
(2010) 12 CAL CK 0055

In the Calcutta High Court

Case No : GA No's. 1320, 2975, 3277 and 3463 of 2010 and CS No. 108 of 2010

Paltu Mukherjee and Others

APPELLANT

Vs

East Bengal Club and Others

RESPONDENT

Date of Decision : 01-12-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8
Companies Act, 1956 — Section 166, 256
Constitution of India, 1950 — Article 329

Citation : (2010) 12 CAL CK 0055

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : Ahin Chowdhury and Sayantan Bose, S.N. Mookerjee, Debasis Kundu, Jishnu Saha, Raghunath Ghosh and Saubhik Choudhury and Dhruba Ghosh, in GA 3277 of 2010, for the Appellant; P.C. Sen and Ajoy Krishna Chatterjee Soumen Sen and Somnath Saha, Jayanta Mitra Ranjan Bachawat and Debnath Ghosh for the Defendant No. 32, for the Respondent

Final Decision : Dismissed

Judgement

Sanjib Banerjee, J.—As is now the wont, elections of office-bearers of sporting clubs in the Maidan have become acrimonious affairs. Elections were due to be held for various posts in the East Bengal Club this year. The present suit was filed in or about April this year seeking the following reliefs:

- a) A decree of perpetual injunction restraining the Defendants /the present Executive Committee of the East Bengal Club from proceeding to hold the next election of its Executive Committee without first preparing and publishing a draft photo electoral roll, making available copies of the same to all members who may apply for such copies for the due scrutiny/approval thereof and thereafter preparing a final photo electoral roll after duly considering all objections that may be raised with regard to the draft;
- b) A decree of mandatory injunction directing the Defendants/ the present

Executive Committee of the East Bengal Club to forthwith to prepare and publish a draft photo electoral roll of all members of the club before holding further elections, to make available copies of such draft photo electoral roll for due scrutiny /approval of the members and thereafter to prepare a final photo electoral roll after duly considering all objections that may be raised with regard to the draft;

c) An Administrator / Special Officer be appointed for the purpose of ensuring the due free and fair election of the next Executive Committee of the East Bengal Club to hold the next election of the Executive Committee of the club on the basis of the final photo electoral roll upon identifying the voters both on the basis of their photo identity cards and on the basis of their pan cards, driving licences, passports, voter identity cards issued by the Election Commissioner of the Government of India or other like identification;

d) Receiver;

e) Injunction;

f) Costs;

g) Further and other reliefs.

2. Since the suit was instituted with leave under Order I Rule 8 of the Code of Civil Procedure, a number of applications were received for addition of parties. Some of them have been allowed. The appearing parties agree that the orders sought in an application by the added 32nd Defendant, Sekher Ghosh, in GA No. 2975 of 2010 and by the Plaintiffs in their latest application, GA No. 3463 of 2010, are covered by the reliefs claimed in the suit. It is not the contesting Defendants' argument, despite a specific query, that the orders prayed for in the most recent applications are beyond the purview of the suit. GA No. 1320 of 2010 is the Plaintiffs' initial application on which several orders were passed. Contempt proceedings were instituted for alleged non- compliance of some of the orders and the substantive orders passed in the contempt proceedings have been accepted by the parties and no grievance as to the authority of the court to make substantive orders in contempt proceedings has been raised. GA No. 1320 of 2010 was primarily for the purpose of preparation of photo electoral rolls for the club elections. The photo electoral rolls are now in place and the Plaintiffs' first interlocutory application appears to have worked itself out. GA No. 3277 of 2010 is an application by another member complaining of his nomination as a candidate for one of the posts having been rejected and of his name not figuring in the voters' list. The applicant has abandoned the first part of the claim and only seeks an order to allow such applicant to be able to cast his vote at the election.

3. In course of the electoral rolls being prepared in accordance with orders passed in the present proceedings, the time to complete the annual general meeting of the club for the current year has passed and the committee members

continue well past the usual time for them to demit office.

