

17.09.2024
Item No, ADSL. 01

Crt.No.02
b.r.

WPA 23070 of 2024

Nishes Ghosh
-vs-
The State of West Bengal & Ors.

Mr. Avishek Halder
Ms. Sayanti Poddar
..... for the petitioner.

Mr. Jaharlal De, AGP
Mr. Shamim ul Bari
.... For the State.

Mr. Arkadipta Sengupta
Mr. Amitabrata Roy
Ms. Aayushi Mukherjee
... for the Resp. nos. 6 to 8.

Mr. Moyukh Mukherjee
Ms. Sagnika Banerjee
... for the REsp. no.11.

On the urgency pleaded on behalf of the petitioner and in view of the determination being assigned before this Court today, this writ petition has been taken up for consideration by publishing the same in the supplementary list.

Mr. Avishek Halder, learned counsel, appears for the petitioner. On his prayer made on behalf of the petitioner, supplementary affidavit affirmed by the petitioner on September 17, 2024 filed today in Court, is taken on record. Copy has been served upon Mr. Arkadipta Sengupta, learned counsel representing the private respondent nos. 6 to 8.

The petitioner claims to be the Secretary of one Society under the name and style of Bandel Elit Academy (for short, the Society). The Society runs a polytechnic College. The Society was formed under the provisions of the **West Bengal Societies Registration Act, 1961 (for short, the said 1961 Act)**. Alleging diverse mismanagement and defalcation of fund against the private respondents in this writ petition, the petitioner lodged a complaint before the **Registrar of Firms, Societies and Non-Trading Corporation**. Prior thereto, against the private respondents, the petitioner has lodged **First Information Report (FIR)** before the **Mogra Police Station in March/May, 2020**.

Upon the said complaint, the respondent no.3 passed its reasoned order dated **January 15, 2021 annexure p-5 at page 48** to the writ petition.

The private respondents challenged the same before a Co-ordinate Bench through **WPA 2743 of 2021**. By an order dated **June 16, 2022 annexure p-7 at page-61** to the writ petition, the said impugned decision dated **January 19, 2021** was **quashed**. An appeal being **MAT 1457 of 2022** was carried out by the petitioner. The Hon'ble Division Bench by its order dated **January 16, 2024 annexure p-8 at page-74** to the writ petition

disposed of the said appeal with the following observations:-

“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 in 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.

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.”

Being aggrieved by the said order of the Hon’ble Division Bench, the petitioner preferred a Special Leave Petition being **Special Leave to Appeal (C) No(s). 5201-5202/2024**. The Hon’ble Supreme Court by its order dated **March 4, 2024 annexure p-9 at page-79** to the writ petition had

dismissed the said Special Leave Petition with the following observations:-

“2. Although the counsel would raise various contentions pertaining to the mismanagement in the society and the FIR/complainant that have been filed for such alleged mismanagement, having regard to the fact that the direction is issued to the Registrar to hold elections, we are disinclined to interfere.

3. The Special Leave Petitions are, accordingly, dismissed.”

Thereafter, respondent no.5 had issued a notice dated **August 28, 2024 at page-84** to the writ petition for conducting the election of the Society. The petitioner has challenged the same through this writ petition.

Mr. Moyukh Mukherjee, learned counsel appearing for the respondent no.11 submits that, after the demise of her husband, she is entitled to cast her own vote as she is an independent member and the vote of his deceased husband shall be cast by her daughter as the legal heir of the deceased father.

Mr. Arkadipta Sengupta, learned counsel appears for respondent nos. 6 to 8 led by Mr. Amitabrata Roy, learned counsel.

Mr. Jaharlal De, learned Additional Government Pleader and Mr. Shamim ul Bar, learned State counsel appear for respondent nos. 1 to 5.

After considering the submissions made on behalf of the parties and upon perusal of the materials on record, it appears to this Court that the principal prayer in the writ petition is for quashing the said notice dated August 28, 2024 issued by the respondent no.5. From a perusal of the order of the Hon'ble Division Bench and the Hon'ble Supreme Court, as referred to above, this Court is of the view that the direction of the Hon'ble Division Bench to hold the free and fair election being upheld by the Hon'ble Supreme Court, the said notice dated August 28, 2024 was issued.

Inasmuch as when an election of the Society is fixed, to carry out a democratic process, the same shall not be interfered with unless a glaring illegality or mala fide or arbitrariness appears on the face of the decision for holding election. This is not such a case in the instant writ petition.

In any event, the election has been declared to be held pursuant to the direction of the Hon'ble Division Bench being upheld by the Hon'ble Supreme Court, as referred to above.

In so far as the submissions made on behalf of the respondent no.11 is concerned, there is no such claim before this Court made on behalf of the respondent no.11. If the respondent no.11 is entitled to such claim, she can pursue the same in accordance with law.

In view of the foregoing reasons and discussions, this Court is of the firm view that this writ petition is totally devoid of any merit.

Accordingly, this writ petition, **WPA 23070 of 2024** stands **dismissed**, without any order as to costs.

It is made clear that this Court has not gone into the merits of the allegations made by the petitioner against the private respondents or the governing body of the Society, at the relevant point of time

(Aniruddha Roy, J.)