

(2008) 05 GAU CK 0052
In the Gauhati High Court

Anil Kumar Kalita and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 09-05-2008

Acts Referred:

Citation : (2008) 4 GLT 563

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—The challenge made in this writ petition is the Constitution of the Board of Directors of the particular Co-operative Bank and the approval thereof conveyed by the authority.

2. The petitioners numbering 3 are the share holders of Guwahati Co-operative Urban Bank Ltd. The Bank is a Co-operative Society constituted under Assam Co-operative Societies Act, 1949 and the Rules framed thereunder. The Bank has its own set of Bye-laws, known as Bye-laws of Guwahati Cooperative Urban Bank Ltd. According to the petitioner the election for constitution of the Board of Directors of the Bank held on 8.6.2007 and the approval thereof accorded by the Assistant Registrar of the Co-operative Societies vide his letter dated 22.6.2007 are in violation of Rule 22 of the Bye-laws.

3. On 30.4.2007 the respondent No. 6, i.e. the Managing Director/General Manager of the Bank, issued notice intimating all the share holders of the Bank that 38th Annual General Meeting (AGM) would be held on 25.6.2007 at 10.30 a.m. in the premises of the Institute of Engineers, Panbazar, Guwahati. The notice also contained the subjects/agenda which were to be discussed in the meeting. One of the agenda was constitution of new Board of Directors. Be it stated, here that the Bank, in its own entity is not party to this proceeding.

4. Pursuant to the aforesaid notice, the 38th AGM of the Bank was held on 26.5.2007, but after discussion of few items, the proceeding/meeting had to be

adjourned with the consent of all the share holders present at the meeting. According to the petitioners, the meeting had to be adjourned due to sudden bomb blast at Athgaon area on that day. It is the further case of the petitioners that the meeting was attended by about 400 share holders.

5. Upon a reference to Rule 22 of the Bye-laws of the Bank, the petitioners have asserted that in case of any adjourned meeting, same is required to be held not less than 7 days and not more than 14 days of such adjournment and the Chairman has to notify the next date of adjourned meeting within 7 days specifying the date, hour and place of the meeting and such notice shall be forwarded to all the members of the General Assembly. According to the petitioners there was violation of the procedure laid down in Rule 22 of the Bye-laws in not forwarding the notice to all the members of the General Assembly and consequently there was no sanctity of law in holding the adjourned meeting on 8.7.2007. It is in the adjourned meeting item No. 6 was considered and the Board of Directors was elected. The AGM was approved by the Assistant Registrar of the Co-operative Societies by his letter dated 22.6.2007. Being aggrieved, the petitioners have approached this Court by filing the instant writ petition.

6. The Assistant Registrar of the Co-operative Societies, i.e. the respondent No. 3, has filed affidavit in opposition and so also by the respondent Nos. 5,6 and 7 who are the Board of Directors, Managing Director and the Chairman of the Bank. Respondent Nos. 10, 11 and 12 have also filed affidavit in opposition. In the affidavits, the plea of the petitioners that there has been violation of Rule 22 of the Bye-laws, has been denied. According to the respondents due enquiry was carried out in respect of the manner and method of conducting the AGM and on the basis of such enquiry it was found that the AGM/election was held according to the Rules and consequently necessary approval thereto was accorded. According to the respondents in the first meeting held on 26.5.2007 all the agenda except the election agenda were completed peacefully, but the item No. 6, i.e. election of new Board of Directors, had to be adjourned due to unexpected circumstances. It is their stand that notice relating to adjourned meeting scheduled to be held on 8.6.2007 was forwarded to all the members of the Bank by publishing in three leading news papers, namely Assam Tribune, Dainik Assam and Asamia Pratidin. Same was also telecasted through Guwahati Doordarshan and N.E. Television. The notice was also displayed by way of banner etc. Moreover, the next date of adjourned meeting was notified on the date of the first meeting itself, i.e. 26.5.2007, at the end of the meeting.

7. It is the specific case of the respondents that since the petitioner had attended on 26.05.07, they had full knowledge of the date of the adjourned meeting, i.e. on 08.06.07. It was intimated that adjourned meeting would be held on 08.06.07 in the same venue and at the same time.

