

20.01.2022
Item 11-13
Court No.6.
AB

Through Video Conference

**M.A.T. 1011 of 2021
With
I A CAN 1 of 2021**

Sukumar Bera

Vs

The State of West Bengal & Others

With

**M.A.T. 1012 of 2021
With
I A CAN 1 of 2021**

Suvendu Adhikari

Vs

The State of West Bengal & Others

With

**M.A.T. 808 of 2021
With
I A CAN 1 of 2021**

Sukumar Bera

Vs

The State of West Bengal & Others

Mr. Joydip Kar, Sr. Adv,
Mr. B. Bhattacharya,
Mr. Anish Kr. Mukherjee,
Mr. Saket Sharma,
Mr. Amrit Sinha ...for the Appellant in
MAT 1012 of 2021 & for the
Respdt. No.8 in MAT 1011 of 2021
& Respdt. No.2 to 5 in MAT 808 of 2021.

Mr. Abhrotosh Majumdar, Sr. Adv,
Mr. Srijib Chakraborty,
Mr. Aditya Mondal ...for the Appellant in
MAT 1011 of 2021 &
MAT 808 of 2021.

Mr. S. N. Mookherjee, ld. AG,
 Mr. Anirban Roy,
 Mr. Raja Saha,
 Mr. Debasish Ghosh ...for the State in
 MAT 1012 of 2021.

Mr. S. N. Mookherjee, ld. AG,
 Mr. Anirban Roy,
 Mr. Srijan Nayek,
 Ms. R. Maitra,
 Mr. N. Chatterjee ...for the State in
 MAT 1011 of 2021.

Mr. S. N. Mookherjee, ld. AG,
 Mr. Anirban Roy,
 Mr. Srijan Nayek,
 Ms. R. Maitra ...for the State in
 MAT 808 of 2021.

Mr. Pratik Dhar, Sr. Adv,
 Mr. Ritwik Pattanayak...for the Respdt.
 Nos.6, 7, 9 to 18 in
 MAT 1011 of 2021 and
 MAT 1012 of 2021.

Mr. Pratik Dhar, Sr. Adv,
 Mr. Ritwik Pattanayak....for the Respdt.
 Nos.6 to 12 in MAT 808
 of 2021.

Ms. Cardina Royfor the Respdt. No.3
 In MAT No.808 of 2021.

By consent of the parties, all three appeals and
 the connected applications are taken up for hearing
 and disposal together.

In re : MAT 808 of 2021.

This appeal was preferred against an order dated
 August 2, 2021. The order of the learned Single Judge
 was passed in a writ petition filed by the appellant
 challenging a requisition dated July 22, 2021 for

removal of the Chairman of the concerned Cooperative Bank.

The learned Judge set aside the requisition notice having found certain infirmities therein. However, the learned Judge granted liberty to the requisitionists to make fresh requisition for removal of the Chairman of the Bank. Challenging this liberty, the present appeal has been filed.

We have heard learned Counsel for the parties. The fact remains that pursuant to the liberty granted, fresh requisition was made and in fact meeting was held. The order has worked itself out. In our opinion, nothing remains of this appeal.

MAT 808 of 2021 along with IA CAN 1 of 2021 are, accordingly, disposed of.

In re : MAT 1011 of 2021 & MAT 1012 of 2021

MAT 1011 of 2021 is an appeal preferred by Sukumar Bera against an interim order dated September 6, 2021, passed by the learned Single Judge in WPA 13557 of 2021. The writ petition was filed challenging a resolution of the Board of Directors of the concerned Bank removing the Chairman of the Bank, namely, Suvendu Adhikari. The resolution was passed on August 24, 2021.

The learned Single Judge refused to pass any interim order. Against such refusal, the present appeal has been filed.

MAT 1012 of 2021 is an appeal filed by Suvendu Adhikari against an interim order dated September 9, 2021, passed in WPA 14111 of 2021 which was filed challenging the requisition notice for his removal as Chairman of the Board of the concerned Bank and also the Board resolution dated August 24, 2021, removing him as Chairman. By the said order, the learned Single Judge refused to grant any interim protection. Against such refusal, this appeal has been preferred by Suvendu Adhikari.

We have heard learned Counsel for the parties at length. The main point that arises is whether or not, the requisitionists and directors, who requisitioned the meeting for removal of the Chairman of the Bank, were competent to do so. In other words, were they valid directors of the Bank when they requisitioned the meeting.

The appellants, who have assailed the requisition and the resolution removing the Chairman of the Bank, contend that out of the seven requisitionists, five had become disqualified as Directors in view of Section 10A(2A) of the Banking Regulation Act, 1949. Hence, the requisition was not in terms of Rule 51 of the West Bengal Cooperative Rules and could not be acted upon. This would render

the proceedings at the meeting and the resolution taken thereat bad in law.

Learned Advocate for the requisitionists argued that Section 10A(2A) of the 1949 Act would not apply in the facts and circumstances of the case. The said section was introduced by amendment with effect from September 29, 2020. It cannot affect the tenures of the Directors of the Bank, who were elected prior to that, in the year 2017.

Another point that has been urged by learned Counsel for the appellants is that the requisition and the meeting were not in accordance with the provisions of Rule 51 of the West Bengal Cooperative Societies Rules, 2011.

Learned Advocate General appeared for the State and in effect argued that Section 10A(2A) of the Banking Regulation Act shall only apply to Directors of the Bank, who have been appointed subsequent to the said provision of law coming into force.

We are considering appeals from interim orders. The writ petitions are pending before the learned Single Judge. We are not inclined to decide the issues raised before us on merits. We are of the view that these issues should be decided at the first instance by the learned Single Judge.

We, however, record that we find the arguments of both sides to be attractive. Both sides have arguable

cases. One of the issues raised by the appellants herein is that the present Board of Directors of the Bank is incompetent to act since most of the Directors stand disqualified by operation of law since their tenures exceed a continuous period of eight years, which is in violation of Section 10A(2A) of the Banking Regulations Act. We do not think that it would be appropriate for us to express any final opinion on this point since this very point, we are told, is under consideration in a Public Interest Litigation before a Coordinate Bench and the matter has been heard at length by that Bench. However, *prima facie*, we find some substance in the argument advanced by Mr. Kar and Mr. Majumdar, learned Senior Counsel appearing for the appellants. The tenure of the present Board is due to expire on or about February 5, 2022 i.e. in about two weeks' time.

Mr. Dhar, learned Senior Advocate for the requisitionists has pointed out that the Election Commission has passed an order for taking steps for election on December 28, 2021. On that basis, the Returning Officer was appointed on December 30, 2021. Thereafter, draft voters list was published on January 11, 2022 and final voters list has been scheduled to be published on January 24, 2022.

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

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.

All points are left open for the learned Single Judge to decide upon hearing the parties. No observation in this order shall have any bearing at the final hearing before the learned Single Judge.

The Governor, Reserve Bank of India is requested to appoint a responsible Officer for the

purpose indicated above immediately and preferably within 48 hours upon receipt of a copy of this order from the Registrar General of this Court.

We clarify that the Officer to be nominated by the Governor of the Reserve Bank of India for the aforesaid purpose shall function in terms of this order only till the reconstitution of the Board. Upon such reconstitution of the Board, the Officer shall become functus officio.

Since we have not called for affidavits, the allegations in the stay petitions are deemed not to be admitted by the respondents.

The appeals being MAT 1011 of 2021, IA CAN 1 of 2021 and MAT 1012 of 2021, IA CAN 1 of 2021 are, accordingly, disposed of.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)