

D/L. 14 & 15.
November 25, 2022.
MNS.

CPAN 811 of 2022
in
WPA No. 5924 of 2022

Ramkrishna Das
Vs.
Nilanjan Sinha and others

Mr. Rabindranath Bag,
Mr. Jamiruddin Khan

... for the petitioner.

Mr. Srijan Nayak,
Mrs. Rituparna Maitra,
Mr. Biplab Das

...for the contemnor nos. 1 and 8.

Mr. Ashit Kumar Chakraborty,
Mr. Sunanda Mohan Ghosh

...for the contemnor nos. 2, 4 and 5.

Learned counsel for the petitioner contends that this court was misled into passing the order dated April 26, 2022 in WPA No. 5924 of 2022 due to the erroneous submissions of the alleged contemnors.

It is argued that, as recorded in paragraph 12 of the said order, it was submitted that the election was the first priority for the Co-operative Society, in the interest of the welfare of the Society itself and already an ARO had been appointed for the said purpose. The court

proceeded to observe that if a Special Officer was appointed then by the interference of the Court, the same would disturb the election process itself. It is argued that the entire premise of such order was a result of the misleading submissions, since it is evident from the annexures to the affidavits-in-opposition filed in connection with the present contempt application that the Assistant Returning Officer (ARO) was intimated of his appointment only vide letter dated September 1, 2022, that is, much subsequent to the order passed by this Court.

Hence, it is contended that if the first intimation was given long after the order was passed, the previous appointment of the ARO was a mere paperwork having no efficacy.

It is further contended that the Board of Administrators, in order to continue functioning and to exert control over the election process, had sought to mislead the court inasmuch as the ARO had no option but to function under the dictates of the Board of Administrators.

Such attempt to mislead, it is argued, amounts to contempt of court.

Learned counsel appearing for the alleged contemnors place reliance on their affidavits-in-

opposition and submit that already different challenges have been taken out to the ongoing election process. The election itself is going to be held on November 30, 2022.

It is also contended that since the election process has already commenced, the grievances of the petitioner have to be ventilated before the appropriate Election Commissioner.

It is submitted that the outcome of one of the challenges in connection with the same election process was that the election was directed to be expedited and, as a result, the same will be held on November 30, 2022, as indicated above.

Hence, it is argued that there was no instance of misleading the court at all.

Upon hearing learned counsel for the parties and going through the materials on record, it is apparent that the ARO had been appointed by an order dated June 27, 2019. The said order has been annexed to the affidavit-in-reply filed in connection with the contempt application. As such, the observation of this Court in the order alleged to be under contempt, to the effect that ARO had already been appointed, cannot be denied. Hence, on such

score, it cannot be observed that the alleged contemnors attempted to mislead the court and/or as a result of such attempt, the order was passed in the way that it was.

That apart, although a document has been annexed to the affidavit-in-reply which shows that on September 1, 2022 (subsequent to the order of this Court) a communication was made to the ARO on behalf of the Assistant Registrar of Co-operative Societies, Paschim Medinipur Range and Returning Officer, the same enclosed a copy of the order of appointment of the ARO and a copy of the order of this Court. The said communication merely asked the ARO to comply with the order of this Court.

Such communication, *per se*, does not establish beyond doubt that the same was the first communication to the ARO as regards his appointment. There is scope of doubt as to whether the communication was actually of the order of this Court, asking for compliance of the same, along with a copy of the order of appointment of the ARO for convenience and recollection.

Even if there is an iota of doubt, it is not proper to come to the conclusion that the alleged

contemnors were guilty of contempt, that too by misleading the court to arrive at a particular finding.

In any event, as rightly pointed out on behalf of the alleged contemnors, if the petitioner has any grievance with regard to the election process, including the allegation that the ARO had acted *de hors* the law and/or in collusion with or under the direction of the Board of Administrators, it is always open to the petitioner to prefer a challenge in that regard and/or against the result of the election held as an outcome of such alleged collusion, before the appropriate forum.

However, in view of the reasons recorded above, this Court is of the opinion that no contumacious conduct is found on the part of the alleged contemnors, as per the allegations levelled in the present contempt application.

Hence, CPAN 811 of 2022 is disposed of with liberty to the petitioner to prefer a challenge to the election process and the election result, if the petitioner so deems fit, before the appropriate forum.

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.)