
(2008) 09 GAU CK 0036
In the Gauhati High Court
Case No : WA No. 174 of 2008

Debendra Nath Borah

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 30-09-2008

Acts Referred:

Assam Co-operative Societies Act, 1949 — Section 32(3)
Constitution of India, 1950 — Article 226

Citation : (2009) 2 GLR 459 : (2009) 1 GLT 523

Hon'ble Judges : Jasti Chelameswar, C.J.;Hrishikesh Roy, J

Bench : Division Bench

Advocate : M.G. Singh, P. Goswami and U. Bhattachariya, for the Appellant;
K.N. Choudhury, S.S. Dey and S. Katakey, for the Respondent

Final Decision : Allowed

Judgement

Hrishikesh Roy, J.—The Writ Petitioner/Appellant is a shareholder or the Respondent No. 3 Bank and is aggrieved by the alleged irregularities in the Eastern Zone shareholders" meeting held at Jorhat on 29.4.2008.

2. The writ Petitioner/Appellant had challenged the proceedings of the Jorhat meeting and contended that because of the irregularities committed, the nomination of the Eastern Zone Members, who were to eventually participate in the Annual General Meeting ("the AGM") of the Respondent No. 3, Assam Co-operative Apex Bank Ltd. ("the Apex Bank") have not been appropriately decided and accordingly sought postponement of the already schedule AGM of the Apex Bank.

2.1. The Registrar of Co-operative Societies, Assam ("the ROC") rejected the prayer for extension of time for holding of the AGM of the Apex Bank by exercising power u/s 32(3) of the Assam Co-operative Societies Act, 1949 ("the Act") and also rejected the appeal for review u/s 80(2) of the Act by his order dated 12.6.2008. Accordingly the Writ Petition (C) No. 2499/2008 came to be filed by the present Appellant as the writ Petitioner to challenge the said two

decisions of the ROC whereby in substance, the request for postponement of the AGM of the Bank was refused.

3. The learned Single Judge by the impugned order dated 17.6.2008 while admitting the writ petition filed by the Appellant declined to grant any interim prayer to stay the AGM of the Apex Bank which was scheduled on 19.6.2008. This led to filing of this Writ Appeal to challenge the learned Single Judge's order dated 17.6.2008.

4. The Division Bench while entertaining the Writ Appeal against the learned Single Judge's order dated 17.6.2008, permitted the respondent to proceed with the scheduled election and the AGM and at the same time directed the ROC to proceed with the enquiry which was being conducted into the alleged anomalies in the Eastern Zonal Meeting held on 29.4.2008.

5. We have heard Mr. M.G. Singh, learned Counsel appearing for the Appellant/writ Petitioner and Mr. K.N. Choudhury, learned Addl. Advocate General, Assam and also Mr. S.S. Dey, learned Counsel representing the Respondents.

6. It may be appropriate to note that under the Apex Bank, there are two categories of members - (1) individual shareholders and (2) affiliated co-operative societies. The individual members of the Bank numbering approximately 65,000 shareholders are divided into 6 different zones including the Eastern Zone and the Guwahati Zone respectively. Each of these general shareholders indirectly participate in the AGM of the Apex Bank, by nominating specified numbers of representatives from each of the 6 Zones, to represent the general shareholders.

6.1. For participating in the AGM of the Apex Bank, the affiliated societies, however, does not go through any electoral process at the Zonal level and are entitled to directly participate and vote in the AGM.

7. It is not in dispute that the shareholders of the eastern Zone by virtue of their numerical strength are entitled to nominate 122 representatives who would form part of the Electoral College comprising of altogether 645 representatives of the Bank's 65,000 individual shareholders. Therefore, the Eastern Zone shareholders meeting at Jorhat on 29.4.2008 constituted to select 122 members.

7.1. The writ Petitioner/Appellant who participated in the meeting on 29.4.2008 alleged that the said meeting on 29.4.2008 at Jorhat is vitiated by various irregularities and illegalities.

For instance it is alleged that although the meeting was scheduled to be held at 11:30 A.M. and door of the Hall ought to have been closed at 11:30 A.M., in fact the meeting was not held at the scheduled time but was only held at 4 P.M. and door of the Hall was also not closed at 11:30 A.M. and kept open till 3:30 P.M.

