
(2014) 01 GAU CK 0018
In the Gauhati High Court
Case No : W.P. (C) No. 5191 and 5696 of 2013

Aod-Oil Co-Operative Society Ltd.

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 10-01-2014

Acts Referred:

Citation : (2015) 1 GLD 261 : (2014) 3 GLT 187

Hon'ble Judges : Nishitendu Chaudhury, J

Bench : Single Bench

Advocate : G.N. Sahewalia, Sr. Advocate, D. Senapati and M. Bhuyan, Advocate for the Appellant; M. Bhuyan, Advocate and J.M.A. Choudhury, Standing Counsel, Advocate for the Respondent

Judgement

Nishitendu Chaudhury, J.—Two writ petitions, being W.P.(C) No. 5696 of 2013 and W.P.(C) No. 5191 of 2013 along with their Misc. cases, namely, M.C. No. 3213 of 2013 and M.C. No. 3009 of 2013 relate to election of Managing Committee of AOD-OIL Cooperative Society Limited, Digboi. In W.P.(C) No. 5191/2013, the AOD-OIL Cooperative Societies Limited (hereinafter referred to as "the society") and its Vice-President, Sri Pabon Borah, are the petitioners and they have challenged legality and validity of order dated 31.07.2013 issued by the Zonal Joint Registrar of Cooperative Societies, Jorhat (hereinafter referred to as "the Zonal Registrar") whereby the Managing Committee of the society was held to have automatically dissolved u/s 41(3) of the Assam Cooperative Societies Act, 2007 and thereupon one Sri Arun Kotoky a Senior Inspector of the Cooperative Societies Tinsukia who is respondents No. 4 in this writ petition was appointed as the Officer on management to manage the affairs of the society. On the other hand, W.P.(C) No. 5696/2013 is instituted by three share-holders of the same society who have challenged the notification dated 14.09.2013 issued by the respondent No. 5 of the said writ petition (Naba Krishna Chetia) as Chairman of the AOD-OIL Cooperative Society Limited for holding meeting on 29.09.2013 and also for constitution of the managing committee of the society u/s 41(6) of the Assam Cooperative Societies Act, 2007 (hereinafter referred to as "the Act").

The writ petitioners in the second writ petition along with some others filed a Misc. Case in the first writ petition praying for alteration/modification/vacation of the interim order passed in that writ petition pleading substantially same facts and citing same grounds as ventilated in the second writ petition. This is how both these writ petitions along with their respective Misc. Cases are analogous and inseparable. Mr. G.N. Sahewalia, learned Senior Counsel assisted by Mr. D. Senapati, learned counsel, appearing on behalf of the writ petitioners in W.P.(C) No. 5191 of 2013 and Mr. M. Bhuyan, learned counsel, appearing on behalf of the writ petitioner in W.P.(C) No. 5696 of 2013 submitted that the subject matter of the two writ petitions being inter-related and mutually dependent these writ petitions are to be taken up for hearing as analogous items. Accordingly, both these writ petitions are heard together.

2. Facts leading to institution of these writ petitions are required to be stated in brief. The managing Committee of the AOD Oil Cooperative Society Limited, Digboi was reconstituted on 01.08.2010 upon expiry of its previous term. In the reconstituted Managing Committee, Sri Naba Krishna Chetia and Sri Paban Borah were elected as Chairman and Vice-Chairman respectively. Sri Hemen Handique was elected as General Secretary, Sri Achinta Kumar Saikia as treasurer, Sri Pradip Gogoi as Assistant General Secretary, Sri Monoram Saikia as Assistant General Secretary and four others as Members. The proceedings of this meeting were approved by the Registrar of Cooperative Societies, Assam (hereinafter referred to as "the Registrar") on 05.08.2010 and thereupon the elected Managing Committee took over charge on 06.08.2010. Before amendment of the Act, normal tenure of a Managing Committee was 3 years. But by amendment of Section 31 of the Act with effect from 05.02.2013 the term of the board was enhanced to five cooperative years. This amendment was done on the basis of 97th Amendment of the Constitution made in 2011. Under such circumstances, the life time of the managing committee of the society constituted on 1.8.2010 and which took over charge on 6.8.2010 also got an extended life span of 5 cooperative years in total. Consequently, date of expiry of term of this society fell due on 5.9.2015. u/s 32 of the Act the Board (Managing Committee herein) is duty bound to hold at least one general meeting in every cooperative year. The matters to be dealt with in the annual general meeting are also laid down u/s 30 of the Act. According to the writ petitioners in W.P.(C) No. 5191/2013, an order dated 31.07.2013 has been passed by the Zonal Registrar appointing respondent No. 4 (Arun Kotoky) as Officer on Management u/s 41(6) of the Act holding that the petitioners failed to hold annual general meeting/election of the new managing committee/BOD of the society for the year 2013-14 and as such the managing committee of the society stood automatically dissolved u/s 41(3) of the Act. The first writ petition i.e., W.P.(C) No. 5191/2013 (hereinafter referred to as "the first writ petition") was filed thereafter challenging this order dated 31.7.2013. On 06.09.2013 while issuing notice of motion in this case, this Court passed an interim order staying operation of the impugned order dated 31.07.2013 and further providing that the Managing Committee of the

