
(1983) 05 CAL CK 0017
In the Calcutta High Court

Rajbalhat Union Weaver's Co-Operative Society Ltd. and
Another

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 03-05-1983

Acts Referred:

Citation : 86 CWN 660

Hon'ble Judges : G.N. Roy, J

Bench : Single Bench

Advocate : Sundrananda Pal and Sefali Sircar, for the Appellant; D.P. Majumdar for State, for the Respondent

Final Decision : Dismissed

Judgement

G.N. Roy, J.—For giving nomination of three members to the Board of Directors of Rajbalhat Union Weaver's Co-operative Society Ltd. by the State Government the instant writ petition has been moved with notice to the State and the learned Counsel for the State respondents has appeared.

It is contended by the petitioners namely the said co-operative society and a Director of the said society that for the purpose of reconstitution of the Board of Directors, an election was held and twelve persons as set out in paragraph 6 of the writ petition were elected. Thereafter, without any reference to the co-operative society, the State Government in the purported exercise of its powers u/s 28 of the West Bengal Co-operative Societies Act, 1970 has nominated three persons as Directors of the said co-operative society and in selecting its nominees, the State Government has given nomination to the persons who contested the said election but were unsuccessful by securing lesser votes than the elected persons. It is contended by the petitioners that in the facts and circumstances of the case, section 28 of the Act is not attracted and as such the purported nomination u/s 28 is invalid. It appears that the said nomination has been made by the State Government on the ground that the State Government had assisted indirectly in the formation of share capital of the said co-operative

society, It has been categorically stated in the writ petition by the petitioners that the State Government has neither subscribed to the share capital nor it has assisted in the formation or augmentation of the share capital either directly or indirectly. Accordingly, the exercise of the power for the aforesaid ground is non-est on the face of it and the order is therefore illegal. Mr. Pal, the learned Counsel appearing for the petitioners has contended that the co-operative society consists of twelve members in the Board of Directors and all the said twelve members are to be elected according to the rules of the society. In such circumstances, no nomination of any other members in addition to the said twelve members in the Board of Directors can be made by the State Government in exercise of the powers u/s 28 of the Act. Mr. Pal has also contended that the members of the Society have a right to get the said Society administered by the Board of Directors elected by the members of the Society but by the aforesaid nomination made u/s 28, the right of the members of the society to get the society administered by the Directors of their choice has been interfered with and as such even assuming that in the facts of the case, such power u/s 28 could have been exercised by the State Government, such nomination could not have been made *ex parte* and if nomination was at all to be made, the same should have been made after giving the society an opportunity of being heard. He has contended that it is not obligatory for the State Government to nominate members in the Board of Directors simply because conditions referred to in clauses (a) to (e) of section 28(1) have been fulfilled. As there is a question of option to be exercised by the State Government, in giving nomination to the Board of Directors, an opportunity of hearing to the co-operative society before exercise of discretion is implicit and denial of such opportunity to the society has rendered the nomination invalid.

2. The learned Counsel for the State respondents has, however, produced a statement furnished by the Registrar of Co-operative Societies at the hearing of this petition and it appears that the State Government had advanced loans to the said co-operative Society: from time to time amounting to about Rs. 4 lakhs and the Co-operative Society has also repaid such loans and interest from time to time and at the present moment, the outstanding loan together with interest, comes to about Rs. 29,806/-. Mr. Majumdar, the learned Counsel appearing for the State has contended that the State Government has a power to nominate not more than three members or one-third of total number of elected members if the State Government has assisted such society with loans and grants from out of its own fund as referred to in clause (e) of section 28(1). Mr. Majumdar has submitted that in the order for appointment of the nominees, instead, of referring to clause (e), clause (b) has been referred to. Clause (b) relates to giving of assistance directly or indirectly in the formation or augmentation of the share capital of the society. Mr. Majumdar has, however, submitted that for referring the ground concerning clause (b) of section 28(1) in the impugned order of nomination of three members in the Board of Directors, the Writ Court should not interfere because in the facts of the case, the nomination is otherwise

valid and such nomination could have been validly made u/s 28(1) (e) and it was a sheer mistake in referring to a different clause. Mr. Majumdar has also contended that when u/s 28(1) the State Government has a power to, appoint nominees, the co-operative society cannot object to the appointment of the nominees in the Board of Directors and it not necessary to give any hearing before such nomination is made by the State Government. He has also contended that Section 28 makes it quite clear that in addition to the elected members in the Board of Directors, the State Government is entitled to give nomination of three members or one third of the total numbers of the elected members. In the circumstances, Mr. Majumdar contends that no interference is called for and the writ petition should, therefore, fail.

