

(2009) 02 GAU CK 0021

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 2019 of 2008

Dakhin Salmara Matsyajibi Fishery Co-operative Society Ltd., APPELLANT
Hatsingimari, South Salmara, Sub Division, and Another

Vs

State of Assam and Others RESPONDENT

Date of Decision : 13-02-2009

Acts Referred:

Assam Co-operative Societies Act, 1949 — Section 11, 11(1), 11(2), 11(4), 13
Assam Co-operative Societies Rules, 1953 — Rule 6
Assam Fisheries Rules, 1953 — Rule 12

Citation : (2009) 2 GLD 103 : (2009) 2 GLT 484

Hon'ble Judges : B.P. Katakey, J

Bench : Single Bench

Advocate : A. Sharma, M.P. Goswami and B. Sharma, for the Appellant; J. Handique, GA and H.K. Barman, for respondent Nos. 1 to 4 and A.K. Goswami S. Banik, B. Sarma, K.N. Suri and P. Bhuyan, for the Respondent

Final Decision : Allowed

Judgement

B.P. Katakey, J.—The petitioner No. 1, which is a registered Cooperative Society and the petitioner No. 2, who is the Secretary of the petitioner No. 1, by the present petition, has challenged the communication dated 2.9.2005, issued by the Joint Registrar of Cooperative Societies (Fishery), Assam to the Assistant Registrar of Cooperative Societies, Dhubri conveying the permission accorded by the Registrar of Cooperative Societies, Assam for registration of the amended byelaws Nos. 3 and 4(3) of Dhubri Bazar Mach Becha Kina Samabai Samittee Ltd. (respondent No. 5), which is also a registered Cooperative Society, on the ground that such amendment of the byelaws have been allowed without making any enquiry and verification relating to the reasonableness of such amendment and thereby changing the object for which the said society was originally formed and registered and also on the ground that the respondent society being not consist of 100 per cent actual fishermen of the Schedule Caste community and as such, is not eligible for settlement of fishery under the Assam Fishery Rules,

cannot be converted to a Fishery Cooperative Society by way of the amendment of the byelaws and that too by extending its area of operation without there being any member from the said extended areas of operation in the society. The further contention of the petitioners is that the object of the respondent society as reflected in its unamended registered byelaws being purchase and sale of fishes, its byelaws cannot be allowed to be amended so as to change its objects to a Fishery Cooperative Society. According to the petitioners, such amendment is in contravention of the Assam Fishery Rules, 1953 as amended. It is the further case of the writ petitioners that since the Government vide notification dated 9.8.2004 in exercise of the power conferred u/s 3 of the Assam Cooperative Societies Act, 1939 (in short, "the Act") has appointed the officers of the directorate of fisheries as the Registrar of the Cooperative Societies for registering the Fishery Cooperative Societies, the power of amendment of the byelaws also vest on those officers as appointed by the said notification and hence after such notification the no other officer, except those notified officers, has any power and authority to permit registration of the amended byelaws of any registered Cooperative Societies.

2. The case of the respondent No. 5 is that the Registrar of Cooperative Societies, Assam has permitted the amendment of the registered byelaws of the Society upon making a detail enquiry and on being satisfied about fulfillment of the requirements of the Act. The respondent further contended that though initially the object of the Society was purchase and sale of fishes, it being consist of 100 per cent actual fishermen of the fishing community of Assam proposed the amendment of the byelaws to include the object of taking lease of fish mahal and fishing within the area of operation of the society and the registering authority having satisfied with the object and also composition of the society with 100 per cent actual fishermen of the fishing community has permitted such amendment, as sought for, which includes the amendment for extension of area of operation. According to the respondent No. 5, such amendment of the byelaws in no way contravenes the provisions of the Act and the rules framed thereunder or the Government's notification dated 9.8.2004, as by the said notification the power of the Registrar of the Cooperative Societies appointed u/s 3(1) of the Act has not been taken away.

