
(2017) 01 GAU CK 0030
In the Gauhati High Court
Case No : W.P(C) No. 3783 of 2016

Dhiren Das

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 04-01-2017

Acts Referred:

Assam Co-operative Societies Act, 2007 — Section 27
Constitution of India, 1950 — Article 226

Citation : (2017) 1 GauLT 573

Hon'ble Judges : A.M. Bujor Barua, J.

Bench : Single Bench

Advocate : Mr. B.D. Das, Advocate, for the Petitioners; Dr. B. Ahmed and Mr. J. Ahmed, Advocates, for the Respondents

Final Decision : Disposed Off

Judgement

A.M. Bujor Barua, J. (Oral)—Heard Shri B.D. Das, learned senior counsel appearing for the writ petitioner. Also heard Dr. B. Ahmed, learned standing counsel appearing for the cooperative department representing the respondent Nos. 1 to 4 and Shri J. Ahmed, learned counsel appearing for the respondent Nos. 5 and 6 as well as newly impleaded respondent Nos. 7 to 19.

2. Although, the respondent Nos. 7 to 19 have been subsequently impleaded, but as their interest and contention would be same as that of the respondent Nos. 5 and 6 and the respondent Nos. 5 and 6 having filed the required interlocutory application for vacating the interim order and the said respondent Nos. 7 to 19 being represented by the same counsel, namely, Shri J. Ahmed, this Court deems it appropriate that the newly impleaded respondent Nos. 7 to 19 need not file any further pleading in this writ petition and the matter be may proceeded without such pleading of the respondent Nos. 7 to 19. To the aforesaid proposition, learned counsel, Shri J. Ahmed does not object to it.

3. It is further submitted by Shri J. Ahmed for the respondent Nos. 5 to 19 that I.A.(C) No. 1121 /2016 be treated as the affidavit-in-opposition in the writ

petition and the affidavit-in-opposition filed by the writ petitioner against the interlocutory application be treated as the affidavit-in-reply to the writ petition.

4. In the present writ petition, the petitioners assail the impugned order dated 17.06.16 (Annexure-12) to the writ petition, whereby, the Annual General Meeting/Election dated 27.07.2013 electing the Board of Directors of the Chariduar Brahmaputra Am Khaloibeel Fishery Cooperative Society Ltd. (in short, society) was set aside. It is the case of the petitioners that they are the elected members of the Board of Directors of the said society, in question, and after their election, the petitioner No. 1, namely, Dhiren Das had been selected as Chairman of the said society by the elected members. It is stated that the society is comprises of 100% scheduled caste members belonging to the fisherman society. It is stated that earlier the executive committee of the society in its meeting held on 07.06.2013 had decided to hold the Annual General Meeting/Election of the society and accordingly, by its decision dated 07.06.2013 had fixed the schedule as follows :-

3.07.2013 - Publication of amended Voters List.

05.07.2013 - Date for Notice of Annual General Meeting

17.07.2013 - Date of filing nomination and its result

27.07.2013 - Date of A.GM./Election

5. It is stated that according to the aforesaid schedule, the general meeting of the society was held on 27.07.2013 in the presence of the Departmental Officials and the election of the present Board of Directors was duly held in the said meeting. In the election held on 27.07.2013, 13 members including the petitioners were elected. It is stated that out of the total votes, the petitioner No.3, namely, Shri Babul Das secured 638 nos. of votes, the petitioner No.2, namely, Shri Homai Das secured 494 nos. of votes, the petitioner No. 1 namely, Shri Dhiren Das secured 485 Nos. of votes, the petitioner No.5 namely, Shri Mohan Das secured 483 Nos. of votes, the petitioner No.4, Shri Jharu Das secured 448 Nos. of votes, the petitioner No. 6, Shri Betharam Das secured 449 Nos. of votes, the petitioner No.7 Shri Adhir Das secured 440 Nos. of votes, the petitioner No. 8 Naren Chandra Das secured 413 Nos. of votes, the petitioner No.9, Shri Krishna Das secured 393 Nos. of votes, the petitioner No. 10, Shri Ramen Chandra Das secured 392 Nos. of votes and the petitioner No. 11 Shri Jaydev Das secured 360 Nos. of votes.

6. As per the provision of the Assam Cooperative Society Act, 2007, (herein after referred to as the Act of 2007), the term of the elected members is for a period of 5 years. Accordingly, it is the case of the petitioners that the election having been held, the petitioners are entitled to continue for a period of 5 years from the date of their election i.e. 27.07.2013 which has been duly approved by the Assistant Registrar of Co-operative Society, Tezpur by the order dated 21.08.13.