4. The substance of the submission on behalf of the Plaintiffs and the supporting 32nd Defendant is that the election process that has been set rolling by the present committee raises genuine apprehension as to whether the election would be free and fair. The Defendant No. 32 has made an additional point that the present committee and its members have become functus officio since, under the club rules, they ought to have completed the annual general meeting for the year 2010-11 by the end of September. He refers to judgments reported at Krishnaprasad Jwaladutt Pilani Vs. Colaba Land and Mills Co. Ltd., , B. Mookerjee Vs. State Bank of India and etc., and Mohun Bagan Athletic Club and Others Vs. Deba Prasad Mukherjee and Others, in support of the orders sought. The essence of the charge is that office-bearers cannot continue beyond the time stipulated in the rules of the relevant organisation for any reason whatsoever. The corollary to the argument is that since the committee members are deemed to have vacated office at the end of September, 2010, the elections that were due to be held by such time can no longer be conducted under the aegis of defunct committee. The Defendant No. 32 urges that the entire election process commenced by the obsolete body and the election board or sub-committee set up by it should be annulled and, in view of the extraordinary circumstances where the regular machinery of the club as contemplated by its rules cannot conduct the elections, the court should formulate a procedure therefore.

5. It is necessary to address such legal issue before the factual basis for the apprehension expressed by the Plaintiffs and the Defendant No. 32 is noticed. It must be recorded, however, that the Plaintiffs do not support the view of the Defendant No. 32 that the present office-bearers of the club have vacated office at the end of September, 2010. But since the legal issue has been raised, it needs to be assessed as an election process commenced or conducted by a body having no authority would be void even if an overwhelming majority of voters were to condone it.

6. In the judgment in Colaba Land and Mills Co. the tenure of office of an elected director of a company fell for consideration. The Division Bench of the Bombay High Court held, on an interpretation of the provisions of the Companies Act, 1956, which would have overriding effect over the articles of association of any individual company, that if the directors of a company do not call an annual general meeting of the company for any length of time they cannot claim to continue in their office of directors after the expiry of the period stipulated in Section 166 of the Act for calling the statutory meeting. In the judgment of B. Mookerjee, a Division Bench of this Court noted the submission made on behalf of the first Respondent, at paragraph 28 of the report, on the strength of the Bombay decision in the Colaba Land and Mills Co. case. Though the Defendant No. 32 contends that the relevant observation at paragraph 28 reflects the view of the Division Bench of this Court, it is evident that the paragraph merely recorded the submission put forth on behalf of the first Respondent to the appeal

without, in any manner, endorsing it.

7. The other judgment that the Defendant No. 32 has relied on relates to another Maidan giant, Mohan Bagan Athletic Club. A Division Bench of this Court, while disposing of an appeal from an interlocutory order passed by the City Civil Court, appointed a committee of special officers to manage the affairs of the football team of the club. The contention of Defendant No. 32 is that in extraordinary circumstances when a complaint is carried to court either on the legal basis of the incumbent office-bearers' lack of authority to remain in office or on the apprehension of wrongdoing, the court can step in and devise a mechanism which would put the concerned organisation on an even keel.

8. The contesting Defendants have relied on a judgment reported at 1988 (1) CLT 61 Ambari Tea Co Ltd v. Manjushree Saha for the proposition that a mere default in holding the annual general meeting of a company u/s 166 of the Act would not imply that the directors who were due to retire by rotation u/s 256 of the Act must be deemed to have vacated their office. According to the Division Bench, such directors continue to remain in office; as any other interpretation would lead to the disruption in the management of the company which is not the object of the Act. The contesting Defendants have also relied on a judgment reported at Shyamdeo Pd. Singh Vs. Nawal Kishore Yadav, and placed paragraph 24 thereof in support of the contention that once an election process has been initiated, the court should not disturb it but await any challenge to the result. Though the general principle is a question of convenience, the strict legal proposition in the judgment would be inapplicable in the present case since the Supreme Court decision was rendered in the context of the Representation of People Acts of 1950 and 1951 and the Constitutional limits as to the court's authority under Article 329(b).