petitioners" society would continue. It is the case of the writ petitioners in the first writ petition that the two purported grounds, namely, alleged failure of the society to hold the AGM within stipulated time and that the terms of the committee had allegedly expired already, do not really exist and as such the impugned order is baseless and arbitrary. The case of the writ petitioner is that they are entitled to six months with effect from the last day of the cooperative year for holding the AGM and as on 31.07.2013 the time for holding the AGM had not been expired. It was therefore wrong on the part of the Zonal Registrar to hold that the petitioners" society failed to hold the AGM within the stipulated time. So far as the second ground is concerned, the term of the Managing Committee shall expire only on 6.8.2015 and not as on 31.07.2013 in view of the amendment of Section 31 of the Act with effect from 05.02.2013. With these limited submissions Mr. G.N. Sahewalla, the learned Senior Counsel, would argue that the impugned order dated 31.07.2013 deserves to be quashed in exercise of writ jurisdiction.

3. The official respondents including the Zonal Registrar who passed the said order did not file any affidavit-in-opposition so as to support the impugned order. However, the records were produced. Mr. J.M.A. Chowdhury, learned advocate appearing on behalf of the Cooperation Department fairly submitted that the second ground as to automatic expiry of the term of the society cannot be supported in view of amendment made in Section 31 of the Act with effect from 05.02.2013 enhancing the term of board to five cooperative years. The petitioners" society is entitled to a normal term of five cooperative years which expires in the year 2015. So far as the first ground is concerned, the learned Government Advocate adopted the argument of Mr. Bhuyan, the learned counsel for the impleaded respondents who are some of the share-holders of the society and some of whom are the writ petitioners in the second writ petition, namely, W.P.(C) No. 5696 of 2013.

4. Mr. Bhuyan, learned counsel for the impleaded private respondents, has not filed a separate affidavit-in-opposition in the main writ petition. He has filed an application for alteration/modification/vacation of interim order dated 06.09.2013 passed in this writ petition. This application has been registered as MC No. 3009 of 2013. The writ petitioners have filed affidavit-in-opposition there against and in reply thereto an additional affidavit has been filed by the impleaded respondents being the applicants of the Misc. Case. The learned counsel Mr. Bhuyan requested this Court to accept his Misc. Case application as affidavit in the main writ petition. In the Misc. Case, the applicants have alleged that the writ petitioners did not disclose all the material facts leading to issuance of the impugned order dated 31.07.2013 and prayed that all those facts mentioned in the Misc. Case being relevant for the purpose of this writ petition be considered for the purpose of adjudicating the writ petition. According to Mr. Bhuyan, the Misc. Case brought on records background facts leading to passing of the impugned order. The array of facts averred in the Misc. Case show that a general notice dated 31.06.2013 was issued by the chairman of the society notifying the