3. After giving my consideration to the respective submissions made by the learned Counsels appearing for the parties, it appears to me that u/s 28 of the West Bengal Co-operative societies Act, the Government has a power to give nomination if any of the conditions referred to in clauses (a) to (e) of sub-section (1) of Section 28 of the Act are fulfilled and one of the conditions as referred to in clause (e) is that there should be assistance by the State Government to the Co-operative Society with loans or grants from out of its own fund. In the instant case, the Co-operative Society was assisted with loans advanced by the State Government from its own fund and till today, a part of the said loan is subsisting. Accordingly the condition for giving nominees to the Board of Directors has been fulfilled.

4. It is true that in the order passed u/s 28(1), the State Government, has not made any reference to clause (e) but has made a reference to clause (b), namely, assistance of the State Government indirectly in the formation or argumentation of the share capital. Mr. Pal has rightly contended that such condition being nonest, exercise of power u/s 28(1)(b) of the Act was not warranted.

5. It however appears to me that although in the facts of the case, exercise of the power u/s 28(1)(b) could not have been made because such conditions were nonest, but such power could have been exercised u/s 28(1)(e) of the Act. As no injustice has been caused to the petitioner simply by referring to clause (b) instead of clause (e), interference by the writ court is not called for because the writ court is also a Court of equity and a Writ Court may not exercise its discretion and interfere if no injustice has been caused to a party simply because there has been some infraction of any rule or procedure.

6. So far as the requirement of a prior hearing to be given to the Co-operative Society before nomination u/s 28(1) is concerned, it appears to me that in the matter of exercise of power for giving nominee or nominees u/s 28(1), no prior hearing is contemplated either explicitly or implicitly. If for any prejudicial activity or lapses of the Co-operative Society, the State Government would have been entitled to make nomination to the Board of Directors, an opportunity of hearing should have been given before taking any decision for such alleged activity or

lapses on the part of the Co-operative Society. But power of nomination u/s 28 (1) can be exercised not on the basis of any mal-function of Co-operative Society but on fulfilment of certain conditions referred to in clauses (a) to (e) of section 28(1) of the West Bengal Co-operative Societies Act. A reference to the said clauses will make it clear that where the State Government had to play some part in raising the share capital of the Society or for raising funds by way of loan, guarantee or otherwise then presumably in order to safeguard the financial position of the society, the State Government will be entitled to nominate some members in the Board in addition to the elected members in the Board of Directors. By such nomination to the Board of Directors, the right of the Society to elect twelve members from the share-holders has not been taken away. Whenever a Society takes any financial assistance directly or indirectly in accordance with clauses (a) to (e) of section 28 (1), the Society does so with its eyes open that the State Government will have a right of nomination. On fulfilment of the conditions referred to in the aforesaid clauses of section 28(1) a Co-operative Society, save and except making some persuasion to the State Government to desist from giving nomination to the Board, cannot validly raise any objection against exercise of power u/s 28(1). Accordingly, in such circumstances, a prior hearing cannot be held to be implicit on the principle of audi alteram partem.

7. The Co-operative Society may, however make representation to the State Government for withdrawal of its nominees from the Board of Directors even after such nomination is made and if the State Government is satisfied with the reasonings of the society, the State Government will be free to withdraw its nominees. But simply because such nominees have been given by the State Government without giving a prior hearing to the Co-operative Society it cannot be held that the order is invalid. In my view, it is also not correct to contend that when the Rules of the Cooperative Society provide for election of twelve members in the Board of Directors, the State Government is not empowered to give further nominees in the Board of Directors. Section 28 is quite clear that in addition to the elected members of the Cooperative Society, the State Government is entitled to give nomination to the extent of three members or one-third of the total number of the elected members. In the aforesaid circumstances, no interference is called for and the writ petition therefore fails and is dismissed. But there will be no order as to costs.