
(2011) 01 GAU CK 0056
In the Gauhati High Court
Case No : Writ Petition (C) No. 3201 of 2010

Abdul Mannan Bhuyan and Others

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 11-01-2011

Acts Referred:

Assam Co-operative Societies Act, 1949 — Section 80
Assam Co-operative Societies Rules, 1953 — Rule 26

Citation : (2011) 01 GAU CK 0056

Hon'ble Judges : Brojendra Prasad Katakey, J

Bench : Single Bench

Advocate : A.M. Mazumdar, in WP C No. 3201/2010, M.U. Mondal, H.R. Ahmed, M. Hussain, M.R. Khandakar, in WP C Nos. 3201 and 6378/2010, A.K. Goswami, A. Hussain and A.F.N.U. Mollah, in WP C No. 3763/2010, for the Appellant; S. Ahmed, R. Ali for Caveator, H.R.A. Choudhury A.B. Siddique in WP (C) No. 3201/2010, D. Deka, in WP (C) Nos. 3201 and 3763/2010 G.A. Assam, J. Ahmed, N. Jahan, S. Das, P.A. Ahmed and R. Ali, in WP (C) Nos. 3201, 3763 and 6378/2010, for the Respondent

Judgement

B.P. Katakey, J.—10(ten) shareholders of Kazaikata Samabay Samiti Ltd., a society registered under the provisions of Assam Cooperative Societies Act, 1949, who were elected in the Annual General Meeting of the society held on 28.01.2010 as members of the Managing Committee and which proceeding was approved by the Assistant Registrar of Cooperative Societies on 01.02.2010, has filed WP(C) No. 3201/2010 challenging the order dated 21.05.2010 passed by the Registrar of Cooperative Societies in the appeal preferred by the Respondent No. 8 to 17 challenging the proceeding of the Annual General Meeting dated 28.01.2010 and the approval thereof by the ARCS. By order dated 21.05.2010 the Registrar of Cooperative Societies has set aside the election of the office bearers of the Managing Committee held on 28.01.2010 on the ground that valid voters list was not prepared and the same was not published as required under the law.

2. WP(C) No. 3763/2010 has been filed by the Petitioners, who were elected as Chairman and Vice Chairman in the aforesaid meeting of the society held on 28.01.2010, challenging the aforesaid order dated 21.05.2010 passed by the Registrar of Cooperative Societies and also the order dated 19.06.2010 passed by the Joint Registrar of Cooperative Societies, whereby and whereunder the Respondent No. 18 has been appointed as one man ad-hoc committee of the said society by canceling the earlier order dated 17.03.2010 appointing Sri Selim Khan, the Senior Inspector of Cooperative Societies, Dhubri to manage the affairs of the said society.

3. WP(C) No. 6378/2010 has been filed by Sri Abul Hashem, who was elected as Chairman of the society in the meeting dated 28.01.2010, challenging the authority of Respondent No. 8, Anowar Hussain, to manage the affairs of the said society and to adopt the resolution in its meeting held on 26.11.2010.

4. I have heard Mr. M.U. Mondal, learned Counsel appearing for the Petitioners in WP(C) Nos. 3201/2010 and 6378/2010, Mr. A.K. Goswami, learned Sr. counsel assisted by Mr. A. Hussain appearing for the Petitioners in WP(C) No. 3763/2010, Mr. Soren, learned State counsel appearing for the State Respondents including its officers and Mr. J. Ahmed, learned Counsel appearing for the private Respondents in all the three writ petitions. Since all the writ petitions relate to the election of the society held on 28.01.2010 and the subsequent order dated 21.05.2010 passed by the Registrar of Cooperative Societies, those are taken up for hearing and disposal together, as agreed to by the learned Counsel for the parties. I have also perused the records of the appeal preferred by the private Respondent Nos. 8 to 17 before the Registrar on the basis of which the order dated 21.05.2010 has been passed.

