

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction
(Appellate Side)

M.A.T. 14 of 2024

With

CAN 2 of 2024

CAN 3 of 2024

Sujit Biswas

Vs

The State of West Bengal & Others.

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Prasenjit Biswas

For the Appellant / writ : Mr. Milan Ch. Bhattacharya, Sr. Adv.
petitioner Ms. Sulagna Bhattacharya, Adv.
Mr. Narayan Nayak, Adv.

For the State : Mr. Avijit Sarkar, Adv.
Ms. Kalpita Paul, Adv.

for the Respondent Nos.2- : Mr. Srijan Nayak, Adv.
4. Mrs. Rituparna Moitra, Adv.
Mr. Ankit Sureka, Adv.
Mr. Biplab Das, Adv.

for the Respondent Nos.12 : Mr. Kamal Krishna Pathak, Adv.
Mr. Souvik Maji, Adv.
Mr. Vijay Verma, Adv.
Mr. Kaustav Seal, Adv.

for the Respondent : Mr. Deepnath Roychowdhury, Adv.
Nos.10, 11 Mr. Sujay Sarkar, Adv.
Mr. Rahul Chachan, Adv.

for the Respondent Nos. 8, : Mr. Soumyadeep Biswas, Adv.
9

For Judgment on : 22.05.2024

Arijit Banerjee, J. :-

1. This appeal is directed against a judgment and order dated September 12, 2023, whereby a learned Judge of this Court dismissed the writ petition of the appellant herein being WPA 21336 of 2023.

2. The appellant/writ petitioner is a member of Saktinagar Samabaya Krishi Unnayan Samity Limited (in short 'the Cooperative Society'). He approached the learned Single Judge with certain grievances regarding the management of the affairs of the cooperative society. In particular, his grievance was and is that the private respondent herein, Arup Sarkar, has been illegally working as Manager of the Cooperative Society and drawing huge salary every month. According to the appellant Arup attained the age of retirement in November 2022. Thereafter, the Cooperative Society could not have continued to employ him as Manager or in any other capacity. The appellant prayed for primarily the following orders before the learned Single Judge :-

“b) Issue a Writ of or in the nature of Mandamus commanding the respondents to conduct an enquiry with regard to the date of birth of the private respondent forthwith and file a report regarding the same before this Hon’ble Court;

c) Issue a Writ of or in the nature of Mandamus commanding the respondents to remove the private respondent from service at Saktinagar SKUS Ltd. forthwith, as he is illegally working in the said society under the post of Manager, without due process of law;

d) Issue a Writ of or in the nature of Mandamus commanding the respondents to recover the amount of salary drawn by the private respondent while illegally working under the post of Manager at Saktinagar SKUS Ltd., post November 2022 till date;

e) Issue a Writ of or in the nature of Mandamus commanding the respondents to stop payment of salary to the private respondent forthwith for illegally working under the post of Manager or in any capacity at Saktinagar SKUS Ltd.;"

3. The learned Single Judge dismissed the writ petition with the following observations:-

"It appears from the submissions made on behalf of all the parties and upon perusal of materials on record that the dispute sought to be raised by the petitioner in the instant writ petition relates to management of the affairs of the Co-operative Society.

There is provision under the West Bengal Cooperative Society Act, 2006 for raising such dispute before the appropriate forum.

The Court is of the opinion that in the facts and circumstances of the instant case, the writ petition will not be maintainable.

The writ petition stands dismissed.

Dismissal of the writ petition will however, not stand in the way of the petitioner from approaching the appropriate forum, in accordance with law, if so advised.

In the event a dispute is raised before the competent authority, the same shall be decided on merits.”

4. Being aggrieved, the writ petitioner has come up by way of this appeal.
5. Appearing on behalf of the appellant, Mr. Milan Chandra Bhattacharya, learned Senior Advocate, submitted that election of the Cooperative Society has not been held after 2019. Successive Special Officers have been appointed to manage the affairs of the Society. The private respondent, Arup, is drawing a salary of approximately Rs. 2 lakh per month. He submitted that the Managing Committee of the society was dissolved on December 9, 2019. After that, The Manager of the Society namely Arup Sarker, took over charge as the Society’s “Highest Designated

Employee” on and from 13.11.2019. Thereafter, one Sanjay Deb Nath was appointed as Special Officer with effect from November 16, 2021, by the Government. His tenure was terminated on September 22, 2022. Again, Arup Sarkar took over charge as the Society’s “Highest Designated Employee” with effect from September 22, 2022. In this connection learned Senior Counsel drew our attention to a document at page 18 of CAN 3 of 2024 which is described as “introductory statement, Year of Audit 2021-2022”.