It is also alleged that signatures of the shareholders in the attendance register was obtained up to 3:30 P.M.

The writ Petitioner also alleged that even educated shareholders were forced to put their thumb impression in the attendance register.

The biasness of the procedure is also sought to be demonstrated by indicating that disproportionately large number of representatives from two areas, namely, Gomariguri and Merapani were nominated although the Eastern Zone constitute a far larger area.

8. By citing the above alleged anomalies in the Jorhat Meeting, the writ Petitioner sought postponement of the scheduled AGM meeting of the Bank. It is claimed that the Board of Directors of the Apex Bank of which the writ Petitioner too is a member, also decided in a meeting held on 15.5.2008 to postpone the scheduled AGM of the Bank. An application accordingly was then made u/s 32 of the Act by the Managing Director of the Apex Bank to the ROC seeking his approval for holding the AGM on a postponed date.

8.1. But by the impugned order dated 30.5.2008 the ROC rejected the request made by the Managing Director for postponing the AGM to 28.6.2008.

8.2. An appeal/review was also preferred u/s 80(2) of the Act against the ROC's rejection order dated 30.5.2008. But by order dated 12.6.2008, which was also impugned in the writ proceeding, the ROC rejected the said review application filed by the Managing Director of the Bank.

9. It may be noted that a 3 Member Board Level Enquiry Committee was constituted to enquire into the alleged irregularities committed in conducting the zonal level meeting at Jorhat. This committee found some substance in the complaint made by the writ Petitioner on the irregularities committed in the Jorhat meeting. The administrative council of the Apex Bank by resolution adopted on 27.6.2008 accepted the findings of the enquiry committee and decided to declare that the selection of representatives from the Eastern Zone to the Electoral College in the meeting held at Jorhat on 29.4.2008 to be null and void. But as is already noticed, the ROC did not agree with the resolution dated 27.6.2008 and declined to postpone the scheduled AGM notwithstanding the contention of the writ Petitioner as well as the, decision of the Board of Directors of the Bank.

Accordingly, the AGM of the Apex Bank which was scheduled on 19.6.2008 was held with participation of the Electoral College members of the Eastern Zone selected in the Jorhat meeting on 29.4.2008.

10. Mr. M.G. Singh, Learned Counsel representing the writ Petitioner contends that because of the anomalies and the irregularities, which were noticed in the meeting held at Jorhat on 29.4.2008, the interest of the Eastern Zone shareholders of the Bank were not fairly represented in the AGM held on 19.6.2008 and accordingly, the decision of the ROC who had declined to postpone the AGM is liable to be judicially reviewed by this Court.

10.1. The learned Counsel also has referred to the Board Level Enquiry

Committee's report dated 6.6.2008 to contend that since the proceeding of the Eastern Zone meeting held at Jorhat on 29.4.2008 has been recommended to be declared void, the participation of the representatives nominated in the Jorhat meeting, in the voting in the Apex Bank's AGM on 19.6.2008 would also vitiate the result of the AGM of the Bank.

11. Mr. K.N. Choudhury, learned Addl. Advocate General representing the ROC and the other official Respondents submits that an enquiry at the instance of the ROC with regard to the alleged irregularities in the Jorhat meeting has also been conducted by the Zonal Joint Registrar of Co-operative Societies and the report of the said inquiry has been made available for perusal by the court.

11.1. By referring to the aforesaid inquiry finding, it is contended by Mr. Choudhury that the allegations made by the writ Petitioner were found to be unsubstantiated. Mr. Choudhury also refers to the contrary report of the Board Level Enquiry Committee and points out that the said finding also cannot be accepted in the present proceeding inasmuch as the said inquiry report has not been signed by all the members of the Enquiry Committee and only 2 or the 3 members of the Committee have signed the said report.

