
(2011) 08 GAU CK 0010
In the Gauhati High Court
Case No : Writ Appeal No. 84 of 2011

Akbarali & Ors.

APPELLANT

Vs

Hanif Ali Mondal & Ors.

RESPONDENT

Date of Decision : 10-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (2011) 5 GLT 371

Hon'ble Judges : Amitava Roy, J and P.K.Musahary, J

Bench : Division Bench

Advocate : Advocates appeared for the Appellants: Mr. A.B. Choudhury, Mr. A. B. Siddique, Mr. Wise Imran & Mr. A. Kalam, Advocates appeared for the Respondents: Mr.P. S. Deka, GA, Mr. I. Choudhury, Mr. J. Abedin & Mr. D.A. Kayum, Advocates appearing for Parties

Judgement

Amitava Roy, J;

1. The judgment and order dated 09.03.2011 passed in WP(C) No. 1352/2011 preferred by the present respondent Nos. 1, 2 and 3 forms the subject matter of challenge in the instant appeal. By the decision impugned, the notice dated 19.02.2011 issued by the Secretary, Patamari Samabai Samity Limited, Newghat, Dhubri (for short, hereinafter referred to as "the Samity") fixing 10.03.2011 as the date of election, amongst others, of the office bearers thereof has been set aside with the direction to the Executive Officer of the said Samity to incorporate all the names of the shareholders in the voters" list and to obtain the approval of the Assistant Registrar of Cooperative Societies, Dhubri in accordance with law before issuing a notice convening the Annual General Meeting of the Samity.

2. We have heard Mr. A. B. Choudhury Senior Advocate for the appellants; Mr. P.S. Deka, learned Government Advocate, Assam for the official respondents; Mr. I. Choudhury, Advocate for the respondent Nos. 1,2 and 3; Mr. J. Abedin, Advocate for the respondent No, 10 and Mr. D.A. Kaiyum, Advocate for the

respondent Nos. 8,11 and 12.

3. The present controversy has a chequered history which for purpose of the instant appeal does not warrant a dilation of inessential facts. The shareholders/members of the Samity have, by turn, approached this Court with various issues and eventually by order dated 12.01.2011 passed in WP (C) No 6314/2010, this Court directed the OneManAdhoc Committee in place to hold the election/Annual General Meeting of the Samity within 28.02.2011. The Deputy Registrar of Cooperative Societies, Dhubri was directed to oversee the entire process of election. The Executive Committee of the Samity thereafter in its meeting held on 24.01.2011 following necessary deliberations, drewup a voters" list of 3 814 members and resolved to forward the same to the Assistant Registrar of Cooperative Societies, Dhubri for his approval as required in law. This was on 25.01.2011. According to the writ petitioners, for impertinent and collateral considerations the list was not forwarded by the Secretary of the Samity in connivance with the respondent No. 5 (in the writ petition) whereupon the Executive Officer on 04.02.2011 required the Secretary to provide the voters" list. According to the petitioners, on 09.02.211 the Executive Officer of the Samity collected the voter"s list and submitted it to the Assistant Registrar of Cooperative Societies, Dhubri for approval. Though the said State authority was requested by the Executive Officer of the Samity to take a decision on the voters" list in absence whereof it was not possible for the Samity to notify the date of election, the former did not respond. Situated thus, the Secretary and the Executive Officer of the Samity in deference to the order dated 12.01.2011 of the Court, on 19.02.2011 convened the election on 10.03.2011 fixing 28.02.2011 as the date for submission of the nomination papers.

4. It was on 24.02.2011 that the Assistant Registrar of Cooperative Societies by a letter of the same date asked the Executive Officer/Secretary of the Samity to provide a correct voter"s list While the matter was thus pending, as the writ petitioners alledge, the Assistant Registrar of Cooperative Societies in a surreptitious manner declined to accord his approval to the voter"s list drawn up by the Executive Committee on 24.01.2011 and accorded his approval on 25.02.2011 to another voter"s list containing the names of only 2618 members thereby omitting 1201 legitimate shareholders and, thus, depriving them of their suffrage. The challenge in the aforementioned writ petition was laid in this background seeking annulment of the approval dated 25.02.2011 of the Assistant Registrar of Cooperative Societies of the Voter"s list^ dated 22.02.2011. Interference with the result of the nominations on the basis of the said voters" list and suspension of the process of election as notified vide notice dated 19.02.2011 was also sought for. During the pendency of the writ petition, one Azahar Aii and Zahidur Islam were impleaded as respondent Nos. 8 and 9.

5. The learned Single Judge on a consideration of the pleadings available, by the impugned judgment and order interfered with the notice dated 19.02.2011 notifying the election with the consequential directions as referred to

hereinabove. In spite of this determination by the learned Single Judge, the election was held on 10.03.2011 and the appellant No.1 was elected as the Vice Chairman of the Managing Committee of the Samity with the appellants Nos. 2 to 11 as the members thereof. Apart from contending that they were unaware of the institution of the writ petition not having been impleaded therein, they have endorsed the voters' list approved by the Assistant Registrar of Cooperative Societies on 25.02.2011 to be valid one dismissing as well the one dated 24.01.2011 which, according to them, included 1195 new members though not entitled to be enlisted in the voters'/members' roll. According to them, the election was held in an orderly manner and the new Managing Committee had been elected by a majority of votes in a democratic process. That the proceedings of the election though laid with the Assistant Registrar of Cooperative Societies, Dhubri, have not been approved, however, has been mentioned by them.

