
(2003) 12 GAU CK 0031
In the Gauhati High Court
Case No : WP (C) No. 4532 of 2003

Amir Uddin

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 10-12-2003

Acts Referred:

Assam Co-operative Societies Rules, 1953 — Rule 26

Citation : (2004) 3 GLR 1 : (2005) GLT 362 Supp

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : A.B. Choudhury and J. Abedin, for the Appellant; G. Baishya and P.R. Mahanta, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Roy, J.—By this writ petition the petitioner who claims to be elected as the Chairman of the Namati Samabai Samity Ltd., Nagaon (hereinafter referred to as the "Society") in its meeting held on 21.5.2003 seeks an appropriate writ or direction from this court to the respondent No. 3 to allow him and other elected members to run the affairs of the said society and also to approve the proceedings of the meeting held on 21.5.2003.

2. I have heard Mr. A. B. Choudhury, learned counsel for the petitioner, Mr. D. Goswami, learned State counsel and Mr. G. Baishya, learned counsel for the newly, impleaded respondent Nos. 5 to 10 who are the shareholders of the society.

3. The controversy revolves around the non-approval of the proceedings of the Annual General Meeting of the Society held on 21.5.2003 pursuant to the notice issued by the Ex-Chairman and the Secretary thereof. A notice dated 5.5.2003 was published convening the A.G.M. of the Society on 21.5.2003, inter alia, for election of the chairman, Vice Chairman and other members of the Managing Committee thereof. One Sri Mridul Kumar Kalita who was appointed as the

Assistant Returning Officer attended the office of the said Society on 10.5.2003 to receive the nominations. The respondent No. 4, Sri Dhrubajyoti Laskar, Junior Inspector-cum-Auditor, Co-operative Societies, Hojai was appointed as the Returning officer. According to the petitioner, the meeting was held on 21.5.2003 as scheduled as there was the requisite quorum. In due time, the election agenda of the A.G.M, was taken up and as per the agenda, voting started at 11.15 A.M.

On completion of the voting, the counting began and the results were declared by the Returning Officer. Respondent No. The petitioner was declared elected as Chairman of the new body. The Returning Officer, respondent No. 4 also prepared a result sheet on 22.5.2003, However, when the meeting moved to the next item of the agenda on 22.5.2003, some persons suddenly created a chaos by shouting, throwing stones, piece of bricks at the persons seated in the meeting and ultimately snatched away the proceeding Book and other records from the Returning Officer. The Returning Officer on 28.5.2003 submitted a report. However, as the approval of the meeting was withheld by the Respondent No. 3, the petitioner along with other members of the elected body could not take charge of the affairs of the Society. A representation was filed by the petitioner on 31.5.2003 for according approval to the proceedings of the election, but as no action was taken thereon, the petitioner has approached this court praying for the above reliefs.

4. The state respondents have not filed any affidavit. In the counter filed by the private-respondents, it has been contended in substance that in the election a large number of ineligible voters participated and though the fact was brought to the notice of the Returning Officer, he failed to take any action to rectify the irregularity. They supported the fact that after the completion of counting of votes on 22.5.2003 when the general body was preparing to take up the other items of the agenda, all of a sudden some persons intercepted the proceedings and an handled some voters who were present in the meeting. According to the answering respondents, the Incharge, Assistant Registrar of Cooperative Societies, Hojai after perusal of the report of the Returning Officer and on a consideration of the other materials on record by order dated 4.6.2003 rightly refused to accord approval to the proceedings of the election held on 21.5.2003.

5. Mr. Choudhury, learned counsel for the petitioner has submitted that as admittedly the proceedings of the election had been conducted in fair and regular manner as is evident from the report of the Returning Officer and the pandemonium had taken place thereafter, the loss of the Proceeding Book was not a sufficient consideration for withholding the approval to the proceedings of the election. Referring to the report of the Returning Officer, the documents containing the declaration of the election results and the declarations made by the elected members, Mr. Choudhury strongly urged that the refusal on the part of the respondent No. 3 to grant the approval is clearly not sustainable in law and is liable to be adjudged, illegal, arbitrary and opposed to the provisions of

the Assam Co-operative Societies Act 1949 and the Assam Co-operative Rules 1953 (hereinafter referred to as the Act and the Rules). According to Mr. Choudhury approval of the proceedings of a meeting under the Act is a rule and it is only in exceptional circumstances that the same may be withheld. He therefore argued that it is a fit case where this court would issue a writ of mandamus to the Respondent No. 3 to approve the election held on 21.5.2003 and allow the new body to manage the affairs of the Society. In support of his submissions Mr. Choudhury has placed reliance on a decision of this court in Sanjay Kr. Mahanta and another, petitioners v. State of Assam & 5 others, respondents, reported in (1993) 2 GLR 170.

6. As against this, Mr. Baishya has submitted that the face of the report of the Returning Officer, it is apparent that the Proceeding Book of the meeting was snatched away before the meeting could be completed and that according to him for the said reason, the actual number of the shareholders who had attended the meeting could not be ascertained. According to Mr. Baishya, therefore there is no scope in law to approve the proceedings of an election of A.G.M. which was only one of the items in the agenda. He submitted that in the facts and circumstances of the case, looking into the contents of the report of the Returning Officer, the Respondent No. 3 rightly refused to approve the proceedings of the election in the A.G.M. According to the learned counsel, the concerned authority had refused the approval on valid and relevant consideration and therefore this court would not interfere with the same in the exercise of its writ jurisdiction. Mr. Baishya further submitted that in the above premises if this Court deems it fit and proper it may however issue necessary order to hold the A.G.M. within a time frame. In support of his submissions he relied on a decision of this court in J. Bharali, petitioner v. State of Assam, respondent, reported in 2002 (1) GLT 212.