9. It is never desirable that elected office-bearers overstay their welcome. In every case it would be the rules of the organisation and the governing statute that would determine the tenure and the legality of continuation in office beyond the tenure. Rule 16(b) of the club rules that the contesting Defendants cite provides that all members of the executive committee "shall be elected every three years...(and)...shall hold office for three years until the next annual general meeting of the election year..." Strictly speaking, since the first Defendant club is not a company, it would not have to meet the exalted statutory condition of Section 166 of the Companies Act. Further, if the construction that the Defendant No. 32 advocates is accepted, that would mean that the club would be left without any management in the event the election is not concluded by September 30 of the election year. That would lead to a serious disruption and, however disagreeable it is for office-bearers of a club to continue beyond their allotted time, it would lead to a state of complete chaos. It cannot be said that if it is illegal for the office-bearers to continue beyond the stipulated date, that in some circumstances they may continue to hold office while in other cases they would be deemed to have vacated office.

10. The more reasonable interpretation would be that office-bearers of this club would not be deemed to have vacated office if the hold-by date for the election has passed, but they would expose themselves to be susceptible to a challenge on such count. In other words, office-bearers of this club would not be deemed to have vacated office if they continue without an annual general meeting held on September 30 of the election year, but a challenge to their continuation in office before a civil court may result in a declaration that they have ceased to remain in office. It is, thus, that instead of the issue being governed by the strict legal straightjacket, it has to be assessed as to whether the office-bearers have deliberately not held the election to mala fide extend the tenure or the office-bearers have any legitimate justification for postponing the electoral process.

11. It is evident from the records that even in the end of August a substantive order was made that left no room for the election to be completed within the time stipulated by the club rules. The final voters' list was to be prepared after issuance of a fresh notice directed to be published by the order of August 23, 2010. Nominations for the various posts could only have been received thereafter. It does not appear that the present office-bearers deliberately stretched their tenure beyond September 30, 2010. In fact, in one of the contempt petitions it was urged on behalf of the Plaintiffs that the contesting Defendants had acted in derogation of a previous order by abridging the time afforded to members to respond to a notice. The court recorded in the order of August 23, 2010 that the short notice may have been prompted by the committee's eagerness to complete the election process within the time mandated by the club rules. The rules of the club certainly instruct that the annual general meeting and the election of office-bearers in the election year should be completed by September 30. But the club rules do not specify or expressly suggest that the office-bearers would cease to be in office after September 30 of the relevant year even if it is not possible to hold the annual general meeting of the election year by such date for some genuine and unavoidable reasons.

12. The Plaintiffs and the Defendant No. 32 canvass four grounds on facts as to why the election scheduled to be conducted on December 5, 2010 should be postponed and the election process should be completed under an independent person or body. They suggest that there are serious anomalies as to the postal ballots issued to outstation members of the club and a legitimate cause for apprehension of manipulation of a sizable chunk of votes. They contend that a number of the genuine members' photographs do not appear in the photo electoral rolls recently prepared which would give rise to the possibility of impersonation. They say that nominations have been received on the basis of two sets of voters' lists - one of August 12, 2010 and the other of September 20, 2010. In addition, they claim that there are a number of dead persons whose names have been included in the voters' list and, despite the club's attention being drawn to such fact, the club has taken no steps to rectify the list. The Plaintiffs and the Defendant No. 32 say that the manner in which the postal

ballots relating to outstation members of the club has been prepared and the general apathy on the part of the club and the committee to attend to the myriad mistakes in the process pointed out to them, give rise to a real uneasiness as to whether the election would be free or fair or the results thereof truly reflect the wishes of the members of the club.