3. The State respondents though have not filed any affidavit, it appears from the records produced, the stand of the State is that such amendment of the byelaws has been allowed in accordance with the provisions of the Act and the rules framed thereunder and in no way contravenes any of such provisions.

4. I have heard Mr. A. Sharma, the learned Counsel for the petitioner, Mr. A.K. Goswami, the learned senior counsel appearing on behalf of the respondent No. 5 Society and Mr. J. Handique, the learned State Counsel- appearing on behalf of the respondent Nos. 1 to 4.

5. Mr. Sharma, the learned Counsel for the petitioner challenging the communication dated 2.9.2005 (Annexure-II) issued by the Joint Registrar of

Cooperative Societies conveying the Registrar's approval for amendment of the registered byelaws of the respondent No. 5 Society as well as registration of the same, has submitted that keeping in view the purpose for which the Fishery Cooperative Society is constituted, i.e. for the purpose of settlement of the fisheries under the provisions of the Assam Fishery Rules, the amendment proposed in the registered byelaws of the respondent No. 5 Society, ought not to have been permitted by the Registrar, its objects being originally not engaged in fishing business but for sale and purchase of the fish only. It has further been submitted by the learned Counsel that the respondent No. 5 Society being not consist of the 100 per cent actual fishermen of the fishing community of Assam cannot be registered as a Fishery Cooperative Society and, therefore, by amendment of the byelaws it cannot assumed the character of a Fishery Cooperative Society and the order of the Registrar allowing the amendment of the byelaws has infact amounts to registering the respondent No. 5 Society as a Fishery Cooperative Society in violation of the provisions of the Act and the rules. According to the learned Counsel, the respondent No. 5, though is not eligible to be registered as Fishery Cooperative Society, by virtue of the amendment of the byelaws it is trying to get undue advantage in the matter of settlement of fishery. Mr. Sharma in support of his contention has referred to the report dated 27.10.2005 submitted by the Senior Inspector/Auditor of Cooperative Societies, Dhubri to the District Deputy Registrar of Cooperative Societies, Dhubri, which according to the learned Counsel, reflects that the respondent No. 5 Society does not consist of 100 per cent actual fishermen of fishing community and the new area of operation sought to be included by way of amendment of registered byelaws cannot be allowed to be included, there being no members from such villages sought to be included, some of which villages even does not have any fishermen of fishing community. The learned Counsel in this regard has also referred to the communication dated 29.6.2006 issued by the Deputy Commissioner, Dhubri to the Registrar of Cooperative Societies, Assam.

6. Referring to the notification-issued by the Additional Chief Secretary to the Government of Assam in Cooperation Department dated 9.8.2004, it has further been submitted that since the Government of Assam in exercise of the power conferred u/s 3 of the Act appoints a particular set of officers of the Directorate of Fisheries as Registrar of the Cooperative Societies for registering the Fishery Cooperative Societies, the said designated officers can only approve the proposed amendment of any registered byelaws of a Cooperative Societies, to the exclusion of the Registrar of the Cooperative Societies appointed u/s 3(1) of the Act. According to Mr. Sharma, the Registrar of Cooperative Societies, who accorded the permission for amendment of the registered byelaws of the respondent No. 5/Society has no power and authority to do the same, in view of the said notification dated 9.8.2004.

7. Mr. Goswami, the learned senior counsel for the respondent No. 5 Society, on the contrary, has submitted that it is evident from the records that the Registrar before according permission for amendment of the registered byelaws of the

respondent No. 5 Society has made an enquiry about its members being 100 per cent actual fishermen of fishing community and also about its proposed extension of area of operation. According to Mr. Goswami, as the object of the respondent Society was for purchase and sale of the fish, it cannot be said that its object cannot be changed or added by way of amendment of its registered byelaws and if the conditions required for such amendment under the Act are fulfilled, the authority is bound to permit such amendment of the registered byelaws. Referring to Section 13 of the Act, it has been submitted by Mr. Goswami that the proposal for amendment of the registered byelaws was approved by a resolution adopted at a meeting of the General Assembly in accordance with the bye-laws of the Society and was forwarded within a month from the date of such resolution to the Registrar. The Registrar having satisfied with the proposed amendment being not contrary to the provisions of the Act and the rules framed thereunder, allowed the amendment of the registered byelaws as sought for. According to Mr. Goswami, the proposed amendment in no way contravenes any of the provisions of the Act and the rules framed thereunder.

