
(1984) 05 GAU CK 0001
In the Gauhati High Court
Case No : Civil Rule No. 1 of 1984

Baladmari Gobindapur Machmara and Jalbowa Samabay
Samity

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 10-05-1984

Acts Referred:

Citation : AIR 1985 Guw 77

Hon'ble Judges : S. Haque, J;K. Lahiri, J

Bench : Division Bench

Advocate : B.M. Goswami and M.K. Bhattacharyya, for the Appellant; P. Roy, Government Advocate, D.P. Chaliha, B.D. Agarwalla and L. Ali, for the Respondent

Final Decision : Allowed

Judgement

Lahiri, J.—What is the contour of power of the Registrar of Co-operative Societies to dissolve the Managing Committee of a Co-operative Society under the Assam Co-operative Societies Act, 1949, for short "the Act" and "the Rules" framed thereunder ? Could the Registrar of the Co-operative Societies dissolve the Managing Committee of the Co-operative Society on the ground that in the notice served on the members there was no mention that in the meeting of the General Assembly there would be election of members and officers to the Managing Committee of the Co-operative Society, albeit it was specifically mentioned that it was an Annual General Assembly or the Annual General Meeting of the General Assembly and Section 32(1) of "the Act" "clearly specified that election of the members to the Managing Committee and other Committees could only be transacted in an Annual General Meeting of the Assembly? Was the follow up order of the Deputy Registrar appointing the ad hoc Committee valid and legal on the facts and in the circumstances of the case? These are the main questions posed in this writ application presented by the petitioner Co-operative society. The case involves the interpretation of the provisions of Sections 32 and 36 of "the Act" and Rules 24 and 25 of "the Rules".

2. To resolve the questions posed, a bare outline of the relevant facts are set out omitting the fringe matters. The petitioner is a Registered Co-operative Society. The President/Secretary of the Co-operative Society was intimated by the Assistant Registrar of the Co-operative Society by his letter dt. 15-7-83 that the Co-operative year had expired on 30-6-83 and, therefore, under the provisions of "the Act", Rules and the Bye-Laws the Co-operative Society was to call an Annual General Meeting "within 60 days between 1-7-83 to 29-8-83". It was also intimated that the Co-operative Society was required to inform "all the members about the date and time of the meeting and pass . necessary resolution." The then Managing Committee decided to hold the Annual General Meeting on 25-8-83 at 10 A.M. in the permanent office of the Co-operative Society. In due course the Assistant Registrar of the Co-operative Society, Goalpara asked two Junior Inspectors of Co-operative Societies to attend the Annual General Meeting of the Co-operative Society on 25-8-83, Admittedly, the Annual General Meeting of the Society was held on that date at the venue and various businesses were transacted and office bearers were elected. As many as 111 members attended the meeting. The records of the proceedings of the Co-operative Society were placed before us by Mr. B. M, Goswami, learned counsel for the petitioner. We have perused the proceedings book which was signed by one of the Junior inspectors of Co operative Societies, Goalpara. The quorum of a meeting of the General Assembly is 1/5th of the total number of members under Rule 24 of "the Rules". There is no dispute that the businesses were transacted in the annual meeting of the General Assembly, which had quorum. The members present in the Annual General Meeting elected members, the Chairman, Vice-Chairman and other office bearers, as required under Rule 25 of "the Rules". The resolutions adopted in the meeting were duly recorded, as required under Rule 25 of "the Rules" and duly forwarded to the Registrar, Co-operative Societies for obtaining his approval. It is also not disputed that one of the prime purposes of the annual General Meeting is to elect members to the Managing Committee and other Committees, as set forth in Section 32(1)(a) of "the Act". A notice that there would be annual meeting of the General Assembly of a Co-operative Society automatically implies that amongst other business the members were to elect members to the Administrative Council, Managing Committee or other Committees of the Society as well as to elect Chairman, Vice-Chairman and other office bearers. It is not disputed by the parties that none took the technical plea that the notice of the Annual General Meeting was irregular in view of the absence of an item manifesting specifically that there would be election of members to the Managing Committee. The members present elected members to the Managing Committee, the Chairman, Vice-Chairman and other office bearers of the Society for the next co-operative year-However, the petitioner was informed by a letter dated December 19, 1983 issued by the Deputy Registrar of Co-operative Societies, Goalpara at Dhubri that the Registrar of Cooperative Societies, Assam, vide his letter dt. Dec. 16, 1983 held that the Annual General Meeting held on 25-8-83 was "defective and irregular" and the meeting was "not regular, the Managing Committee stood automatically dissolved". The Deputy

