

(1970) 09 CAL CK 0034
In the Calcutta High Court
Case No : C.R. No. 932 (W) of 1954

Sm. Bina Das and Another

APPELLANT

Vs

Registrar, Co-operative Societies and Others

RESPONDENT

Date of Decision : 21-09-1970

Acts Referred:

Bengal Co-operative Societies Act, 1940 — Section 86

Citation : 77 CWN 455

Hon'ble Judges : S.C. Ghose, J

Bench : Single Bench

Advocate : N.C. Sen and Kalidas Basu, for the Appellant; Saradindu Chatterjee, Naresh Chandra Ganguly, Amaresh Chandra Bhattacharya, Manindra Chandra Neogy and Arun Prokash Sircar, for the Respondent

Judgement

S.C. Ghose, J.—This is an application in the constitutional writ jurisdiction of this Court by the petitioners, inter alia, for the issue of a writ of or in the nature of certiorari to the first and second of the opposite parties, namely, (1) Registrar, Co-operative Societies, Government of West Bengal, Calcutta (hereinafter referred to as the Society) and (2) Arbitrator & District Auditor of Co-operative Societies, Calcutta New Secretariat Buildings, (4th Floor) Calcutta requiring them to transmit and certify to this Court the records of the proceedings of the dispute suit No. 90/Calcutta of 1962-63 (between Sm. Sandhya Sen & four others and-- The Managing Committee of the Women's Co-operative Industrial Home Ltd.) and an award or order dated 14th October, 1963 made by the respondent No. 2 in the said suit and for setting aside and quashing the said order or award and/or the proceedings resulting in the said order. The applicants are members of the managing committee of the respondent No. 9, The Women's Co-operative Industrial Home Limited, a society registered under the Bengal Co-operative Societies Act, 1940 (hereinafter referred to as the Act) and located at Uday Villa, Kamarhati in the district of 24 Parganas. The main object of the Society is to establish, run and manage cottage industry for and by the middle class distressed and helpless womenfolk. The Society has been running training centre

for training and maintaining hundreds of girls and ladies belonging to various age groups including refugees from East Bengal.

2. On or about 20th August, 1960 twelve persons including Lady Ranu Mukherjee and the petitioners were elected as directors or members of the managing committee of the Society at its general meeting. The managing committee at its first meeting duly held immediately after the general meeting of the society elected Lady Ranu Mukherjee as the president, Mrs. Bina Das as the Vice-President and Mrs. Dipali Ghose and Mrs. Anima Sastri as Joint Secretaries of the society.

3. On or about 18th of September 1962 a meeting of the Managing Committee was held, notices in respect whereof were issued on 12th September, 1962 containing, inter alia, the following agenda :

to consider whether Lady Ranu Mukherjee can still remain President after submitting a resignation letter in writing unless she is re-elected by the managing committee,

to decide whether the present President, according to law, is Lady Ranu Mukherjee or Sm. Bina Das.

4. The consideration of the aforesaid agenda was occasioned by, it appears, acceptance of resignation of Lady Ranu Mukherjee from the post of president of the managing committee written to Mr. J. C. Talukdar, Secretary, Co-operation, State of West Bengal but not to the Managing Committee and also on the ground that Lady Ranu Mukherjee had tendered her resignation verbally at the meeting of the managing committee held on 28.8.62. It should be noted here that the alleged verbal resignation or consideration thereof did not form part of the agenda for the meeting of the managing committee held on 18th September 1962.

5. It was resolved unanimously at the said meeting held on 18th September, 1962 to accept the resignation of Lady Ranu Mukherjee tendered verbally at the meeting of the managing committee held on 28.8.62. On 26.9.62 the petitioner No. 1, Sm. Bina Das was purported to be elected president of the managing committee in the vacancy caused by the resignation of Lady Ranu Mukherjee and Sri K. B. De, the petitioner No. 2 was purported to be elected as the vice-president in the vacancy caused by the resignation of Sm. Bina Das, as Vice-President.