8. Relating to the communication issued by the Senior Inspector/Auditor of the Cooperative Societies, Dhubri to the District Deputy Registrar of Cooperative Societies as well as by the Deputy Commissioner to the Registrar of Cooperative Societies, Mr. Goswami submits that those reports were submitted unilaterally without there being any enquiry and without hearing the respondent No. 5 Society and at the instance of the writ petitioners. According to Mr. Goswami, in any case the Deputy Commissioner has nothing to do with the registration or amendment of registered byelaws of a Cooperative Society, under the Act.

9. Referring to Section 3 of the Act, Mr. Goswami further submits that though the Government issued the notification dated 9.8.2004 appointing certain officers in the Directorate of Fisheries as Registrar of the Cooperative Societies for registering the I Fishery Cooperative Societies, the powers of the Registrar of the Cooperative Societies under the Act for registration as well as for amendment of the registered byelaws have " not been taken away and hence the order passed by the Registrar of the Cooperative Societies, which has been communicated by the impugned communication dated 2.9.2005, allowing amendment of the registered byelaws of the respondent Society cannot be held to be contrary to the provisions of the Act and the rules framed thereunder. Referring to the decisions of this Court in *Shri Ganga Fisherman Samabay Samity Ltd. Vs. State of Assam and Others*, and *Parghat Kaibarta Min Silpa Samabai Samity Ltd. and Another Vs. State of Assam and Others*, , it has been submitted by Mr. Goswami, the learned senior counsel in the matter of settlement of fishery under the Assam Fishery Rules, the criteria being neighbourhood of the fishery and not being within the area of operation, the amendment of the byelaws for extension of the area of operation cannot be refused and whether a fishery is in the neighbourhood of a fishery cooperative society or not is to be seen only at the time of settlement of a fishery.

10. Mr. Handique, the learned State Counsel appearing on behalf of the respondent Nos. 1 to 4 has submitted that the Registrar of Cooperative Societies has allowed the proposed amendment of the registered byelaws of the respondent No. 5 Society, the same being not in contravention of any of the provisions of the Act and the rules framed thereunder. It has further been submitted by Mr. Handique that the Registrar before taking such a decision has kept in mind the purpose for which a Fishery Cooperative Society is registered under the Act and having satisfied that the respondent No. 5 Society consist of 100 per cent actual fishermen of fishing community, approved the amendment of the registered byelaws, after making due enquiry in that regard. Mr. Handique further submits that the power of the Registrar to register a Cooperative Society or to allow amendment of the registered byelaws of Cooperative Society has not been taken away by notification dated 9.8.2004 issued by the Government of Assam in Cooperative Department.

11. I have considered the submissions of the learned Counsel for the parties and also perused the pleadings as well as the records produced by the learned State Counsel.

12. Sub-section (1) of Section 3 of the act provides that the State Government may appoint a person to be a Registrar of Cooperative Societies for the Province or any portion of it for registration, supervision, assistance, counsel and control of registered societies and for the development of the cooperative movement and control over all cooperative education and with other powers and responsibilities as may be provided under the Act or the rules or the byelaws framed thereunder. Sub-section (2) empowers the State Government to appoint persons to assist the Registrar and may by general or special order in writing, delegate to any such person or to any other Government Officer-all or any of the powers of the Registrar under the Act. Sub-section (3) also empowers the State Government to appoint non-official helpers with such designations and functions as prescribed to aid in the organisation of Cooperative Societies. It is, therefore, evident from the said provision of law that the State Government may appoint other persons to assist the Registrar appointed under Sub-section (1) of Section 3 of the Act and can delegate any or all the powers of the Registrar to such persons.

