

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

(Appellate Side)

MAT 213 of 2022

with

CAN 1 of 2022

with

MAT 219 of 2022

with

CAN 1 of 2022

(Through Video Conference)

Reserved on : 24.02.2022

Pronounced on: 13.04.2022

Institute of Company Secretaries of India & Ors.

...Appellants

-Vs-

Biman Debnath & Ors.

...Respondents

&

Anil Kumar Dubey

...Appellant

-Vs-

Biman Debnath & Ors.

...Respondents

Present:-

Mr. Abhrajit Mitra, Senior Advocate,

Mr. S. Pal Chodhury, Advocate

.... for the Appellants in MAT 213 of 2022

Mr. Kishore Datta, Senior Advocate,

Mr. Sayantak Das,

Mr. Bikash Kumar Roy, Advocates

.... for the Appellant in MAT 219 of 2022

Mr. Abhrajit Mitra, Senior Advocate,
Mr. S. Pal Choudhury, Advocate

.... for the Respondents (I.C.S.I.)
in MAT 219 of 2022

Mr. Abhratosh Majumdar, Senior Advocate,
Mr. Sirsanya Bandopadhyay,
Mr. Arka Kumar Nag, Advocates

.... for the Writ Petitioner/ Respondent
No. 1 in both the appeals

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE**

**THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE**

Rajarshi Bharadwaj, J:

1. By this appeal, correctness of the order of the Learned Single Judge dated 16.02.2022 passed in W.P.A. No. 1367 of 2021 (Biman Debnath - versus- Institute of Company Secretaries of India & Ors.) has been questioned by the petitioner. This appeal challenges the order of the Learned Single Judge who allowed this writ petition holding that the procedure adopted in the conduct of the concerned 317th meeting of the ICSI East Zone was erroneous.

2. On the 316th meeting of the Eastern India Regional Council of the Institute of Company Secretaries of India, 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.

3. However, on 22nd December, 2021, Mr. Sudhir Kumar Banthiya, the existing chairman of EIRC was disqualified to hold the office as a council member of EIRC in a proceeding relating to professional misconduct. The Regional Council could not understand as to how the next meeting would be held and thus clarifications were sought from the ICSI headquarters regarding the 317th meeting of the EIRC and how the same would be conducted in the absence of a chairman. The ICSI headquarters clarified that the meeting could

be held on 27th December, 2021 as scheduled nominating an interim chairman.

4. On 27th December, 2021, an e-mail was issued by the respondent no.4 at 1:31 p.m. by which it issued a guidance/clarification. The opposite-party no.1 issued an email dated 27th December, 2021 at 4 p.m. to all the parties in the writ petition on a misconceived interpretation of the regulations. The procedure of attempting to circulate the said email was objected to, by the writ petitioner by reference to the Company Secretaries Act 1982.

5. At 7 p.m. on 27th December, 2021 the 317th meeting commenced and the office-bearers were elected. One Rajesh Mittal was proposed as chairman of the meeting. The objection of the writ petitioner was not addressed neither is it clear from the meeting as to whether there were any formal objection to the nomination of office bearers. Although the writ petitioner had objected to the entire procedure being adopted and that no voting appears to have taken place.

6. On 19th January, 2022 the opposite-party no.1 filed the present writ petition being W.P.A. No. 1367 of 2021. The issue to be decided is whether 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.

7. The provisions of the aforesaid regulations and the Company Secretaries Act, 1980 were carefully considered by the Learned Single Judge. Regulation 92 of Company Secretaries Regulation 1982, prescribes the procedure for election and conduct of business of the council i.e., the governing body of ICSI.

8. The Eastern India Regional Council comprises of a chairman, vice-chairman, secretary, treasurer and other members and Regulation 120 prescribes that the provisions applicable to conduct of business by ICSI shall apply to such regional councils as well.

9. As per a plain reading of Regulation 92 of Company Secretaries Regulation 1982, in the absence of the president/chairman of outgoing council, the vice-president/ vice-chairman would conduct and discharge the responsibilities of the office of president.

10. Here, since the chairman had demitted office for disciplinary proceedings, the vice-chairman being the writ petitioner should have chaired

the meeting and discharged the functions of chairman. The contention that the election of the interim chairman comes within the power conferred under Regulation 119 sub-clause (2) was not accepted by this court.

11. The Learned Single Judge held that the action in appointing interim chairman/president was not justified. Thus, the election of a formal chairman in the 317th meeting was improper and incorrect. The decision of election of chairman in the meeting cannot be said to be unanimous since the constitution and conduct of the meeting was itself opposed by the writ petitioner. A formal vote on the resolution would have been warranted given such objection. As the procedure adopted in the conduct of the 317th meeting was erroneous, the Learned Single Judge quashed and set aside the election of all office bearers as well as the meeting and its resolutions. The court directed a fresh meeting to be held on 25th February, 2022 at 11 a.m. for the purpose of electing office bearers of the Eastern India Regional Council of the Institute of Company Secretaries.

12. Thus, no case is made out to interfere in the order of the Learned Single Judge. For the foregoing reasons, the appeal is found to be devoid of any merit which is accordingly dismissed. All pending applications are also accordingly disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata

13.04.2022
PA(BS)