19
24.08.2023
mb

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 4165 of 2023

Soleman Ali Khan @ S.A.K.
Primary Teachers' Training Institute
Vs.
The State of West Bengal & Ors.

Mr. Sarwar Jahan,
Mr. Sayantan Hazra,
Mr. Maidul Islam Kayal
... for the petitioner

Mr. Sk. Md. Galib,
Mr. Gourav Das
...for the State

Mr. Raghunath Ghose,
Ms. Rituparna Saha
...for the respondent no. 4/Bank

Mr. Sauvik Nandy
...for the respondent no. 5

The petitioner's complaint is that the petitioner is an institute, which is a registered society. It is argued that the private respondent, one Rafik Ali Khan, had been included as the Secretary of the Society *vide* Meeting dated September 14, 2011. However, by the resolution dated April 3, 2017, annexed at page 26 of the writ petition, the Managing Committee was reconstituted and the private respondent was removed from his post. Such resolution was subsequently ratified by the meeting dated

February 17-18, 2018 by the ERC-NCTE, the minutes of which have been annexed at page 28 of the writ petition.

Subsequently, the Society, represented through the petitioner in the writ petition, could not trace out two Fixed Deposit (FD) Certificates of the said Society. Accordingly, duplicate copies were sought from the respondent-Bank. However, the Bank did not issue such duplicate copies, apparently on the premise of a pending criminal case in that regard.

It is submitted that the private respondent, although removed as a secretary and from the governing committee long back, lodged a complaint with the Officer-in-Charge of the Ghatal Police Station on April 27, 2022, with an allegation of alleged forgery of signature with regard to a withdrawal from the bank account of the Society. In the said complaint, the FD Certificates were also mentioned. As it appears from the search/seizure list, in connection with the said investigation, the Certificates were recovered by the police from the private respondent. However, the State now takes a stand that those were returned to the complainant/private respondent subsequently in due process of law.

However, it is submitted that since the private respondent did not have any *locus standi* to claim himself to be a Secretary or as a portfolio holder in the Society at the relevant point of time, that is, on September 20, 2018, when the alleged forgery was perpetrated, the Bank is acting *de hors* its authority in refusing to issue duplicates of the said Certificates to the petitioner.

Learned counsel for the Bank submits that the operation of the account-in-question as well as issuance of duplicate certificates has been withheld by the bank due to pendency of a criminal proceeding, in due diligence, for the protection of the account holder.

Learned counsel appearing for the State contends that since a criminal investigation has been initiated on the complaint of the private respondent and the two Certificates-in-question were a part of the seizure**,** in the event duplicates of those are issued at present, the criminal investigation may be affected. That apart, it is sought to be pointed out that the alleged ratification of the change of the Managing Committee of the Society is not valid in the eye of law.

Upon hearing learned counsel for the parties, it transpires that the present position is that the FD

Certificates-in-question were recovered by the police from the private respondent but were subsequently handed back to the private respondent. Thus, it cannot be said that the whereabouts of the said Certificates cannot be traced out.

The position, as it stands today, is that certain allegations have been made by the private respondent against Abu Taher Khan, the alleged Secretary of the petitioner-Society.

A perusal of the said complaint, which was the genesis of the First Information Report lodged by the police, annexed at page 41 of the writ petition, shows that the said complaint dated April 27, 2022 has two components. The allegation giving rise to an apprehended criminal offence pertains only to the purported forgery of signature of the private respondent by the said Abu Taher Khan with regard to withdrawal of an amount of Rs.30,000/- from the bank account.

However, insofar as the allegation pertaining to the FD Certificates is concerned, the same, *ex facie*, does not indicate any criminal offence. The exact nature of the allegation is that both the original Certificates are at present with the private respondent, but Abu Taher Khan is seeking to obtain duplicates of the same and to use the same for withdrawing the amount.

Insofar as the alleged attempt of Abu Taher Khan to obtain duplicates and withdraw the amount is concerned, the same does not come within the contemplation of a criminal offence but falls within the domain of a civil dispute raised by the private respondent.

The dispute is whether the private respondent was validly removed as a member of the governing committee as well as the Secretary of the petitioner-Society at the relevant point of time, that is, by the resolution dated April 3, 2017, subsequently ratified.

The said dispute can only be resolved before an appropriate civil forum/court. However, there cannot be any impediment of the Society, through the said Abu Taher Khan, its present Secretary, to obtain duplicates of the FD Certificates, since those are admittedly not in possession of the Society but stand in the name of the Society and was purchased by the Society.

In the event the private respondent has a civil dispute against the Society or Abu Taher Khan, relating to the latter's locus and status on the relevant date, it will be open to the private respondent to approach a competent civil forum for adjudication of the same.

However, insofar as the Bank is concerned, its liability is only to the account holder, that is, the petitioner-Society and the internal squabbles between the present portfolio holders and ex-portfolio holders of the said Society cannot be a stimulus for the Bank to withhold the issuance of duplicate Certificates and/or freeze the operation of the Society's account.

Inasmuch as the criminal allegation against Abu Taher Khan by the private respondent is concerned, till date, there is nothing on record to show that the investigation has culminated in a charge sheet, let alone any criminal trial having been initiated.

That apart, there are certain palpable discrepancies insofar as the complaint is concerned, due to which the apprehension of a backlash and afterthought cannot be ruled out. In the said complaint, which was lodged only on April 27, 2022, a past incident of the year 2018 is ventilated. No explanation has been given in the complaint or anywhere else, to indicate as to what prevented the private respondent from lodging the complaint regarding the alleged forgery of signature for the four years between 2018 and 2022.

Insofar as the FD Certificates are concerned, it transpires from the annexures to the present writ petition that there was an apparent change in the constitution of the governing committee and that the private respondent was removed as the secretary of the Society. Hence, as on the face of it, there is nothing to impede the Bank from issuing duplicates of the FD Certificates in due process of law and in consonance with banking regulations to the account holder, that is, the petitioner-Society, through its present portfolio holder(s), if so applied for.

Moreover, there is nothing in law to prevent the petitioner-Society from operating its bank account, since there is no allegation regarding operation of the bank account. Mere pendency of an investigation on a complaint lodged much later than the alleged incident cannot be a fetter for the Bank to permit the legitimate account holder-Society to operate its account.

In view of the above observations, WPA No.4165 of 2023 is allowed, thereby directing the respondent no. 4, that is, the Branch Manager, UCO Bank, Ghatal Branch, to ensure that the duplicates of the Certificates of Fixed Deposits standing in the name of the petitioner-Society with the Bank be issued to the petitioner at the earliest, subject to compliance of due formalities in that regard by the petitioner-Society through its present portfolio holder(s).

The Bank shall also permit the petitioner-Society, through its present designated members/office bearers having authority to do so, to operate its account standing with the UCO Bank, Ghatal Branch.

It is, however, made clear that nothing in this order shall create any special right or equity in favour of the petitioner as well as Abu Taher Khan, its present Secretary, and in the event any civil proceeding is instituted by the private respondent against the petitioner or Abu Taher Khan, nothing in this order shall unduly influence the competent civil court or other forum from deciding the said dispute independently and in accordance with law.

It is further added that nothing in this order pertains to the merits of the allegations made against the petitioner, which are the subject-matter of investigation at present and the investigation will take its own logical course, independent and irrespective of the observations made herein.

The report of the O.C., Ghatal Police Station, handed over by learned counsel for the State be kept on record.

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 of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)