8. The petitioners have filed an affidavit in reply to the affidavit in opposition filed by the respondent No. 3. It is their stand that since there was no proper notification of the adjourned meeting, they could not participate in the election

held on 8.6.2007. According to them, inspite of publication of the notice in three news papers, they were not aware of the date of the adjourned meeting.

9. I have heard Mr. B.C. Das, learned Senior Counsel assisted by Ms. P. Barman, learned Counsel for the petitioners as well as Mr. I. Choudhury learned Counsel representing the respondent Nos. 5, 6 and 7. I have also heard Mr. B. Ahmed, learned Counsel representing the respondent Nos. 10, 11, and 12. Ms. R. Chokraborty, learned Additional Senior G.A. made her submission on behalf of the respondent Nos. 1, 2, 3 and 4. I have considered their submissions and so also the materials on record.

10. Mr. Das, learned Counsel for the petitioners confining his argument relating to violation of the procedure laid down in Rule 22 of the Bye-laws submitted that the question is not what has been done, but what should have been done towards holding of the adjourned meeting. His submission is that when Rule 22 of the Bye-laws envisages the particular manner of holding the adjourned meeting, no amount of publication of notice in the newspaper and/or other method would validate holding of the AGM held contrary to the procedure laid down in the said Rule. In this connection, he has placed reliance on the decision of the Apex Court reported in Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur,

11. Mr. I. Choudhury, learned Counsel for the respondent Nos. 5, 6 and 7 on the other hand upon a reference to the factual aspects of the matter as reflected in the affidavit in opposition, submitted that Rule 22 of the Bye-laws is not applicable to the case. He submitted that even if same is held to be applicable, there being substantial compliance of issuance of notice, the AGM held in the adjourned meeting and the approval thereof cannot be faulted with. He placed reliance on the decision of this Court reported in Shri Bileshwar Khand Udyog Khedut Sahakari Mandali Ltd. and Another Vs. State of Gujarat and Others, Rule 22 of the Bye-laws is the center of controversy. Same is quoted below:

22. Adjournment of meeting--If within half an hour from the fixed for a meeting of the General Assembly a quorum is not present, the chairman shall, if the meeting has been, called at the requisition of member, dissolve it, but in any other case it shall stand adjourned to a date not less than seven days and not more than fourteen days later as may be decided by the chairman and the business to be transacted at the adjourned meeting shall be the same as that proposed for the original meeting. At least seven days notice of such an adjourned meeting specifying date, hour and place shall be forwarded to all members of the General Assembly, provided that no business transacted at an adjourned meeting shall be deemed invalidated on account of non receipt of the notice by a member in due time. At such an adjourned meeting if a quorum is not present, any business may be transacted by a majority of three fourth of the members present and entitled to vote.

12. Rule 22 comes into operation if within half an hour from the time fixed for

the meeting of General Assembly the quorum is not present. In such an eventuality, the Chairman shall, if the meeting has been called at the requisition of the members, dissolve it, but in other cases the meeting shall stand adjourned to a date not less than 7 days and not more than 15 days later and the business to be transacted at the adjourned meeting shall be same as that proposed for the original meeting. In the instant case, the meeting was not adjourned because of lack of quorum, but was adjourned due to some other reasons. While it is the case of the petitioners that the meeting had to be adjourned due to bomb blast in nearby area, but according to the respondents, the meeting had to be adjourned not because of any bomb blast; but because of unruly behaviour of the petitioner No. 1 and his followers who rushed to the Dias and used abusive language against the officials. The petitioner No. 1 and his followers were infuriated because of rejection of nomination of the petitioner No. 1 by the Returning Officer. In the said meeting all the agenda items except the item No. 6, i.e. election of the new Board of Directors, were transacted upon. The meeting was not adjourned because of lack of quorum, but because of the aforesaid incident.

13. Apart from the fact that the date, venue and time of the adjourned meeting was indicated in the first meeting on 26.5.2007, same was also dully notified by publishing notice in three news papers which are admitted widely circulated. Inspite of such notice to which there is no denial on the part of the petitioners, if they failed to participate in the election conducted on 8.6.2007, they cannot take recourse to the procedural aspect of Rule 22 of the Bye-laws. Rule 23(iv) of the Assam Co-operative Societies Rules, 1953 provides for adjournment of meeting in the event of disorder to such a date and time as he may think fit subject to however, the provisions of the Bye-laws.