13. The Government of Assam in Cooperation Department vide notification dated 9.8.2004, in exercise of the power conferred u/s 3 of the Act, appointed the Director of Fisheries, Assam, Guwahati as Registrar of Cooperative Societies for registering the Fishery Cooperative Societies only, for whole of Assam and also appointed the Deputy Director of Fisheries (Zonal) for that purpose for their respective zones. Issuance of such a notification has not been disputed by any of the respondents. It is also not the case of any of the respondents that such a notification has been superseded by the subsequent notification issued. It is also not in dispute that the State Government appointed a Registrar of Cooperative Societies u/s 3(1) of the Act for the whole of Assam for registration, supervision, assistance, counsel and control of registered societies, which includes the Fishery

Cooperative Societies also. However, the State Government by the notification dated 9.8.2004 has delegated the powers of the Registrar to the Director of Fisheries as well as the Deputy Director of Fisheries for registration of the Fishery Cooperative Societies only, in exercise of the power conferred by Sub-section (2) of Section 3 of the Act. It is the contention of the writ petitioners that since such power has been delegated by the State Government to the Director of Fisheries and the Deputy Director of Fisheries by issuing the said notification dated 9.8.2004, the Registrar appointed under Sub-section (1) of Section 3 has been denuded of its power to function as Registrar under the Act in respect of the Fishery Cooperative Societies. The contrary submission, however, of the respondents, as noticed above, is that the Registrar appointed under Sub-section (1) of Section 3 of the Act has not been denuded of its power by the notification dated 9.8.2004.

14. The question, which, therefore, requires consideration of this Court is-as to whether in view of the notification dated 9.8.2004, the Registrar appointed u/s 3(1) of the Act has been denuded of its power under the provisions of the Act in respect of a Fishery Cooperative Society.

15. The word "delegation" has been defined in the Black's Law Dictionary (7th edition) as-the act of entrusting another with authority or empowering another to act as an agent or representative. "Delegation", does not always imply parting with powers by a person who delegates, it may also imply conferring of an authority to do things which otherwise that person would have to do himself, without parting with the power to do that thing. It depends upon the provisions of law, which empowers an authority to delegate the power to another or from the nature of such delegation, as to whether the authority whose power has been delegated, is denuded of such power completely, once the delegation is made and such power can only be exercised by delegate. As noticed above, Sub-section (2) of Section 3 of the Act empowers the State Government to appoint any other person to assist the Registrar appointed under Sub-section (1) of Section 3 and further empowers the State Government to delegate to any such persons or to any other Government Officer all or any of the powers of the Registrar under the Act. From the said provision of the Act what, therefore, implies is that such persons are appointed to assist the Registrar appointed under Sub-section (1), who can also exercise all or any of the powers of the Registrar under the Act. From the language used in Sub-section (2) of Section 3, it is, therefore, evident that when any other person is appointed by the State Government in exercise of its power under Sub-section (2) of Section 3 and delegate any or all of the powers of the Registrar appointed under Sub-section (1) of Section 3, the Registrar has not been denuded of its power, as the State Government under the said provision of law can only appoint a person to assist the Registrar appointed under Sub-section (1) of Section 3 of the Act. Hence, though the State Government vide notification dated 9.8.2004, in exercise of the power conferred under Sub-section (2) of Section 3 of the Act appointed the Director of Fisheries as well as the Deputy Director of Fisheries to. assist the

Registrar and delegated the power of Registrar to register the Fishery Cooperative Societies, the Registrar appointed under Sub-section (1) of Section 3 of the Act has not been denuded of its power under the Act, which he can still exercise, in a given case, inspire of such notification dated 9.8.2004. The contention of the writ petitioners that the order of the Registrar appointed under Sub-section (1) of Section 3 of the Act registering the proposed amendment of the registered byelaws of the respondent No. 5 society in view of the notification dated 9.8.2004, is contrary to the provisions of the Act, therefore, cannot be accepted and hence rejected.

