IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction
(Appellate Side)

M.A.T. 1011 of 2021
I.A. No. CAN/2/2022

Sukumar Bera
Vs.
The State of West Bengal & Ors.

With

CPAN 119 of 2022
Chintamani Mandal
Vs.
Dr. M. V. Rao

In

MAT 1012 of 2021
I.A. No. CAN 1 of 2021

Suvendu Adhikari

Vs.

The State of West Bengal & Ors.

Before: The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Kausik Chanda

For the Appellants in (MAT 1011 of 2021) and For the Respondent no.8 in (CPAN 119 of 2022)	: Mr. Abhratosh Majumdar, Sr. Adv. Mr. Srijib Chakraborty, Adv. Mr. Aditya Mondal, Adv.
For the Respondent nos. 2	: Mr. Pradip Kumar Roy, Adv. Mr. Joydeep Roy, Adv.
For the Respondent nos. 6	: Mr. Pratik Dhar, Sr. Adv. Mr. Ritwik Pattanayak, Adv.
For the Respondent nos. 8 in (MAT 1011 of 2021) and For the Appellants in	: Mr. Billwadal Bhattacharyya, Adv. Mr. Anish Kumar Mukherjee, Adv. Mr. Saket Sharma, Adv.

(MAT 1012 of 2021)	Mr. Amrit Sinha, Adv. Mr. Surojit Saha, Adv.
For the State	: Mr. S.N. Mookherjee, LAG. Mr. Anirban Ray, LGP. Mr. Srijan Nayak, Adv. Ms. Rituparna Maitra, Adv.
For the R.B.I.	: Mr. Alok Kumar Banerjee, Adv. Mr. Arunabha Sarkar, Adv.
For the alleged Contemnor no. 4 In (CPAN 119 of 2022)	: Mr. Ankit Surekha, Adv. Mr. Biplob Das, Adv.
Heard On	: 06.12.2021, 20.01.2022, 11.02.2022, 21.02.2022, 22.02.2022, 25.02.2022 and 28.02.2022
CAV On	: 01.03.2022
Judgment On	: 20.04.2022

In re: I.A. CAN 2 of 2022

Arijit Banerjee, J.:

1. **I.A. No. CAN 2/2022 and CPAN 119 of 2022** arise out of the same bundle of facts. Accordingly, we have taken up the two matters analogously and are disposing of both by this common judgment and order.

2. Three appeals viz. M.A.T. 1011 of 2021 (***Sukumar Bera v. The State of West Bengal and Ors.),*** M.A.T. 1012 of 2021 ***(Suvendu Adhikari v. The State of West Bengal and Ors.)*** and M.A.T 808 of 2021 ***(Sukumar Bera v. The State of West Bengal and Ors.)*** were disposed of by this Bench along

with the connected applications by a judgment and order dated January 20, 2022. The relevant portion of the said order reads as follows:-

> “Since there is a serious contention about the competence or authority of the present Board to be in charge of the affairs of the Bank and since the Bank deals with public money, we are of the view that for its remaining tenure till the constitution of a fresh Board, the present Board should function under the general supervision of an officer to be nominated by the Governor of the Reserve Bank of India. Such officer shall not interfere with the day to day functioning of the Board. However, any major policy decision shall be taken and any transaction over the value of Rs. 1 Crore shall be undertaken by the Board only in consultation with such officer. We are passing this order of interim arrangement in public interest and to inspire public confidence in the functioning of the concerned Bank. The Reserve Bank of India being the guardian of all Banks in India and having supervisory power over such Banks, we are sure that the present Board shall not find it objectionable to function for the limited period indicated above under the general supervision of an Officer of the Reserve Bank of India.”

