
(2000) 11 CAL CK 0013
In the Calcutta High Court
Case No : Writ Petition No. 1435 (W) of 2000

Hari Sadhan Mondal

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 13-11-2000

Acts Referred:

Citation : (2001) 2 ILR (Cal) 179

Hon'ble Judges : Dilip Kumar Seth, J

Bench : Single Bench

Advocate : Ranabijoy Bhattacharya and Amar Kumar Sinha, for the Appellant;
Keshab Bhattacharya, for the Respondent

Judgement

Dilip Kumar Seth, J.—Petitioner has challenged two orders contained in Annexes. "E" and "F" both dated January 21, 2000. First Order being Order No. 421 relates to a notice to show cause why the Board of Directors should not be dissolved as contemplated u/s 30(1) of the West Bengal Co-operative Societies Act, 1983. Whereas the second notice being order No. 422 relates to deputation of a Government Officer to the service of the society to manage the affairs till an Administrator or Board of Administrators is appointed.

2. Learned Counsel for the Petitioner contends that in view of Sub-section (1) of Section 30 notice is to be given before dissolving the Board and the hearing postulates thereafter. Therefore, only after giving opportunity of hearing to the Board, the Board can be dissolved. According to him, the second notice contained in Order No. 422 in effect dissolved, the Board by reason of deputation of an Officer. Inasmuch as such deputation will prevent the Board to function since the Officer so deputed would be functioning. Therefore, according to him, this amounts to supersession in contravention of Sub-section (1) of Section 30 with regard to the giving opportunity to reply to the show cause which has been frustrated by reason of such a step. Therefore, both the orders should be quashed.

3. Learned Counsel for the Respondents, on the other hand, contends that Sub-section (3) of Section 30 postulates deputation of a Government Officer for managing the affairs till an Administrator or Board of Administrator is appointed. According to him, Sub-section (1) Section 30 cannot be read in isolation and it should be read in consonance with Sub-section (3) of Section 30. One provision cannot be used out of context. The entire section has to be given a comprehensive reconciliation. According to him, Section 30 has been applied in order to avoid certain situation so that the records of the Society are preserved. Be that as it may, so long Sub-section (3) of Section 30 is declared ultra vires, the same remains. He further contends that the vires of Sub-section (3) of Section 30 has not been challenged. Therefore, the Petitioner cannot make it out a grievance of a subsequent order being No. 422 issued on the same date.

4. Heard both the Learned Counsel at length. Sub-section (1) of Section 30 postulates certain grounds. If the Registrar is of the opinion that the Board should be dissolved, he may serve a notice upon the Board and giving opportunity of being heard, he may pass an order of dissolution stating the reasons therefor. Thus Sub-section (1) Section 30 postulates giving of a notice and hearing, namely, an opportunity of hearing before dissolving the Board. He may dissolve the Board stating the reasons. But Sub-section (1) of Section 30 is the operative section by which the dissolution is effected. During the period when the process of dissolution continues, namely, giving of notice and opportunity of hearing, Sub-section (3) of Section 30 makes provisions of some interim arrangement. By reason of such a situation if in the opinion of the Registrar it appears that the interim arrangement is to be made, it is open to him to make such arrangement. Then again, a section cannot be read in isolation and out of context. All Sub-sections constitute the whole section and to be reconciled and given a full meaning. Legislature never use any infructuous provision. In the present case, Sub-section (3) of Section 30 provides for an interim arrangement to the extent that after service of notice under Sub-section (1), the Registrar has to depute a Government Officer to the service of the Cooperative Society to manage its affairs till an Administrator or Board of Administrators is appointed under Sub-section (1) and such Government Officers are empowered to exercise such powers as the Registrar may specify in the order and The Board of the Society is required to allow such Government Officer to exercise his power and perform his duties accordingly. Therefore, Sub-section (3) makes it obligatory on the Board of Directors of the Society to allow such Government Officer so deputed to discharge his functions and duties. Sub-section (3) uses an expression shall before the expression after service of notice under Sub-section (1) of Section 30. Thus deputation of Government Officer is made clear. Where notice under Sub-section (1) is issued, there is no option but to depute a Government Officer for the purposes mentioned in Sub-section (3). Use of the word "shall" in Sub-section (3) indicates the mind of the legislature expressing the intention but then ultimately the question relates to interim arrangement during the period of process under Sub-section (1). Therefore, it is a stop gap

arrangement with which the Board cannot quarrel, particularly, in view of the express provision of Sub-section (3).

5. Thus it appears that Order No. 422 dated January 21, 2000 deputing the Government Officer after the order No. 421 dated January 21, 2000 issuing the show cause notice does not suffer from any infirmity. Learned Counsel for the Petitioner sought to draw my attention to the merits of the case. The question cannot be gone into at this stage since the merit is to be gone into at the time when the reply to show cause is given and the question is decided on merits for the purpose of dissolution of the Board, Therefore, I refrain from entering into such question. Petitioner prays for time to file objection. Learned Counsel for the Respondents opposed the same on the ground that time has expired long before. Since the Petitioner did not avail of the opportunity, there may not be another extension of such opportunity.

6. In law, there being an interim order, it was open to the Petitioner to submit its objection without prejudice to the rights and contentions, if he has not chosen to do so, he has done so at his peril. Then the question of dissolution requires an opportunity of hearing. Therefore, if in the meantime, the dissolution has not taken place, in that event, in case the Petitioner submits his reply within two weeks from date, in that event Petitioner may be given an opportunity of hearing and an appropriate order may be passed in terms of the notice dated 421 dated January 21, 2000. In case, the order of dissolution and appointment of Board of Administrator has already been passed, in that event, the objection need not be gone into.

7. In case, the Board has not been superseded or dissolved in the meantime, in that event the Petitioner, if seeks for inspection of any documents, copies of the same be furnished by the Officer deputed to manage the affairs of the Society within there days from the date of furnishing the list of documents.

8. The relief as prayed for could be had by the Petitioner in this writ petition. The writ petition is liable to be rejected. But however, in view of the observation made above the writ petition stands disposed of as observed above. There will be no order as to costs.

9. Urgent Xerox certified copy of this order, if applied for, be supplied expeditiously.