Registrar, in exercise of his power conferred u/s 32(5) of "the Act" constituted an ad hoc Committee consisting of a Chairman, Vice-Chairman, Treasurer and 4 members. The petitioner made representation to ascertain the reason for declaring the Annual General Meeting as void and illegal. The Joint Registrar, Cooperative Societies (Fishery), Assam, Gauhati, informed the petitioner that it was found that the holding of the Annual General Meeting and election to the Managing Committee were irregular inasmuch as the notice issued for the purpose was defective as the agenda of the notice did not disclose that the election of members to the Managing Committee would be held. So, this was the reason for holding the Annual General Meeting to be void and on that count the Registrar, Cooperative Societies dissolved the Managing Committee whereupon the Deputy Registrar constituted an ad hoc Managing Committee, The petitioner contests the validity of the order of the Registrar dissolving the Managing Committee as well as the appointment or constitution of an "ad hoc Managing Committee".

3. The provisions of Sections 36, 32 and 37 empower the Registrar to dissolve a Managing Committee. Section 36(1) of "the Act" reads as follows: --

"36. Dissolution or re-construction of the Administrative Council, managing body or any committee of a society -- (1) When the Registrar is satisfied, after an inspection or inquiry u/s 60 or 61 for reasons to be recorded in writing, that the Administrative Council, managing body or any committee of a registered society is not functioning properly, or according to this Act, rules or bye-laws, he may, after giving the offending body an opportunity to state its case, direct under Clause (d) of Sub-section (1) of Section 33, that a special general meeting of the General Assembly be called within a time to be specified to dissolve the Administrative Council, managing body or committee concerned and to elect a new one. Provided that, if in the opinion of the Registrar, it is necessary as an emergent measure to suspend the offending body forthwith, he may do so and shall appoint a person, on such conditions as prescribed by him to be in full control of the suspended body until a new body has been elected or action has been taken in accordance with Section 37."

It is seen that if a Managing Committee is not functioning properly or according to the Act, Rules and bye-laws the Registrar must make an enquiry or inspection Under Sections 60 and 61 of "the Act", record a finding to that effect and thereafter he must give an opportunity to the offending body to state its case. If he is not satisfied with the causes shown he may direct the Co-operative Society to convene a Special General Meeting of the General Assembly within a prescribed period to dissolve the Managing Committee and to elect a new one. However, as an emergent measure he may forthwith suspend the offended body and appoint a person to take control of the suspended body. Section 32(4) of the Act empowers the Registrar to dissolve a Managing Committee or body, if the society fails to hold the Annual General Meeting within the period of 60 days as required under Sub-section (2) of Section 32 or when the Society fails to hold

the Meeting within the extended period or where the prayer for extension has been refused. When the Managing Committee is so dissolved the Registrar may appoint any officer or any ad hoc body to manage the affairs of the society and perform the functions of the body till a new body is elected or formed. Further, the Registrar may dissolve a Managing Committee if the society does not dissolve the old Managing Committee in spite of the order made by the Registrar u/s 36(1) of the Act:

4. This is not a case where no Annual General Meeting could be held within the extended period. In fact the Annual General Meeting was held but the Registrar concluded that it was irregular. Section 32 of the Act envisages a situation where a Co-operative Society fails to hold a meeting and in that contingency the Registrar can dissolve the body continuing its existence beyond the prescribed period. In the instant case there was no failure on the part of the Co-operative Society to hold the meeting within the extended period. As such, the provisions of Section 32(4) are inapplicable and no dissolution could have been made and no ad hoc body could have been constituted to manage the affairs of the society.