3. The appellant has taken out the present application for modification of the aforesaid order dated January 20, 2022. The prayer in the said application reads as follows:-

> "In the premises as aforesaid Your Lordships would graciously be pleased to issue a Rule calling upon the respondents to show cause as to why the order dated 20.01.2022 passed in CAN 1 of 2021 in MAT 808 of 2021 and CAN 1 of 2021 in MAT 1011 of 2021 be not modified to the effect that due to the expiry of the tenure of the Board of Directors in the respondent no. 6 Bank, the Reserve Bank of India should be directed to take control of the day to day affairs of the respondent no. 6 bank in terms of the Banking Regulation Act, 1949 and on causes being shown and/or if no cause is shown to make the Rule absolute and to pass such further order/orders as Your Lordships may deem fit and proper."

4. We have been told that pursuant to the aforesaid order, the Governor of the Reserve Bank of India (in short 'RBI') has nominated an officer, under whose supervision the Board of Directors of the Bank is presently functioning.

5. Appearing in support of the application, Mr. Abhratosh Majumder, Learned Senior Counsel, submitted that the tenure of the Board of Directors of the Cooperative Bank came to an end on February 5, 2022. Referring to Section 36(2) of the West Bengal Cooperative Societies Act, 2006, he submitted that all the Directors are deemed to have vacated office on that date. None of them can function as a Director any further. However, taking advantage of this Court's Order dated January 20, 2022, the defunct Board continues to operate.

6. Mr. Majumder further submitted that RBI should exercise its powers under Section 35 ACA of the Banking Regulation Act, 1949, and appoint an Administrator over the affairs of the Cooperative Bank. Referring to Section 35 (1A) of the 2006 Act, he argued that there is no inconsistency between the powers of the State Government and the power of RBI to take charge of the affairs of the Cooperative Bank by appointing an Administrator in the event protection of interest of the depositors so warrants. He said that since the Bank is presently functioning under the supervision of an officer of RBI, it would be convenient that RBI takes charge of the affairs of the Bank by appointing an Administrator till such time that a new Board of Directors is elected. The Board, of which the tenure has expired, cannot be allowed to function even for a single day. He further pointed out that most of the Directors having completed ten years on the Board, they are disqualified to contest the next election by reason of the provisions of Section 10A(2A) of the Banking Regulation Act which provides inter alia that no director of a banking company other than its chairman or whole-time Director, by whatever name called, shall hold office continuously for a period exceeding 8 years.

7. Appearing for the respondent nos. 6,7,9 to 11, 13 to 18, Mr. Pratik Dhar, learned Senior Counsel, urged the following points:-

> (i) Section 36 of the West Bengal Cooperative Societies Act, 2006, which deals with expiry of the Board's term and appointment of Special Officer, will not apply in the facts of this case because of judicial intervention. He pointed out that a writ petition being WPA

1631 of 2021 was filed by the Bank challenging a notification dated January 8, 2021, issued by the State Government appointing a nominee on the Board of Directors of the Bank. Upon the learned Single Judge refusing to pass an interim order, the Bank preferred an appeal being MAT 120 of 2021. In the said appeal an interim order dated February 11, 2021, was passed "directing the parties to maintain status quo ante maintaining the position connected to the composition of the BOD of the appellants as existing prior to the notification impugned dated 8th of January, 2021 until further orders. In view of the aforesaid direction, the notification dated 8th January, 2021, remains axiomatically stayed. Mr. Dhar submitted that such interim order is still in subsistence. Accordingly, neither the State Government nor RBI can interfere with the composition of the Board of Directors without first getting the said interim order vacated or suitably modified.

(ii) Mr. Dhar then submitted that it was the responsibility of the Cooperative Election Commission to hold election prior to expiry of the tenure of the present Board. Each and every effort made by the Election Commission to do so was challenged at every stage by the appellant. The appellant's sole object has been to create a situation which would apparently justify appointment of a Special Officer by the State Government or an Administrator by RBI over and in respect of the affairs of the Bank. The State has also acted in a manner making election impossible till date. By issuing notification under Section 36 of the West Bengal Cooperative Societies Act, 2006, the State has sought to do indirectly what it could not do directly because of subsistence of the interim order passed in MAT 120 of 2021. In this connection learned Counsel relied on the decision of the Hon'ble Supreme Court in the case of ***Shiv Kumar Sharma v. Santosh Kumari (2007) 8 SCC 600,*** at paragraph 22 whereof it has been observed that what cannot be done directly cannot be done indirectly. Learned Counsel also relied on the decision of the Hon'ble Supreme Court in the case of ***Devendra Kumar V. State of Uttaranchal & Ors. (2013) 9 SCC 363,*** at paragraph 25 whereof it has been observed that a person cannot take advantage of his own wrong.