6. Mr. Bhattacharya drew our attention to the various sub sections under Section 29 of the West Bengal Cooperative Societies Act, 2006 (in short ‘the 2006 Act’). He submitted that election of Board of Directors of the Society is to be held at the Annual General Meeting. Section 29(7) lays down what is to be done in case election cannot be held. Section 29(7) reads as follows:-

“29[(7) If the election as referred to in the [third proviso to sub-section (1A) of section 35 or in sub-section (2) of section 36] cannot be held owing to an order of any Court or for any other reasons or if the directors of the board elected in such general meeting cannot function owing to an order of any Court or for any other reason, or if the elected

directors of the board resign simultaneously, the Registrar may constitute a board of directors from amongst the members or delegates or representatives of the Co-operative Society in conformity with Section 32 and the constituted board shall elect its office-bearers from amongst themselves:

Provided that the board, so constituted, shall function till the directors of the board elected under this section assume charge.]”

7. Mr. Bhattacharya then referred to Section 29(8) of the 2006 Act, which reads as follows:-

“29(8) If the board of directors, constituted under [sub-section] [Substituted by section 8(c) of the West Bengal Co-operative Societies (Amendment) Act, 2011 (West Bengal Act No. 14 of 2011), w.e.f. 6.2.2012, for sub-sections (1) and.] (7), cannot function owing to an order of any Court or for any other reason, the chief executive officer of the Co-operative Society or where there is no chief executive officer appointed by the State Government or the Registrar the highest designated employee of the Co-operative Society, by whatever name called, shall manage the affairs of the Co-operative Society till a board is in a position to function.”

8. Learned Senior Counsel said that the provisions of sub section 8 should not have been resorted to straightaway, without taking measures under sub-section 7.

9. Learned Senior Counsel further submitted that there is no provision under the 2006 Act for appointment of successive Special Officers as has been done in the instant case.

10. Mr. Bhattacharya also drew our attention to the minutes of a meeting dated July 23, 2019, which was attended by the appellant herein. At the said meeting, it appears that the members of the Managing Committee participated. The members unanimously resolved to extend the tenure of Arup Sarkar as Manager till November 30, 2028, after noting that he was due to retire on November 30, 2022. Learned Senior Counsel submitted that although the appellant's name is recorded in the minutes of that meeting, the appellant was not present and did not in any manner consent to the extension of the tenure of Arup Sarkar as Manager. The Chairman/President of the meeting, who appears to have signed the minutes, is not a man of letters. He can barely put his signature in English. The minutes of the said meeting cannot be relied upon.

11. Learned Senior Counsel relied on a decision of a Division Bench of this Court in the case of ***Ali Ahmed v. State of West Bengal & Ors., reported at 86 CWN 246*** in support of his submission that whatever the prayers are in a writ petition, the writ Court can mould the relief and pass appropriate orders in the facts of a given case. In the present case, the writ Court, should direct Arup Sarkar to refund to the Society the salary that he received after November, 2022, since he was not entitled to act as Manager after attaining age of superannuation.

12. Mr. Bhattacharya relied on two Supreme Court decisions in the case of ***M.J. Exporters Private Limited v. Union of India & Ors., reported at (2021) 13 SCC 543*** and in the case of ***Greater Mohali Area Development Authority & Ors. v. Manju Jain & Ors., reported at (2010) 9 SCC 157,*** in support of the proposition that in a given set of undisputed facts, the appeal Court may decide a point of law even if the same has not been argued before the Single Judge.

13. Mr. Bhattacharya finally submitted that in the facts of the present case and for efficient management of affairs of the Cooperative Society, the Government should appoint an Administrator in exercise of power under Section 35 of the 2006 Act. According to him, the Special Officer who has

been appointed, is a henchman of Arup Sarkar, respondent no. 12, and he will function at the dictates of Arup Sarkar.

