

23. 12.10.2023
Court No.6
Tanmoy Ghosh

MAT 1817 of 2023
Biplab Biswas
-Versus-
Sri Nripen Dey & Ors.
With
IA No: CAN/1/2023
With
IA No: CAN/2/2023

Mr. D.K. Sengupta, Adv.,
Ms. Sweta Saha, Adv.

...for the applicant/appellant.

Mr. Pranit Bag, Adv.,
Mr. Mrinmoy Mohan Barat, Adv.

...for the respondent no.1/
writ petitioner.

Mr. Srijan Nayak, Adv.,
Mrs. Rituparna Maitra, Adv.,
Mr. Biplab Das, Adv.,
Mr. Ankit Surekha, Adv.

...for the West Bengal
Co-operative Election Commission.

Mr. Soumyadeep Biswas, Adv.

...for the respondent no.11.

In Re: IA No: CAN/1/2023

This is an application for leave to appeal against a judgment and order dated September 12, 2023, whereby the writ petition of the respondent no.1 herein being WPA 21517 of 2023, was disposed of by a learned Single Judge of this Court.

The applicant says that he is a member of Dignagar Samabay Krishi Unnyan Samity Limited, being a primary Co-operative Society and is affected by the order impugned. The learned Judge has directed completion of the election of the Board of Directors of Nadia District Central Co-operative Bank Limited, without first

ensuring that election of the primary Co-operative Societies is completed.

Having heard learned Counsel for the parties, we are of the view that the applicant may have something to say as regards the order he seeks to challenge. Accordingly, leave is granted to the applicant to prefer appeal against the judgment and order dated September 12, 2023.

This application being IA No: CAN/1/2023 is allowed.

In Re: MAT 1817 of 2023
With
IA No: CAN/2/2023

By consent of the appearing parties, the appeal and the connected application are taken up together for hearing.

The respondent no. 1/writ petitioner had approached the learned Single Judge with the grievance that although the tenure of the Board of Directors of Nadia District Central Co-operative Bank Limited (in short, 'the Bank') was to expire on September 15, 2023, and although draft voters' list had been published and objections thereto had been invited and considered, the final voters' list has not been published, without which election could not be held. The learned Judge disposed of the writ petition with the following directions:-

“ As it appears that the term of the Board of Directors will expire within a couple of days, accordingly, the respondent no.3 is directed to take prompt necessary steps to conduct and

conclude the election in accordance with law, at the earliest, but positively within a period of three months from the date of communication of a copy of this order.

The Commission shall ensure that the election is conducted peacefully in free and fair manner.

It will be open for the Commission to seek assistance from the concerned police station and other authorities for the purpose of conducting the election peacefully, in a free and fair manner.”

The appellant says that unless the election of the primary Co-operative Societies is first held, the election of the Board of Directors of the Bank cannot be held. The appellant has made a statement in paragraph 4 of the stay petition (IA No: CAN/2/2023) to the following effect:-

“4. ... The petitioner states that being a member of the member Co-operative Society have filed an application in the writ Petition being WPA 21517 OF 2023 for addition of Party vide C.A.N. 2 of 2023 but the same was not taken up for hearing and the Hon’ble Court even after hearing the parties simpliciter directed for completion of the election of the District Central Co-operative Bank Ltd within a period of three months from the date of communication of the Order without considering the contention of the petitioner that election of the District Bank without convoking delegates from elected bodies of Primary member Societies shall be void, illegal and in violation of the provision of the Statute.”

Mr. Bag, learned Advocate appearing for the respondent no.1 herein, says that the aforesaid statement is incorrect. No application had been filed by the present appellant before the learned Single Judge.

Mr. Sengupta, learned Advocate appearing for the appellant, in his usual fairness, says that Mr. Bag is correct. The application was sought to be moved unlisted

but the same was not allowed. He tenders apology on behalf of the appellant for having made a misstatement, as aforesaid.

We are not inclined to interfere with the order under appeal. The appellant's application was admittedly not listed before the learned Single Judge and in fact we are told, had not even been filed. Hence, there is no reason why we should entertain the present appeal which is accordingly dismissed along with the connected application.

However, this will not prevent the appellant from pursuing such other remedy that he may have in accordance with law.

Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being MAT 1817 of 2023 and the connected application being IA No: CAN/2/2023 are accordingly dismissed.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)