(1995) 07 GAU CK 0016

In the Gauhati High Court

Case No : Civil Rule No. 1329 of 1994

Assam Apex Handicraft and Marketing Co-Operative Society Limited and Another	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision : 25-07-1995

Acts Referred:

Assam Co-operative Societies Act, 1949 — Section 65(2)(IV)
Assam Co-Operative Societies Rules, 1953 — Rule 19
Constitution of India, 1950 — Article 226

Citation : (1995) 3 GLR 297

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : A.B Choudhury and B.K. Talukdar, for the Appellant; P.C. Gayan, Government Advocate, for the Respondent

Judgement

J.N. Sarma, J.—This application Under Article 226 of the Constitution of India has been filed praying the following reliefs:

(i) to struck down Clause - IV of Sub-section (2) of Section 65 of the Assam Co-operative Societies Act, 1949.

(ii) to quash the impugned order dated 4.4.94 issued by the Registrar, Co-operative Society.

2. The learned Counsel Shri Choudhury at the time of Hearing does not make his submission with regard to the validity of the Clause mentioned above and that aspect to the matter shall not be dealt with in this case and left open to be decided in an appropriate case. The order dated 4.4.94 is Anuexure-5 to the writ Application that is quoted below:

Annexure-5.

ORDER 4.4.94.

Whereas as a result of the enquiry u/s 60 of the Assam Co-operative Societies Act conducted by Shri S.A. Mazumdar, Jt. Registrar of Coop. Societies into the (sic) of the Assam Apex Handicraft Marketing Society Ltd it appears to the that:

(iii) Continuation of the society is not in the interest of the Co-operative movement in general and its constituent unit in particular as it will lead to unnecessary competition with the Assam Apex Weavers'' And Artisans Coop: Federation Ltd. and that I am satisfied that the society ought to be dissolved, now therefore, I Shri S. Prasad, IAS, Registrar of Co-operative-Societies, Assam acting u/s 65(2)(IV) cancel the registration of the society named Assam Apex Handicraft Marketing Society Ltd registered vide No. A-1/Regn/CIL/3/91/93-94.

Shri Madhusudhan Goswami, Senior Inspector of Coop. Societies is appointed u/s 66 as Liquidator of Assam Apex Handicraft and Marketing Society Ltd. who shall take full charge of the society forthwith and shall require all claims against the society to be made to the liquidator within two months of the publication of the notice.

Sd/- S. Prasad Registrar of Coop. Societies Assam, Guwahati.

3. Shri Choudhury submits that this is a fraud on power and a mala fide exercise of power and in this connection Choudhury draws my attention to Section 65(1) and (2) of the Assam Co-operative Societies Act, 1949 which is quoted below:

Section 65(1) : If the Registrar, on receipt of an application made upon resolution adopted in a meeting of the General Assembly by a three-fourth majority of the members present and the meeting provided that the notice of dissolution was included in the circulated agenda of the meeting, is of opinion that the society ought to be dissolved, he may be an order in writing cancel the registration of the society.

(2) The Registrar, after an enquiry has been held u/s 60 or after an inspection has been made u/s 61, may cancel the registration of a society which-

(i) has not commenced working; or

(ii) has ceased working; or

(iii) has ceased to comply materially with any condition as to registration in this Act, rules or bye-laws, and

(iv) in his opinion ought to be dissolved.

4. We are not concerned herewith Section 65(1) of the Act. We are concerned herewith only with Sub-section (2) of Section 65. In order to decide this question let us have a look at Section 60 of the Act which is quoted below:

Section 60. Inquiry by Registrar (1) The Registrar may, at any time of his own motion or shall at the request of the administrative head in charge of the Civil Sub-Division or oilier administrative area, hold an inquiry or direct some person authorised by him by order in writing in this behalf, to hold an enquiry into the constitution, working and financial condition of a registered society. (2) Such an inquiry shall also be held on the application of-

(i) the affiliating society, if any, of which the society is a member and a debtor;

(ii) a majority of the members of the managing body.

(iii) one third of the members of the society, who shall have deposited such security for costs, if any, as the Registrar, may direct,

(iv) creditor representing not less than owe-half of the borrowed Capital of the society who shall deposit such security for cost, if any, as Registrar may direct.

(3) The Registrar shall communicate the result of any enquiry under this section to the society and to the person at whose request such enquiry was made.

5. Section 61 is the power of inspection. In this connection let us have a look at Rule 19 of the Assam Co-Operative Societies Rules, 1953 which provides for procedure for inquiry Under Rule 19 of the Rules is quoted below:

79. Procedure of enquiry u/s 60 and inspection u/s 61(1): Unless the Registrar otherwise directs the enquiry regarding the affairs of a Co-operative (sic) u/s 60 shall be conducted in its registered office.

(2) Timely intimation shall be given to the society before the enquiry is held:

Provided that the verification of the cash balance and securities or the examination of any particular register and registers may be carried out without any previous intimation to the society.

(3) The Officers, employees and other members shall furnish all information required by the inspecting officer for the completion of the enquiry and for this purpose they shall prepare such statements and take such action as may be necessary for the verification and examination of society''s records as required by him to look into its constitution, working and financial condition u/s 60 or Section 61. The enquiry in the instant case was conducted by resorting to proviso of Sub-rule (2).