election to be held on 14.07.2013 u/s 35(2) of the Act. The said notice included certain modification in respect of the posts in the board of directors and another general notice was issued on 21.06.2013 notifying that all other instructions as well as rules, regulations and conditions would hold full force and effect. By notification dated 28.06.2013, the share-holders were informed about the agenda of the meeting to be held on 14.07.2013 but ultimately owing to lack of quorum the meeting could not be held necessitating issuance of notice on 15.07.2013 for adjourned meeting of the 78th AGM/Election of the Society to be held on 21.07.2013 at 10.00 A.M. at the same place i.e., Duliajan Club Auditorium. According to the applicants of the Misc. Case, adjourned meeting was held as per the notice dated 15.07.2013 wherein one Pabitra Gogoi, Senior Inspector of Co-operative Societies, Tinsukia was appointed as observer/returning-cum-presiding officer of the AGM. The AGM was held peacefully as per the agenda but the secretarial report could not be placed before the meeting. This was brought to the notice of the Assistant registrar of Cooperative societies by the observer (Pabitra Gogoi) on 22.07.2013. This report has been enclosed as Annexure-6 to the Misc. Case. The observer stated in this report that at 5 P.M., the Assistant General Secretary had announced to the general assembly that he did never prepare the secretarial report and he was pressurized by the board of directors to give his signature to the same. According to the report, consequently a chaotic situation was created and the same being out of control the meeting was cancelled. The observer reported that the society failed to hold the AGM in due time for its inactiveness and, therefore, recommended for appropriate action under the provisions of the Act. Mr. Bhuyan argues that it is on the basis of this letter the impugned order dated 31.07.2013 was passed and the same is discernible from the impugned letter itself. According to the applicants of the Misc. Case, the writ petitioners failed to comply with the provisions of Section 30(4) of the Act and consequently, the directors have ceased to be the directors as on the date of AGM by operation of law and as such the order dated 31.07.2013 is not vitiated by any error of law or jurisdiction. Mr. Bhuyan would also argue that once the directors ceased to be in office any more there is no question of giving them any further chance to hold the AGM afresh by complying with the provisions of Law and this is why some of the applicants and share-holders have already filed a separate writ petition being W.P.(C) No. 5696 of 2013 not only praying for cancellation of notice issued by the writ petitioners on 14.09.2013 after getting interim order in the present writ petition entitling them to continue in office but also for issuance of necessary direction to the respondent No. 2 to take steps for constitution of the board u/s 41(6) of the Act.

5. As against this Misc. Case, the writ petitioners filed an affidavit-in-opposition and in the affidavit-in-opposition they have also admitted that there was issuance of notices for holding meeting on 14.07.2013 and on 21.07.2013. According to the writ petitioners, the meeting held on 21.07.2013 was attended by 699 share-holders, the Chairman made the welcome speech under agenda No. 1, condolence resolution was adopted under agenda No. 2 and while moving

agenda No. 3, namely, the election of the board of directors for the year 2013-18 some of the share-holders including the applicants No. 4 & 5 herein objected to holding of the election until and unless bylaw of the society was amended. A substantial period of time was spent to mitigate the impasse. At that time the Chairman called upon the treasurer to place the annual report of the activities for the previous financial year but the same was also opposed by the share-holders demanding that the report should be placed by the General Secretary. The General Secretary had already retired from service in the meantime and the Assistant General Secretary Sri Pradip Gogoi was not keeping well for which he also could not place the report. However, Sri Pradip Gogoi was finally brought in spite of his ailing health conditions but he could not read out the report. In the meantime 6.30 P.M. was already over and the meeting could not be continued. The writ petitioner denied that the meeting was held peacefully as per agenda and asserted that annual report could not be placed. The writ petitioners further alleged that the report of the observer was not made available to the managing committee and as such it was ignorant about the contents of the report. However, the observations made in the report as was gathered from the Misc. Case are factually incorrect. The writ petitioners further claimed that the Annual General Meeting convened on 21.07.2013 having remained inconclusive the impugned order dated 31.7.2013 ousting the writ petitioner was illegal. The Managing Committee on resuming office was entitled to hold the meeting within six months as provided u/s 39 of the Act and that is why notice was issued on 14.9.13 for holding meeting on 29.09.2013. In Paragraph 10 of the affidavit-in-opposition it was further claimed by the writ petitioners that annual financial statements of accounts and annual report of previous year were duly circulated among the share-holders, however, the agenda for approval of the same could not be concluded. The writ petitioners asserted that the impugned order dated 31.07.2013 was never issued for violation u/s 30(4) of the Act and as such the same cannot be justified by taking recourse to an argument to that effect. According to the writ petitioners the annual financial statements of accounts and annual report of activities were duly prepared on 13.06.13 which is well ahead of the date of AGM and the same were made available to the shareholders. The writ petitioners, therefore, challenged the argument that the board of directors ceased to be in office u/s 30(4) of the Act. According to the writ petitioners there was no infirmity in the interim order dated 06.09.2013 and as such there was no question of vacating or modifying the same.

