
(2006) 09 CAL CK 0007
In the Calcutta High Court
Case No : Writ Petition No. 10449 (W) of 2006

Shri Satyajit Basu

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 15-09-2006

Acts Referred:

Citation : (2007) 1 CALLT 539 : (2007) 1 CLT 539

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : Milan Bhattacharya and Sulagna Bhattacharya, for the Appellant; Tarun Kumar Roy, Sudhindra Nath De and Biplab Ranjan Bose for Respondent Nos. 3, 7 to 16 and Keshab Bhattacharya and Banani Mukherjee for the Respondent Nos. 1, 4 to 7, for the Respondent

Final Decision : Dismissed

Judgement

Jyotirmay Bhattacharya, J.—The legality and/or validity of the proceeding of the requisitioned meeting of the Board of Directors held on 21st April, 2006 at the Conference Hall of the Jalpaiguri Central Co-operative Bank Ltd., has been challenged by the removed Chairman of the Board of Directors in this writ petition.

2. The Board of Directors is composed of nine elected Directors, three State nominees, one nominee from the Zilla Parishad and one nominated by the employees.

3. Out of these fourteen members of the Board of the Directors, eleven members have the voting right.

4. Nine members of the Board of Directors, by their letter dated 12th April, 2006 requested the Chief Executive Officer of the said Co-operative Bank to call a meeting of the Board of Directors of the said bank on or within 21st April, 2006 for taking a decision on the agenda of removal of the Chairman of the said Bank.

5. Upon receipt of the said notice, the Chief Executive Officer convened a meeting to be held on 21st April, 2006 at 12 noon at the Meeting Hall of the Head Office of the Bank for taking a decision on the single agenda regarding removal of the Chairman of the said Bank. All the members of the Board of Directors were requested to attend the said meeting vide Notice dated 14th April, 2006 issued by the Chief Executive Officer being annexure-P to this writ petition at page 36.

6. Pursuant to the said notice, the said meeting was held on the scheduled date and ultimately the proposal for removal of the Chairman of the said Bank was accepted by seven directors present in the said meeting.

7. The minutes of the said meeting was subsequently confirmed by six members of the Board of Directors in the next board meeting held on 3rd June, 2006.

8. The validity of the proceeding held on 21st April, 2006 has been challenged by the petitioner on several grounds.

9. Mr. Bhattacharya, learned Advocate appearing for the petitioner submitted that the notice of holding the requisition meeting was illegal and invalid as the same was not issued by the Chief Executive Officer in conformity with Rule 42 of the West Bengal Co-operative Societies Rules, 1987 (hereinafter referred to as the said Rules). By referring to the said Rule, Mr. Bhattacharya contended that the said Rule cast a duty upon the Chief Executive Officer to call a Board meeting in consultation with the Chairman. Mr. Bhattacharya pointed out that here in the instant case the Chairman was never consulted before the said board meeting was called by the Chief Executive Officer.

10. Mr. Bhattacharya further submitted that even the Chairman, namely, the petitioner herein was not allowed to preside over the said meeting in violation of the provision contained in Rule 45 of the said Rules which provides that the Chairman shall preside over all meetings of the Board at which he is present. Mr. Bhattacharya further submitted that though the petitioner was present in the said meeting but he was not allowed to preside over the said meeting and the said meeting was presided over by the Vice-Chairman in total disregard of the provision contained in Rule 45 which provides that only in the absence of the Chairman, the Vice-Chairman will take the chair.

11. Mr. Bhattacharya further submitted that even the proposal on the agenda of the removal of Chairman was passed by open vote and not by ballot. According to Mr. Bhattacharya, adoption of such resolution for removal of Chairman by open vote is contrary to the provision contained in Rule 44 of the said Rules.

12. By referring to a Division Bench decision of this Court in the case of Rama Mimani and Another Vs. Canara Bank and Others, Mr. Bhattacharya submitted that the West Bengal Co-operative Societies Rules, 1987 which was framed by the State Government in exercise of its Rule making power u/s 147 of the West Bengal Cooperative Societies Act, 1983, has statutory force as "the said Rules"

was passed/ approved by the State Legislature as per the provision of Section 147(4) of the said Act.

13. Mr. Bhattacharya thus argued that since the impugned resolution was adopted without following the statutory Rules as aforesaid; the entire proceeding held in the said meeting should be declared as void.

14. Mr. Roy, learned senior advocate, appearing for the Co-operative Society, refuted such submission of Mr. Bhattacharya by contending, inter alia, that since the said meeting was convened on a requisition being made by the nine directors under Rule 47 of said Rules, the Chief Executive Officer was not required to call such meeting in consultation with the Chairman as contemplated under Rule 42 of the said Rules.