5. Mr. Mondal, learned Counsel for the Petitioners in WP(C) Nos. 3201/2010 and 6378/2010 has submitted that despite the order dated 22.03.2010 passed by this Court in WP(C) No. 1779/2010 directing the Registrar of Cooperative Societies to rehear and decide the appeal filed by the private Respondents after giving notice to all the elected members, though notice dated 21.04.2010 was shown to have been issued, no notice was however issued and served on the Petitioners before passing the order dated 21.05.2010 by the Registrar of Cooperative Societies setting aside the election of the Petitioners, thereby denying the Petitioners the reasonable opportunity of being heard. It has also been submitted by Mr. Mondal that since an interim order dated 11.06.2010 was passed in WP(C) No. 3201/2010 directing the parties to maintain status quo, as on that date, as regards the management of the society, by order dated 19.06.2010 an one man ad-hoc committee has been appointed to manage the affairs of the society and such one man ad-hoc committee has adopted certain resolutions on 26.11.2010. According to the learned Counsel, since such action on the part of the official Respondents including the one man ad-hoc committee is contrary to the interim order dated 11.06.2010, the same needs interference.

6. Mr. Goswami, learned Sr. counsel appearing for the Petitioners in WP(C) No.

3763/2010 challenging the order dated 21.05.2010 passed by the Registrar of Cooperative Societies has submitted that it is evident from the order passed that the Registrar has set aside the election as well as the proceeding of the society dated 28.01.2010 without recording any clear and definite finding that the proper voters list was not published as required under the law before the election was held. Referring to the report dated 29.01.2010 of the Returning Officer appointed by the Assistant Registrar of Cooperative Societies to conduct the election, it has also been submitted by Mr. Goswami that it is evident from the said report that there was no discrepancy in the voters list and the election was held peacefully and without there being any objection from any quarter. Mr. Goswami further submits that even one of the Appellants before the Registrar also participated in the said proceeding of the society held on 28.01.2010, in the capacity of the election agent of a defeated candidate, who never at any point of time prior to filing the appeal before the Registrar, objected to the preparation and publication of voters list, which according to Mr. Goswami was duly published and such voters list was approved by the ARCS on 24.12.2009. Mr. Goswami submits that those factors have not been taken into consideration by the Registrar while passing the order dated 21.05.2010.

7. Mr. Soren, learned State counsel appearing for the State Respondents as well as its officials, producing the records of the appeal, has submitted that though a copy of the notice dated 21.04.2010 issued by the Joint Registrar is available on record, there is, however, nothing on the records to suggest that such notices were issued to the Petitioners in WP(C) No. 3201/2010, although there was a positive direction in the order dated 22.03.2010 passed in WP(C) No. 1779/2010 directing the Registrar of Cooperative Societies to rehear the appeal after giving notice to all the elected members.

8. Mr. Ahmed, learned Counsel appearing for the private Respondents, on the other hand supporting the order dated 21.05.2010 passed by the Registrar of Cooperative Societies, has submitted that in fact, the notices dated 21.04.2010 were issued to all the elected members including the President and the Vice President of the society, who were elected in the proceeding dated 28.01.2010, fixing 28.04.2010 as the date of hearing of the appeal filed by the private Respondents, accordingly the President and the Vice President as well as the elected members (Petitioners in WP(C) No. 3201/2010) had appeared before the Registrar on 28.04.2010, who heard the appeal in their presence. Mr. Ahmed further submits that while the Registrar asked the Petitioners in WP(C) No. 3201/2010 to file their attendance in writing, they refused to do so. Mr. Ahmed, therefore, submits that the grounds taken in WP(C) No. 3201/2010 in challenging the order dated 21.05.2010 that they did not know about the proceeding before the Registrar, is not sustainable. It has also been submitted by Mr. Ahmed that since there is no dispute relating to the service of notice on the Petitioners in WP(C) No. 3763/2010, the order of the Registrar dated 21.05.2010 may not be interfered with, on the ground of non-service of notice on those two persons. Mr. Ahmed in reply to the submissions made by Mr. Goswami, learned

Sr. counsel appearing for the Petitioners in WP(C) No. 3763/2010 has also submitted that it is apparent from the impugned order dated 21.05.2010 passed by the Registrar that the correct voters list was not prepared and published as required under the law and therefore no illegality has been committed by the Registrar in passing the impugned order.