16. Sub-section (1) of Section 4 of the Act provides that a society, which has its objects the promotion of the economic interests or general welfare of its members or of the public in accordance with the cooperative principles, or a society established with the object of facilitating the operations of any society, may be registered under the Act with limited liability. Sub-section (2) stipulates that no society shall be registered, if in the opinion of the Registrar, its declared objects are unlikely to be achieved or it is likely to be economically unsound or it may have an adverse effect upon any registered society or the cooperative movement as a whole. Section 5 lays down the age, qualification of a member of a registered society and Section 6 lays down the conditions of registration. Sub-section (1) of Section 11 provides that the Registrar shall decide all questions as to whether the application for registration complies with the provisions of the Act and the rules framed thereunder and whether the objects of the societies are in accordance with Section 4. Sub-section (2) of Section 11 provides that the Registrar may register the society and the byelaws only if he is satisfied that the application is in order as required under sub-section (1) and the proposed byelaws are not contrary to the provisions of the Act. Sub-section (4) Section 11 of the Act empowers the Registrar to refuse registration of a society or an amendment of the byelaws of a registered society and in that case he has to record the reasons in writing for doing so.

17. Section 13 deals with the requirement and the power of registering the amendment of the byelaws of a registered society by the Registrar. It provides that every proposal for amendment of the byelaws of a registered society shall have to be approved by a resolution at a meeting of the General Assembly in accordance with the byelaws of the society and shall have to be forwarded to the Registrar within a month from the date of the resolution. The Registrar has the power either to reject such an application or to allow the same. But while registering the amendment, the Registrar has to satisfy that the proposed amendment is not contrary to the provisions of the Act or the rules framed thereunder. Section 14 of the Act confers the power on the Registrar to cause amendment of the byelaws of a registered society, if such amendment is found to be necessary in the interest of such society or of the cooperative movement as a whole or for the purpose of bringing about uniformity with the provisions of the byelaws of the societies, which have similar objects and functions.

18. Rule 6 of the Assam Co-operative Societies Rules, 1953 (in short, "the Rules") requires the Registrar to examine the application filed for registration of a society and the byelaws and to satisfy himself (i) that the application and the byelaws are in conformity with the Act and the Rules; (ii) that the byelaws are suitable for carrying out the objects of the society and ensure safe conduct of its business and (iii) that the proposed society has reasonable chances of success having regard to local conditions. It also empowers the Registrar to call for further information or make such enquiry as he may deem necessary in that regard. The Registrar only on being satisfied on all the aforesaid requirements may register such society and the byelaws. Rule 10 of the Rules provides the mode of amendment of the registered byelaws of a registered society, on the basis of an application filed by the society. It requires a registered society to file the application in the form as set forth in the schedule thereto, before the Registrar within the time prescribed under Sub-section (2) of Section 13 and signed by the members of the Managing Committee, which shall contain (a) the date of the meeting of the General Assembly at which the amendment was passed; (b) the number of members on the roll of the society on the date of issuing the notice of the General Assembly meeting; (c) number of members present at the meeting and (d) the number of members who voted in support of the amendment.

19. From the aforesaid provisions of the Act and the rules framed thereunder, it, therefore, transpires that the Registrar in the matter of initial registration of a society and the byelaws is required to make an enquiry to satisfy himself as to whether the society seeking its registration as well as of its byelaws satisfies conditions stipulated in Section 4 of the Act and whether or it will have an adverse effect upon any registered society in existence or the cooperative movement as a whole, apart from the fulfillment of other conditions enumerated in Sections 5 and 6 of the Act, as the law. requires satisfaction of the Registrar before registering such society and the byelaws. Without making an enquiry, therefore, no satisfaction can be recorded by the Registrar in that respect. A Fishery Cooperative Society is registered under the provisions of the Act normally with the object of obtaining the benefit of the proviso to Rule 12 of the Assam Fishery Rules, 1953, as amended in 2005, which empowers the State Government to settle a 60% category registered fishery with the special category of fishery cooperative society, non-Government organisation and self help groups, consisting of 100 per cent actual fishermen in the neighbourhood of fishery concerned by the tender system. "Special category" has been defined in explanation 1 to the Rule 12 of the said Rules, which means and includes the Cooperative Societies, Self-Help Groups, Non-Governmental Organisations comprising of 100% actual fishermen of the Scheduled Caste community or Maimal community of erstwhile Cachar district, who can not participate in competitive bidding because of poor financial condition due to famine, flood, draught, epidemic of any other circumstances which are beyond control of the society, non-Governmental Organisation or Self Help Groups, as the case may be.