(iii) Thirdly, Mr. Dhar submitted that until fresh election is held, the choice is between the present Board running the affairs of the Bank under the supervision of the officer nominated by RBI or a Special Officer appointed by the State or an Administrator appointed by RBI taking charge of such affairs. The present Board has been managing the affairs of the Bank successfully for the last several years. It will be in the interest of all concerned if the present Board under the supervision of the officer nominated by RBI continues to administer the Bank until constitution of a new Board pursuant to election. Referring to Section 29(7) of the Cooperative Societies Act, 2006, learned Counsel submitted that under certain circumstances even the Registrar of Cooperative

Societies can constitute a Board. A fortiori, the Court can order an ad-hoc Board to function for a limited period if the circumstances of a case so warrant. There is no allegation of mis-management of the Bank's affairs by the present Board. The election will be completed very soon. The present arrangement should continue in so far as managing the affairs of the bank is concerned.

(iv) Mr. Dhar then submitted that the bonafide of the present Board is beyond any question. Even with a favourable interim order of status quo in its favour, it is trying to get fresh election held rather than trying to delay the election.

(v) Learned Counsel then submitted that the State, by issuing notification under Section 36 of the 2006 Act has acted in breach of the aforesaid interim order of status quo ante passed by the Division Bench in MAT 120 of 2021. Learned Counsel referred to paragraph 28 of the Supreme Court decision in the case of ***All Bengal Excise Licensees' Association v. Raghabendra Singh & Ors. (2007) 11 SCC 374,*** which reads as follows:-

> "In our opinion, a party to the litigation cannot be allowed to take an unfair advantage by committing breach of an interim order and escape the consequences thereof. By pleading misunderstanding and thereafter retaining the said advantage gained in breach of the order of the Court and the wrong perpetrated by the respondent contemnors in contumacious

disregard of the order of the High Court should not be permitted to hold good. In our opinion, the impugned order passed by the High Court is not sustainable in law and should not be allowed to operate as a precedent and the wrong perpetrated by the respondent contemnors in utter disregard of the order of the High Court should not be permitted to hold good."

(vi) Mr. Dhar submitted that the prayer in the modification application is in effect one for appointment of Administrator by the RBI over and in respect of the Bank's affairs. This is identical with prayer (e) of a Public Interest Litigation pending before a Coordinate Bench being ***WPA(P) No. 225 of 2021 Devasish Jana v. Reserve Bank of India and Ors.*** Hence, this Court should not entertain such prayer.

(vii) Finally, Mr. Dhar submitted that the present modification application is not maintainable. The appeal stood disposed of by the order dated January 20, 2022. The appeal cannot be reopened by way of a miscellaneous application. The applicant could have preferred a Special Leave Petition before the Hon'ble Supreme Court or could have filed a review application. In this connection learned Counsel relied on paragraph 10 of the decision of the Hon'ble Supreme Court in ***State of Uttar Pradesh v. Brahm Datt Sharma and Anr. (1987) 2 SCC 179*** which reads as follows:-

"The High Court's order is not sustainable for yet another reason. Respondents' writ petition challenging the order of dismissal had been finally disposed of on August 10, 1984, thereafter nothing remained pending before the High Court. No miscellaneous application could be filed in the writ petition to revive proceedings in respect of subsequent events after two years. If the respondent was aggrieved by the notice dated January 29, 1986 he could have filed a separate petition under Article 226 of the Constitution challenging the validity of the notice as it provided as separate cause of action to him. The respondent was not entitled to assail validity of the notice before the High Court by means of a miscellaneous application in the writ petition which had already been decided. The High Court had no jurisdiction to entertain the application as no proceedings were pending before it. The High Court committed error in entertaining the respondent's application which was founded on a separate cause of action. When proceedings stand terminated by final disposal of writ petition it is not open to the court to reopen the proceedings by means of a miscellaneous application in respect of a matter which provided a fresh cause of action. If this principle is not followed there would be confusion and chaos and the finality of proceedings would cease to have any meaning."