9. Mr. Ahmed, learned Counsel appearing for the private Respondents further submits that the appeal preferred by them was initially allowed by the Registrar vide order dated 11.03.2010 by setting aside the proceeding of the society dated 28.01.2010 and thereafter one man ad-hoc committee was appointed vide order dated 17.03.2010 to manage the affairs of the society till the fresh election is held after preparation and publication of the correct voters list, which order however was superseded by another order dated 19.06.2010 appointing another officer as one man ad-hoc committee to manage the affairs of the society. It has been submitted by Mr. Ahmed that from 17.03.2010 the society being managed by one man ad-hoc committee appointed for that purpose, which cannot in any way allowed to be managed by the persons elected on 28.01.2010, the said proceeding having been set aside by the Registrar initially vide order dated 11.03.2010 and subsequent vide order dated 21.05.2010, which is under challenge in the present writ proceedings.

10. On being asked Mr. Soren, learned State counsel has submitted that the records maintained by the Registrar of Cooperative Societies does not reveal that the Petitioners in WP(C) No. 3201/2010 were present on 28.04.2010 i.e. the date fixed for hearing by the private Respondents. There is also no note to the effect that though they appeared on that date, they refused to put their presence in writing.

11. I have considered the submissions of the learned Counsel for the parties and also perused the pleadings as well as the records as made available by Mr. Soren, learned State counsel.

12. The Annual General Meeting of the society was held on 28.01.2010, on which date the election of the office bearers of the Managing Committee of the society was also held. The Petitioner Nos. 1 and 2 in WP(C) No. 3763/2010 were elected in the said meeting as Chairman and Vice Chairman of the society respectively. The Petitioners in WP(C) No. 3201/2010 were elected as members of the Managing Committee of the said society in the said meeting. The proceeding of the said meeting thereafter was send to the approving authority, namely, the Assistant Registrar of Cooperative Societies as required under proviso to Rule 26 of the Assam Cooperative Societies Rules framed under the provisions of the Act. The Assistant Registrar of Cooperative Societies on 01.02.2010 approved the proceeding of the meeting of the society dated 28.01.2010, which includes the election of the office bearers of the Managing Committee of the society. An appeal was thereafter preferred by the private Respondents before the Registrar of Cooperative Societies u/s 80 of the Act, which was initially allowed by the Registrar vide order dated 11.03.2010. The said order was put to challenge by

the Petitioner No. 1 in WP(C) No. 3763/2010, who is also the Petitioner in WP(C) No. 6378/2010, before this Court in WP(C) No. 1779/2010 which writ petition was disposed of on 22.03.2010 by a Single Bench of this Court directing the Registrar of Cooperative Societies to rehear the appeal and to decide the same within a period of 30 days from the date of receipt of the certified copy, after giving notice to all the elected members.

13. The records produced by Mr. Soren, learned State counsel contains a copy of the notice dated 21.04.2008 signed by the Joint Registrar of Cooperative Societies and addressed to the Petitioners in WP(C) Nos. 3201/2010 and 3763/2010 i.e. the Chairman and Vice Chairman and all the elected members of the society, who were elected in the proceeding dated 28.01.2010. The said record, however, does not disclose as to whether such notices were in fact issued and served on the Petitioners in WP(C) No. 3201/2010. There is no dispute that such notices were served on the Petitioners in WP(C) No. 3763/2010 and they have also participated in the hearing before the Registrar on the date fixed i.e. on 28.04.2010.

14. The Petitioners in WP(C) No. 3201/2010 are the members elected in the Annual General Meeting of the society on 28.01.2010, whose election was also under challenge in the proceeding filed by the private Respondents before the Registrar of Cooperative Societies u/s 80 of the Act. They being the elected members, whose election has been approved by the approving authority on 01.02.2010, they have a right to object to the prayer of the private Respondents made in the appeal for setting aside their election. Such appeal cannot be heard and disposed of by the Registrar without issuing any notice to all the elected members. If such course of action is taken, it would amounts to violation of principle of natural justice. By order dated 22.03.2010 passed in WP(C) No. 1779/2010 the Registrar was also directed to hear the appeal after issuing notice to all the elected members.