12. It is relevant to note that of the 122 members from the Eastern Zone, who were entitled to participate as representative of Eastern Zone shareholders in the 645 strong Electoral College, only 36 representatives from the Eastern Zone participated in the AGM held on 19.6.2008. The specific contention of the writ Petitioner is that the selection of Electoral College members in the Jorhat Meeting held on 29.4.2008 is vitiated by various irregularities which took place in the said meeting. It is also alleged that the writ Petitioner himself was unfairly not selected as one of the 122 representatives of the Eastern Zone for the main Electoral College.

13. It is seen from the information furnished by the ROC that 245 voters of the individual categories and 269 voters of the institutional categories (Co-operative Societies) participated in the AGM held on 19.6.2008 and also voted in the election to elect the members of the Board of Directors of the Apex Bank.

13.1. This Court by interim order dated 19.6.2008 permitted the Respondents to proceed with the election scheduled on the same date, i.e., on 19.6.2003, but placed a restriction on declaration of the results of the said election. We are now informed that elections were held as scheduled although formal declaration of result has not been made because of the interim order passed by this Court. But the votes polled in favour of individual contestants are now known and available.

14. It appears that for the 3 seats for the individual (General) category, the contest was amongst 4 candidates and the secured votes as under:

1. Sri R.D. Borkotoky (360 votes),
2. Sri B. Phookan (336 votes),

3. Sri D. Mahajan (260 votes) and

4. Sri A.S. Sarma, the 4th contestant secured the lowest 126 votes.

15. A charge showing the votes secured by the contestants is shown hereinbelow for ready reference:

Society (Registered Society 1288)

Total	Contested/Votes	Result	Post	polled	Victory	Category Margin Gaon
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Panchayat 4	1. Gautam Bora.	Uncontested.	Samabay Society	2. H.B. Sarma	3. Pankaj Borbora	4. Kartik Chandra Daw
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State Level Samabay 2 1. K. Kakati = 354 122 + Votes Society 2. M. Sarma = 266 122 + Votes 3. Abhijit Sarma = 73 Lost 4. Prabhat Bezbaruah Lost = 31

Wholesale Consumer 1 1. S. Kanango = 382 122 + Votes Co-operative Society 2. H. Bhuyan = 50 Processing Society 1 Elected uncontested. Uncontested Individual Individual (Tea) 1 Elected uncontested 122 + Votes Individual (General) 3 1. R.D. Borkotoky = 360 122 + Votes 2. B. Phookan = 336 122 + Votes 3. D. Mahojan = 260 122 + Votes 4. A.S. Sarma = 126 Lost

16. As regards the 3 positions in the individual (general) category, of all the 4 contestants in the fray, the difference between the 3rd position contestant Mr. D. Mahajan who secured 260 votes and won and Mr. A.S. Sarma who secured 126 votes and lost is 134 votes. It must be taken into account that only 36 of the 122 nominated representatives of the Eastern Zone participated and voted in the AGM on 19.6.2008.

Thus, even if it were to be assumed that these 36 representatives have been selected through a meeting which stands vitiated and assuming all 36 of them would have cast votes in favour of the candidate (A.S. Sarma) who lost, there would be no material difference in the result of the AGM, as the difference of votes between each of the 3 winners vis-a-vis the sole losing candidates is much more than 36 votes.

17. It is seen that under the provisions of the Act, it is for the ROC to take a decision on the postponement of a scheduled AGM and in the instant case the ROC by the impugned orders dated 30.5.2008 and 12.6.2008 have declined to grant the prayer of the Petitioner to extend the time for holding the AGM on the grounds and reasons mentioned in the said order. We find that the grounds and reasons mentioned are reasonable and germane to the decisions of the ROC taken under Sections 32 and 80 of the Act and require no interference by this Court.

18. We must also note that the writ Petitioner himself had participated in the meeting held at Jorhat on 29.4.2008 and in facie, his name was also proposed to

be one of the 122 representatives who would be eligible to participate and vote in the AGM of the Bank. But obviously the writ Petitioner did not have the members in the democratic process and was not nominated by the 518 shareholders of Eastern Zone who participated in the Jorhat meeting. Since the candidature of the writ Petitioner was not accepted by the majority, it may be natural for the writ Petitioner to allege irregularities in the said meeting.