13. As to the anomalies in the voters' list, the Defendant No. 32 has raised several questions at paragraph 16 of the petition relating to GA No. 2975 of 2010. To be fair to the club and its present committee, it must be recorded that there has been a refreshing element of candour; in the committee admitting that there may have been some mistakes. It is understandable that when the entire system as envisaged by the club rules is transformed under court orders, there may be some inadvertent errors that might creep in. Every mistake cannot be regarded as a mala fide act on the part of the club or its committee members and the fact that the committee has owned up to some mistakes and taken steps to rectify them would also demonstrate that it was not this committee's overwhelming desire to cling on to office by disregarding the wishes of the members. After all, the committee accepted that the preparation of the photo electoral rolls would be beneficial to the club and would eschew both the possibility of any corrupt practice and of charges as to manipulation being levelled. This committee acted in accordance with the directions issued by the court in the present proceedings in the matter of preparation of the photo electoral rolls and, barring the few avoidable mistakes, the final voters' list prepared on September 20, 2010 appears to be in order.

14. Of the several anomalies in the voters' list and election process that have been highlighted by the Plaintiffs and the Defendant No. 32, it is the one relating to the outstation members and the postal ballots issued to them that is of some concern. The allegations made in the petition relating to GA No. 2975 of 2010 and a supplementary affidavit filed therein by the Plaintiffs have been dealt with in detail by affidavits filed on behalf of the club. In the larger scheme of things, it is not necessary to go through the voters' list with a toothcomb to point out where the i's have not been dotted and the t's have not been crossed.

15. There are 8053 members whose names have been included in the final voters' list of September 20, 2010. Of these, the photographs of about 762 members have not been included. The contesting Defendants say that despite issuance of repeated notices, the concerned members did not furnish their photographs to the club and there is no fault on the club's part that there are some names in the voters' list without photographs. As to the members of the club who have allegedly died and in respect whereof the Plaintiffs or the Defendant No. 32 informed the club, the contesting Defendants say that it is for the heirs of the deceased members to inform the club or for unimpeachable evidence of the death of the members being presented to the club. The club says that an unconnected member furnishing information to the club of the death of a member without any material in support thereof cannot be accepted by the club

as conclusive nor is it desirable that the club issue notices in the name of alleged dead members to verify whether they were dead.

16. The Plaintiffs say that a large number of members, including outstation members, have been inducted in the club during the tenure of the present committee. The assertion at paragraph 5 of the petition relating to GA No. 3463 of 2010 is that during the term of the present committee "around 5000 new members including around 600 outstation members" have come in. Paragraph 8 of the club's affidavit-in-opposition does not clearly deal with such allegation. This is a matter of some significance. In the Plaintiffs' supplementary affidavit in GA No. 2975 of 2010 they insinuate that a number of the outstation members could be bogus or fictitious. At paragraph 27 (page 40) of such affidavit they say that they posted letters to a number of the outstation members at their recorded address. The Plaintiffs have appended a list, as Annexure "Q" to the supplementary affidavit, which reveals that there are 45 outstation members whose address in the club's records is the same: "C/o Assam Book Depot, Panbazar, Guwahati, Assam - 781001." There is another member whose address is shown as "C/o Guwahati Book Depot" with the other particulars being the same. Annexure "Q" reveals that the postal articles addressed by the Plaintiffs to these 46 outstation members of the club from Guwahati were returned with the endorsement "insufficient address." The Plaintiffs have carried the postal articles to Court and have given inspection thereof to the contesting Defendants. There are 16 outstation members whose address in the club's records is "C/o Pulak Biswas, D.N. Das Lane, Laryartoly, Bengali Akhara, Patna - 800004." The postal articles relating to such 16 outstation members have been returned to the Plaintiffs with the endorsement "complete address required." There are seven outstation members listed in Annexure "Q" where the postal department returned the articles with the remark "not known." In all, the Plaintiffs try to demonstrate that the 77 outstation members whose names have been included in Annexure "Q" were unlikely to receive the postal ballots since the postal articles sent to them by the Plaintiffs could not be delivered. The Plaintiffs and the Defendant No. 32 say that the postal ballots relating to outstation members are a cause for concern since the undelivered postal ballots were required to be returned to the residential address of the club president. They suggest that it is possible for the postal ballots to be misused since there would be no foolproof way of ascertaining first, as to the existence of the outstation voters; and then, as to whether such voters had filled in the postal ballots.