20. The object of a society being one of the vital issue which requires consideration for being registered under the provisions of the Act, a registered society, though may u/s 13 of the Act seek registration of any amendment of its registered byelaws, the Registrar, in case registration of amendment of registered byelaws amending its object, has to follow the same procedure laid down in the Act for the purpose of initial registration of a society and its byelaws. The registered society seeking registration of amendment of the registered byelaws relating to its object has also to fulfill all such conditions stipulated for the purpose of its initial registration. The Registrar, therefore, before registering such amendment of the byelaws has also to satisfy himself about the fulfillment of the conditions stipulated in Section 4 of the Act including whether such proposed amendment of the object will have an adverse effect on any existing registered society, apart from satisfying himself about the fulfillment of the condition precedent for registration of a society and its byelaws enumerated in Section 11 of the Act and Rule 6 of the Rules.

21. The Registrar of the Cooperative Societies, therefore, while dealing with an application filed by a Fishery Cooperative Society for its registration as well as for registration of the byelaws and also for amendment of the registered byelaws is required to make an enquiry to satisfy himself as to its composition as well as the fulfillment of the requirements of the Act and the rules framed thereunder.

22. In the case in hand, the record produced before this Court by the learned State Counsel reveals that an application (which does not bear any date) was filed by the Chairman, Secretary and the Executive Members of the respondent No. 5 society, which is a registered Cooperative Society bearing Registration No. D- 27/2000/2001 dated 21.8.2000, before the Assistant Registrar of Co-operative Societies enclosing therewith the proceeding of the general meeting dated 16.5.2005 of the said society alongwith the resolutions adopted therein including the resolution for amendment of the byelaw Nos. 3 and 4 (3) relating to the object as well as the area of operation of the society, requesting registration of such proposed amendment. The said application was forwarded by the Assistant Registrar of Cooperative Societies, Dhubri to the Registrar of Cooperative Societies vide communication dated 16.6.2005. The note-sheet as well as the records of file No. CP 7/2005, as produced by the learned State Counsel, further reveals that the Joint Registrar of Cooperative Societies (Fishery) having considered the following information as relevant consideration for the purpose, took a decision on 11.8.2005, to instruct the Assistant Registrar of Cooperative Societies, Dhubri to submit a report relating to the application filed by the respondent No. 5 society for amendment of its registered byelaws and to intimate:

1. Whether the members are belongs to actual fishermen community?
2. Whether the members enrolled from the proposed extended area?

23. The record reveals issuance of the said communication by the Joint Registrar

of Cooperative Societies, Guwahati to the Assistant Registrar of Cooperative Societies, Dhubri on 11.8.2005. Most interestingly the Assistant Registrar of Cooperative Societies, Dhubri replied the said communication dated 11.8.2005 on the next date itself, i.e. on 12.8.2005, intimating that the respondent No. 5 society belongs to actual fishermen of fish, trade or fishing community and no member is enrolled from the proposed extended area, with the further observation that the new area proposed for inclusion in the area of operation of the society by way of amendment of the byelaws does not overlap other like societies, though no query was made by the Joint Registrar in that regard in his communication dated 11.8.2005. The report of the Assistant Registrar of Cooperative Societies was placed on record and processed and was ultimately placed before the Registrar of Cooperative Societies on 29.8.2005 by the Joint Registrar of Cooperative Societies with the following notes:

RCS.

