

(2019) 12 CAL CK 0103
In the Calcutta High Court

Case No : Civil Application (CAN) No. 10630, 10631 Of 2019, Tender Of Mand
Appl (MAT) No. 1578 Of 2019

M. Murugesan And Others

APPELLANT

Vs

Nand Kishore Singh And Others

RESPONDENT

Date of Decision : 02-12-2019

Acts Referred:

Andaman And Nicobar Islands Cooperative Societies Regulation, 1973 — Section 127(1)(b)

Citation : (2019) 12 CAL CK 0103

Hon'ble Judges : Dipankar Datta, J; Moushumi Bhattacharya, J

Bench : Division Bench

Advocate : Gopala Binu Kumar, Md. Tabraiz, Anjili Nag, A.K.Mandal

Final Decision : Disposed Of

Judgement

The Registrar of Cooperative Societies, Andaman and Nicobar Administration, by an order dated 21st October, 2016 superseded the Board of Management of the Central Cooperative Welfare Society Limited (hereafter CCWS Ltd) and appointed an Administrator to manage the affairs thereof initially for a period of one year with immediate effect. Such an order was made in exercise of power conferred by Section 127(1)(b) of the Andaman and Nicobar Islands Cooperative Societies Regulation, 1973. It is not in dispute that by different subsequent orders, the term of the officer nominated to function as Administrator has been suitably extended.

By the last of such orders, the Assistant Commissioner (Settlement) had been appointed as the Administrator for CCWS Limited. The said Administrator issued a notice dated 21st September, 2019, whereby a General Body meeting of the CCWS Ltd. was convened on 20th October, 2019 to discuss the following agenda.

"Agenda

1. Placement of Administrative report for the period from 2016-19.

2. Placement of Annual Audit Report for the year 2016-17, 2017-18.

3. Election of the Managing Committee."

Pursuant to issuance of such notice, the respondent no.1 invoked the writ jurisdiction of this Court on 26th September, 2019 ventilating his grievance that the election for re-constitution of the Board of Management of CCWS Ltd. ought not to be conducted without first deleting the names of members who have died or have left the area of operation of CCWS Ltd. as well as without induction of new members.

The writ petition was considered by a learned Judge of this Court on 27th September, 2019. Learned advocates appearing for the respondents in the writ petition agreed to disposal of the writ petition without exchanging affidavits.

Upon hearing the parties, the learned Judge disposed of the writ petition with the following directions:

" From the submissions made by the learned counsel appearing for the parties, it appears that it would take time to prepare fresh list of the eligible members for free and fair election of the society.

In view of the submission made by the counsel appearing for the parties, I am disposing of this writ application by giving direction to the present Administrator to hold the election, after preparing a fresh list of the eligible members in appropriate case after observing all formalities including deletion as well as induction of members in accordance with bye-laws of the society. The entire exercise should be completed within a period of four months from date.

In view of the above, the decision taken by the Administrator to hold the election on October 20, 2019 stands cancelled."

(emphasis supplied)

In compliance with the aforesaid order dated 27th September, 2019, the Administrator issued notice dated 10th October, 2019 for revision/updation of the list of members. All bonafide members of the CCWS Ltd. were requested to furnish the requisite information in the prescribed form along with supporting documents so that the same reaches the office of the CCWS Ltd. in the manner stipulated, positively by 15th November, 2019. It was made abundantly clear by the Administrator that if the requisite information were not received to update the membership list within the cut-off date, names of such members who have either died or have permanently left the area of operation of CCWS Ltd. would stand deleted from the updated list of members.

By a subsequent notice dated 16th November, 2019 the Administrator suo motu extended the cut off date till 23rd November, 2019.

Ten days prior to the cut-off date of 15th November, 2019, fixed by the notice dated 10th October, 2019, the appellants tendered the present appeal together

with an application for leave to appeal as well as stay of operation of the impugned order.

The appellants also happen to be share holders of CCWS Ltd. Their primary grievance was that the learned Judge ought not to have made any direction for induction of new members.

Since the appellants have an interest in conducting of free and fair election for reconstitution of the Board of Management of CCWS Ltd., they have locus standi to prefer an appeal against the order of the learned Single Judge. The application for leave to appeal, thus, stands allowed.

Mr. Binnu Kumar, learned advocate appearing for the appellants submits that they have no grievance insofar as the direction of the learned Judge for updating/reviewing the membership list is concerned but they are seriously aggrieved by the direction for induction of new members. Such direction, according to Mr. Kumar, is in the teeth of the decision of the Supreme Court reported in 2000 (6) SCC 1 (Jt. Registrar of Cooperative Societies vs. T.A.Kuttappan).

Mr. Kumar also submits that the cut-off date should be suitably extended so that maximum number of members can cast their votes in the election to be conducted in terms of the impugned order.

Since Mr. Tabraiz, learned advocate appearing for CCWS Ltd., Mrs. Anjili Nag, learned advocate appearing for the respondent no.1 and Mr. Mandal, learned advocate for the Administration do not join issue with regard to the proposition of law laid down in T.A.Kuttappan (supra) as well as its applicability to the present case involving pari materia provisions, we have no hesitation to hold that the impugned order, so far as the same makes a direction for induction of new members in accordance with the bye-laws of CCWS Ltd. cannot be sustained in law.

Accordingly, we direct that the words "as well as induction of members" in the underlined portion of the order extracted supra, would stand deleted.

Although much has been submitted by Mr. Kumar with regard to the validity of the notice dated 20th October, 2019 to the effect that no cut-off date should have been fixed and all the members should have been allowed to participate in the election, as and when conducted, upon production of documents relating to identity and other supporting documents, we are not impressed.

Due notice was published but unfortunately the appellants did not respond on time, as well as within the extended time. We see no reason to interfere with the notices that have been issued by the Administrator.

We make it abundantly clear that if anyone has been inducted as a member of CCWS Ltd. after the Administrator was initially appointed by the order dated 21st October, 2016 and his/her name appears in the list of eligible members, such name shall be deleted and he/she shall not be entitled to vote in the election.

In view of the fact that an election is long overdue, we encourage the Administrator to complete the process in accordance with law at the earliest.

With the aforesaid modification of the impugned order, the application for stay together with the appeal stands disposed of. There shall be no order as to costs.