17. Against such charge, the contesting Defendants have caused the election board or sub-committee to produce in Court the relevant registers as to the despatch and delivery of the postal ballots. It is submitted on behalf of the election board that against 881 postal ballots despatched, the club has received postal acknowledgement cards relating to 543 articles and 21 ballots have been returned unserved. The club has also received 135 filled-up ballot papers which have not yet been opened. It appears from the registers carried to court on behalf of the election board that outstation members against serial nos. 387 to

418 have the same address, "C/o J.J. Group of Companies" in Bhubaneswar. Outstation members against serial nos 487 to 506 in the same register have another common address. There appear to be blocks of outstation members whose postal address in the club's records appear to be common. It is not to suggest that this by itself would lead to the inevitable conclusion that the list is erroneous or that there is likelihood of manipulation, but it sows seeds of apprehension nonetheless. There appears to be some question mark over nearly ten per cent of the outstation members and it may be indicative since the challengers cannot be expected to produce a comprehensive list. As the outstation members make up roughly 11 per cent of the total members of the club, there is some basis as to the apprehension expressed by the Plaintiffs and the Defendant No. 32.

18. The Plaintiffs have appended copies of the postal ballots despatched to the outstation members by the club. The Plaintiffs point out that the second clause in the instructions incorporated in the postal ballots reflects that the details relating to the date, place and time of the election were to be subsequently "notified in the newspapers as per rules of the Club." The challenging members contend that such postal ballots have to be rejected outright. Though the club argues that the particulars as to time, place and venue of the election have, in fact, been subsequently notified by way of publication in newspapers, it does not answer the fundamental question raised as to how an out-of-state casual outstation voter would be expected to be aware of such details since the notices have not been published in Guwahati or Bhubaneswar or Allahabad or Patna newspapers. The postal ballots did not inform the outstation voters as to whether the election was likely to be concluded within a week or a month or several months after the date of the issuance thereof. A laid-back outstation voter was not afforded any meaningful choice of casting his vote by postal ballot without the information as to the date of the election being made known.

19. The Plaintiffs and the Defendant No. 32 say that the entire process was suddenly undertaken in a hurry despite GA No. 2975 of 2010, that seeks the appointment of a special officer to oversee the election, remaining pending. The challengers suggest that the unusual haste in which the venue and date were fixed only a few days prior to this Court reopening after the Puja Vacation, would suggest that the club and its committee attempted to present the Court with a fait accompli. They say that only a day's time was afforded by the committee for inspection of the postal ballots or the form thereof. They submit that the postal ballots were despatched by the club in early November, 2010 without fixing the date and venue for the election, though such minutiae were finalised by November 6, 2010. They suggest that the club ought to have waited till a decision as to the date and venue of the election was arrived at before issuing the postal ballots since the club rules permit even an outstation member to attend the election with a copy of the postal ballot received by him. They complain that such choice was not offered to the outstation members in the committee's haste to show the initiation of the election process. The notices as

to the date and venue of the election were published in the newspapers on November 7, 2010, a day before the court reopened after the Puja Vacation on November 8, 2010.

20. The other point that the Plaintiffs and the Defendant No. 32 make is as to the venue for the election. According to the challengers, St Paul's School in Amherst Street is not a suitable venue to accommodate more than 6000 members who are likely to turn up for the election. They claim that a bigger, more easily accessible venue should have been chosen. They submit that every member would take considerable time to fill up the ballot paper since there are 22 posts that have come up for election. According to the Plaintiffs and the Defendant No. 32, if the polling booths are clogged genuine members of the club who may not be siding with one group or the other may not have the patience to endure the likely long wait. The club answers that there is a history of at least one previous election that was successfully conducted at the same school and that the school has sufficient number of classrooms for multiple polling booths to put in place to avoid any undue delay. On the basis of the material brought by the parties, it is not possible to assess as to whether the venue selected is ideal or suitable for the purpose.