15. Mr. Roy further submitted that since the said meeting was convened for transacting the agenda of removal of Chairman, it was decided by the majority members present in the said meeting that such meeting should be presided over by the Vice-Chairman. Accordingly, the said meeting was presided over by the Vice-Chairman as per the decision of the majority members.

16. Mr. Roy further argued that the provision contained in Rule 45 of the said Rules prescribing the person as to who will preside over the meeting, is not a mandatory provision as the consequence of non observance of the said provision has not been provided in the said Rules. Mr. Roy, thus, contended that the provisions contained in Rule 45 are merely directory in nature and as such the proceeding held in the said meeting cannot be vitiated for the non-observance of the provision contained in the said Rules.

17. Mr. Roy further pointed out that the vote by ballot was also opposed by the majority members and as such the decision was taken by open vote.

18. By referring Rule 44 of the said Rules, Mr. Roy further pointed out that even the said Rule does not provide for taking the ultimate decision by vote on secret ballot. As such, Mr. Roy contended that the allegation regarding violation of any provision contained in Rule 44 in the process of taking decision for removal of the Chairman by open vote as made by the petitioner, are absolutely without any substance.

19. Mr. Roy ultimately submitted that after all the petitioner was elected as a Chairman in the democratic process and as such he will have to accept his removal when the majority members lost confidence in the Chairman.

20. Mr. Keshab Bhattacharya, learned Advocate, appearing for the State Respondents also supported the decision of the majority members regarding removal of the Chairman by contending, inter alia, that the decision of the majority members cannot be vitiated even for non observance of the provisions contained in Rules 44 and 45 of the said Rules which are all directory in nature. Mr. Bhattacharya further contended that since the penal consequences for non-observance thereof have not been provided under the said Act, the provision

contained in the said Rules cannot be regarded as mandatory. In support of such submission, he relied upon the following decisions:

- i) Rubber House Vs. Excellsior Needle Industries Pvt. Ltd., :
- ii) Bhagirathi Co-operative Joint Farming Society v. Howrah Zilla Parishad 1987 CWN 981.

21. Heard the learned Advocates of the parties. Considered the materials on record.

22. Let me now consider the points of challenge raised by Mr. Milan Bhattacharya, one by one.

23. Let me now, first of all, consider the petitioner's allegation regarding violation of Rule 42 of the said Rules.

24. The procedure for removal and/or recall of a member of a Board and an office bearer is provided in Rule 41 of the said Rule.

25. Rule 41 provides that an elected member of the Board may be removed from the office by a general meeting with due agendum. The said Rule also provides that an office bearer may be removed from the office by resolution of the Board at a meeting specially convened for the purpose. Thus, the said provision contemplates different types of meeting for different purposes. Elected members can be removed from office in a general meeting but the office bearer can only be removed at a meeting specially convened for the purpose.

26. Thus, though a member of the Board may be removed in a general meeting as contemplated under Rule 43 of the said Rules but removal of office bearer can only be done in a requisitioned meeting as per Rule 47 of the said Rules.

27. Rule 43 of the said Rules provides that the Board shall meet for transaction of the business of the society once in every two months. The mode of calling of such meeting and the manner in which calling of such meeting is to be notified to the members of the Board of Directors has been specified in Rule 42. Rule 42 provides that meeting as contemplated under Rule 43 can be called by an officer deputed u/s 28 or deputed to function as manager in consultation with the Chairman. Thus, the provision contained in Rule 42 is required to be followed for calling a Board meeting, for the purpose as contemplated in Rule 43. But an office bearer cannot be removed from the office in such a meeting, as Rule 41(1) (a) of the said Rules prescribes a different mode for removal of an office bearer.

28. The mode of removal of an office bearer from office is prescribed under Sub-rule (2) of Rule 41 which provides that an office bearer may be removed from an office by a resolution of the Board at a meeting specially convened for the purpose.

29. Such a meeting is required to be convened specially on a requisition made by one-third of the directors by giving seven clear days' notice in the manner as

provided in Rule 47 of the said Rule. The mode of calling a requisition meeting is provided under Rule 47. The said Rule does not provide that the requisition meeting is required to be called by the Secretary or any other person performing the duties of the Secretary in consultation with the Chairman.

30. Thus, the Secretary or any person performing the duties of Secretary is authorised under Rule 47 to convene a meeting for removal of Chairman independently within seven days from the date of receipt of the said requisition. Since the removal of Chairman, is the only issue in such meeting, the Chairman may not agree to come to a consensus regarding calling of such meeting and as such the Secretary alone was given the power to call the said meeting within seven days from the date of receipt of the requisition. The said provision also provides that if the Secretary fails to call any meeting for the said purpose within the prescribed period then such a meeting can be convened by the requisitionists themselves. Even in such a situation, the requisitionists are not required to fix a date for holding such meeting in consultation with the Chairman as per Rule 47 thereof.