6. The writ petitioners filed an additional affidavit on 26.11.2013 sworn by Sri Pradip Gogoi, the Assistant General Secretary referred to above and wherein, it is stated that auditor of the society, namely, Ajoy Paul and Associates, Chartered Accountants issued certificates on 13.07.2013 in regard to the balance sheet and accounts of the society for the relevant year whereas the managing committee report prepared the report and signed it for and on behalf of the Managing Committee on 13.06.2013. He further stated that Sri Pabitra Gogoi having been appointed as observer by order dated 19.06.2013 for the election to be held on

14.7.2013 could not have assumed jurisdiction as an observer in the meeting held on 22.07.2013. The deponent further denied the contents of the report submitted by the observer, Pabitra Gogoi. In this additional affidavit, the deponent annexed certificate of the Chartered Accountants, the copy of notice dated 08.06.2013, the order dated 19.06.2013 and photo Copy of the attendance sheet of the meeting held on 21.07.2013 including the resolutions.

7. The applicants have filed a counter affidavit against this additional affidavit on 05.12.2013. In this affidavit, the contention of the writ petitioner that annual financial report for the year 2012-13 had been placed on 21.07.2013 has not only been denied but preparation of the same has also been denied. It was asserted that the report was not prepared and placed before 15 days of the AGM held on 21.07.2013 and that mandatory provision of Section 30(4) of the Act was thereby violated. The claim of the deponent in the additional affidavit of being affected by high fever is also disputed by the deponent in the counter affidavits. It was asserted that he was present in the campus on that day. It is further contended that proceedings annexed at page 46 of the additional affidavit was in the context of the 77th meeting and not in the context of the 78th meeting held on 21.07.2013. Moreover, the applicants disputed the authenticity of the minutes of the meeting placed at Annexure-F of the additional affidavit claiming the same to be fabricated. It is stated at Paragraph-8 of the counter affidavit to the additional affidavit of the writ petitioners filed in the Misc. Case that these minutes do not tally with the contents of the minutes of the proceedings as recorded in the minutes book. On the other hand at annexure-8A of this counter affidavit, the applicants of the Misc. Case have placed on record photo copies of some minutes which according to them are the photo copies of the minutes book of the society. Comparing these minutes with the minutes available at page--46 of the additional affidavit filed on behalf of the writ petitioner, Mr. Bhuyan sought to establish that correct facts have not been placed before the Court by the writ petitioners and accordingly, they have disentitled them to get any relief in a writ petition.

8. Averments of the applicants in the Misc. Case No. 3009 of 2013 arising out of W.P.(C) No. 5191 of 2013 are virtually stated in the writ petition in W.P.(C) No. 5696/13. In this case, the writ petitioners stated that pursuant to the general notice issued on 13.06.2013 annual general meeting was held on 14.07.2013 but owing to lack of quorum the meeting was adjourned to 21.07.2013 vide notice dated 15.07.2013. On 21.07.21013 annual general meeting was held. It is stated in Paragraph-8 of the writ petition that ultimately the meeting had to be cancelled as the Managing Committee "failed to submit the annual financial statement of accounts and annual report of the previous year". It was claimed in this paragraph that in the process Section 30(4) of the Act have become applicable and under the aforesaid circumstances, the board of directors ceased to be in office by operation of law and as such subsequent notice issued to them on 14.09.2013 for holding the AGM on 29.09.2013 was without jurisdiction and illegal. The writ petitioners in the second writ petition prayed that notice dated

14.09.2013 for holding meeting on 29.09.2013 be adjudged illegal and consequently, Registrar of Co-operative Societies be directed to take action u/s 41(6) of the Act for constitution of Managing Committee of the society.