6. Thereupon a complaint was filed by several members being respondents Nos. 3 to 7 u/s 86 of the Bengal Co-operative Societies Act complaining that Lady Ranu Mukherjee was wrongfully removed from the office of President of the managing committee and that the petitioner No. 1 had purported to have been wrongfully elected in the place and stead of Lady Ranu Mukherjee as President. The said complaint is annexure "C" to the petition.

7. Pursuant to the said complaint the Registrar referred the disputes raised by

the said complaint to the District Auditor of Co-operative Societies, Calcutta and appointed the said District Auditor as an Arbitrator in terms of clause C of sub-section 1 of section 187 of the Act. The said Arbitrator served notices upon the managing committee, considered the evidence produced by the managing committee and thereafter made and published his award on the 14th October, 1963. The said award is annexure "E" to the petition.

8. The Arbitrator communicated the gist of the award to the Joint Secretary of the Society on or about the 9th November, 1963. The Society filed appeal against the said award which was, however, returned on the ground that the Arbitrator had been improperly impleaded in the appeal. Thereafter, notices demanding justice was served on behalf of the Society on or about 13th March, 1964 and the present application was moved on the 25th March, 1964 whereupon the Rule nisi was issued as mentioned above.

9. Before me Mr. N. C. Sen, appearing on behalf of the petitioners urged four grounds against the said award, to wit, (1) The dispute which was raised by respondents Nos. 3 to 7 was not dispute touching the business of the Society and as such section 86 and section 87 of the said Act could not be attracted. Thus the said appointment of the Arbitrator proceedings held by the Arbitrator and the award are null and void. (2) The complaint or the dispute raised is with regard to the wrongful removal of Lady Ranu Mukherjee. The reference u/s 87 of the said Act was continued to the said dispute or complaint but the award with regard to the election of Sm. Bina Das and Sri K. B. De to the post of President and Vice-President of the governing body or managing committee of the Society went beyond the reference and as such is void. (3) The Arbitrator did not issue any summons or notice upon either Sm. Bina Das or Sri K. B. De or Lady Ranu Mukherjee and heard the reference in their absence. Thus the Arbitrator was guilty of having violated the principle of natural justice and the aforesaid proceedings and the award have been vitiated because of the said violations and must be set aside. (4) Lady Ranu Mukherjee tendered her resignation and so the election of Sm. Bina Das and Sri K. B. De were valid and lawful.

Section 2(j) of the said Act provides as follows:

"dispute" means any matter capable of being the subject of civil litigation, and includes a claim in respect of any sum payable to or by a Co-operative Society (whether such claim be admitted or not).

10. According to Mr. Sen, the dispute as to who are lawful members of the managing committee or as to whether the president or other office bearers of the managing committee were lawfully elected or wrongfully removed is a domestic affair concerning the internal management or constitution of the society and they are in no way connected with the business of the Society. Therefore, the same cannot be a dispute within the meaning of section 86 read with section 2(j) of the said Act. The subject-matter of the complaint in the instant case related to the personal rights of Lady Ranu Mukherjee or Sm. Bina Das. So, this did not

form part of the business of the Society.

11. The word "business" has various meanings. It may mean affairs or "a matter that concerns a particular person or thing". The constitution of the managing committee; election thereto or to any office thereof including that of President are matters concerning the Society. The same would therefore come within the word "business" (See Shorter Oxford English Dictionary). For the aforesaid reason the case of Co-operative Milk Societies Union v. State of West Bengal 62 C.W.N. 405, decided that a dispute between a Cooperative Society and its Workmen regarding Wages, scale of wage and dearness allowance was an industrial dispute and was to be decided according to the provisions of the Industrial Disputes Act which is a special statute relying to such disputes and the said industrial dispute did not touch the business of the Society. In my view the said authority does not help Mr. Sen.