6. Mr. Choudhury while questioning the locus standi of the writ petitioners, has strenuously urged that as the process of election involved is not governed by common law norms and no statutory right of theirs in the facts and circumstances of the case has been infringed, the writ petition ought to have been dismissed in limine on this count alone. Even assuming without admitting that there subsisted a dispute with regard to the voters' list on the date of the election, no interference in the exercise of the writ jurisdiction of this Court during the continuance of the process was permissible. As by the exercise was undertaken on the basis of the voters' list in terms whereof the writ petitioners had no right to participate therein, neither any prejudice could have been caused to them nor any public interest has been jeopardized, he urged. The learned senior counsel for the appellant therefore, contended that interference with the process of election in the attendant facts and circumstances has been unwarranted. To reinforce his arguments, Mr. Choudhury has placed reliance on the decision of the Apex Court in *Skri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha & Anr. Vs. State of Maharashtra & Ors.*: 2001 (8) SCC 509 and also on an extract from the "Law of Election, Second Editions by N. P. Chopalgaonker."

7. Whereas Mr. Deka refrained from offering any comment, Mr. I. Choudhury while reiterating the challenge laid in the writ proceeding, has in particular referred to the letter No. GPSS. 6/86/3 dated 11.07.86 of the Registrar of Cooperative Societies, Assam and Clause 15 of the Model byelaws applicable to the Samity. He has urged in particular with reference to the above byelaws that as in terms thereof a voters' list is to be obligatorily prepared before 30 clear days of the Annual General Meeting, the notice dated 19.02.2011 is patently in transgression of such mandatory prescription and has been rightly interfered with. As admittedly, no correct and approved voters' list was in existence on 19.02.2011, the process initiated thereby was void ab initio and, thus, the impugned judgment and order does not call for any interference in the appeal.

8. The learned counsel for the appellants, however, has sought to neuter this

plea by contending that these byelaws being directory in nature, even assuming that the process of election was not conducted in strict adherence thereto, no invalidation thereof would ensue ipso facto.

9. We have extended our anxious consideration to the rival pleadings and the arguments advanced on the basis thereof. As the writ petition would reveal, the respondent Nos. 1, 2 and 3 as the writ petitioners had sought for the annulment of the voters' list dated 22.02.2011 and the approval thereto granted by the Assistant Registrar of Cooperative Societies, Dhubri on 25.02.2011 on the basis of which eventually the election was held on 10.03.2011. The writ petitioners, as a matter of fact, had impugned the process as a whole including the nominations therefor. Admittedly, the rival pleadings would reveal that on the date of issuance of the notice dated 19.02.2011 notifying the election on 10.03.2011 there was no approved voters' list containing the names of the eligible members/shareholders of the Samity. The voters' list on the basis of which the election was eventually held on the same date had been approved by the Assistant Registrar of Cooperative Societies, Dhubri only on 25.02.2011.

10. There is no wrangle at the Bar that the Model byelaws produced in course of the arguments govern the Samity as well. In terms of Clause 15 (3) thereof the Managing Committee has to mandatorily prepare the list of shareholders before 30 days of the Annual General Meeting in the manner as set out in Clause 15(1) and (2) thereof. Clause 15(4) prohibits inclusion of any person as a member of the Society within 30 days of the Annual General Meeting in which the members of the Managing Committee are to be elected. The letter dated 11.07.86 issued by the Registrar of Cooperative Societies, Assam the applicability whereof visavis preparation of the list of eligible members of the Samity has not been questioned, also stipulates with reference to the byelaws that the management is required to prepare a list of all eligible members before 30 days of the Annual General Meeting.

11. The existence of a list of eligible members of the Samity before 30 days of the Annual General Meeting in which the members of the Managing Committee are to be elected, therefore, is an indispensable prerequisite for a valid election. In the facts and circumstances of the case, it is incontrovertible that no such list of eligible members of the Samity as approved by the Assistant Registrar of Cooperative Societies, Dhubri was in existence on the date on which the notice dated 19.02.2011 had been issued, In that view of the matter, we are of the unhesitant opinion that the proceedings of the Annual General Meeting held on 10.03.2011 were in apparent violation of the prescription of Clause 15 of the byelaws as well as the enjoinder to this effect as embodied in the letter dated 11.07.86 of the Registrar of Cooperative Societies, Assam. The view taken by the learned Single Judge, therefore, cannot be faulted with. Further, the notice dated 19.02.2011 and the proceedings that followed on the basis thereof having been annulled by the impugned judgment and order dated 09.03.2011, the proceedings of the Annual General Meeting held on 10.03.2011, therefore, have

to be construed as nonest.

12. The averments made in the writpetition carried the grievance of the petitioners of having been illegally excluded from the voters" list dated 24.01.2011. In that view of the matter, want of their locus to question the contemplated election on the basis of a voters" list to their exclusion in unconvincing. The decision relied upon by the learned counsel for the appellants is also of no avail in the factual setting as it obtains herein. In the contextual facts of the decision pressed into service the election had been held on the basis of an existing voters" list, though disputed. As a matter of fact, in the said case such a voters" list had existed when the process of election had been initiated. The facts herein are clearly distinguishable. Though in general terms, having regard to the factual background in the reported decision the legal proposition laid down therein is unquestionable, this is of no avail in the present set of facts.

13. In the above view of the matter, having regard to the aforementioned findings, we are constrained to hold that the appeal lacks on merit. It is, thus, dismissed. No costs.