
(1996) 08 CAL CK 0020
In the Calcutta High Court
Case No : C.O. No. 10003 (W) of 1996

Arun Kumar Mukherjee and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 19-08-1996

Acts Referred:

Bengal General Clauses Act, 1899 — Section 14(2)

Citation : (1997) 1 CALLT 181

Hon'ble Judges : Prabir Kumar Samanta, J

Bench : Single Bench

Advocate : Anupam Chatterjee, Ashit Chakraborty and Indranil Nandi, for the Appellant; K.D. Mukherjee and Krishnendu Banerjee for Respondent No. 4 and Keshab Bhatteerjee, for the Respondent

Final Decision : Dismissed

Judgement

Prabir Kumar Samanta, J.—The writ petitioner No. 1 is the Secretary and a Director of Panihati Co-operative Bank Ltd. The petitioner No. 2 is the Panihati Co-operative Bank Ltd. This writ petition has been filed by the aforesaid two petitioners challenging the notice of the Special General Meeting of the said Co-operative Bank issued by the respondent No. 4, the Chairman of the said Bank. The respondent No. 4 raised a preliminary objection against the maintainability of the writ petition by the Co-operative Bank in the absence of any authorisation in this behalf by the Board of Directors in favour of the petitioner No. 1. Such question need not be gone into for the purpose of disposal of this writ petition because even if the writ petition is held to be not maintainable on behalf of the petitioner No. 2 but then the petitioner No. 1 alone can maintain this writ petition on his behalf.

2. One third delegate members of the aforesaid Co-operative Bank by a written notice addressed to the Secretary of the said Bank requested the Board of Directors of the said Bank to call for a Special General Meeting of the Bank on the agenda mentioned therein. The said requisition in writing was received by the

Secretary of the said Bank on 6.3.96. The Board of Directors though in its meeting dated. 9.4.96 took into consideration the said requisition of the delegates for a Special General Meeting as aforesaid but no consensus was arrived at therein, both in respect of the date of the Special General Meeting and the list of business and/ or businesses to be transacted therein.

3. In such circumstances, the Assistant Registrar of Co-operative Societies, North 24-Parganas, in exercise of the power under Sub-section (3) of Section 26 of the West Bengal Co-operative Societies Act, 1983 (hereinafter called the said Act), passed an order dated 4.7.96 authorising the Chairman of the said Bank to call a Special General Meeting in terms of Section 26(1) of the said Act. In the said order it was categorically pointed out that the majority of the Directors of the Board of Management of Panihati Co-operative Bank Ltd. failed to call the requisition Special General Meeting within the time prescribed u/s 26(2) of the said Act. On the basis of such authorisation the Chairman of the said Bank, the respondent No. 4 herein, published a notice dated 6.7.96 for a Special General Meeting of the said Bank on 28.7.96 with agenda mentioned therein which included amongst other an agendum for removal of the writ petitioner from his office of Director of the Board.

4. Both the said order dated 4.7.96 of the Assistant Registrar, Cooperative Societies u/s 26(3) of the said Act and the aforesaid notice dated 6.7.96 for a requisition Special General Meeting by the Chairman of the said Bank have been challenged in this writ petition.

5. Mr. Anupam Chatterjee, learned advocate appearing on behalf of the petitioners raised several issues to challenge the said order and the notice. Mr. Chatterjee, seriously contended that the Assistant Registrar, Co-operative Societies had exercised his power u/s 26(3) of the said Act when there was no material before him about the failure of the majority of the Directors to call for a Special General Meeting as per the requisition of the delegates. It was also contended that the said order of the Assistant Registrar does not disclose the materials upon which he reached his satisfaction. Accordingly, it was contended that the same was made without application of mind and is therefore liable to be set aside. Next it was contended that the authorisation to the Chairman of the said Bank to call a Special General Meeting was beyond the scope of Sub-section (3) of Section 26 of the said Act as because the provision therein speaks of authorisation only in favour of any person. Mr. Chatterjee, contended that "any person" referred to in Sub-section (3) Section 26 of the said Act must be a person individual but neither an office nor an officer. Lastly, Mr. Chatterjee contended that the impugned notice of the Special General Meeting of the said Co-operative Bank with the agenda mentioned therein including the agendum for removal of the writ petitioner from his office of Director of Board is violative of provisions of Rule 41(1)(a) of the West Bengal Co-operative Societies Rules 1987 (hereinafter called as said Rules) as it prohibits transactions of other businesses in a General Meeting where there is an agendum for removal of an elected

member of board from his office. In other words the impugned notice of a Special General Meeting with the agenda mentioned therein including the agenda No. 1 for removal of the petitioner No. 1 from his office of Director of the Board is violative of Rule 41 (1)(a) of the said Rules and therefore it was contended by him that the said notice of Special General Meeting is liable to be set aside.

6. Sub-sections (1)(2) & (3) of Section 26 of the said Act read as follows:--

Special General Meeting -(1) A special general meeting of any Cooperative society may be called at any time by a majority of the directors of the board, (and shall be called)

(a) on the requisition in writing of one-third of the members of the Co-operative society or the delegates, where there are delegates ; or

(b) at the direction of the Register.

(2) The Special General Meeting [under Clause (a) or Clause (b) of sub-section(1)] shall be called within two months from the date of the requisition or the direction, as the case may be.