31. On consideration of the aforesaid provisions of law, this Court holds that for requisitioning a meeting under Rule 47 for removal of an office bearer, neither the Secretary nor the requisitionists are required to call such meeting in consultation with the Chairman.

32. Here is the case where the requisition meeting was convened by the Chief Executive Officer under Rule 47 of the said Rules on the basis of the request made by the requisite number of Directors. As such, this Court holds that the calling of the said requisition meeting by the said Chief Executive Officer cannot be declared as illegal for non observance of the formalities contained in Rule 42 thereof.

33. With regard to the other submission of Mr. Bhattacharya, regarding violation of Rule 45 of the said Rules by not allowing the Chairman to preside over the said meeting, this Court was impressed with the submission of Mr. Milan Bhattacharya, as the said Rule specifically provides that all meetings of the Board shall be presided over by the Chairman, if he is present in the meeting. The said Rule further provides that in the absence of the Chairman, the Vice-Chairman will take the chair and in the absence of the Vice-Chairman, one of the directors in the panel in order of their names in the panel shall preside over the meeting.

34. The said provision does not make any exception for holding the meeting for removal of the Chairman, if he is present in the meeting.

35. Thus, when the Chairman was present in the meeting, the Chairman should have been allowed to preside over the meeting. The members of the Board ought not to have allowed the Vice-Chairman to take the chair in the presence of the Chairman. The said Rule specifically mentions that the Chairman shall preside over all the meetings of the Board. All the meetings of the Board, in my view, include the meeting for removal of the Chairman also. As such, the Board

members ought not to have made a departure by replacing the Chairman by the Vice-Chairman for presiding over the said meeting for removal of the Chairman.

36. Let me now consider as to how far such departure can affect the ultimate decision of the majority members regarding removal of Chairman, taken in the said meeting.

37. Rule 45 of the said Rule no doubt provides that the Chairman shall preside over all the Board meetings at which he is present. But the said Rule does not mention the consequence for non-observance of the said provision. It is nowhere provided in the said Rule that non observance of the said Rule will vitiate the proceedings of the meeting.

38. Under such circumstances, this Court holds that the direction contained in Rule 45 is not mandatory in nature and as such the proceeding in the said meeting cannot be vitiated for non-observance of such directory directions.

39. Here in the instant case the majority members decided that the said meeting would be presided over by the Vice-Chairman. The Vice Chairman, thus, took the chair as per the decision of the majority members.

40. Admittedly, the Chairman participated in the said meeting by accepting the decision of the majority members. As such, the Chairman cannot raise such a dispute at a later stage. Even if such a dispute is raised, such a dispute, in my view, has no legal footing for the reasons recorded hereinabove.

41. Let me now consider the last submission of Mr. Bhattacharya regarding the violation of Rule 44 of the said Rules.

42. Rule 44 provides that when a proposal at a meeting of a Board is passed by majority of votes shall be adopted and if the votes are divided equally, then the Chairman of the meeting will exercise his casting vote.

43. Mr. Bhattacharya contended that the decision in such a meeting should have been taken by vote by ballot and not by open vote. Mr. Bhattacharya further contended that since the decision in the said meeting was taken by open vote instead of vote by ballot, the decision taken in the said meeting should be ignored.

44. The said submission of Mr. Bhattacharya does not appeal to this Court at all, as unlike the other provisions in "the said Rules" such as Rules 26, 31, 36 etc., Rule 44 does not provide for taking such decision by ballot voting. Rules 26, 31 and 36 specifically provide that certain decisions should be taken by ballot and certain decisions may be taken either by ballot or by open vote. Rule 44 does not provide for any specific mode for deciding the majority decision. Thus, such decision can be taken either by ballot or by open vote. Here the majority members decided to take the said decision by open vote instead of ballot and in fact the ultimate decision of the removal of Chairman was taken by seven out of eleven members by open vote.

45. In such circumstances, this Court also does not find any justification to interfere with the decision taken by the said meeting on the aforesaid ground.

46. Afterall, the Chairman of the Board of Directors is an elected post. The petitioner was elected as Chairman in an election by democratic process. As such, the petitioner has to accept his removal also when such decision was taken by the majority members in a democratic process. The entire system of democracy will collapse if the voice of majority members is not honoured. Thus when the majority members lost confidence in the Chairman, he should accept such removal spontaneously.

Under such circumstances, this Court does not find any merit in this application. The writ petition, thus, stands rejected.

Since the writ petition itself is disposed of by this order, no further order need be passed on the respondents' application for vacating interim order.

Urgent xerox certified copy of this Judgment, if applied for, be given to the parties, as expeditiously as possible.