

AD. 110.
March 30, 2022.
MNS.

WPA No. 16964 of 2021

The Midnapore Cooperative Milk Producers'
Union Ltd. and another
Vs.
State of West Bengal and others

Mr. Milan Chandra Bhattacharjee,
Ms. Sulagna Bhattacharya

...for the petitioners.

Mr. Naba Kumar Das,
Mr. Raja Ram Banerjee

...for the State.

Mr. P.K. Roy,
Mr. Biplob Das

....for the respondent no.2.

Learned senior counsel appearing for the petitioners argues that although an efficacious alternative remedy is available before the West Bengal Cooperative Tribunal, the writ petition may be entertained by this court since the said Tribunal is not functioning at present.

The plinth of the contention of the petitioners is that, without service of any notice on the petitioners by the Arbitrator appointed by the Registrar of Cooperative Societies, that is, the respondent no.3, the dispute case, filed at the behest of the petitioners, was dismissed for non-appearance of the petitioners.

It is contended that in view of the statute contemplating service by the Arbitrator, in the absence of any proof as regards such service, the dismissal was in contravention of law.

It is, however, submitted by learned senior counsel appearing for the petitioners, in his usual fairness, that the Advocate for the appearing parties had been directed to communicate the initial order passed by the Arbitrator.

Learned counsel appearing for the respondent no.2 submits, by pointing out to the order dated February 25, 2021, that the defendant in the said proceeding was represented through counsel. However, nothing is evinced from the photocopy of the certified copy of the order of the Arbitrator, annexed to the writ petition, to indicate that the petitioners were served notice at any point of time from the end of the Arbitrator or that they had appeared in the matter.

In the absence of such recording in any of the orders, the dismissal of the dispute case for absence of the petitioners was bad in law.

Since, despite service, none appears for the respondent nos.3 and 4, although the respondent nos.1 and 2 are represented through counsel, there is no other option but to decide the matter in the absence of the respondent nos.3 and 4.

In view of the reasons given aforesaid, WPA No. 16964 of 2021 is allowed, thereby setting aside the order dated March 9, 2021 passed by the respondent no.3, that is, the Arbitrator, in DIS/RCS/28 of 2019 and remanding the matter back to the Registrar of the Cooperative Societies, that is, the respondent no.2, with a direction on the respondent no.2 to appoint another Arbitrator (in view of the tenure of the previous Arbitrator appointed by the Registrar having expired in the meantime) for the purpose of deciding the aforesaid dispute case afresh, upon giving appropriate notice of hearing to all the parties to the dispute, in accordance with law and without being prejudiced in any manner by any of the observations made in the impugned order dated March 9, 2021 which is set aside.

It is made clear that this court has not gone into the merits of the respective contentions of the parties to the dispute.

It is expected that the Registrar shall appoint such Arbitrator as expeditiously as possible, preferably within a fortnight from date. Thereafter, upon reference, the Arbitrator shall expedite the adjudication of the dispute to the best of the Arbitrator's ability.

Since no affidavits have been invited from any of the respondents, it is deemed that the respondents

have not admitted any of the allegations made in the writ petition.

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.)