

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 14867 of 2023

Anirban Roychoudhury & Ors.
Vs.
State of West Bengal & Ors.

Mr. Biswaroop Bhattacharya,
Ms. Sharmistha Ghosh,
Mr. Victor Chatterjee
...for the petitioners

Mr. Ayan Banerjee,
Ms. Arpita Mondal
...for the State

Mr. Rudrajit Sarkar,
Mr. Debangshu Dinda,
Ms. Nikita Khaitan
...for the respondent nos. 3 to 5

Mr. Arkadyuti Pahari,
Mr. Abdul Kalam Chowdhury
...for the respondent no. 6

Learned counsel appearing for the petitioners vociferously argues that patent irregularities have been committed in declaring the election of the Kolkata Uniworld City Apartment Owners Association to be held on June 25, 2023. It is argued that despite several complaints against the present management of the said Association pending at the behest of the petitioners before the Competent Authority, the said authority has been sitting tight over the matter.

In the meantime, by a communication dated June 11, 2023, the present management intimated the members of the Association about the appointment of one M/s. DS Law Advisors, also a respondent herein, as a third party “neutral agency” for conducting election for the vacant positions on behalf of the Association as decided at the Annual General Meeting.

Learned counsel places reliance on Annexure P-12 at page 62 of the writ petition, which is purportedly the transcription of a ‘Whatsapp’ communication by the present Secretary of the Association to members thereof, indicating that the third party neutral agency was appointed “after consulting the CA” for neutrality and credentials.

Thereafter, the cost to be incurred for appointment of the said firm was also mentioned.

It is argued, by placing reliance on certain documents handed over by learned counsel for the petitioners, that the daughter of the person officiating as the Competent Authority is one of the active partners of the said M/s. DS Law Advisors. As such, it is apprehended that the said specific firm has been appointed in order to appease the Competent Authority, which is, incidentally, also sitting tight over the complaints of the petitioners.

It is further argued that when the Competent Authority was sought to be contacted by the members of the Association, the Competent Authority refused to interfere on the ground that he does not stay in the Uniworld City Apartment, that is, the concerned housing estate, and cannot check tower notice board. However, he reiterated that it does not take away his right to receive election notices and nominate himself as a candidate as per the Apartment Ownership Act. The same, it is seen, is the part of a trail mail, as annexed to the writ petitioner.

Be that as it may, learned counsel for the petitioner also alleges that the provisions of the West Bengal Apartment Ownership Bye-laws, 2002 have been patently contravened by appointing a third party as the authority to conduct the elections. Such empowerment is entirely *de hors* the provisions of the Bye laws of 2002, it is submitted. That apart, learned counsel also submits that the said appointment is entirely beyond the scheme of the West Bengal Apartment Ownership Act, 1972 as well as its Bye Laws.

Learned counsel appearing for the respondent no. 6, namely, M/s. DS Law Advisors submits that the mere incidental fact that one of the partners of the said firm is the daughter of the Competent

Authority has no connection with the disputes raised by the petitioners. That apart, in the absence of any specific allegation against M/s. DS Law Advisors and otherwise, it would be beyond the scope of the present writ petition to remove the said law firm.

Learned counsel appearing for the Association submits that the appointment of M/s DS Law was not out of the blue but done with the sanction of the majority of the members of the Association who attended the Annual General meeting of the Association and took the decision of appointment of a third party under the aegis of the Board of Managers.

Learned counsel appearing for the respondent/Association also hands over a purported copy of the minutes of the said meeting to the Court, which is, however, disputed by learned counsel for the petitioners.

It is further argued by the respondent/Association that, in terms of Bye Law 8(6) of the 2002 Bye Laws, all subsequent elections after the first election of the managers of the Board shall be held in the manner as decided under Clause (1) of Bye Law 8 “or any other manner as will be decided by the Association in a subsequent general meeting.”

Hence, there is no bar to a third party neutral agency being appointed to conduct the said election.

Moreover, there is no irregularity in the mode of appointment of the said firm, since the said firm is allegedly reputed for having conducted similar elections in respect of other large associations, which is, of course, disputed by the petitioners.