8. In reply, Mr. Majumder, learned Advocate for the applicant submitted that the interim order of status quo would be applicable only in respect of composition of an existing Board. The order cannot apply in respect of composition of a Board of which tenure has expired. The status quo order must be construed in the context of the challenge in those proceedings which was to the nomination of a Government representative on the Board of the Bank. He further submitted that the Board members, when they moved the court for early election, did not feel that the status quo order will stand in the way. No contempt application has been filed by the Board members for alleged violation of the *status quo* order.

9. As regards the point of maintainability of the modification application, Mr. Majumder submitted that the writ petition which gave rise to the appeal on which the order dated January 20, 2022, was passed, modification whereof is sought, is pending. Hence it cannot be said that the proceedings have been disposed of finally. When the said order was passed, everybody was under the impression that election for constitution of a fresh Board will be held prior to the tenure of the Board expiring. Since that has not happened and the Board continues to function, the present modification application became necessary. He also referred to Order 39 Rule 4 second proviso of the Code of Civil Procedure.

10. We have considered the respective contentions of the parties.

11. The prayer in the modification application is for a direction on the Reserve Bank of India to take control of the day to day affairs of the

respondent Bank in terms of the provisions of the Banking Regulation Act, 1949. RBI being the guardian of all Banks in the country, no doubt it has power to supervise or regulate the operations of a particular Bank. In fact, the RBI has the power to supersede the Board of Directors of a banking company in certain cases and appoint an Administrator over the affairs of the banking company. The power is to be exercised by RBI in consultation with the Central Government and in public interest for preventing the affairs of a banking company from being conducted in a manner detrimental to the interest of the depositors or for securing proper management of the banking company. Upon such an order of supersession being passed and an Administrator being appointed, the Chairman, Managing Director and other Directors of the banking company shall vacate their offices. All the powers, functions and duties of the Board of Directors shall be exercised and discharged by the Administrator until reconstitution of the Board of Directors.

12. We inquired of learned Advocate representing RBI as to whether or not RBI was contemplating taking steps under Section 36 ACA of the Banking Regulation Act. Learned Advocate, on instruction, categorically stated that RBI was not thinking of exercising its power under Section 36 ACA qua the respondent Bank.

13. We are of the view that RBI being an expert body, it is in the best position to assess and decide as to when it should exercise its power under Section 36 ACA of the Banking Regulation Act. The Court should not issue a

writ of or in the nature of mandamus directing RBI to exercise its power under Section 36 ACA of the 1949 Act.

14. We are accordingly unable to accede to the prayer in the modification application. However we take this opportunity to clarify the true intent and purport of our order dated January 20, 2022.

15. At the time the order dated January 20, 2022 was passed, the tenure of the Board of Directors of the respondent Bank was fast coming to an end. The tenure was due to expire on February 5, 2022. Preparation for holding election for constituting a new Board was in progress. In view of the serious allegation raised that the current Board of Directors of the Bank is incompetent to Act since most of the Directors stand disqualified by operation of law, we were inclined to make an interim arrangement whereunder the Board would operate under an officer to be nominated by the Governor of the RBI, for the rest of its tenure. The sentence in the said order which has perhaps created some confusion reads as follows:-

> “Since there is a serious contention about the competence or authority of the present Board to be in charge of the affairs of the Bank and since the Bank deals with public money, we are of the view that for its remaining tenure till the constitution of a fresh Board, the present Board should function under the general supervision of an officer to be nominated by the Governor of the Reserve Bank of India.”

