

179
04.05.2022
TN

WPA No.7309 of 2022
IA No: CAN 1 of 2022

Sri Goutam Chatterjee
Vs.
Joint Registrar of Cooperative
Societies and others

Mr. Soumabho Ghose,
Mr. S. Ganguli,
Ms. Tiana Bhattacharyya

.... for the petitioner

Mr. Pradip Kumar Roy,
Mr. Biplob Das

.... for the respondent no.1

Mr. Lalit Mohan Mahata,
Mr. Prasanta Behari Mahata

.... for the State

Mr. D.K. Adhikari,
Mr. Asit Bera

.... for the addition of party

In Re: IA No: CAN 1 of 2022

Learned counsel appearing for the applicant in the application for addition of party submits that the applicant is a member of the concerned Co-operative Society and lodged a complaint against the present writ petitioner, who has been functioning as the Secretary of the Co-operative Society since the 2000 elections.

It is contended that no electoral process took place within the contemplation of Section 29 of the West Bengal Co-operative Societies Act, 2006 (hereinafter referred to as “the 2006 Act”) in the meantime. Taking advantage of the situation, it is alleged, the writ petitioner has been defalcating funds and misappropriating amounts without maintaining any valid records of accounts. That apart, the applicant has several other allegations of serious nature, it is contended, against the writ petitioner.

However, the scope of challenge in the present writ petition is limited to the validity of the show cause notice issued to the writ petitioner, which formed the premise of the subsequent action against the petitioner. Whatever may be the outcome of the present writ petition, the applicant in CAN 1 of 2022 has no direct interest in the matter. Moreover, whichever way the writ petition goes finally, the same shall not preclude the applicant herein from making appropriate complaints against the writ petitioner before the appropriate forum and to proceed with the same in accordance with law.

As such, in view of the applicant not having any direct interest in the outcome of the writ petition, since the allegations and counter-allegations involved herein pertain to the writ petitioner and the

respondent-authorities, CAN 1 of 2022 is dismissed without any order as to costs.

However, it is made clear that the merits of the allegations made in the application for addition of party against the writ petitioner, have not been gone into by this court while deciding the application for addition of party.

Since no affidavits have been invited in respect of the said application, that is, CAN 1 of 2022, it is deemed that none of the allegations made in the application are admitted by the writ petitioner and/or the other parties.

WPA No.7309 of 2022 is now taken up for hearing as a 'Listed Motion'.

In Re: WPA No.7309 of 2022

Learned counsel for the petitioner contends that the show cause notice (Annexure-P/7 at page-49 of the writ petition), was issued without specifying in details what are the actual allegations against the writ petitioner and/or without disclosing the foundation or basis of the said allegations. Moreover, despite the writ petitioner having promptly replied to the same within five days, no copy of any document or material to incriminate the petitioner on any ground were given by the respondent-authorities to the petitioner.

As such, learned counsel contends that the show cause notice was *de hors* the law and ought to be set aside.

That apart, learned counsel argues that the authorities had reached foregone conclusions in the show cause notice itself, prior to giving an opportunity of hearing to the petitioner at any point of time.

Moreover, the order passed in consequence of the show cause notice was beyond the allegations made in the show cause notice itself, it is contended.

Learned counsel appearing for the State, in his usual fairness, contends that certain ingredients of allegations were disclosed in the show cause notice, although no specific details were.

Learned counsel appearing for the respondent-authorities, on the other hand, contends that the writ petition ought to be dismissed *in limine*, in view of the writ petitioner himself being a defaulter in law.

It is contended that the petitioner has admitted in paragraph no.3 of the writ petition that the petitioner has been the Secretary of the respondent no.3-Housing Society for a period of twenty-two years commencing from the year 2000 till date. As such, it is contended that, within the contemplation of Section 32 of the 2006 Act, the petitioner had carried on in

the office of Secretary of the Society illegally and *de hors* the law on the subject.

Hence, the petitioner has not come with clean hands and the writ petition ought to be dismissed at the threshold, it is contended.

Learned counsel further submits that the show cause notice categorically mentioned the allegations made against the writ petitioner. In view of the writ petitioner himself having filed a reply thereto, it does not lie in the mouth of the writ petitioner to say that the procedure adopted by the respondent-authorities was illegal or violative of the principles of natural justice.

However, a mere perusal of the show cause notice dated March 14, 2022 (Annexure-P/7 at page-49 of the writ petition) indicates that the same was sketchy and vague.

No specific allegation was disclosed therein as against the writ petitioner, nor was any foundation or basis for coming to the conclusions, even *prima facie*, in the show cause notice were disclosed.

Moreover, in view of the petitioner having categorically asked for the basis and/or foundation of the purported allegations, it was the incumbent duty of the respondent-authorities to hand over the copies

of all material basis, if any, for upholding the allegations made against the petitioner.

Thirdly, learned counsel for the petitioner is absolutely justified in arguing that the show cause notice itself contained foregone conclusions as against the petitioner, as reflected from the tenor of the same. It is conspicuous to note that the show cause notice itself was captioned as an '**O R D E R**'.

In view of the above considerations, the show cause notice impugned in the present writ petition and/or the consequential action taken by the respondent-authorities against the petitioner do not stand a moment's judicial scrutiny.

That apart, the alleged conduct of the petitioner in continuing beyond the statutory period as the Secretary of the Co-operative Society does not, itself, call for any sanction within the contemplation of the 2006 Act, apart from necessitating the respondent-authorities to take appropriate steps and to interdict for the purpose of organising an election of the Society. In view of the respondent-authorities having not done so, it does not befit the said respondents to contend that the petitioner was a "law-breaker".

In fact, despite the stipulation in Section 32(6) of the 2006 Act that no Director who has been an office bearer for two consecutive terms or 120 months,

whichever is less, shall be eligible for re-election as an office bearer until after expiry of five years of the next term, there is no specific provision in the Act or the connected Rules of 2011, which call for any specific penal action against the petitioner.

That apart, the said allegations did not even form a part of the purported show cause notice issued against the petitioner, which has been impugned in the present writ petition.

In such view of the matter, WPA No.7309 of 2022 is allowed, thereby setting aside the purported show cause notice dated March 14, 2022 issued against the writ petitioner (Annexure-P/7 at page-49 of the present writ petition) and the consequential action, including the order dated March 28, 2022 passed vide Memo No.216/1(3)/IX-18/69/KMAH.

Hence, the writ petitioner's status reverses back to the original position in which the petitioner stood prior to the issuance of the show cause notice. However, it is made clear that the merits of the allegations made against the petitioner have not been gone into in the present writ petition. The entire consideration above has been for the purpose of arriving at a tentative decision as regards the validity of the purported show cause notice and shall not preclude the respondent-authorities from taking

appropriate legal action in accordance with law against the petitioner and/or the petitioner from controverting such allegations in due course of law in future.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)