14. Learned Advocate appearing for the respondent no. 12 submitted that the learned Single Judge was right in holding that there is a statutory alternative remedy which the appellant could avail of. Section 102 of the 2006 Act which is of very wide amplitude, provides for a mechanism for resolution of disputes between the cooperative society and its members, present and past, or disputes between members inter se. Learned Counsel also referred to Sections 134A, 134B and 134C of the 2006 Act in Chapter XIII A of the Act and submitted that a Cooperative Credit Structure Entity, which the present Cooperative Society is, has autonomy in all financial and internal administrative matters including personal policy, staffing, recruitment, posting and compensation to staff. He submitted that in the interest of proper management of the Society, the respondent no. 12 was appointed as the Manager and there was nothing wrong about the same. It is nobody's case that the respondent no. 12 procured such appointment by any fraudulent means or otherwise. Such appointment has also been terminated by issuance of an order dated April, 9, 2024, by the Special

Officer of the Cooperative Society. Therefore, according to the learned Counsel, the appeal has become infructuous.

15. Learned Advocate appearing for the Cooperative Society argued that the issues raised in this appeal are beyond the scope of the writ petition. He further submitted that a member of a Cooperative Society loses his individuality and must abide by the majority decision. He alone cannot try to represent the Society's interest. It is the Society which represents the interest of all the members. In this connection learned Advocate relied on a decision of the Hon'ble Supreme Court in the case of ***Bengal Secretariat Cooperative Land Mortgage Bank and Housing Society Ltd. v. Aloke Kumar & Anr., reported at 2022 SCC OnLine SC 1404.***

16. We have carefully considered the rival contentions of the parties. The only issue that falls for determination before us is whether or not the learned Single Judge was justified in dismissing the writ petition on the ground of an alternative remedy being available to the writ petitioner.

17. The appellant basically has two grievances. One is that election has not been held since December 2019, when the term of the last Board of Directors expired. But the more serious grievance appears to be that the Respondent no. 12, i.e., Arup Kumar Sarkar, in spite of having retired in

November, 2022, was appointed as Manager to look after the affairs of the Cooperative Society. Arup was drawing a salary of about Rs. 2 lakh per month. This was against the interest of the Society. Since Arup had the support of the majority, the protests of the appellant were in vain.

18. Therefore, there appears to be a dispute between the appellant and the Cooperative Society or between the appellant, the Cooperative Society and the respondent no. 12. The appellant is admittedly a member of the society. The respondent no. 12 is admittedly an ex-employee of the Society.

19. Section 102 of the West Bengal Co-operative Societies Act, 2006, reads as follows:-

“102. Disputes to be filed before Registrar._ (1) Any dispute concerning the management or business or affairs of a Co-operative society other than the dispute relating to election in a Co-operative society as and when such election is conducted by the Co-operative Election Commission and disciplinary action taken by Co-operative society against its paid employees regarding the terms and conditions of the service shall be filed before the Registrar for settlement if it arises-

- (a) among members, past members and persons claiming through members and deceased members or their sureties; or
- (b) between member, past member or a person claiming through a member, past member or deceased member representing through heirs or legal representatives and the Co-operative society, its board or any officer, agent or employees of the Co-operative society or liquidator, past or present; or
- (c) between the Co-operative society or its board and any past board, any officer, agent or employee or any past officer, past agent; or past employee or the nominee, heirs or legal representatives of any deceased officer or deceased employee of the Co-operative society; or
- (d) between two Co-operative Societies or between a Co-operative Society and a liquidator of another Co-operative or between liquidator of two different Co-operative or between a Co-operative Society and any person having transaction with it or between a Co-operative Society and its financing bank.

(2) Any dispute mentioned in sub-section (1) other than a dispute relating to recovery of money shall be filed before the Registrar within three months from the date on which the cause of action arises.

(3) Notwithstanding anything contained in this section or in any other law for the time being in force. the Registrar may admit any dispute after the expiry of the period of limitation provided in sub-section (2), if the applicant can show sufficient cause for not filing the dispute within such period of limitation and the dispute so admitted shall not be barred by limitation.