12. The dispute was in the instant case, between the respondents Nos. 3 to 7 and the managing committee of the respondent No. 9 with regard to the validity or otherwise of the election of Sm. Bina Das to the office of President and that of K. B. De to the office of Vice-President of the managing committee. The said dispute was with regard to the affairs or internal management of the respondent No. 9. That is included in the word "business" as mentioned hereinbefore. The dispute, in fact, was with regard to the alleged violation by the members of the managing committee of the rule framed under the said Act and bye-law 52 of the respondent No. 9, in removing from the position of Director Lady Ranu Mukherjee who had been elected at the General Meeting by the Managing Committee.

13. It is clear from the perusal of the petition of complaint filed with the Registrar, Co-operative Societies that the said petition was filed u/s 86 of the said Act. Rules have been framed under the rule making power conferred by section. 140 of the said Act. Rule 36(b) provides that a director shall cease to hold office if he resigns his office. A director includes a President. Rule 43 confers power upon the managing committee of a society to admit new members as well as to suspend, remove or expel existing members. Rule 36(b) does not certainly mention as to whether such resignation by the director must be given in writing. Mr. Sen relies on Rule 122, 125, and 127 and submits that the said Rules mention the word in "writing" whenever anything has to be done in writing but Rule 36(b) does not say so. Therefore resignation may be tendered also orally. I am unable to accept the said contention of Mr. Sen.

14. Rules 122, 125 and 127 are with regard to the proceedings of arbitration and that is why they have mentioned the word "writing" expressly. But, although Rule 35(b) does not mention the word "writing" in my opinion, the resignation has to be tendered in writing. Mr. Sen also relied on bye-law 11,

of the said society. Bye-laws 11 and 12 of respondent No. 9 shows clearly that the respondents Nos. 3 to 7 who were ordinary members of the respondents No.

9 were interested in the personnel of the managing committee. As a matter of fact the general members including respondents Nos. 3 to 7 are entitled to elect members of the managing committee and thus are interested in the constitution of the Managing Committee.

15. In the instant case summons were issued by the arbitrator and served upon the managing committee. Sm. Bina Das, and D. B. De were members of the managing committee. As a matter of fact, the managing committee filed its statement in writing wherein it was stated that Lady Ranu Mukherjee tendered oral resignation at the meeting of the managing committee of the society on 28th August 1962. Both Sm. Bina Das and K. B. De signed that statement. Thus Sm. Bina Das and K. B. De were parties to the proceedings of the managing committee not merely as members of the managing committee but they were taking active interest in the proceedings. They gave evidence in that proceedings in the form of their statement mentioned above. The said statement is annexure "D" to the petition. The managing committee participated in the said proceedings before the Arbitrator by filing its written statement. In defence, the managing committee stated the facts and the case of the managing committee. The said case is the same as the case of Sm. Bina Das and K. B. De, It has not been stated on behalf of either Sm. Bina Das or K. B. De in the petition before me that they could place any further material before the Arbitrator if they were summoned individually. In fact, if they chose to do so they could do so. Nothing took place behind their back before the Arbitrator. The principle of natural justice has not been violated in the instant case. No letter of resignation was tendered to the managing committee by Lady Ranu Mukherjee or accepted by them. A letter of resignation is not a letter of resignation unless it is placed before proper persons who can accept the same. The complaint filed u/s 86 of the said Act is annexure "C" to the petition and the written statement filed before the arbitrator on behalf of the managing committee including the petitioners before me is annexure "G". From the aforesaid it appears that two issues were the subject-matter of the suit before the Arbitrator. One is wrongful removal of Lady Ranu Mukherjee by the other members of the managing committee and the other is the election of Sm. Bina Das in the place of Lady Ranu Mukherjee and that of K. B. De in the place of Sm. Bina Das as President and Vice-President respectively of the Managing Committee. The award made and published by the Arbitrator, therefore, did not go beyond the reference and thus is not without jurisdiction.

For all the aforesaid reasons this application must fail and accordingly this Rule nisi is discharged. In the facts and circumstances of the case I do not make any order as to costs.

Operation of this order is stayed till a fortnight after the long vacation.