15. As discussed above, the records do not reveal the issuance and service of notice of the appeal to the Petitioners in WP(C) No. 3201/2010, who are elected members. That being the position, the order dated 21.05.2010 passed by the Registrar of Cooperative Societies in so far as the Petitioners in WP(C) No. 3201/2010, has to be set aside, which I accordingly do.

16. The next question, which requires consideration is whether the order dated 21.05.2010 passed by the Registrar can be set aside in part i.e. in so far as the Petitioners in WP(C) No. 3201/2010 only, on the ground of violation of principle of natural justice. The appeal was preferred by the private Respondents u/s 80 of the Act challenging the election on the ground of non-preparation and non-publication of correct voters list. In the event only WP(C) No. 3201/2010 is allowed by dismissing WP(C) No. 3763/2010 it may leads to an anomalous situation, as it may be that the Registrar may while reconsidering the appeal decides to dismiss the same by holding that proper voters list was prepared and published. Moreover, the Registrar while passing the impugned order dated

21.05.2010 did not take into consideration the report of the Returning Officer dated 29.01.2010 and the approval of the voters list by the Assistant Registrar of Cooperative Societies on 24.12.2009.

17. In view of the aforesaid position, the order dated 21.05.2010 passed by the Registrar of Cooperative Societies is set aside. The matter is remitted to the Registrar for fresh consideration and disposal by a speaking order, which shall be done within a period of 2(two) months from the date of appearance of the parties. The elected President, Vice President, the members of the society as well as the private Respondents, who are the Appellants before the Registrar and the Returning Officer and also the Secretary of the Society apart from the Assistant Registrar of Cooperative Societies are directed to appear before the Registrar on 01.02.2011, on which date the Registrar shall fix a date for hearing of the appeal. While doing so, the Registrar shall also obtain the records from the concerned authority and shall also consider the submissions of Mr. Goswami, learned Sr. counsel for the Petitioners in WP(C) No. 3763/2010 as recorded above.

18. The next question which requires consideration by this Court is who would, in the meantime, manage the affairs of the society. It appears that the election of the society held on 28.01.2010 was set aside initially by the Registrar on 11.03.2010. The Registrar, thereafter, vide order dated 17.03.2010 appointed one officer of the Cooperative Department to manage the affairs of the society, which was however superseded by another order dated 19.06.2010, whereby and whereunder Sri Anowar Hussain, a Senior Inspector of Cooperative Societies was appointed as one man ad-hoc committee to manage the affairs of the said society. Since the Registrar of Cooperative Societies by the order dated 21.05.2010 has again set aside the proceeding of the election dated 28.01.2010 and the one man ad-hoc committee has already been appointed, it is directed that till the appeal is heard and disposed of by the Registrar, the one man ad-hoc committee appointed by the Joint Registrar vide order dated 19.06.2010 shall continue to manage the affairs of the society. The said one man ad-hoc committee however shall not take any steps, till disposal of the appeal by the Registrar, for the purpose of holding the election of the society. Such a course of action would not be contrary to the interim order dated 11.06.2010 passed in WP(C) No. 3201/2010, as by that order it was directed to maintain status quo. As discussed above, vide order dated 17.03.2010 one man ad-hoc committee was already appointed by the Registrar before passing of the said order dated 11.06.2010, which however was superseded by the subsequent order dated 19.06.2010. That being the situation, one man ad-hoc committee appointed on 19.06.2010 shall continue to discharge his duties and responsibilities till the appeal is heard and disposed of. For those reasons the resolution adopted on 26.11.2010 which is under challenge in WP(C) No. 6378/2010, cannot be interfered with.

19. WP(C) No. 3201/2010 is accordingly allowed. WP(C) No. 3763/2010 stands

disposed of. WP(C) No. 6378/2010 stands dismissed. No cost.