18.1. One such alleged irregularities mentioned by the writ Petitioner is that in the meeting which was scheduled to start at 11:30 A.M., shareholders were allowed to enter uptill 3:30 P.M. The writ petition also claim that the Hall gate should have been closed at 11:30 A.M. was not closed till 3:30 P.M. But we find that even with the longer time permitted for entering the Hall, only 518 shareholders attended the meeting, whereas we are informed that in the Eastern Zone, there are about 22,000 shareholders who were eligible to participate in the meeting held at Jorhat on 29.4.2003. Considering the attendance of only 518 shareholders vis-a-vis approximately 22,000 shareholders of the Eastern Zone, it is apparent that only a small group of shareholders participated in the Zonal meeting constituted for election of representatives of the Electoral College and since the substantial allegation of the writ Petitioner pertains to keeping the Hall door open beyond 11:30 A.M. (scheduled time of closure) to 3:30 P.M., we do not find that an overwhelmingly large number of shareholders availed of late entry because of longer entry time as only 518 shareholders (from amongst the 22,000 Eastern Zone shareholders) attended the said meeting. This fact also indicates that there may not be any material deference to the eventual outcome of the meeting even if we are to assume that the meeting Hall door was kept open for longer time than was intended.

19. By a long catena of decisions starting from N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, it is settled law that there are no common law rights in any election process nor there is any constitutional right involved. On the other hand in the context of elections to various representative bodies like the Parliament, the Legislative Assemblies and the Panchayatraj institutions the constitutional scheme is that elections are not to be interfered with by the courts except in accordance with the procedure established by law and by the competent Tribunals created for the purpose of examining the legality of such elections.

20. In the instant case there does not appear to be any forum created under the law for examining the legality of an ejection such as the one in issue before us. At any rate no provision is brought to our notice to demonstrate that there is a forum created for adjudicating the disputes arising out of the elections such as the one in dispute. In such a case the grounds on which such elections are conducted by the State or its officers can only be the grounds which are available for scrutiny under the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India like absolute lack of jurisdiction on the part of the authority which conduct the election. At the same time the exercise of such

jurisdiction is equally limited. High Courts in exercise of the jurisdiction under Article 226 do not normally examine the issues which are based on disputed questions of fact. We have already noticed that the adjudication of the dispute in the present case certainly involves an examination of disputed questions of fact. The fact that the Legislature has not provided for a forum for adjudication of such disputes does not necessarily lead to the conclusion that this Court is bound to examine such issues.

21. Even otherwise, as we have already arrived at the conclusion on the basis of the materials placed before us, the alleged irregularity in the conduct of the zonal election of Jorhat even if believed to be true would not in any way alter the final result of the election in question to the Co-operative Apex Bank.

22. Under the scheme of the Representation of the People Act every irregularity in the conduct of the election does not automatically entitle the person questioning the legality of the election for a declaration of the voidness of the election. Barring an allegation of corrupt practice, if proved successfully which automatically leads to the consequence of annulment of the election under the scheme of the Representation of the People Act other irregularities in the conduct of the election even if established demand the person who is challenging the election to establish a further fact that by virtue of the irregularity in the conduct of the election the result of the election is materially altered. Though the said scheme of the Representative of the People Act would have no direct bearing on the elections other than the one conducted under the provisions of the Representation of the People Act we are of the opinion it is a sound policy that the same should be adopted while dealing with the questions of irregularities in the conduct of election to the respective bodies not governed by the Representation of the People Act.

23. The records made available to the court have been perused. We have also considered the submissions made by the learned Counsels representing the parties. We have already noted that even if all the 36 Eastern Zone representatives votes are taken into account in favour of the writ Petitioners, group who we assume to be on the losing side, there would no material alteration of the final outcome of the contest dates 19.6.2008, as margin of difference of the losing candidate at 4th position and the 3 winning candidates for the 3 seats are far higher than the 36 Eastern Zone votes.

24. In view of above discussion, we find that there is no justifiable basis to accept the present appeal and the writ petition and these are hereby dismissed. Consequently, the interim order is also recalled.

The respondent authorities are permitted to take all consequential action in pursuant to the AGM and the election held on 19.6.2008.