9. I have heard Mr. G.N. Sahewalla, learned Senior counsel assisted by Mr. D. Senapati, learned counsel for the petitioners in W.P.(C) No. 5191 of 2013 and Mr. M. Bhuyan, learned counsel for the petitioners in W.P.(C) No. 5696 of 13. I have also heard Mr. J.M.A. Choudhury, learned counsel for the official respondents.

10. While Mr. Sahewalla has challenged the validity of the order dated 31.07.2013, appointing officer on management, inter alia, on the ground of failure on the part of the society to hold annual general meeting within stipulated time, Mr. Bhuyan has highlighted failure of the Managing Committee to prepare and submit annual and financial report before the General Assembly at the time of meeting or before it was held and thereby Section 30(4) of the Act has become operational.

11. According to Mr. Sahewalla, the validity of the order dated 31.07.2013 has to be decided on the basis of the grounds mentioned in the order and not by any other ground. This submission of Mr. Sahewalla has forced. It is settled law that when a public authority passes any order, the same should be judged on the basis of the grounds mentioned in it and it cannot be subsequently supplemented by filing affidavit in Court. The case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, subsequently reaffirmed in the case Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, can be referred in this regard. As discussed above, herein the impugned order dated 31.07.2013 has been passed basing on two grounds only, namely, failure on the part of the society to hold meeting within stipulated time and alleged automatic expiry of the normal term of the society. The first ground that the society has failed to hold the annual general meeting within stipulated time cannot be countenanced in view of the fact that u/s 39 of the Act, AGM can be held within a period of 120 days from the date of expiry of every cooperative year. u/s 2(h) of the Act cooperative year has been defined and the same means the period beginning and ending on such dates as may be fixed by the Registrar for the purpose of drawing up the balance sheet and for other purposes under the Act. Since a year beginning on 1st April every year has been accepted for the purpose of drawing up balance sheets of Registered Co-operative Societies, a cooperative year begins on the 1st day of April every year and ends on 31st of March next year as per English calendar. In this view of the matter a co-operative society is entitled to hold AGM within 120 days from 31st March of the year and accordingly, the statutory period of holding the AGM would have really expired on 30.09.2013. The finding of the Zonal Registrar in the letter dated 31.07.2013 that the society failed to hold meeting within stipulated time, therefore, is not correct. The first ground in support of the impugned order is thus baseless. The second ground that the normal tenure of the managing committee of the society had already expired is also not acceptable in view of the fact that by operation of

amended Section 31 of the Act, the normal tenure of the managing committee being five cooperative years it expires in the year 2015. The second ground of the impugned order is also baseless. Under such circumstances the order dated 31.07.2013 is not sustainable on the grounds mentioned in the order. The impugned order dated 31.7.2013, therefore, is liable to be set aside and quashed and it is accordingly quashed. Consequently, the first writ petition stands allowed to that extent.

12. Now, it is to be seen, as to what would be the physical effect of the quashment of the order impugned in the first writ petition. In this context, the pleading and prayer of the second writ petition is of utmost relevance. The petitioners in the second writ petition have taken a stand that the Managing Committee having failed to place the annual report and the financial report before the General Assembly at the time of AGM held on 21.7.2013, it became non-existent immediately by operation of law u/s 30(4) of the Act. If really the society had failed to prepare and produce the annual report and the financial report of the previous year before 21.7.2013, the contention of the writ petitioners in the second writ petition that Section 30(4) of the Act become operational cannot be brushed aside. In that event, the board may have become automatically non-existent on 21.07.2103 itself. Under such circumstances, passing of order on 31.07.2013 declaring the board to be illegal was of no consequence. In that view of the matter, the second writ petition is of utmost importance. This shows that quashing of order dated 31.7.2013 itself is not sufficient to empower and entitle the Managing Committee in question to continue in office. If and only if the contention in the second writ petition is found to be devoid of substance, the Managing Committee shall be reinstated with right to hold the AGM afresh. Conversely, if the second writ petition succeeds, even quashing of the impugned order of the first writ petition would not resurrect the Managing Committee. So, let us now consider the rival contentions in the second writ petition.