The aforesaid sentence needs to be read and understood in the context of the immediately preceding paragraph of the said order which reads as follows:-

> "Hence, we see that fresh election is scheduled to be held very soon."

Since it is the mandate of law that the Cooperative Election Commission will conduct an election for constitution of a new Board prior to expiry of the tenure of the existing Board, we proceeded on the basis that such election would be held before the life of the existing Board came to an end on February 5, 2022. Hence, we used the words "till the constitution of a fresh Board." It was never our intention to extend the tenure of the existing Board beyond its natural life. The true intent of the order was that for the remaining tenure, the Board will function under the supervision of an officer of RBI. The aforesaid sentence in our order quoted above must not be construed as a direction that the existing Board shall continue to function under the officer of the RBI until a new Board is elected, despite tenure of the existing Board having expired on February 5, 2022.

16. Mr. Pratik Dhar, learned Senior Counsel appearing for some of the respondents who are members of the Board which continues to function beyond February 5, 2022, argued that the constitution of the Board cannot be changed in view of the subsistence of an interim order dated February 11, 2021, passed in MAT 120 of 2021, "directing the parties to maintain

status quo ante" maintaining the position connected to the composition of the BOD of the appellants as existing prior to the notification impugned dated 8th of January, 2021 until further orders.

17. We are unable to agree with such submission. The aforesaid interim order cannot be construed to extend the tenure of the Board which came to an end in terms of the relevant statutory provision on February 5, 2022. The said interim order must be understood and interpreted in the context in which it was passed. The Bank had challenged the appointment of a State Government nominee on its Board of Directors. In that context, the Division Bench passed the aforesaid interim order being prima facie satisfied that the State Government did not have the power or authority to appoint such a nominee on the Board of the respondent Bank. The said interim order must be understood to be limited in period of time and operative during the tenure of the Board. The interim order, in our opinion, became redundant and otiose once the tenure of the Board came to an end on February 5, 2022.

18. Before parting, we only wish to observe that election for constitution of a new Board of Directors should be held by the Cooperative Election Commission at the earliest.

<u>In re: CPAN 119 of 2022</u>

19. The Contempt application, being CPAN 119 of 2022, was filed for alleged wilful violation of our order dated January 20, 2022. The alleged act of violation was issuance of a notification by the State Government under

Section 36 of the West Bengal Cooperative Societies Act, 2006, appointing a Special Officer for managing the affairs of the respondent Bank upon the tenure of the existing Board of Directors of the Bank coming to an end on February 5, 2022. The Petitioner argued that our order dated January 20, 2022, was to the effect that the present Board would continue to function under the RBI officer until constitution of a fresh Board. Hence, issuance of the notification under Section 36 of the 2006 Act was in breach of such order and was contumacious.

20. Prima facie, the petitioner's submission had appealed to us and by an order dated February 9, 2022, passed on the contempt application, we had stayed the operation of the notification dated February 7, 2022. However, upon hearing the parties and upon reconsidering the matter, we are not inclined to continue the said order dated February 9, 2022. We have clarified above that it was never our intention to extend the life of the existing Board of Directors of the Bank by passing our order dated January 20, 2022. Hence, we are of the view that upon the tenure of the existing Board expiring on February 5, 2022, the State Government was well within its rights to exercise its power under Section 36 of the West Bengal Cooperative Societies Act, 2006. We accordingly vacate the interim order of stay passed on February 9, 2022.

21. However, we repeat that the State Government should have approached this Court before issuing the notification under Section 36 of the 2006 Act for obtaining clarification of our order dated January 20, 2022. The alleged contemnors have filed affidavits wherein they have stated that

they failed to understand the true purport of the order dated January 20, 2022, and have tendered unconditional apology which we accept. We do not find any wilful violation of our order dated January 20, 2022, on the part of the alleged contemnors. We accordingly close the contempt proceedings.

22. The modification application being MAT 1011 of 2021 with IA No. CAN 2 of 2022, and the contempt application being CPAN 119 of 2022 are accordingly disposed of.

23. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.) **(Arijit Banerjee, J.)**