

(2012) 03 CAL CK 0055
In the Calcutta High Court
Case No : Writ Petition No. 2083 (W) of 2012

Anil Kumar Ghosh

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 15-03-2012

Acts Referred:

West Bengal Co-operative Societies Act, 2006 — Section 100(2)(c), 36(d)(ii)

Citation : (2012) 3 CALLT 212

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : Tarun Kumar Ray, Mr. Pabitra Charan Bhattacharjee and Mr. Arnab Ray, for the Appellant; Tapan Kumar Mukherjee, Mr. Sadhan Kumar Haider and Mr. Nilotpal Chatterjee for the State, for the Respondent

Judgement

Biswanath Somadder, J.—At the outset, learned counsel representing the writ petitioners prays for striking out the names of the writ petitioner Nos. 2 to 4. Such prayer is granted and the names of the writ petition Nos. 2 to 4 are directed to be deleted from the cause title of the writ petition in course of this day. The writ petitioner has described himself as one of the members of the Durgapur Steel Peoples" Co-operative Bank Limited possessing member No. P000557. He is essentially aggrieved by an order dated 25th January, 2012, issued by the Registrar of Co-operative Societies, West Bengal, whereby it has been held, inter alia, that no free and fair election can be held for election of delegates in respect of Durgapur Steel Peoples" Co-operative Bank Limited, unless it is ensured that the voters" list is prepared as per rules and is free from all irregularities. The basis of such an order appears to be a complaint lodged by one Arun Kumar Nandi and some others stated to be members of Durgapur Steel Peoples" Co-operative Bank Limited, with regard to the election of delegates of the said bank, which was scheduled to be held on 29th January, 2012.

2. In course of hearing of the matter it has been brought to this Court's notice by the learned counsel for the parties that the West Bengal Co-operative

Societies Act, 2006, has undergone a recent amendment, which has come into effect from 6th February, 2012. Pursuant to such amendment, the Government of West Bengal, Co-operative Department, has issued a notification dated 2nd March, 2012, appointing one Dhiraj Kumar Roy, as a Special Officer of the bank for a period of six months, with effect from the date of issuance of the notification, for managing the affairs of the bank with an additional direction upon him to exercise all the powers and perform all the duties, subject to control and direction of the Registrar of Co-operative Societies, West Bengal, in accordance with the provision of section 36(d)(ii) of West Bengal Co-operative Societies Act, 2006 (as amended upto date), and to make over the charge to the newly elected Board of Directors of the bank to be reconstituted by the Registrar of Co-operative Societies, West Bengal, as per clause (cc) of section 36 of the West Bengal Co-operative Societies Act, 2006 (as amended upto date), in accordance with the relevant provisions of the West Bengal Co-operative Societies Act, 2006, Rules and by-laws of the bank, before expiry of his stipulated tenure.

3. It is the specific contention of the learned counsel appearing on behalf of the writ petitioner that pursuant to the appointment of a Special Officer what the State is actually seeking is to have a fresh voters" list prepared for the purpose of holding election of delegates of the bank based on a frivolous complaint, which culminated in issuance of the impugned order dated 25th January, 2012. According to the learned counsel for the petitioner, it is well settled that election cannot be postponed for reason that certain claims and objections still remain to be disposed of and no authority should pass any order which has the tendency or effect of postponing an election which is reasonably imminent. In this context, he relies on the five Bench decision of the Supreme Court rendered In Lakshmi Charan Sen v. A.K.M. Hussan Uzzaman & Ors., reported in AIR 1985 SC 1233. According to him, the only purpose of appointing a Special Officer in terms of the notification dated 2nd March, 2012, was to stall the election process which has already commenced and to help the State to prepare a fresh voters list, based on the observations made in the impugned order dated 25th January, 2012, passed by the Registrar of Co-operative Societies, West Bengal.

4. On the other hand, learned counsel representing the State categorically submits that the instant writ petition has essentially become an academic exercise, consequent upon issuance of the notification dated 2nd March, 2012. He further submits that the impugned order dated 25th January, 2012, has also become redundant at this stage, since the entire responsibility to perform all statutory duties for managing the affairs of the bank has been entrusted upon the Special Officer who is also statutorily bound to ensure that a free, fair and transparent election takes place for the purpose of electing delegates and consequently the Board of Directors of the bank, within the time frame as stipulated in the notification dated 2nd March, 2012.

5. Upon considering the submissions made by the respective parties, it appears

that the Impugned order dated 25th January, 2012, has not been passed by the Registrar of Co-operative Societies, West Bengal, suo motu, but is based upon an enquiry conducted under the provisions of section 100 of the West Bengal Co-operative Societies Act, 2006. Clause (c) of sub-section (2) of section 100 of the said Act provides for such an enquiry by the Registrar to be held on the application of 1/10th of the members of the concerned Co-operative Societies, each of whom has been a member for not less than six months immediately proceeding the date of application and who have deposited such security for cost, if any, as the Registrar may direct. Thus, it is clear that only if the above requirement is fulfilled, the Registrar could have caused an enquiry based on which the impugned order dated 25th January, 2012 was passed.

6. At this junction, it may not be out of place to take note of the fact that the recent amendment of the West Bengal Co-operative Societies Act, 2006, has no effect on the provisions contained u/s 100 of the West Bengal Co-operative Societies Act, 2006. Therefore the only aspect of the matter that requires consideration now is whether the impugned order dated 25th January, 2012, has been passed by the Registrar strictly in accordance with clause (c) of sub-section (2) of section 100 of the West Bengal Co-operative Societies Act, 2006, or not. If less than 1/10th members of the bank made an application calling for an enquiry and the impugned order was passed pursuant thereto, the order cannot have any effect or bearing on the preparation of the voters' list by the Special Officer appointed by the State in terms of the notification dated 2nd March, 2012.

7. In such circumstances, while agreeing with the stand taken by the learned counsel for the State that the Special Officer appointed in terms of the notification dated 2nd March, 2012 is duly empowered to manage the affairs of the bank and perform all statutory duties, including holding of a free, fair and transparent election for the purpose of electing delegates and consequently the Board of Directors, at the same it is observed that the Special Officer cannot rely on the impugned order dated 25th January, 2012, unless the application of Arun Kumar Nandi and some others was made strictly in conformity with clause (c) of sub-section (2) of section 100 of the West Bengal Co-operative Societies Act, 2006, as discussed hereinbefore. If the aforesaid provision of law has not been strictly followed, the Special Officer shall proceed to prepare the voters' list on the basis of available records with the bank and in accordance with the scheme of the statute to ensure that by a free, fair and transparent democratic process, the election for delegates and consequently, the Board of Directors, is completed within the shortest possible time, which, in any event, shall not exceed the time frame as stipulated in the notification dated 2nd March, 2012. The writ petition stands disposed of accordingly.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties.