

Item-22. 16-01-2024

sg Ct. 8

MAT 1457 of 2022
CAN 1 of 2022

Nishes Ghsoh
Versus
Swapam Bhowal & Ors.

Mr. Abhishek Halder, Adv.
Mrs. Praniti Bandopadhyay, Adv.
Mr. Arkaprava Sen, Adv.
Mrs. Madhurima Basu, Adv.
...for the appellant
Mr. Bikash Ranjan Bhattacharyys, Sr. Adv.
Mr. Uday Sankar Chattopadhyay, Adv.
Mr. Suman Sankar Chatterjee, Adv.
Ms. Trisha Rakshit, Adv.
Ms. Rajarshi Tah, Adv.
Ms. Aiswari Datta, Ad.
...for the respondent nos. 1-3

1. The appeal and the application are taken up together and disposed of by this common order.
2. The subject matter of challenge in this writ petition is an order passed by the learned Single Judge on 16th June, 2022 in connection with a writ petition filed by the Vice President, Treasurer and a member of Bandel Elite Academy challenging an order dated 19th January, 2021 passed by the Joint Secretary, Department of Commerce, Industries and Enterprises, Government of West Bengal. By the said order, it was communicated to the Secretary of the Academy to remove the impasse created in the operation of the said society due to the sub-judice matters.
3. The Secretary was of the opinion that the regular matters of the society related to the polytechnic institute were to be jointly administered by the President and the Secretary of the society in the public interest, especially to protect the future of the students and the staff until a new committee is formed

and the Court cases are finally disposed of. It was further directed to submit regular monthly returns to the Registrar of Firms, Societies and Non-Trading Corporation, West Bengal along with the earnings and expenditures statement which should be jointly signed by the President and the Secretary of the society.

4. Briefly stated; the writ petitioners are the members of the said society. The said society has 14 members including one Samarendranath Ghosh and Nishes Ghosh (the present appellant). The present appellant filed a writ petition against an order restraining him from acting as a part of the governing body and from taking part in any affairs of the college until further order. There were disputes amongst the members with regard to administration and management of the society. The present appellant lodged an FIR against some members of the society including the writ petitioners alleging huge defalcation of fund and on an investigation initiated Swapan Bhowal and Khokon Bhowan were arrested. Tapan Bhowal obtained anticipatory bail from the Court on 17th October, 2021. He was restrained from entering the jurisdiction of Mogra Police where the polytechnic is situated.
5. On 20th April, 2022, the Hon'ble Division Bench modified the bail condition and restrained the petitioner no.3 from entering the precincts of college concerned without permission of this Court subject to the result of the writ proceedings.
6. The writ petitioners raised a jurisdictional issue in

questioning the order dated 19th January, 2021 on the ground that it is a private society and the State has no jurisdiction to interfere with the functioning of the society. The college has no separate governing body. The society functions as governing body of the college.

7. However, this objection was refuted by Mr. Abhishek Halder, learned Counsel representing the appellants herein. Mr. Halder contended that the authority is competent to pass such order under Section 23 of the West Bengal Societies Registration Act, 1961.
8. The learned Counsel representing the State before the learned Single Judge also supported Mr. Halder and submitted that keeping in mind the deadlock created in the functioning of the society and for the protection and the interest of the students, the said direction was passed by the Joint Secretary to the Government of West Bengal on 19th January, 2021.
9. The learned Single Judge on interpretation of Section 23 of the West Bengal Societies Act, 1961 expressed a view that the said order is not sustainable in view of the procedural irregularity as no enquiry was initiated in terms of Section 23(6) of the Act. The said order was passed on the *ipse dixit* of the authority concerned without applying its mind to the report of the Commissioner of Enquiry.
10. We find the interpretation of the said Section is a correct interpretation of law. However, even if we consider the said direction to be an interim arrangement and the discretion to be exercised by the Joint Secretary may be a possible view, it

cannot continue in perpetuity. The order itself has emphasized that it is an interim management and it is for the benefit of the students. Much time had lapsed after the said order and without the order of the writ court being implemented in view of the pendency of the appeal at the end of the day casualty is caused to the students.

11. Essentially, this is a dispute between the members of the governing body and a time has come that an elected body should be in place to run the said society in accordance with this memorandum. Accordingly, to put to an end to the impasse created by reason of the differences between the President and the Secretary, we direct the Registrar under the West Bengal Societies Registration Act, to hold a free and fair election to elect the members of the governing body and to hand over management to the duly elected body within a period of eight weeks from the date of communication of this order.
12. The President and the Secretary are directed to cooperate with the Registrar in implementing this order.
13. The writ petitioners shall bear all costs and expenses for implementing this order.
14. With the above directions, the appeal and the application are accordingly, disposed of. The Order under challenge is modified to the above extent. However, there shall be no order as to costs.
15. The parties are directed to immediately communicate this order to the Registrar of the society.
16. The reconstitution of the managing committee, affiliation of

the college should be restored subject to compliance of all formalities.

17. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Uday Kumar, J.)

(Soumen Sen, J.)