7. During the term of the aforesaid elected Board of Director of the society, some

of the shareholders of the society had filed a representation dated 16.10.2015 before the Registrar of Co-operative Society, Assam. In the said representation, it had been alleged, inter-alia that although as per Section 27 of the Assam Co-operative Society Act, 2007, newly inducted shareholders cannot have the voting right before the completion of one year, but in the election held on 27.07.2013, 236 newly shareholders had taken part and had voted in the election. As such, it is the allegation of the complainant shareholders that the election held on 27.07.2013 is vitiated. It has been pointed out that prior to the aforesaid complaint, certain other complaints have also been filed by the different shareholders raising the issue that 236 number of newly inducted shareholders had also participated in the election process, although they had not completed the period of one year as required under Section 27 of the Co-operative Society Act, 2007. Based upon the earlier complain, the Senior Inspector/Auditor of Cooperative Society, Tezpur had conducted an enquiry and submitted a report dated 27.12.2013. As per the said report of the Senior Inspector dated 27.12.2013, 236 number of newly inducted members were enrolled as per the resolution No. 11 of the Annual General Meeting held on 05.07.2012 and all the members had completed one financial year as on 31.03.2013. Accordingly, the report of the Senior Inspector provides that the newly inducted 236 number of members of the society had completed the period of one year and, therefore, they satisfy the requirement of Section 27 of the Act of 2007.

8. After, the complaint dated 16.10.2015, another enquiry was made by the Zonal Joint Registrar of Co-operative Society, Tezpur Zone. As per the enquiry report of the Zonal Joint Registrar, which is annexed as Annexure - 11, page-58 of the writ petition, at paragraph 5 thereof, it has been recorded that there is allegation that in the last election, 236 number of newly shareholders who have not completed the term of one year had participated in the election. It had further been concluded in the enquiry report that the enquiring authority had found that 236 number of shareholders were admitted as shareholders of the society on 30.03.2013 and the election of the society was held on 27.07.2013. Accordingly, it was concluded that 236 number of shareholders have not completed one financial year so as to enable them to take part in the election. The Zonal Joint Registrar also refers to the Section of 27(I) of the Act of 2007 and quotes the 1st proviso to the said Section of 27(1). By referring the 1st proviso, the Zonal Joint Director understands that a person shall be to be a member for at least one full financial year before being eligible to vote in an election. Accordingly, the Zonal Joint Registrar concludes that as 236 numbers of shareholders having not completed one full financial year as shareholders, their participation in the election held on 27.07.13 renders the entire election to be vitiated.

9. Consequent upon the aforesaid enquiry report of the Zonal Joint Registrar, the impugned order dated 16.06.2016/17.06.2016 (read as 16.06.2016) had been passed by the Registrar of Co-operative Society.

10. From the impugned order dated 16.06.2016, it can be seen that while passing the said order, the Registrar had given a hearing to the complainant shareholders as well as to the elected chairman and secretary of the society. In paragraph-3 of the impugned order dated 16.06.2016, it had been recorded that the Zonal Joint Registrar of Co-operative Society, Tezpur had submitted his report vide letter No.ZCTE 1/2016/88 dated 29.01.2016 on the complaint petition and according to the report, the society had violated the provisions of Act of 2007 by conducting the Annual General Meeting/Election of the society by allowing the new members to participate in the election, which is stated to be in violation of Section 27(1) of the Assam Cooperative Societies, Act 2007. Accordingly, by the impugned order, the Annual General Meeting as well as Election held on 27.07.2013 was set aside and accordingly appointed Prasenjit Choudhury, Senior Inspector/Auditor of the Co-operative Society in the Office of the Assistant Registrar of the Cooperative Society, Tezpur to hold the Annual General Meeting election of the society within a period of 90 days.

11. Shri B.D. Das, learned senior counsel for the writ petitioner contends that the basis and the reasoning given in the aforesaid impugned order dated 16.06.2016 is incorrect and contrary to the provision of Section 27 of the Act of 2007. It is contended that the Registrar while passing the impugned order had failed to take note of the provision of Section 27(1) of the Act of 2007. Learned senior counsel by referring the provision points out that the 2nd proviso to Section 27(1) provides that the condition of one year membership shall not apply to the members who joined at registration or at any time after registration of a Co-operative society but before the first day of the next Co-operative year.

12. By referring the said 2nd proviso to Section 27(1), the learned senior counsel points out that in the enquiry report of the Zonal Joint Registrar, there is a categorical finding that the 236 number of new shareholders were admitted as shareholders of the society on 30.03.2013. It being so, and the 236 number of new shareholders having been admitted on 30.03.2013, the said shareholders were admitted as shareholders before the first day of the next cooperative year. The election to the cooperative society having been held on 27.07.2013 i.e. during the currency of the next cooperative year, and the 236 number of new shareholders having been admitted on 30.03.2013 i.e. before the first day of the next cooperative year, are eligible to vote in the election.

