

15.01.2019

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RP Ct.14

WP 266 (W) of 2019

Ajoy Das
vs.
State of W.B. & Ors.

Mr. Utpal Majumder, Sr. Adv.
Mr. Aniruddha Saha, Adv.
Mr. Teesham Das, Adv.
Mr. Abhisekh Banerjee, Adv.
.... For the Petitioner

Mr. Srijan Nayak, Adv.
Mrs. Rituparna Maitra, Adv.
.... For the Respondents No.1,2,3 & 5

Mr. Biplab Das, Adv.
.... For the Respondent No.4

Mr. Debasish Kundu, Adv.
.... For the Respondent No.6

By an order dated 1st February, 2018 passed in WP 30392(W) of 2017 a coordinate bench of this Court had directed the Cooperative Election Commission to hold election for the post of director in Nabarun SKUS Limited within a period of ten weeks from date.

Now prior to passing of the order, however, the respondent authorities by an order dated 7th December, 2017 appointed a nominated board in the said SKUS. The term of the nominated board was extended for a further period of six weeks on 15th June, 2018.

It is submitted on behalf of the petitioner that on 6th September, 2018 a huge number of members were inducted into the said SKUS and deposits were also accepted by them on the said date.

The learned Counsel for the State however does not admit the same.

A draft voters' list was published on 13th September, 2018 after declaration of the electoral process. Objections were filed in respect thereof and the final voters' list was published on 7th December, 2018. The writ petition has been filed on 18th December, 2018.

Prior thereto on 7th August, 2018 the Deputy Registrar of Cooperative Societies, West Bengal passed an order authorizing the Nominated Boards, Administrators and Special Officers appointed under Section 29, 35 or 36 of the 2006, Act to induct members.

The learned Counsel for the petitioner refers to a decision of the Hon'ble Supreme Court in the case of Jt. Registrar of Cooperative Societies, Kerala vs. T.A Kuttappan & Ors., reported in (2000) 6 SCC 127, particularly paragraph 7 thereof, nominated and appointed board of cooperative societies or committees of management appointed by the State are not entitled to induct any members as the same member

change the nature and character of the society and consequently defeat the cooperative movement.

He submits that the order dated 7th August, 2018 is an administrative order issued by the Registrar is intended to frustrate and bypass the order of the Hon'ble Supreme Court, as indicated above.

The contention of the petitioner is not devoid of substance.

One cannot but notice that an administrative order cannot be used as an indirect route to amend a statute and consequently frustrate a judgment of the Hon'ble Supreme Court. One could have obtained amendment to the statute or an ordinance introduced in this regard. The same has not been done. Hence, in my view an administrative order cannot in any way dilute or change the object and purpose of a statute passed by the Registrar of a Cooperative Society. This Court has no doubt in its mind that the said order has been passed to bypass or frustrate the effect of the order of the Supreme Court in the case of T.A Kuttapam (supra). The said order dated 7th August, 2018 of the Registrar shall not be of any effect and is hereby stayed.

The learned Counsel for the Election Commission also submits that the electoral process has commenced sometime in September 2018

and the petitioner and other persons had raised objections to the same and some of them also filed nomination and hence, are debarred from challenging the process of election.

I have considered the same and find that the writ petition has been filed after the objections of the petitioner and many other persons had been rejected by the Cooperative Election Commission and the final list was published on 7th December, 2018. The writ petition was affirmed on 18th December 2018. There is, therefore, no delay at all on the part of the petitioner in agitating the grievance in question.

The next argument of the Election Commission is that there is only one person who has challenged the election process and that in the spirit of the Cooperative Societies Act of 2006 the wishes of the majority must be deemed to have prevailed and one person cannot upset the election process of a large society having a large number of members when the other members have not come up agitating the aforesaid grievance as contended in the instant petition.

This Court cannot lose sight of the fact that the members of a cooperative society, particularly an agricultural cooperative society, may not wish to be burdened by litigation or participating in judicial proceeding. Even if a single person is coming forward before a Court of

Law and complaining of a gross illegality which is evident in this case, the Court cannot shut its eyes simply because the majority of the members have not approached the Court.

In that view of the matter, this Court is satisfied that the writ petitioner has made out a strong case for interference by this Court.

None of the members inducted by the nominated board shall be allowed to participate in the election process except those who were present in the rolls of the society as members prior to the taking over of the nominated board. This Court is more inclined to pass the aforesaid order as there is a clear attempt to frustrate not only the order of the Supreme Court but also the aforesaid order dated 21st December, 2018. The learned Counsel for the Election Commission has referred to a decision of a Division Bench of this Court in similar circumstances being order dated 30th October, 2018 passed in MAT 1399 of 2018 where from an order preventing the members inducted by a nominated board from participating in election was interfered with by a Division Bench permitting the persons to participate in the process of election and that the dispute as regards their induction by a nominated board would abide by the result of the appeal that was filed challenging the process of election.

I am of the view that there is a difference in the facts of the case before the Division Bench and the instant case. In the instant case a single judge had already ordered election to be conducted within a period of ten weeks from 1st February, 2018. Continuation of the nominated board, of a board by the Assistant Registrar of Cooperative Societies and extension thereof is, according to me, a clear attempt to frustrate not only a specific order passed by a coordinate bench of this Court in respect of the same society but also an attempt to bypass and frustrate the order of the Hon'ble Supreme Court passed in T.A. Kuttapan (supra) referred to hereinabove.

Hence, this Court directs that the Assistant Registrar of Cooperative Societies shall finalise the voters' list essentially based on the members who were present on the list of the society immediately prior to taking over of the nominated board and election shall be held accordingly with such members.

It is further made clear that the members inducted by the nominated board may continue as such members after election is complete with the members who were present on 1st February, 2018, being the date of the order passed in WP 30392(W) of 2017 directing the election to be held within a period of ten weeks.

With the aforesaid direction, this writ petition is disposed of.

There shall be no order as to costs.

Urgent Photostat certified copies of this order, if applied for, be delivered to the learned Advocates for the parties, upon compliance of all formalities.

(Rajasekhar Mantha, J.)