SL 27 and office note at pre-page may be seen.

This is called for from ARCS Dhubri to consider a proposal of amendment of Byelaws of Dhubri Bazar Mach Becha Kina S.B. Ltd. submitted by the ARCS Dhubri vide SL 1.

The AGM of Dhubri Bazar Mach Becha Kina S.S. Ltd. adopted resolution to amend Bye-Law No. 3 which speak about area of operation of the society and Bye-Law No. 4 which speak about the aims and object of the society.

As per amendment as proposed, the society wants to extend the area of operation and extend its object which may be seen at SL 7.

In this regard certain clarification called for from ARCS vide SC 26. As per report of ARCS the share holder are cent percent actual fishermen and there is no similar type of society in the proposed extended area of operation.

So, the RCS may accord permission to ARCS to register the amendment as proposed.

Submitted F.F.O.

Sd/-Illegible 29.8.2005.

The Registrar accorded the permission as sought for, for registration of the amended byelaws on 30.8.2005 on the basis of the aforesaid note, although no enquiry, whatsoever, was made to ascertain whether the change of object of the respondent No. 5 sought to be made by way of amendment of the registered byelaws, will have any adverse effect upon any registered society in existence, as required under Sub-section (2) of Section 4 of the Act.

24. It appears from the aforesaid note submitted by the Joint Registrar before the Registrar of Cooperative Societies that the comment of the Assistant Registrar of Cooperative Societies contained in the communication dated

12.8.2005 that no member has been enrolled from the proposed extended area of operation was not brought to the notice of the Registrar of Cooperative Societies, though having considered that the information on the queries mentioned above are required and relevant consideration, a report in that respect was earlier called for from the Assistant Registrar of Cooperative Societies and the Registrar in fact was kept in dark about the same while according permission to the amended registered byelaws.

25. In the instant case, it is not in dispute that the object as is reflected from the registered byelaws of the respondent No. 5 society initially was for sale and purchase of fish and to extend all possible help, which was sought to be amended, apart from others, for obtaining settlement of fishery and to catch and sale fish and also to engage the members of the society for that purpose. The respondent No. 5 society also by way of the proposed amendment sought to extend the area of operation of the society from Ward Nos. 1 to 16 of Dhubri Municipality to other villages including the village Takirganj". The object of the society at the time of its original registration of the byelaws was therefore, different from the objects sought to be amended in the year 2005, the Registrar, as discussed above, is required to form an opinion under Sub-section (2) of Section 4 of the Act as to whether such amendment, if allowed will have an adverse effect upon any existing registered society. Such an enquiry, as it appears from the communication dated 11.8.2005 issued by the Joint Registrar has never been made. The entire note-sheet or the documents available on the records as produced by the learned State Counsel do not reveal consideration by the Registrar while according permission for registration ,of the amended byelaws as to whether such amendment if allowed shall have an adverse effect upon any registered society in existence or the cooperative movement as a whole.

26. The note-sheet maintained in the aforesaid file bearing No. CR 7/2005 further reveals that after registration of the amendment, a complain has been received by the Office of the Registrar relating to the permission accorded for registration of the amended byelaws, on the basis of which the comments/ reports "from the Assistant Registrar of Cooperative Societies, Dhubri was called for on 1.12.2005, pursuant to which the Assistant Registrar of Cooperative Societies has submitted the report on 27.2.2006 suggesting deletion of the village Takirganj" from the area of operation of the society as amended by the amendment of the registered byelaws, which was though placed before the Joint Registrar of Cooperative Societies (Fishery), the file was never placed before the Registrar of Cooperative Societies by the Joint Registrar in that respect, as the Joint Registrar vide order dated 6.4.2006, after receipt of the said communication from the Assistant Registrar of Cooperative Societies dated 27.2.2006 directed the records to be filed.