13. Shri J. Ahmed, learned counsel for the respondent Nos. 5 to 19 on the other and submits that the newly inducted shareholders were inducted by the society on 30.03.2013, but their induction had not been registered by the Registrar in the office of the Registrar of Co-operative Society. Learned counsel again by referring to the 2nd proviso of Section 27(1) contends that the provision for induction before the first day of the next cooperative society has to be read in the context of the date when the newly inducted shareholders were actually registered in the office of the Registrar of Co-operative society.

14. Dr. B. Ahmed, learned standing counsel, Co-operative Society, on the other

hand, submits that in the instant case, 236 number of newly inducted shareholders having been admitted to the society on 30.03.2013, the requirement of the provision of 2nd proviso of Section 27(1), inasmuch as the said newly inducted shareholders were admitted to the society before the first day of the next cooperative year would have to be satisfied. Dr. Ahmed also submits that under the Act of 2007, newly inducted members have to be complete one full financial year as shareholders before being eligible for taking part in the election. In other words, learned counsel submits that they have to be the shareholder for a period of at least 365 days in order to be eligible to participate in the election.

15. Having regard to the submission of the parties, the issue before this Court is as to whether the newly inducted shareholders would require to be a shareholder for at least 365 days in order to be eligible to participate in an election or such shareholders would be eligible to participate in an election if they were inducted as shareholders before the first day of the next cooperative year when the election is held.

16. On a plain reading of Section 27 of the Act of 2007, it can be seen that section 27(1) of the Act provides that each member/shareholder of a society shall have equal voting right meaning thereby that each member would have one vote.

17. The first proviso to Section 27(1) inter-alia provides that a person shall have to be a member for at least one financial year before seeking election. On a plain reading of the 1st proviso, the submission of Shri J. Ahmed, that the newly inducted shareholders would have to complete at least 365 days as shareholders in order to be eligible to participate in the election may be worth a consideration.

18. But on a further reading of the 2nd proviso, it can be seen that the condition of one year membership shall not apply to the members who had joined at the registration or at any time after the registration of the cooperative society on any day prior to the next cooperative year. It is noticed that the 2nd proviso begins with the expression "provided further". The expression "provided further" by itself gives the indication that irrespective of what has provided in the 1st proviso, in the event of any conflict, the 2nd proviso would have a preceding effect over the 1st proviso.

19. In such view of the principles of interpretation, in the present case, the eligibility of the newly inducted 236 number of shareholders would be guided by the provisions of 2nd of proviso of section 27(1) of the Act of 2007. On a plain reading of 2nd proviso of section 27(1), it can be seen that the requirement of one year membership of a newly inducted shareholder would not be applicable to such members who joined at registration or at any time after registration of cooperative society but before the first day of the next cooperative year.

20. The provision of the 2nd proviso makes it amply clear that if a newly inducted shareholder is admitted to the cooperative society before the first day of

the next cooperative year, and the election is held during the currency of the next cooperative year, such shareholder would be eligible to participate in the election. It is so because the 2nd proviso makes it explicitly clear that the requirement of the one year membership as provided in the 1st proviso would not be applicable to such members who are inducted before first day of the next cooperative year.

21. In the context of the aforesaid provision of law, more particularly, the 2nd proviso of Section 27(1), the facts of the present case when looked into would reveal that 236 number of shareholders were admitted on 30.03.2013 and the election to the cooperative society was held in the next cooperative year i.e. 27.07.2013. In view of the said factual situation, the provision of the 2nd proviso of Section 27(1) would clearly be applicable in the facts of the case and accordingly 236 number of newly inducted shareholders who were admitted to the society on 30.3.13 would be eligible to vote in the election that had been held in the next cooperative year i.e. on 27.07.2013.

22. In view of the aforesaid finding, the impugned order of the Registrar of Cooperative society stands vitiated. In the impugned order, the Registrar of Cooperative Society merely relies upon the report of the Zonal Joint Registrar and by relying upon the 1st proviso to Section 27(1) holds that the newly elected shareholders had not completed one full financial year as shareholders and therefore, they are not entitled to participate in the election. In such view of the matter, the reasoning and the basis of arriving at the impugned decision dated 16.06.2016 by the Registrar of Cooperative Society is not sustainable. Accordingly, the impugned order of cancellation of the election held on 27.7.2013 passed by the Registrar of Cooperative Society by the impugned order dated 16.6.2016 is set aside.

23. It is needless to say that consequent thereof, the earlier Board of Director which was duly constituted as per the election held on 27.07.2013 and duly approved by the Registrar of Cooperative Society would continue to function as the Board of Director of Society in question.

With the above observation, writ petition is disposed of.