13. The point raised in the second writ petition in regard to failure on the part of the society to prepare and place the annual report and financial statement of the previous year is a matter of fact which, on the other hand, has been disputed by the writ petitioners in the first writ petition. The petitioners of the second writ petition have pleaded that the purported minutes of society submitted by the petitioners of the first writ petition are not the real copy of the proceedings book. The report of the Observer, as referred to above, speaks of irregularities in preparation of annual report and financial report. The departmental observer has specifically stated in the report that the society has failed to hold meeting. Even on the face of rival contentions of the parties the facts admitted at the end of the day are that there was holding of adjourned meeting on 21.7.2013, that some resolutions, namely, resolutions on agenda No. 1 and 2 were passed, that purported report was sought to be placed before the General Assembly and ultimately the AGM ended inconclusively. Under such facts and circumstances, it can be said that there was an Annual General Meeting but it was not conclusive.

14. Next question arises as to whether mischief of section 30(4) of the Act is present under the aforesaid facts. Section 30(4) is quoted below:-

"30.(4) All Directors shall cease to be Directors on the date of the Annual General Meeting, if the annual financial statement of accounts and annual report of activities for the previous financial year were willfully not prepared before 15 days of the Annual General Meeting for inspection of the members or for placing before the Annual General Meeting."

15. Section 30(1) of the Act has endowed the Board or Managing Committee, as may be named in the byelaw of the society, with responsibility, inter alia, to deal with annual report and financial statements of accounts of the previous year or years. Clause (4) of the section provides a default clause in this regard. Besides, the clause is worded with "shall" and not "may". On totality of these provisions it has to be held that clause (4) of this section is mandatory and not directory. Once it is held that the clause (4) of the section 30 is mandatory it is to be seen as to what is expected of a board under this section. A bare perusal of clause (4) shows that the board is duty bound to prepare the annual statements and financial statement of accounts of the previous year or years for inspection by the members before 15 days of the AGM. Whether it has placed the report before the General Assembly is not the relevant question. To attract the provision of Section 30(4), it is to be made out that the report was not prepared before 15 days of the AGM and that, too, willfully. While it is claimed by Sri Paban Bora, the deponent in affidavit in opposition at paragraph 10 of his affidavit that the allegations as to failure to prepare the annual reports and financial statements before 15 days of meeting were incorrect, the writ petitioners in paragraph 4 of their counter affidavit filed in Misc. Case No. 3009 of 2013 alleged that the annual report and financial statements were not willfully prepared by the board 15 days before the meeting for inspection by the members. The situation is further complicated on the face of allegations made in the report of the Departmental Observer that the Society was guilty of "inactiveness" in regard to holding of the AGM and placement of reports. There are allegations and counter allegations but there is no sufficient material to decide the same. At the end of the day a hazy picture has emerged from the rival contentions of the parties warranting a full-fledged inquiry. It is not possible for a writ court to decide all these disputed questions referred to above. Moreover, this Court cannot compare as to whether the minutes placed at Page-46 of the additional affidavit referred to above are really photo copies of the minutes book. It is also not possible to arrive at a finding on facts that the Managing Committee did not prepare or submit the annual report and the financial report as required under the Act. On the background of the aforesaid factual position, it is to be noted that there is a provision of appeal in Section 111 of the Act of 2007 which is similar to that of section 80 of the Act of 1949 (since repealed). Under such circumstances, and also in view of the facts stated above, this Court feels that the whole matter raised by the second writ petitioner be inquired into by the Registrar of the Co-operative Societies so as to pass appropriate order/orders as may be necessary

in accordance with law. It is needless to say that in so doing the Registrar of the Co-operative Societies shall afford adequate opportunity of hearing to both the parties. The whole exercise shall be completed within a period of two months from today and during this period the interim order granted earlier shall continue subject to the modification that the Managing Committee in charge of the society shall not hold meeting on the basis of the impugned notice of the second writ petition or otherwise. In other words, the Managing Committee holding charge of the society shall only discharge the regular and day to day functions of the society till the dispute is decided by the Registrar.