27. It further appears from the records produced that the Deputy Commissioner, Dhubri, who may also be consulted by the Registrar under Rule 5 of the Rules, in the matter of registration of a Society, also submitted a report to the Office of

the Registrar of Cooperative Societies, Assam relating to the amendment of the byelaws of the respondent No. 5 society granted by the Registrar, pursuant to which the record was placed before the Registrar of Cooperative Societies by the Joint Registrar of Cooperative Societies vide note dated 3.11.2006 suggesting sending of the report to the Deputy Commissioner to the Assistant Registrar of Cooperative Societies, Dhubri for comment, which was though approved by the Registrar of Cooperative Societies on 6.11.2006 and though the draft pursuant to the same was approved by the joint Registrar on 21.12.2006, records as produced before this Court does not reveal either issuance of such communication asking the Assistant Registrar of Cooperative Societies to submit the report/comment or taking any action thereafter. It, therefore, transpires that the Office of the Registrar of the Cooperative Societies allowed the matter to set at rest at that stage.

28. From the aforesaid narration of the factual matrix, as revealed from the records, it is, therefore, evident that no proper enquiry, as required, was made so as to record the satisfaction by the Registrar of the Cooperative Societies about the fulfillment of the requirements of the law in the matter of amendment of the registered byelaws relating to the change of its objects. The Assistant Registrar of Cooperative Societies at Dhubri, whose office is about 300 km away from Guwahati submitted his report/comment immediately on the next date, i.e. on 12.8.2005, pursuant to the communication issued by the Office of the Registrar at Guwahati on 11.8.2005. The Registrar was kept in dark, while according permission for amendment of the registered byelaws, relating to the respondent No. 5 society having no member from the proposed extended area of operation of the society, which was sought to be included by way of amendment of the byelaws, as the comment of the Assistant Registrar of Cooperative Societies contained in the communication dated 12.8.2005 in that regard, was not brought to the notice of the Registrar of the Cooperative Societies, as revealed from the note of the Joint Registrar dated 29.8.2005 as quoted above. No enquiry also has been made or cause to made by the Registrar as to whether, if the amendment of the object of the respondent No. 5 society is allowed, shall adversely effect any existing registered society. The Joint Registrar of Cooperative Societies even directed the matter to be filed on 6.4.2006 when the Assistant Registrar of Cooperative Societies has brought to the notice of the Office of the Registrar that village "Fakirganj" is to be excluded from the area of operation of the respondent No. 5 society, which has been included by way of amendment of the byelaws in the area of operation thereby withholding such information from the Registrar of the Cooperative Societies. As noticed above, no further action has been taken by the Office of the Registrar relating to the report of the Deputy Commissioner dated 29.6.2006 though the Registrar on 6.11.2006, as proposed by the Joint Registrar of Cooperative Societies on 3.11.2006 directed to have the comments of the Assistant Registrar of Cooperative Societies on the report of the Deputy Commissioner. The cumulative effect of the materials available on record, as discussed above, leads to the

conclusion that no proper enquiry was made before according permission for registration of the amended byelaws and all the relevant facts were not placed before the Registrar while according such permission for registration of the amended byelaws of the respondent No. 5 society.

29. In view of the aforesaid discussion, the permission accorded by the Registrar of Cooperative Societies on 30.8.2005, as communicated by the impugned communication dated 2.9.2005 issued by the Joint Registrar of Cooperative Societies, cannot stand the scrutiny of law, and therefore, set aside. Keeping in view, the reasons for which the decision of the Registrar impugned in the writ petition has been interfered with, the decision of this Court cited by the learned senior counsel for the respondent No. 5 have not been discussed.

30. The Registrar of Cooperative Societies is directed to take up the application filed by the respondent No. 5 society praying for registration of proposed amendment of the registered byelaws for consideration afresh and to pass necessary order upon making necessary enquiry, which is required to be made under the law for recording its satisfaction under the provisions of the Act. The entire exercise shall be carried out within a period of two months from the date of receipt of the certified copy of the judgment and order.

31. The writ petition is accordingly allowed. No cost.