5. Where a managing body fails to function properly or in accordance with the provisions of the Act, Rules and bye-laws the provisions of Section 36(1) come into play. In that event an enquiry and recording of finding to that effect are must. Similarly the offending committee must be given the opportunity to state its case. In the instant case no enquiry was made nor findings recorded by the Registrar nor did he give any opportunity to the body to state its case. If the Registrar was not satisfied with the case put up by the Managing Committee, he was to direct the Co-operative Society to call a Special General Meeting of the General Assembly within a prescribed period to dissolve the existing Managing Committee and to elect a new one in its place. This was also not complied with. Further, if the Registrar considered it a case of "emergency" he could have suspended the offended body and appointed a person to take charge of the suspended body until a new body was elected or action taken in accordance with Section 37 of "the Act". There is nothing to show that any emergency existed nor did the Registrar suspend the offending body. Under these circumstances if the purported action of the dissolution was taken u/s 36(1) of the Act it must be declared to be invalid as there was no enquiry Under Sections 60 and 61 of "the Act" nor did the Registrar record any finding that the committee was not functioning properly or according to the law. The order is to be declared bad because the Registrar did not serve any statutory notices required to be served. None of the conditions for exercising the power u/s 36(2) had been complied with. Further, at best the Registrar could have directed the Co-operative Society to suspend the body within a specified time and to elect a new committee in its place. The question of emergency does not arise in the instant case. Under these circumstances if the purported action was u/s 36 of the Act it was invalid action as the Registrar had no jurisdiction vested in him by law to dissolve the committee.

6. The view we have taken finds support from the decisions of the Supreme Court in *Joint Registrar of Jt. Registrar of Co-operative Societies Madras and Others Vs. P.S. Rajagopal Naidu and Others*, and in an unreported decision of our High Court in *Moireng Jan Paka Singh v. Abongangebam Babusims Singh*, CA 942 of 1964 decided on 2-1-1965.

7. If the purported action was taken u/s 32(4) of the Act, the same must be declared to be invalid as there was no inaction of the Co-operative Society to hold the meeting within the extended period allowed by the Registrar. It has been contended that the Annual General Meeting was held but it was not a meeting as contemplated u/s 32 of "the Act", and, therefore, the Registrar had jurisdiction to refuse to recognise the Managing Committee elected in the meeting. In our opinion, the language of Section 32(4) does not take in its fold such a case. Section 32(4) punishes a body or committee if it endeavours to continue its life without holding the Annual General Meeting within the prescribed period or the extended period. It does not spell out that the provisions of Section 32(4) are applicable where an Annual General Meeting has been held but not in strict compliance with the procedure prescribed. If a meeting is held illegally, that is, in breach of the mandatory provisions of the Act or the Rules it may be said that there was no meeting and the body and/or committee had no right to function as it was illegally constituted. Say if a meeting is held where there is no quorum of the meeting or if the meeting is held without serving notices to the members at all. It may be said that the members and office bearers of the Committee were not legally competent to function as there was no valid meeting held in accordance with the mandatory provisions of law. It can be said that the committee was not legally constituted committee competent to function according to the provisions of the Act, the Rules and bye-laws. We are of the tentative view that the provisions of Section 32(4) may attract I where the Annual General Meeting or the meeting of the General Assembly is held in violation or breach of the mandatory provisions of the Act, Rules or bye-laws. It may be said that the meeting was void ab initio, there was no meeting and, therefore, Section 32(4) is applicable. Let us assume that the Registrar in exercise of his power u/s 32(4) has dissolve the managing committee on the ground that the election of the members and office bearers to the Managing Committee was void as there was breach of the mandatory provisions of "the Act", Rules or bye-laws. Let us examine the question from that angle though the order of the Registrar does not spell it out. We cannot ignore the fact that the members of the Cooperative Society have legal right to hold if Annual General Meeting and exercise their rights to elect members to the Administrative council, Managing Body of other Committee etc. When the members exercise their statutory right and do elect the members to the managing committee etc. the Registrar should be cautious, careful and circumspect to whittle down the will of the members. Indeed, if the meeting is held in breach of a mandatory provision of law the meeting can be declared to be invalid However, if there is no breach of any mandatory provisions of law, the Registrar cannot declare such election as

invalid. In the instant case the Respondents have failed to show that the meeting was held in breach of any provisions of the Act or Rules or bye-law. Let us try to fathom the reason for which the meeting was held to be invalid. The Registrar held that omission to mention in the agenda of the meeting, that is, the notice served on the members, that there would be election of the members and office bearers to the Managing Committee vitiate the entire proceedings of the Annual General Meeting. No provision could be pointed out to us which requires that the notice of the Annual General Meeting must set out specifically that one of the purposes of the meeting is to elect members to the Administrative Council body or Council etc. and/or the non-compliance vitiates the entire proceedings of the Annual General Meeting. Let us turn to Section 32(1)(a) of the Act, which is extracted below, to ascertain whether such a requirement is mandatory.