(3) The Registrar or any person authorised by him in this behalf may, by an order in writing, call at any time a Special General Meeting of any Co-operative society and shall call such a meeting upon refusal or failure by a majority of directors of the board to call a Special General Meeting [under Clause (a) or Clause (b) of Sub-section (1)].

7. Sub-section (3) aforesaid empowers the Registrar or any person authorised in this behalf to call a Special General Meeting upon failure by a majority of directors of the board to call a Special General Meeting under Clause (a) or Clause (b) of Sub-section (1). So far as the failure by majority of directors of the board to call a Special General Meeting in pursuance to the requisition as aforesaid is concerned, it is not in doubt, in this case. Though Mr. Chatterjee sought to argue that Sub-section (2) merely provides for calling of the meeting within two months from the date of requisition but not the holding of the meeting within the time aforesaid but from the materials on record produced by the writ petitioners themselves it does not appear that the majority of the directors in any of its meeting held within a period of two months from 6.3.1996 i.e., the date of requisition fixed the said Special General Meeting any time before the impugned order dated 4.7.96 as aforesaid was made by the respondent No. 3 herein. Therefore, it can safely be said that the respondent No. 3 had certainly the occasion to exercise his power under Sub-section (3) of Section 26 of the said Act. Mr. Mukherjee, learned advocate appearing on behalf of the respondent No. 4, in course of hearing, produced a copy of the letter dated 17.6.1996 written by him to the Registrar Co-operative Societies in this regard. Mr. Mukherjee, therefore contended that the Registrar. Co-operative Societies had the knowledge of failure of the majority of the directors of the board in this

regard. Be that as it may, said Sub-section (3) as it stands does not require recording of the reasons and/or the facts giving rise to the exercise of power by the authority concerned. Therefore, merely because, the facts were not set out as to how the said respondent No. 3 reached its satisfaction about such failure, would not make the order fatal or exercise of power illegal ab initio so long as the facts thereof are in existence or could be proved in same other way or could be established, if needed, in the proceeding. Therefore, in view of the facts established that till before the impugned order dated 4.7.96 of the respondent No. 3, there was no material whatsoever to established that the majority of the directors called for a Special General Meeting of the said Bank, it cannot be said that the exercise of power by the respondent No. 3. u/s 26(3) was illegal or unlawful.

8. The next and important point for consideration is whether the Chairman of the said Bank which he stands for is a person falling within the scope of Sub-section (3) of Section 26 of the said Act. Person has not been defined in the said Act. Therefore, it is to be seen whether the word "person" has been used in Sub-section (3) to mean a person individual and to exclude all others. In order to determine this question it is necessary to find out from the said Act and the Rules framed thereunder who can be entrusted to call for a Special General Meeting of the Co-operative Bank. Rule 20 of the said Rules provides that Rules pertaining to Annual General Meetings shall apply mutatis mutandis, to a Special General Meeting called u/s 26 of the said Act. Rule 18 relates to Annual General Meeting and sub Rule (4) of the said Rule 18 provides as follows:--

(4) "when the Registrar or the officer or the person as the case may be authorised by him calls an Annual General Meeting under Sub-section(3) of Section 25 or a Special General Meeting under Sub-section (3) of Section 26 or when the Registrar calls an Annual General Meeting under Sub-section (4) of Section 25, the secretary or any other officer authorised under these rules to call Annual General Meetings and Special General Meeting shall arrange to issue and despatch the notices of the meetings as may be required by the Registrar or the officer or the person authorised by him."

9. Thus Sub-rule (4) makes it clear that the Registrar may authorise either a particular person individual or any officer to call for a Special General Meeting under Sub-section (3) of Section 26 of the said Act. The word person in Sub-section (3) of Section 26 of the said Act has thus further been explained and/or supplemented by the said sub Rule (4) of Rule 18 by including an officer. An officer has been defined in Section 2(31) of the said Act which includes a Chairman of a Co-operative Bank. Therefore, in true consonance of all the provision of the aforesaid Act and the Rules framed thereunder the word "Person" used in sub section(3) of Section 26 of the said Act includes not only the Chairman of the Cooperative Bank, but also all other officers as defined in the said Act and person individual too. Hence the contentions of Mr. Chatterjee fail.

10. Last contention of Mr. Chatterjee, is that in view of Rule 41(1)(a) of the said Rules and more particularly of the word "agendum" used therein the Special General Meeting cannot be called, with agenda including the agendum of removal of the petitioner from his office of director of the board. He accordingly contended that the business for removal of the petitioner as aforesaid can be transacted in the a Special General Meeting if the same is called for that purpose only and with only agendum thereof but not in the impugned Special General Meeting which had not been called for that purpose only with the agendum thereof. In this connection reference may be made to Sub-section(2) of Section 14 of Bengal General Clauses Act, 1899 which reads as follows:--

In all Bengal Acts [and West Bengal Acts], unless there is anything repugnant in the subject or context,--

(2) words in the singular shall include the plural, and vice versa.

11. In view of the aforesaid provisions the word "agendum" appearing in Rule 41(1) (a) of the said Rules means and includes agenda and therefore the contention of Mr. Chatterjee in this regard is also not tenable.

12. In all these views of the matter all the contentions on behalf of the writ petitioner fails. The writ petitioner is accordingly dismissed.