
(2006) 09 CAL CK 0070
In the Calcutta High Court
Case No : Writ Petition No. 3922 (W) of 2003

Abdul Khaleque

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 08-09-2006

Acts Referred:

West Bengal Co-operative Societies Act, 1983 — Section 32(2)

Citation : (2007) 1 CALLT 368

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : Anupam Chatterjee and Mr. Ashit Kumar Chakraborty, for the Appellant; Milan Bhattacharya, Keshab Bhattacharya and Hare Krishna Haider for Respondent Nos. 1 to 6, for the Respondent

Judgement

J. Bhattacharya, J.—The Petitioner along with eight other members from different member societies were elected as Director of the West Bengal Co-operative Spinning Mills Ltd. in the 16th Annual General Meeting held on 4th October, 2002 under the supervision of one Cooperative Development Officer attached to the Handloom and Textiles Directorate as Election Officer.

2. The first, meeting of the Board of Directors was scheduled to be held on 1st November, 2002 on the following agenda:

1. Election of Vice-Chairman

2. Panel of Chairman.

3. Before holding the said meeting, the Deputy Secretary to the Government of West Bengal, in exercise of the power conferred u/s 32(2) of the West Bengal Co-operative Societies Act, 1983 and also in terms of the direction of the Governor, issued a Notification on 31st October, 2002 whereby the Annual General Meeting of the Society held on 4th October, 2002, was rescinded and the proposal for notifying the names of the Government nominees in the Board of Directors of the

said Society was dropped.

4. The legality and/or validity of the said Notification is under challenge in this writ petition.

5. Mr. Chatterjee, learned senior Advocate, appearing in support of the Petitioner, submitted that when the election of the Board of Directors in the 16th Annual General Meeting has not been challenged by anyone from any quarter, the State Government ought not to have invoked its power and/or authority u/s 32(2) of the said Act to rescind the Annual General Meeting held on 4th October, 2002 on the ground of certain alleged irregularities in the process of holding such election without disclosing the basis for formation of opinion regarding commission of such alleged irregularities in the order impugned.

6. Mr. Chatterjee further contended that the reasons for which the Annual General Meeting was rescinded as disclosed in the said Notification, are not sufficient reasons for which such exercise could have been made. According to Mr. Chatterjee, when conclusion was required to be drawn on the disputed question of facts, the authority ought not to have decided such disputed question without hearing the Petitioner as well as the other elected Directors. Mr. Chatterjee also contended that the Government being a shareholder member of the Society, ought not to have rescinded the Annual General Meeting on the ground of the alleged irregularities as disclosed in the impugned Notification, without approaching the Registrar of the Co-operative Societies for resolving such an election dispute as per the provision as contained in Section 95 of the said Act.

7. Mr. Chatterjee also argued that the State Government does not enjoy the power to rescind and/or suspend any proceeding or resolution of any Annual General Meeting of a Co-operative Society or of any meeting of the Board thereof u/s 32(2) of the said Act, in the absence of any order passed by the Registrar under the provisions of Section 32(3) of the said Act. In fact, Mr. Chatterjee submitted that Section 32(2) of the said Act cannot operate independently. Mr. Chatterjee contended that Section 32(2) of the said Act is dependent on the order passed by the Registrar under Sub-section (3). As a matter of fact, Mr. Chatterjee tried to impress upon this Court by submitting that as if the order u/s 32(2) of the said Act is a consequential order which may be passed by following an order passed u/s 32(3) of the said Act subject to its confirmation by an order passed by the State Government u/s 32(5) of the said Act.

8. Mr. Chatterjee, thus, submitted that since no order of suspension was passed by the Registrar suspending the execution of the resolution. or order of the Board or prohibiting doing of any act and such order having not been confirmed by the State Government and no order having been passed by the State Government either by rescinding or by modifying or confirming the said order of the Registrar u/s 33(5) of the said Act, the impugned order passed by the State Government by invoking its power independently u/s 32(2) of the said Act is a nullity, as the

said order was passed in excess of its jurisdiction.

9. Under such circumstances, Mr. Chatterjee invited this Court to quash the impugned Notification and to permit the Petitioner to hold the first meeting of the Directors for election of the office bearers and also to allow the Board of Directors to complete the full term of its tenure as per the provisions contained in the West Bengal Co-operative Societies Act.

10. Mr. Bhattacharya, learned Advocate, appearing for the State Respondents, supported the said Notification by submitting that the provision contained in Section 32(2) of the Act is an independent provision which can operate independently without reference to the provision contained in Section 32(3) of the said Act.

11. Mr. Bhattacharya contended that when the Registrar passes an order u/s 32(3) of the said Act, suspending the execution of any resolution or order of the Board or prohibiting doing of any act which was done by any authority in excess of the powers conferred by this Act or the execution of such resolution or doing of such act is likely to prejudice the material interest of the Co-operative Society or the members thereof or of the Co-operative movement in general then, the Registrar is required to send a copy of the said order to the Government which in turn can pass an order either to rescind, modify or confirm the order of the Registrar u/s 32(5) of the said Act.