6. The enquiry report is available in the record produced by the learned. Government Advocate and the enquiry report is quoted below:

An enquiry report u/s 60 of the Assam Cooperative Societies Act into the constitution, working and financial position of the Assam Apex Handicraft & Marketing Coop: Society as authorised by the Registrar of Coop: Societies vide his memo No. CIL 3/91/Pt/l dated 31.3.94 recorded by-Sri S.A. Mazumdar, Jt. R.C.S. (Processing).

CONSTITUTION : The society was registered on 6.12.93 under Regd. No. A-1/ Regn/CIL.3/91/93-94. On examination of Registration papers and the concerted records available in the office file, It appears that the proceedings of the inaugural General Meeting is not genuine because the President of the said meeting submitted two different proceedings on two different dates which are not similar. The constitution of the managing body are different in these two set of proceedings. It is now difficult to ascertain winch proceeding was actually recorded in the day of the meeting of any meeting was at all held.

On examination of scope of functioning provided under the object of the society, it appears that object is fully covered under the objectives of Anr. existing State Level Coop: Society namely Assam Apex Weavers and Artisans Coop: Federation Ltd. (ARTFED) which was registered long before and also functioning in the lines of the objectives spelt out in this Society. So I am of the opinion that the continuation of this society shall have an adverse effect on the function of the certain registered Coop: Society namely ARTFED and also it will have an adverse effect on the Coop: movement as a whole.

WORKING : It appears from record of the society that the society started its functioning with effect from 6.12.93 but the society in its proposal for grant of financial assistance vide its letter No. AAHCS/RCS/GH/1/94/5 dt. 10.3.94 has forwarded an audit report by M/S. S.K. Jain & Associate Charted Accountants for the year 1992-93 (as on 31st March, 93). So it is clear that the society has manipulated its account for making it eligible for financial assistance from Govt. of India and also at the same time obtained a report by producing false accounts to the Chartered Accountant.

In its audited accounts for the year 92-93 the society has shown that it has collected an amount of Rs. 3.00 lakh as advance against share from seven affiliated societies of which Rangamahal Hasta Shilpa SS Ltd. share is shown as Rs. 50000/-. On verification of the report submitted by the Secretary & Chairman of Rangmahal Masta Shilpa SS Ltd that the society has not stated its business nor it has collected any money till 25.3.94. So it is clear that the Assam Apex Handicraft & Marketing Coop : Society is being managed by a linkage with its affiliating unit.

FINANCIAL POSITION : As per records maintained by the society the financial position of the society as on 27.3.94:

Capitals & liabilities Properties & Assets

1. Share Money : 11,500.00 (1) Cash in hand : 6650,00

A Class Rs. 8000.00

C Class Rs. 3500.00 (2) Advance to youth enterprises. : 5000.00

2. Admission fees : 150.00

Total 11.650.00 Total 11.650.00

GENERAL REMARKS: In the back ground of my observation stated above, I feel that the continuation of a 2nd state level Federal Coop : Society for the promotion of primary Handicraft and Artisans society is bound to effect adversely the Coop : movement as general and also its constitutional units in particular for the reason that apart from the anomalies stated above it will bring an undesirable competition against the sister concern at the state level and so I recommended that Assam Apex Handicraft & Marketing Coop : Society Ltd be sent into liquidation at the earliest.

Sd/- S.A. Mazumdar Joint Registrar of Coop: Societies H.O. Assam, Guwahati.

7. Rule 79(2) proviso provides that the verification of cash balance and securities or the examination of any particular Register or Registers may be carried out without any previous intimation to the society.

8. A bare perusal of the enquiry report will show that it examined only the registration papers and the concerned record available in the office file and from the perusal of these materials, the Enquiry Officer came to the finding that the proceeding of inaugural general meeting is not genuine because of the proceeding of the said meeting submitted two different proceedings on two different dates which are not similar. It was further found that the object of the society is not similar to Anr. society already in existence and it was held that the continuation of the society will have an adverse effect on the other registered Co-operative Societies, namely ARTFED and it will have an adverse effect on the Co-operative movement as a whole. Further from examining the audited account for the year 1992-93 it was found that the society had collected an amount of Rs. 3,00,000/- (Three Lakhs) as advance from some affiliated societies. But that money was not collected till 25.3.94. It was further found by the Enquiry Officer that the society is being managed by a Secretary or persons having vested interest and having no linkage with its affiliating units. In the order by which the registration was cancelled it was found that the registration of the society was obtained furnishing false information and forged documents. It was further found that the society submitted forged balance sheet to obtain financial assistance from the Government, of India and the State Government on the basis of forged balance sheet and as such the registration of the society was cancelled. It is the fundamental principle of law that nobody or person should be allowed to any benefit on the basis of fraud and fraud must be deprecated at all levels. From the enquiry report it is crystal clear that the society resorted to fraud and that can not be allowed, Whatever it may be technical fault in this matter. Fraud may be described for most useful purposes as the procuring of advantage to oneself or furthering some purpose of one''s own, by causing a person with whom one deals to act upon a false belief. The term fraud connotes actual dishonesty. The essence of the matter is deceit, some statement or suppression of fact in word or deed with intent to deceit. As I am satisfied that there was fraud on the part of the society to derive the benefit. I am satisfied that there was fraud on the part of the society to derive the benefit, I am not inclined to pass any mandamus is or direction. Further alternative remedies by way of statutory appeal and review are available u/s 80 of the Act. Accordingly this writ application stands rejected.

9. I have heard Sri A.H. Choudhury, learned Advocate for the Petitioner and Sri

P.C. Gayan, learned Government Advocate, Assam, who produced the records. The records shall be kept along with the file.

