Secretary dated January 19, 2021, cannot be sustained.

Section 23 of the West Bengal Societies Registration Act, 1961 is quoted below:

“23. Investigation of affairs of a society.—(1) Where on information received, the State Government is of opinion that there are circumstances suggesting that the business of a society is being conducted with intent to defraud its creditors, members or any other person, or that the society is guilty of mismanaging its affairs or of any fraudulent or unlawful act, the State Government may appoint a competent person as [Commissioner for Enquiry] to investigate into the affairs of the society or inspect any institution managed by the society and report on such matters as the State Government may direct.

(2) It shall be the duty of every officer of the society when so required by [Commissioner for Enquiry] to produce any books and papers of or relating to the society which are in his custody, and otherwise to give to the [Commissioner for Enquiry] all assistance in connection with the investigation or inspection which he is reasonably able to give.

(3) [A Commissioner for Enquiry] may call upon and examine on oath any officer of the society in relation to the affairs of the society and it shall be the duty of every officer when so called upon to appear before the [Commissioner for Enquiry] for such examination.

(4) On the conclusion of the investigation or inspection, as the case may be, the [Commissioner for Enquiry] shall make a report to the [State Government] on the matters on which he was directed by the State Government to report.

(5) For refusal to comply with the provisions of sub-section (2) or sub-section (3), the officer in default shall be punishable with fine which may extend to two hundred and fifty rupees.

(6) [On perusal of the report made by the Commissioner for Enquiry] the State Government may give such directions as it may think fit to the society for the removal of any defects or irregularities within such time as may be specified and on the society making any default in taking action according to such directions the State Government may direct the Registrar to move the Court for dissolution of the society.

(7) If on a perusal of the report [made by the Commissioner for Enquiry], it appears to the State Government that any person has, in relation to the formation, promotion, management or conduct of the business of the society, been guilty of any offence for which he is criminally liable, the State Government may direct the prosecution of such person for the offence.

(8) The expenses of, and incidental to, an investigation by [Commissioner for Enquiry] appointed by the State Government shall be defrayed by the State Government.”

A bare perusal of Section 23 makes it clear that before passing an order in terms of sub-section (6) thereof, the State must take into consideration the report made by the Commissioner of Enquiry. The order impugned does not reflect that in passing the said order any such enquiry report was considered by the State. sub-section (6) further provides that the Government is authorised to give such direction as it may think fit to the society for the removal of any defects or irregularities. The order impugned does not direct to remove any defects or

irregularities. On the other hand, it interferes with the functioning of the society directing the President and the Secretary to run the society in denial of the right of the other members.

The said sub-section (6) does not confer the State any power to interfere with the functioning of the society. It, as noticed earlier, can only direct the society to remove the defects or irregularities within a specific period of time. In the event the society defaults in taking action according to such direction, the State may direct the Registrar to move the Court for dissolution of the society.

The order impugned clearly goes beyond the scope of sub-section (6) of Section 23 of the West Bengal Societies Registration Act, 1961.

It has been submitted by Mr. Halder that the words “such directions as it may think fit” as deployed in sub-section (6) authorises the State to pass any order for larger public interest. In support of his submission, he relied upon a judgment reported in **(2020) 13 SCC 521 (Department of Customs v. Sharad Gandhi)**. It has been held in paragraph 17 of the said judgment that as follows:-

“**17.** The question would be whether the High Court is right in applying the principles of ejusdem generis. In order that it applies, the Court must find the existence of enumerated things before general words. In other words, specified categories must have a

common golden thread of commonality running through them. The specified words must be followed by general words. Since the purpose of interpretation of statute is to glean the legislative intention and purposive interpretation being an important tool of statutory interpretation, the demands made by the same may overwhelm, the temptation to place a restrictive interpretation by adopting the principles of *ejusdem generis* unless it is warranted. Two views being possible, a view which advances the object may be preferred but the question arises whether the learned Additional Solicitor General would be justified in relying upon the principles relating *ejusdem generis* in the facts. When the legislature makes a law, the presumption is that it is aware of all existing laws. The Court does not begin with a presumption of ignorance. The Act in question, would indeed furnish a lucid illustration of the aforesaid principles. The legislature was fully conscious that the Customs Act, 1962 exists on the statute book. The legislature was conscious of its operation and it wanted to articulate the manner in which both laws were to co-exist. It is accordingly that in Section 4 it has expressly provided that the Customs Act shall apply in relation to all antiquities and art treasures, the export of which by any person other than the Central Government or authorised or agency is prohibited under Section 3 of the Act. The only area where it tabooed the application of the Customs Act is where the Act contains provisions which were irreconcilable being inconsistent with the Antiquities Act. Equally, it also expressly provided for the situation that any confiscation, notwithstanding Section 125 of the Customs Act thereof, shall be made in regard to antiquities and art treasure unless on an application made to the Central Government, it otherwise directs. Section 125 of the Customs Act is a provision which enables the officer adjudging the confiscation proceedings to give an option to pay a fine in lieu of

confiscation. The obvious intention of the legislature is to provide that once an order for confiscation is passed under the Customs Act in respect of antiquities or art treasure the powers ordinarily available under Section 125 of the Customs Act will not be available.”

The said judgment is not applicable in the present case. The wording of Section 23 (6) of the Act of 1961 makes it clear that the authority of the State is limited to the extent of passing a direction upon the society to remove the defects or irregularities. The State cannot direct a society to be run only by the President and the Secretary.

Such an order directly interferes with the rights of the other members to manage the affairs of the society.

For the aforesaid reason, I am of the opinion that the order impugned dated January 19, 2021, cannot be sustained and the same is accordingly quashed.

Mr. Chatterjee, learned advocate for the petitioner, has drawn my attention to the order dated April 20, 2022 passed in CRM No.5073 of 2020, wherein it has been observed as follows:

“... However, condition imposed upon him not to enter the jurisdiction of Mogra Police Station is modified and the applicant/petitioner No.3 is restrained from entering the precincts of the college concerned without permission of this court in the course of writ proceedings being WPA 2743 of 2021.”

For the aforesaid reasons, as indicated in this order, I permit petitioner no.3 to enter the precincts of the polytechnic to participate in the affairs of the society.

Accordingly, WPA No. 2743 of 2021 is allowed and the connected application being I.A. No. CAN 1 of 2021 is disposed of.

Parties are directed to act on the server copy of this order.

(Kausik Chanda, J.)