7. That the Annual General Meeting was convened on 21.5.2003 is admitted. It is also not in dispute that the proceedings of the election of the office bearers of the Managing Committee of the Society were held and it was only after the completion of the counting and the declaration of the results that the problem started in course of which the Proceeding Book of the meeting was snatched away as a result of which the meeting could not take up the remaining items of the agenda. In absence of the Proceeding Book the report of the Returning Officer is the primary document which would indicate as to in what manner the proceedings of the election were held. The relevant portion of the report which has a direct bearing is quoted hereinbelow :

"After completion of the vote casting we started counting the votes at about 11.45 p.m. Counting continued and completed at about 5 p.m. of next day. The result of the election were declared (copy of the declaration enclosed). Then I requested the Chairman to take over the Chair to continue and complete other agenda of the meeting.

But it is unfortunate to inform you that while the Chairman was going to conduct

the next agenda of the A.G.M., some unknown people suddenly created a very unpleasant situation throwing stones, pieces of bricks and chair to the Chairman and the persons sitting in the meeting place and also forcibly snatched away the Proceeding Book and other records from us. The security personnels deputed to the meeting has failed to control the situation. As the Proceeding Book was snatched away the actual attendants of the meeting could not be ascertained.

Thus the whole situation became out of order and beyond control. We the officers deputed to the meeting could somehow managed to take shelter at nearest police station at Murajhar for our safety.

In the circumstances the Chairman postponed the meeting."

It would be ex facie clear from the above that the Proceeding Book and other records of the meeting were snatched away by some unknown persons for which the actual number of members of the society who attended the meeting could not be ascertained. It would also be clear therefrom that the remaining items of the meeting had to be postponed.

8. The question is as to whether the Assistant Registrar of co-operative societies had acted on irrelevant and extraneous considerations in withholding the approval of the proceedings of the election. There cannot be two opinions that the proceeding book of the society containing the minutes of the proceedings of its A.G.M. is an important contemporaneous document furnishing the first hand information about the manner in which it had been held and the resolutions taken vis-a-vis the different items is the agenda. The report of the Returning Officer though certified that the election was held and the results were declared indicates that because of the loss of the Proceeding Book, the actual number of members attending the meeting could not be ascertained.

9. In view of the allegations made in the affidavit of the respondents that many ineligible voters had participated in the election and that a message from the S.D.O.(C) S/N to the Dy Registrar of Co-operative Societies, Hojai (Annexure 1 to the affidavit) to that effect had also been issued, it is difficult to conclude that the opinion expressed by the Asstt. Registrar of Co-operative Societies, Hojai that the election process cannot be approved because of the loss of the Proceeding Book and the failure of the society to submit the proceedings of the meeting is not based on relevant considerations. It is true that the power to approve or disapprove the proceedings of an A.G.M. of a society under the Act cannot be exercised mechanically and in whimsical or arbitrary manner but if there are unusual and exceptional circumstances justifying withholding of such approval it cannot be made incumbent on the authorities concerned to accord approval of the proceedings of such a meeting.

10. In the decided case cited by Mr. Choudhury, a similar question arose. There the approval of the meeting of the Society involved was withheld due to some complaint made. This court in the facts of that case held that the complaint was vague and doubtful. It was therefore of the view that the same could not having

taken note of for withholding the approval. While observing that according approval of the proceedings of the Annual General Meeting should normally be the rule it ruled that disapproval may follow in exceptional circumstances when its becomes apparent from the records that the election was held with gross irregularity and in violation of Rules and procedure.

11. The report of the Returning Officer in the instantly case though certified that the election was duly held and was completed perfectly and peacefully, he was of the opinion that in view of the loss of the Proceeding Book the actual number of the members of the voters was not ascertainable.

12. In the exercise of the power of judicial review this court is not supposed to sit in appeal over the impugned decision unless the satisfaction is based on non-existent or entranceous facts or grounds. The fact that there was a commotion in the meeting and that the Proceeding Book of the society was lost as a result whereof the actual number of members of the society attending the meeting could not be ascertained is admitted and therefore the grounds set forth in support of the impugned cannot be dubbed as extraneous or non existent calling for interference by this court. One more aspect cannot be overlooked. Rule 26 of the Rules contemplates placing of the proceedings of a meeting of the society before the Registrar for his approval. In the case in hand the proceedings of the meeting could not be completed because of the interference by some unknown persons. The proceedings of the election thus could not have been approved in isolation. Further the letter dated 18.8.2003 (Annexure B to the rejoinder affidavit of the petition) containing the grounds for non-approval mentions that the proceedings of the meeting were not submitted.

13. On an over all consideration of the facts and circumstances of the case, I am of the view that the action of the Assistant Registrar of Co-operative Societies in not granting approval to the proceedings of the election of the Managing Committee held on 21.5.2003 cannot be faulted with. The petition is therefore devoid of merit and is dismissed.

14. Mr. Choudhury prays for a direction to the Respondent No. 3 to allow the present elected body to manage the affairs of the Society as an interim arrangement till the election is held afresh. In view of finding recorded hereinabove, it is not possible to accept such a prayer It is, however, ordered that the respondent authorities would take immediate steps to ensure that the A.G.M. of the society is held at the earliest as per the Act and the Rules, so that the newly elected members of the society may take over charge of its affairs without unnecessary delay. This should be done within 6 (six) weeks from the date of receipt of the certified copy of this order. No costs.