14. While it is the case of the respondents that the adjourned meeting was to be held as per the provision of Rule 23(iv) and that Rule 22 of the Bye-laws is not applicable, it is the case of the petitioners that since operation of Rule 23(iv) of the Rules 1953 is contrary to the provision of Bye-laws, the procedure laid down in Rule 22 must be followed.

15. At the first instance, Rule 22 of the Bye-laws is not at all applicable in the instant case about which discussions have been made above. The meeting held on 26.5.2007 was not adjourned on account of any lack of quorum, but was adjourned art altogether different grounds. In the meeting itself it was notified that the adjourned meeting would be held on 08.06.07 at the same venue and at the same time. It is also on record that nomination of the petitioner No. 1 was rejected by the Returning Officer in the meeting held on 26.5.2007. Except the agenda item relating to election, all other agenda items were transacted on that day.

16. Apart from the aforesaid intimation relating to the adjourned meeting dated 8.6.2007 confining the same only to the election, same was also notified in three leading news papers. It was also notified in Guwahati Doordarshan and N.E.

Television. It is not the case of the petitioner that there was no notice in the newspaper, but their feeble plea is that they were not aware of any such notice published in the news papers. If they were unaware about the adjourned meeting inspite of such notice, they will have to thank themselves.

17. In the normal circumstances an election held should not be interfered with lightly. In the instant case, the election was held on 8.6.2007 and in the election new set of members have been elected. Such election has already been approved by the competent authority. During the course of hearing it was submitted that the total number of share holders is about 4000. None of the share holders who participated in the proceeding except the three writ petitioners has any raised objection to the meeting held on 8.6.2007. Coupled with this, the fact that the nomination of the petitioner No. 1 was rejected by the Returning Officer, leads to the irresistible inference and conclusion that the entire effort of the petitioners is somehow to thwart the process of election which has attained its finality.

18. Even assuming that Rule 22 of the Bye-laws is applicable to the present case, it cannot be said that the procedure envisaged therein has been violated. The procedure to be followed is not to be looked into in the perspective of mere technicality. The requirement of Rule 22 is to give notice in respect of the adjourned meeting. Learned Counsel for the petitioner emphasized on the provision relating to forwarding of notice of the adjourned meeting to all the members of the General Assembly. In my considered opinion such "forwarding of notice" cannot be construed as a notice only by hand. It can be by other mode also. The notice relating to adjourned meeting apart from being notified in the first meeting held on 26.5.2007 was also notified in the news papers, Guwahati Doordarshan and N.E. Television and the same was also displayed in the banner etc. Such notice will have to be considered to be the notice forwarded to all the members of the General Assembly. Any other interpretation may lead to deferment of transaction of business of Assembly on ground of non receipt of notice personally, as is sought to be conveyed by the learned Counsel for the petitioner.

19. There is no quarrel with the proposition of law laid down by the Apex Court in Raja Buland Sugar Co. (supra). That was the case relating to connotation of the meeting "shall" and as to whether the was same in the context of mandatory or directory requirement. In the instant case, apart from the fact that Rule 22 is not applicable, even in case of application of the same, there being substantial compliance of the procedure laid down therein, no fault can be attributed to the adjourned meeting held on 8.6.2007.

20. In Nalin Ch. Hazarika (supra) on which learned Counsel for the respondent Nos. 4, 5 and 6 has placed reliance, the Division Bench of this Court held, that the adjourned meeting is, in the eye of law, continuation of the former meeting.

21. This decision has been pressed into service to emphasize that since the adjourned meeting on 8.6.2007 was in continuation of the earlier meeting, the

petitioners must have had knowledge relating to the date venue and time of the adjourned meeting and the plea taken in the writ petition contrary to the factual position is not sustainable.

22. For all the aforesaid reasons, discussions and conclusions, there is no merit in the writ petition and consequently, it is liable to be dismissed which I accordingly do.

23. The writ petition is dismissed leaving the parties to bear their own costs.