(4) Any Civil Court or any Consumers' Dispute Redressal Forum shall not have any jurisdiction to try any dispute as mentioned in sub-section (1).

(5) Any dispute to be filed before the Registrar shall be made in writing to be called the plaint and it shall be filed in such manner and form as may be prescribed.”

20. The aforesaid provision has been incorporated in the statute for resolution of disputes among members or between a member and a past member or between a Cooperative Society and a member thereof or between

a member and a past employee of the Society. Therefore, the dispute that is sought to be raised by the appellant would clearly be covered by Section 102(1) of the 2006 Act. Sub-section 4 of Section 102 ousts the jurisdiction of a Civil Court or Consumers' Disputes Redressal Forum to try any dispute as mentioned in sub-section (1).

21. Although existence of an alternative remedy is not a bar to the maintainability of a writ petition, ordinarily the High Court would decline to entertain a writ application in exercise of high prerogative writ jurisdiction if an efficacious alternative remedy is available to the writ petitioner. This is such an established principle of law that no authority need be cited in support thereof. This reluctance of the High Court to entertain a writ petition where an alternative remedy is available to the writ petitioner, is particularly strong where a dispute contemplated by a statute arises and the statute itself provides a mechanism for resolution of such dispute. Perhaps the latest decision of the Hon'ble Supreme Court in this regard is in the case of ***PHR Invent Educational Society v. UCO Bank & Ors., (Civil Appeal No. 4845 of 2024 Arising out of SLP (C) No. 8867 of 2022) reported at 2024 INSC 297***. That case involved the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act

2002 (in short 'SARFAESI Act'). The borrower had filed a writ petition challenging an order of Debts Recovery Tribunal. The High Court allowed the writ petition by setting aside the impugned order and issuing consequential directions. The matter being carried to the Hon'ble Supreme Court, the Hon'ble Court referred to its earlier decisions in ***United Bank of India v. Satyawati Tondon & Ors.*, reported at (2010) 8 SCC 110, *Celir LLP v. Bafna Motors (Mumbai) Private Limited & Ors.*, reported at (2024) 2 SCC 1, *South Indian Bank Limited & Ors. v. Naveen Mathew Philip & Anr.*, reported at (2023) SCC OnLine SC 435, *Agarwal Tracom Private Limited v. Punjab National Bank & Ors.*, reported at (2018) 1 SCC 626, *Authorised Officer, State Bank of Travancore and Anr. v. Mathew K.C.*, reported at (2018) 3 SCC 85, *Phoenix ARC Private Limited v. Vishwa Bharati Vidya Mandir & Ors.*, reported at (2022) 5 SCC 345 and *Varimadugu OBI Reddy v. B. Sreenivasuly & Ors.*, reported at (2023) 2 SCC 168**, and held that it is more than a settled legal position of law that the High Court should not entertain a petition under Article 226 when an alternative statutory remedy is available. When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

22. We are of the considered opinion, that in view of the settled position of law, the learned Single Judge was fully justified in not entertaining the appellant's writ petition on the ground of availability of an alternative statutory remedy in the form of complaint to be filed before the Registrar of Cooperative Society as specified in Section 102 of the West Bengal Cooperative Societies Act, 2006.

23. We are also of the view that the grievance of the appellant involves dispute questions of fact which cannot be conveniently adjudicated by the writ Court and the statutory mechanism provided is much more well-equipped to decide such disputes.

24. Accordingly, this appeal fails and is dismissed with costs assessed at Rs. 10,000/- to be paid by the appellant to the Cooperative Society and the private respondent equally. Such cost is to be paid within a fortnight from date, failing which, the parties would be at liberty to bring the same to our notice.

25. This order will not prevent the appellant from approaching the appropriate forum under the provisions of the West Bengal Cooperative Societies Act, 2006, for redressal of his alleged grievances. If such statutory forum is approached by the appellant, that forum shall decide the disputes

raised by the appellant, in accordance with law, without being influenced by any observation in this order or in the order of the learned Single Judge that is the subject matter of the present appeal.

26. The appeal and the connected applications stand disposed of accordingly.

27. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(Prasenjit Biswas, J.)

(Arijit Banerjee, J.)