21. The anomalies as to the outstation members and the vague instructions as to the election in the postal ballots would warrant the issuance of fresh postal ballots to the outstation voters and some strict measures for scrutiny of the postal ballots to be put in place. Though the club has invited a direction on the Ballygunge Post Office to not return the undelivered postal ballots to the residential address of the club president, it is too late for such an order to be now made since a number of the postal ballots have already been returned undelivered and a sizable number of apparently filled-up postal ballots has also been received. In view of the postal ballots not carrying the requisite information as to the date and venue of the elections, they need to be recalled. As a corollary, the election can now not be held on December 5, 2010.

22. Though it has already been found that the present office-bearers did not deliberately postpone the holding of the annual general meeting to stretch their term, there was room for the photo electoral rolls to be prepared earlier since the initial direction in such regard was issued in April, 2010. The club has a history of unsavoury faction-fighting as would appear from the references to previous elections and court proceedings relating thereto. The manner in which the postal ballots were issued without specifying the date and venue of the election lends credence to the apprehension expressed by the Plaintiffs and the Defendant No. 32 as to the fairness of the election process. There is also a matter of polling agents being appointed who would have the authority to scrutinise the identity of the members coming to cast their votes. The electoral rolls include voters without photographs and some photographs where the faces are barely recognisable. Polling agents at the election would, therefore, have to go by their ability or discretion in matching faces against unclear photographs and requiring

or exempting further proof of identity to be furnished. Though it is undeniable that club elections entitle the incumbent office-bearers to decide on the election process and the manner in which it is to be conducted, just as the rules of East Bengal Club also do, to avoid acrimony and the uncertainty upon results being challenged, the more preferred option would be to have the election conducted under the supervision of an unconnected, independent person with full authority to appoint polling agents from out of the club members in consultation with both the committee and the other parties to the present proceedings.

23. Ordinarily, a civil court will not interfere in the internal management of a club. There are exceptions to the restraint exercised by the civil court, say, where serious charges are levelled against the office-bearers or there is a justifiable cause for apprehending that any election may not be conducted in a free and fair manner or there are serious disputes between two or more factions that would jeopardise the club and its functioning. It is made clear that this order should not be construed to be an expression of lack of confidence of the court in the present committee or the election board set up by it, save as to the matter of outstation voters and the postal ballots issued, but only to ensure that further uncertainty and confusion is avoided.

24. The election of the office-bearers of East Bengal Club for the year 2010-11 convened to be held on December 5, 2010 and all notices relating thereto are set aside. The entire election process will now be commenced and conducted under the supervision of Gen. Shankar Roychowdhury (retd.) who is appointed as special officer for the purpose at a consolidated remuneration of Rs. 3 lakh to be paid by the club. The election will be conducted on the basis of the photo electoral rolls and voters' list of the club, prepared on September 20, 2010 (such date has been furnished by the contesting Defendants). No fresh nomination will be sought and the candidates already in the fray will vie for the respective posts. The special officer will be at liberty to fix the date, time and venue for the election. It is made clear that if the special officer deems it fit the election may even be held at St Paul's School, Amherst Street. The special officer will be responsible for appointing polling agents for the election in consultation with all concerned, but the special officer's decision in such regard will be final. The special officer will put such measures in place as he deems fit for the scrutiny of the postal ballots and the custody of undelivered postal ballots. The special officer will set norms for polling agents to verify the identities of the members seeking to cast their votes at the election and will be personally present during the election to decide and resolve disputes relating thereto on the spot. In all matters relating to the conduct of the election, the Special Officer will have the final say. The entire process including the declaration of the election results should preferably be completed by February 15, 2011.

25. The other functions of the club will be conducted by the present committee till the new committee is installed after the election.

26. The time to carry out the amendment of the plaint to incorporate the name

of the Defendant No. 32 therein is extended by four weeks from date.

27. GA No. 1320 of 2010, GA No. 2975 of 2010 and GA No. 3463 of 2010 are disposed of accordingly. GA No. 3277 of 2010 is dismissed since the applicant has not insisted that the rejection of his nomination be revisited and since his other prayer to allow him to cast his vote at the forthcoming election would be contrary to the club rules. There will be no order as to costs.

28. Urgent certified photocopies of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

Later:

29. The contesting Defendants seek a stay of the operation of the order which is declined.