"32. Annual meeting of General Assembly : (1) A general meeting to be termed the annual general meeting of the General Assembly of a registered society shall be held at least once in every co-operative year for the purpose of:

"Provided that notwithstanding anything to the contrary contained in this Act or Rules made thereunder or bye-laws of any society, the Registrar may direct that the first annual general meeting of any registered society shall be held on a date to be fixed by him (which shall be a date within one hundred and eighty days of the registration of the society) to elect the office bearers of the society, according to the procedure and manner prescribed in the bye-laws of the society and the office bearers so elected shall assume office on the conclusion of the general meeting in which they are elected in replacement of the managing committee elected at the time of the inaugural general meeting of the society."

(a) electing members to the Administrative Council, managing body and other committees of the society, the Chairman, Vice-Chairman, and other office bearers, as may be provided in bye-laws and fixing such fees, salaries or other remuneration as prescribed in the bye-laws; Provided that the Government may prescribe by rules the qualifications necessary for office bearers and employees;

(b) to (2) *****

It is seen that Section 32(1) specifies the business to be transacted in the Annual General Meeting. It was not the first Annual General Meeting of the Registered Society. As such the proviso to Section 32(1) is not applicable. Admittedly the notices were issued to all the members informing them that the Annual General Meeting would be held on a fixed date, at the venue and time specified in the notice such a notice implied that the members were to exercise their rights prescribed in Section 32(a)(b)(c)(d)(e)(f) and (g) of the Act in the said meeting. Notices informing the members that there would be an Annual General Meeting of the General Assembly was clear enough to indicate that election of the members to the Committee would be held on that date. Election of members to the Managing Committee could be made only in the Annual General Meeting and in no other meeting. As such all the members were fully aware that on the date

fixed they would transact the business of election of the members to the Managing Committee.

8. We are constrained to hold that the notices served on the members sufficiently notified that the business referred in Section 32(1)(a) to (g) would be transacted. Further, 111 members attended the meeting, participated therein and none objected to the holding of elections in the absence of specific item to that effect in the Agenda. All were aware that service of notice of the Annual General Meeting was sufficient notice to them to exercise their right of voting for electing members to the Managing Committee. Nobody was prejudiced. No grievance was made by any of the members as to the alleged irregularity. Admittedly it was not an illegality, so the Registrar coloured it as an "irregularity". Assuming it to be irregular, on the facts and circumstances of the case, we hold that the irregularity did not vitiate the proceedings of the Annual General Meeting in any way whatsoever. There was no question of prejudice to any one.

9. For the foregoing reasons we hold that the impugned order of the Registrar dissolving the Managing Committee is void, illegal and without jurisdiction. We hold, on the facts and circumstances of the case, that the notices of the Annual General Meeting were neither defective nor irregular. When the order of dissolution falls through, the follow up order of the Deputy Registrar of Co-operative Society exercising his power constituting "the ad hoc committee" in place of the elected Managing Committee also must fall through. Accordingly, we also declare the impugned order of the Deputy Registrar constituting an ad hoc committee is void, illegal and without jurisdiction.

10. In the result the petition is allowed, however, we make no order as to costs.

11. Before parting we would like to observe that the co-operative year is expiring by June 31, 1984. Accordingly we direct the Registrar Co-operative Society Assam at Gauhati (Respondent 2) to issue necessary orders to the President and Secretary of the Co-operative Society elected in the meeting held on 25-8-1983 to hold the next Annual General Meeting in accordance with law. Learned counsel for the petitioner states that the petitioner shall submit the account in the Special General Meeting of the General Assembly whenever the Secretary of the Society holds such a meeting.

12. It will now be for the Registrar to issue necessary directions to the President and or the Secretary of the Co-operative Society to hold a Special General Meeting of the General Assembly and also to direct the President/Secretary to hold the Annual General Meeting on such date as he considers just and expedient. However, on just and sufficient ground the Registrar may extend the dates of the meetings.