12. Mr. Bhattacharya submitted that here in the instant case, the State Government has not exercised its power u/s 32(5) of the said Act on the basis of an order passed by the Registrar u/s 32(3) of the said order. Mr. Bhattacharya pointed out that here in the instant case, the State Government passed the impugned order in exercise of its power u/s 32(2) of the said Act which authorizes the State Government to pass an order, rescinding and/or suspending the resolution of an Annual General Meeting when the State Government considers that the Annual General Meeting was not held in conformity with the provision of the said Act-and the Rules framed there under. The said provision also authorizes the State Government to pass such an order of rescinding and/or suspending any Annual General Meeting when it is considered by the State Government that any proceeding or the resolution is likely to affect adversely the interest of any co-operative society or members thereof or of the co-operative movement in general.

13. By referring to the impugned Notification, Mr. Bhattacharya submitted that, apart from the irregularities as pointed out in the said notice, the State Government considered that for betterment of the cooperative movement of the State in general, the invocation of the power by the State Government u/s 32(2) of the said Act to rescind the Annual General Meeting was necessary.

14. Mr. Bhattacharya further contended that the Petitioner has not placed any material before this Court to show that the irregularities which were referred to in the said Notification were not committed at all in the process of holding such

election and as such, the justification for passing the impugned order cannot be challenged by the Petitioner.

15. Mr. Bhattacharya further submitted that the Government being a shareholder cannot raise any dispute u/s 95 of the said Act and as such, the Government on being satisfied about the irregularities committed in the process of holding the Annual General Meeting as referred to in the said notice rightly exercised its power u/s 32(2) of the said Act.

16. Mr. Bhattacharya ultimately submitted that the normal tenure of the Board has already expired and as such, the question of allowing those Board of Directors to continue, does not arise at all. That apart, when the other eight Directors accepted the impugned order, the Petitioner alone cannot maintain this writ petition.

17. Mr. Bhattacharya, thus, prayed for rejection of this writ petition.

18. Heard the learned Advocates of the parties. Considered the materials on record.

19. On perusal of the scheme of working out the provisions contained in Section 32 of the said Act, this Court is of the view that Section 32(2) and Section 32(3) are two independent provisions which have their own, independent and distinct sphere of operation. The State Government may pass an order u/s 32(2) of the said Act either to rescind or suspend the Annual General Meeting when the State Government is satisfied that the said meeting was not held in conformity with the provision or when the State Government considers that if the proceeding of the Annual General Meeting and/or the resolution adopted therein is allowed to exit, then that will likely to affect adversely the interest of any co-operative society or members thereof or of the co-operative movement in general. The power of the State Government to pass the order u/s 32(2) is not a consequential power depending upon the order passed by the Registrar under Sub-section (3) thereof. The State Government, however, on receipt of a copy of the said order passed by the Registrar u/s 32(3) of the said Act may also pass an order either to rescind or modify or confirm the order of the Registrar passed under Sub-section(5) of Section 32 of the said Act.

20. Here, of course, the State Government exercised its power u/s 32(2) of the said Act as the State Government was not only satisfied that certain irregularities as referred to in the said. Notification were committed in the process of holding the said Annual General Meeting but also found that the election held in the Annual General Meeting is required to be rescinded for the betterment of the co-operative movement of the State in general.

21. The Petitioner has not placed any material before this Court to show that alleged irregularities were not committed in the process of holding such Annual General Meeting and the Annual General Meeting was held in conformity with the extant Rule. That apart, the Annual General Meeting was rescinded on the

ground of betterment of the cooperative movement in the State.

22. Under such circumstances, this Court holds that even without adverting to the remedy available u/s 95 of the said Act, the State Government, in exercise of its power u/s 32(2), can rescind the resolution adopted in the Annual General Meeting.

Furthermore, when the other eight Directors have not come forward with such a challenge, this Court can presume that they have accepted the said order and they are not interested to exercise their right to manage the affairs of the said Society as member of the Board of Directors. The Petitioner being the only Director cannot manage the affairs of the Society in the absence of the other Directors.

23. When admittedly the elected body could not start functioning since 4.10.2002 till date and the normal tenure of the said elected body has already expired and further in case the old elected body is allowed to function, then many new members who have already been admitted in the said Co-operative Society since then, will loss their right to elect their representative for the next three years, this Court feels that it will be beneficial for the Society and its members to have a newly elected body which can manage the affairs of the said Society as the representative of all the present members of the Co-operative Society and its members societies.

24. In such view of the matter, this Court feels that no interference is necessary in the facts of the instant case, in spite of the fact that the reasons for which the State Government exercised such power u/s 32(2) of the said Act, as disclosed in the impugned notice and the manner in which such opinion was formed are not far from criticism.

25. Under such circumstances, this Court directs the Registrar, Cooperative Society to appoint a suitable Officer not below the rank of the Deputy Registrar to hold election of the said Co-operative Society in accordance with law. The Registrar is requested to give such appointment within a period of seven days from the date of receipt of this order.

26. Immediately upon appointment, the said Officer will start election process in accordance with law and will complete the holding of the said election in terms of law and will obviously act independently in this matter.

This writ petition is, thus, disposed of.

Urgent Xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible.