

Nikhil Chandra Deb and Others Vs The State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: Oct. 10, 2012

Acts Referred: West Bengal Co-operative Societies Act, 2006 â€” Section 34

Citation: (2013) 2 CHN 342 : (2013) 2 WBLR 613

Hon'ble Judges: Biswanath Somadder, J

Bench: Single Bench

Advocate: Tarun Roy, Ashit Kumar Chakraborty, Subhajit Panja and Arnab Roy, for the Appellant; Sailaja Nanda Bhattacharya and Mojnu Sk. for the Respondent Nos. 1 to 3, Ashok De, Srimanta Dutta and Himadrisekhhar Chakraborti for the Respondent Nos. 7, 9 and 10 and Malay Kumar Basu and Indranil Nandi for the Nos. 11 to 17, for the Respondent

Final Decision: Dismissed

Judgement

Biswanath Somadder, J.

Affidavit of service filed in Court today be kept on record. The petitioners claim to be members and shareholders

of cooperative society named, ""Observance Co-operative Housing Society Limited (hereinafter referred to as the Society). According to the

petitioners, they were elected as Directors in the Board of the Society in an Annual General Meeting held on 16th October, 2011. They have now

approached this Court challenging an order dated 28th August, 2012, issued by the Registrar of Co-operative Societies, West Bengal, invoking

the provisions of Section 34 of the West Bengal Co-operative Societies Act, 2006.

2. The main thrust of the writ petitioners" case is two-fold. According to them, the provision of Section 34 of the West Bengal Cooperative

Societies Act, 2006, has to be exercised by the Registrar of Co-operative Societies on his own and not at the behest of the Government of West

Bengal, which the Registrar, in fact, has chosen to do while rendering the impugned order dated 28th August, 2012. The other contention of the

petitioners is that although they were duly elected as members of the Board in an Annual General Meeting held on 16th October, 2011, the

Registrar of Co-operative Societies has ignored this important fact and has proceeded to observe in the impugned order that the Board was last

elected on 29th June, 2008. In such circumstances, it has been contended on behalf of the petitioners that the impugned order dated 28th August,

2012, is bad in law and is liable to be set aside.

3. Learned Advocate representing the respondent Nos. 11 to 17, while making his submissions, has essentially adopted the submissions made on

behalf of the petitioners.

4. On the other hand, the learned Advocate for the State has submitted that the Registrar of Co-operative Societies, West Bengal, duly exercised

his powers u/s 34 of the West Bengal Cooperative Societies Act, 2006, following the report submitted by the Enquiry Officer with regard to

certain irregularities existing in the affairs of the Society and had not merely been obeying the directions of the Government of West Bengal, as

sought to be contended on behalf of the petitioners. He also drew this Court's attention to the impugned order dated 28th August, 2012, wherein

the Annual General Meeting held on 16th October, 2011, was duly taken note of and it was observed that such meeting was held suppressing the

material fact that section 34 of the West Bengal Co-operative Societies Act, 2006 has already been applied and the lawful directions of the

Registrar of Co-operative Societies, West Bengal, had been blatantly violated. In such circumstances, learned Advocate for the State submitted

that the impugned order did not warrant any interference by this Court.

5. Learned Advocate representing the respondent Nos. 7, 9 and 10 took a stand similar to the stand taken by the learned Advocate for the State.

He further submitted that the petitioners have approached this Court without challenging the validity of an earlier order dated 21st September,

2011, passed by the Registrar of Co-operative Societies, West Bengal. He drew this Court's attention to the said order dated 21st September,

2011, and submitted that the Registrar of Co-operative Societies, West Bengal, had exercised his powers u/s 34 of the West Bengal Co-operative

Societies Act, 2006 while passing the said order and the impugned order dated 28th August, 2012, cannot be read in isolation and the same is

required to be read along with the order dated 21st September, 2011. He also drew this Court's attention to another order dated 17th

November, 2011, whereby, in exercise of power conferred u/s 100(1) of the West Bengal Co-operative Societies Act, 2006, an Assistant

Registrar of Co-operative Societies was authorised to cause an enquiry into the affairs of the Society, especially prevailing in the Society after

issuance of the order dated 21st September, 2011, as also notice dated 22nd September, 2011, of Apex Housing and reply dated 31st October,

2011, of the Society. He, thereafter, invited this Court's attention to the enquiry report dated 5th March, 2012, which has formed the basis of the

impugned order dated 28th August, 2012. Finally, he submitted that having regard to the facts and circumstances of the case, this Court ought not

to interfere with the proceeding initiated by the Registrar of Co-operative Societies, West Bengal, and should dismiss the writ petition.

6. After considering the respective submissions made by the parties and upon perusing the instant writ petition, it appears that the impugned order

dated 28th August, 2012, has its genesis in the order dated 21st September, 2011, passed by the Registrar of Co-operative Societies, West

Bengal, under Section- 34 of the West Bengal Cooperative Societies Act, 2006. Therefore, it cannot be held that the impugned order dated 28th

August, 2012, was passed by the Registrar of Co-operative Societies, West Bengal, at the behest of the Government of West Bengal only, as

sought to be contended, by the petitioners, it is also noticed from the impugned order dated 28th August, 2012, that the Registrar of Co-operative

Societies, at the very outset; has referred to the earlier order dated 21st September, 2011, which was issued by him, in exercise of his powers u/s

34 of the West Bengal Cooperative Societies Act, 2006. At this stage, it may be profitable to quote the directions given by the Registrar of Co-

operative Societies, West Bengal, in the order dated 21st September, 2011:

Now, therefore in terms of power conferred upon me under subsection (1) of Section 34 of West Bengal Co-operative Societies Act, 2006,

Chairman and Secretary of Observance Co-operative Housing Society Ltd. bearing registration number 17/KMAH of 2003 of 35/1A Panditia

Road, Kolkata-700029 are directed to call a Special General Meeting of the said society with the existing members duly approved by the

Registrar, to dissolve the Board and reconstitute the same within six weeks from the date, failing which action shall be taken in accordance with

law.

7. It will be evident from the subsequent order dated 17th November, 2011, that the Annual General Meeting of the Society held on 16th

October, 2011, was held in violation of the order dated 21st September, 2011, passed by the Registrar of Co-operative Societies, West Bengal.

It was under such circumstances and also for other reasons as stated in the order dated 17th November, 2011, that the Registrar of Co-operative

Societies, West Bengal, appointed an Assistant Registrar of Co-operative Societies to cause an enquiry into the affairs of the Society, especially

prevailing in the Society after issuance of the order dated 21st September, 2011, notice dated 22nd September, 2011 of Apex Housing and reply

dated 31st October, 2011, of the Society. It was clearly mentioned in the order dated 17th November, 2011, that till a decision was taken by the

Registrar of Co-operative Societies upon receipt of enquiry report, no effect to the Annual General Meeting of the Society dated 16th October,

2011, was to be given under any circumstances whatsoever. It is quite strange that the petitioners never thought it necessary to challenge the order

dated 17th November, 2011. Instead, they have now approached this Court raising the contention that the Board was duly elected on 16th of

October, 2011. The enquiry report, which was prepared by the Assistant Registrar of Co-operative Societies dated 5th March, 2012, brings forth

certain findings with regard to the existing affairs of the Society which have been duly taken into consideration by the Registrar of Co-operative

Societies, West Bengal, in the impugned order dated 28th August, 2012. The impugned order dated 28th August, 2012, cannot be read in

isolation of the earlier order dated 21st September, 2011, and is merely a continuation of the proceedings initiated by the Registrar of Co-

operative Societies, West Bengal, u/s 34 of the West Bengal Co-operative Societies Act, 2006. The proceeding initiated by the Registrar of Co-

operative Societies, West Bengal, is in due exercise of his powers conferred u/s 34 of the West Bengal Co-operative Societies Act, 2006, and, as

such, the impugned order dated 28th August, 2012, does not warrant any interference by the writ Court. For reasons stated above, the writ

petition is liable to be dismissed and is accordingly dismissed.