It is, thus, argued that the purported 'Whatsapp' message from the Secretary does not vitiate the appointment of the third party agency, since the consultation referred to therein was at the most in respect of neutrality and credentials in the appointment of a neutral agency.

Learned counsel for the petitioners disputes such contention and submits that it is evident from the language of the purported 'Whatsapp' communication that the consultation with the Competent Authority was in respect of neutrality and credentials of a particular agency appointed, which all the more shows that there was a patent element of bias in such consultation.

At this juncture, learned counsel for the respondent/association, on instructions, submits that on principle, the said respondent does not have any objection if the Court appoints a third party to conduct the elections. However, at the

juncture when the order is being passed, it is sought to be clarified by learned counsel for the respondent/association that such concession is given to the limited extent that such third party Special Officer shall act in conjunction with M/s DS Law Advisors.

Upon hearing learned counsel for the parties, it is seen that the pivot of the argument of the petitioners for the purpose of vitiating the appointment of respondent no. 6 is that one of the partners of respondent no. 6 is the daughter of the person officiating as the Competent Authority.

However, it would be premature at this juncture, merely due to such coincidence, to hold that the credentials and neutrality of the said respondent no. 6 are at stake.

It may very well be that the daughter of the person functioning as a Competent Authority is one of the partners of the agency, which has been appointed. However, it is argued by the respondent/association on the strength of a document handed over in court today, that a resolution was duly taken, in terms of the Bye Laws, in the Annual General Meeting by the majority members represented therein, to the effect that a neutral agency would be appointed for the purpose of conducting the election by the Board of

Managers. In fact, the same is also recorded in the minutes of the AGM meeting, which is also kept on record.

Even without taking into consideration the minutes, which are, of course, disputed by the petitioners, it cannot be said that *per se* the appointment of a third party to conduct election is violative of Bye-law 8 of the 2022 Bye-Laws.

As rightly argued by the respondent/association, sub-clause (6) of Bye-Law 8 clearly stipulates that, for subsequent elections, as in the present case, the same shall be held in the manner as decided in clause (1) of the Bye-law “or in any manner as will be decided by the association in a subsequent general meeting.”

Such clause has been substantially complied with in the present case as per the association. Hence, the perception that the Bye laws have not been complied with cannot be drawn at this juncture, in the absence of specific evidence substantiating such allegations. As such, it cannot be said that the appointment of respondent no. 6, by itself, vitiates the election, which has been declared to be held on the coming 25th of this month.

Insofar as the appointment of a third party-Special Officer is concerned, the same would not

improve the situation insofar as either of the parties are concerned, since the respondent no. 6 is already entrusted to conduct the election and has proceeded substantially in that regard. The elections are due to be held only two days hence, which is another relevant consideration in the above regard.

Hence, it cannot be found, even *prima facie*, from the materials annexed to the writ petition that the election process itself is vitiated in any manner in contravention of the Bye-laws or any other law.

However, needless to say, nothing in this order shall preclude the petitioners and/or any other member of association, if aggrieved by the process in which the election is actually held, to ventilate their grievances before the appropriate authority in due process of law.

Insofar as the pending complaints made by the petitioners before the Competent Authority is concerned, the Competent Authority, that is, the respondent no. 2 herein, is directed to decide on such complaints as expeditiously as possible, upon holding an appropriate enquiry, positively within one month from the date of communication of this order to the said respondent.

W.P.A. No. 14867 of 2023 is, accordingly, disposed of in the light of the above observations. There will be no order as to costs.

It is, however, clarified that none of the observations made herein, which have been arrived at only for the limited purpose of deciding the present writ petition, shall unduly prejudice or influence the Competent Authority or any other forum in deciding any disputes pertaining to the association-in-question or its elections, in any manner whatsoever, and the Competent Authority and all other legal forums shall decide all disputes raised before them independently and in accordance with law, without being influenced in any manner by any of the observations made herein.

W.P.A. No. 14867 of 2023 is, accordingly, is disposed of in the light of the above observations.

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.)