

6th April,
2022
(AK)
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W.P.A 4233 of 2022

Ananta Deb Co-operative Housing Society
Limited and another
Vs.
The State of West Bengal and others

Mr. Achintya Kr. Banerjee,
Mr. Indumouli Banerjee

.... for the petitioners

Mr. Srijan Nayak,
Mrs. Rituparna Maitra

.... for the State

Mr. P.K. Roy,
Mr. Biplab Das,
Mr. Ankit Sureka

.... for the respondent no.2

Ms. Sonal Shah,
Mr. Aniket Chaudhary

.... for the respondent nos.6 to 11

Mr. Subrata Ghosh,
Mr. Pratyush Ghosh

.... for the respondent no.12

Learned counsel for the petitioners contends that the impugned notification dated December 20, 2021, superseding the earlier notification dated December 6, 2021 was issued *de hors* the law and by flouting the basic tenet of natural justice, that is, *Audi Alteram Partem*.

It is contended that despite a representation having been given by the petitioners on behalf of the erstwhile Board of Directors, the tenure of which expired in the year 2018, the Registrar of Co-operative Societies sat tight over the matter.

It is contended further that proper administration of the Society cannot be conducted unless the petitioners' specific representation, asking the Registrar to take adequate steps with regard to correction of the irregularities happening in the Society, is acted upon.

It is contended that the Notification dated December 20, 2021 is not maintainable in law, in particular under Section 35 of the West Bengal Co-operative Societies Act, 2006.

It is further submitted by learned counsel for the petitioners that no reasons were recorded by the State Government in the impugned Notification within the purview of Sub-Section (1A) of Section 35 of the 2006 Act, which is a prerequisite of appointment of an administrator.

It is further submitted that in view of the second proviso to sub-section (1A) of Section 35 stipulating a specific bar, which is attracted in the present case, the purported Notification under Section 35 was barred by law.

By placing reliance on the first proviso to sub-section (1A), learned counsel contends that the Board of any such Co-operative Society as mentioned in the said provision shall not be superseded or kept under suspension where there is no Government shareholding or loan or financial assistance or any guarantee by the

Government. It is submitted that none of the criteria envisaged therein apply to the present case.

It is further contended by the petitioners that the allegedly recalcitrant members of the society failed to discharge their obligations by making due payments, for which the erstwhile Board was compelled to continue administration of the Society.

Learned counsel appearing for the respondent nos.6 to 11 argues that, contrary to the allegations levelled by the petitioners, it is the said respondents, that is, respondent nos.6 to 11, who have been the worst sufferers.

Learned counsel cites several instances of irregularities and mismanagement, including specific acts of embezzlement, having been perpetrated by the erstwhile Board of Directors.

Learned counsel appearing for the respondent-authorities submits that the provisions of Section 35 of the 2006 Act squarely applied in the present case and have been substantially complied with in the Notification impugned before this court.

A plain reading of Section 35 (1A) indicates that if the State Government is of the opinion, *inter alia*, that the Co-operative Election Commission has failed to conduct election in accordance with the provisions of the Act, the State Government may, by Notification stating reasons therefor, supersede the Board and the Directors of such

Board shall forthwith vacate their offices and by the said Notification the State Government shall appoint one of its officers to manage the affairs of the Co-operative Society who shall be called the administrator, for the period specified in sub-section (1).

It is seen from the impugned Notification dated December 20, 2021 that all the criteria as stipulated in Section 35 have been substantially complied with.

In the present case, admittedly no election has been held by the Co-operative Election Commission, which comes squarely within the purview of Clause (c) of sub-section (1A) of Section 35.

The Notification dated December 20, 2021 specifically mentioned that no election of Board of Directors in the Co-operative Society-in-question was held since its registration.

It is further stated in the Notification that the election for reconstitution of the Board of Directors of the said Society could not be held because of certain unavoidable administrative exigencies.

Hence, ample ground was disclosed in the Notification regarding the election as contemplated in the 2006 Act having not been conducted by the Co-operative Election Commission, which satisfied Clause (c) of sub-section (1A) of Section 35 of the 2006 Act.

That apart, the State Government appointed one of its officers as administrator, as envisaged in sub-section

(1A) for the period specified in sub-section (1) of Section 35.

Non-mention of the specific term “supersede” is not a *sine qua non* for issuing a Notification within the contemplation of Section 35 (1A), as per the language of the said provision itself.

It is *ex facie* obvious and evident that by virtue of the impugned Notification, on the ground of the Co-operative Election Commission having failed to conduct election in accordance with the provisions of the Act under Section 35 (1A)(c), the State Government appointed an administrator in supersession of the existing Board and the Directors of such Board had no other option but to forthwith vacate their offices upon receipt of the Notification dated December 20, 2021.

Learned counsel for the respondent-authorities is justified in arguing that the petitioners, which had become defunct by expiry of its tenure as long back as in the year 2018, have no *locus standi* to prefer the instant application under Article 226 of the Constitution of India.

In any event, in view of the discussions above, this court does not find any patent irregularity or illegality and/or excess of jurisdiction on the part of the respondents authorities to justify interference under Article 226 of the Constitution of India.

As far as the allegation of the petitioners with regard to non-applicability of the conditions as stipulated in the

first proviso to sub-section (1A) is concerned, the same is squarely a factual issue which cannot be decided without taking evidence, which is patently beyond the charter of the writ court.

Hence, the present writ petition cannot be entertained merely on such bald allegation being made by the petitioners.

In such view of the matter, WPA No.4233 of 2022 is dismissed without any order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)