
(2010) 12 GAU CK 0032

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3228 & 5853 of 2010

Fayzul Hoque Mazumdar

APPELLANT

Vs

State of Assam & Ors.

RESPONDENT

Date of Decision : 20-12-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (2012) 3 GLT 535

Hon'ble Judges : I.A.Ansari, J

Bench : Single Bench

Advocate : Advocates appeared for the Petitioner: Mr. A.M. Barbhuiya, Mr. JUNM Laskar , Mr. J. Islam??Advocates appeared for the Respondents: Mr. G Soren, GA& Dr. B. Ahmed, Advocates appearing for Parties

Judgement

I.A. Ansari, J.—Heard Mr. A.M. Barbhuiya, learned counsel for the petitioner, and Mr. G Soren, learned Government Advocate appearing on behalf of the State respondents. Heard also Dr. B. Ahmed, learned counsel for the respondent No.6.

2. The petitioner, as a member of Rajyashapur Cooperative Society Ltd., Hailakandi, which is registered under the Assam Cooperative Societies Registration Act, 1449, filed his nomination paper for being elected as Chairman of the said society. The petitioner's nomination papers were accordingly accepted, on 11.11.2009, by the Returning Officer, who was to conduct the elections of the Managing Committee of the said society. However, after acceptance of the nomination papers of the petitioner, a complaint was made by the respondent No. 6 herein, who too is a member of the said Society and who too was a candidate for the office of the Chairman of the said Society, alleging, inter alia, that the petitioner herein was not qualified to be a member of the said Society, because of the embargo placed on his becoming a member of the said Society by Byelaws No. 6(1) and that the Byelaw No. 22(1)(v) of the said Society disqualified him from seeking election to any office of the said Society including the office of the Chairman. Accepting the complaint made by the respondent No.

6, respondent No. 4 passed an order, on 13.11.2009, cancelling the petitioner's nomination for the office of the Chairman of the said Society.

3. Aggrieved by the order, dated 13.11.2009, the petitioner challenged the same by way of a writ petition made under Article 226 of the Constitution of India, which gave rise to WP(C) No. 4975/2009 (hereinafter referred to as the "first" writ petition"), wherein he contended that though the Returning Officer had accepted his nomination paper, on 11.11.2009, for his election to the office of the Chairman of the said Society, respondent No. 4, vide order, dated 13.11.2009, declared the nomination submitted by the petitioner as invalid on the basis of the complaint filed by the respondent No. 6, though the complaint had no legal substance, the complaint ought not to have been accepted and his (petitioner's) nomination ought to have been sustained.

4. By order, dated 18.11.2009, passed in WP(C) No. 4975 of 2009 (i.e., the "first" writ petition"), the Court allowed the elections to the various offices of the Managing Committee of the said society to be held except to the office of the Chairman thereof. By a subsequent order, dated 01.04.2010, however, the Court held that as against the order, dated 13.11.2009, passed by the Assistant Registrar of Cooperative Societies, Hailakandi, there is provision for appeal under Section 80 of the Assam Cooperative Societies Act, 1949, and, hence, the statutory remedy of appeal ought to have been availed by the petitioner. With the reasoning, so assigned, the "first" writ petition was disposed of providing therein that the petitioner shall be at liberty to file an appeal against the impugned order, dated 13.11.2009, before respondent No. 2, namely, Registrar of Cooperative Societies, Assam, with further direction to the Registrar, Cooperative Societies, to consider and dispose of the appeal, in accordance with law, should the present petitioner files an appeal. The relevant observations made by the Court and the directions given by it in its order, dated 01.04.2010, read as under:

"The grievance of the petitioner is that after the list of candidates for the office of the Chairmanship was published, a complaint was lodged by the respondent No. 6 making several allegations, viz., double membership of A class member in one holding and the father of the petitioner being an agent/4 dealer" of the society was within the expression of "interested in the transaction of the society" etc. and thereafter the Asstt. Registrar of Cooperative Societies, Hailakandi, passed the impugned order dated 13.11.2009 (Annexure 7 to the writ petition) cancelling the nomination of the petitioner for the office of the Chairmanship of Rajyeswarpur Somabai Samittee. Affidavits were filed by the respondents as well as reply affidavit by the petitioner. In the writ petition, the petitioner has also raised the question of jurisdictional incompetency of the Asstt. Registrar to issue the impugned order dated 13.11.2009, interpretation of the provision of byelaws under Section 22 (1)(v) of the Gaon Panchayat Samabai Samittee (for short G.P.S.S. Ltd) and also the byelaws under Sections 22 (1) vi and 22 (1) vii and other related provisions."

5. The petitioner, accordingly, preferred an appeal to the Registrar, Cooperative Society against the order, dated 13.11.2009, aforementioned, passed by the respondent No. 4, whereby acceptance of the petitioner's nomination had been cancelled. In appeal, the contention of the petitioner, as indicated in the impugned order, dated 13.11.200, aforementioned, was as under:

"1. That he was a candidate for the post of Chairman of the society and that the Returning Officer accepted his nomination as valid.

2. But the Asstt. Registrar of Cooperative Societies, Hailakandi, while entertaining some complaints, cancelled his nomination, whereas the Asstt. Registrar of Cooperative Societies is not delegated with the power under Section 80 of the Act.

3. The provisions of Clause 22(1)(v) of the Byelaws does not attract his case as he has not been residing with his father and, hence, he should not be denied "A" class membership."

6. By order, dated 26.05.2010, the Registrar dismissed the appeal. While dismissing the appeal, the Registrar noted that the Assistant Registrar had, while cancelling the nomination of the present petitioner, assigned the following reasons:

"1. That Sri Fayzul Haque Mazumder and his father reside in the same house hold with same holding No. for both of them and, hence, there can not be two "A" Class members from a same family.

2. The father of Sri Mazumder is a "dealer" of the society and, hence, provision of Clause 22(1)(v) is attracted in this regard."

7. Having taken note of the above reasons, which had been assigned by respondent No. 4, namely, Assistant Registrar, Cooperative Societies, Hailakandi, the Registrar's findings, as recorded in its order, dated 26.05.2010, read as under:

"Findings: It has been found that the Asstt. Registrar of Cooperative Societies, of a subdivision is authorized to entertain complaints against the decision of the Returning Officer as communicated vide this office circular No. GPSS 6/86/37 dtd 5.7.96 and in the instant case the Asstt. Registrar of Cooperative Societies, Hailakandi rightly entertained the matter and disposed of the matter after giving both the parties reasonable opportunity to represent their cases and I do not find anything wrong in his findings & the action taken by the Asstt. Registrar of Cooperative Societies.

In the light of the above, I, Shri S.K. Nath, IAS Registrar of Cooperative Societies, Assam, is of the opinion that the Asstt. Registrar of Cooperative Societies, Hailakandi, has cancelled the nomination of Sri Fayzul Haque Mazumder after examining all relevant facts & circumstance and there is no scope for the undersigned to intervene in the matter."

8. Consequent upon the dismissal of the appeal, yet another order was made, on 26.05.2010, by the Registrar to hold the Annual General Meeting of the said Society and also election to the office of the Chairman of the said Society within a period of 30 days.

9. Thereafter, by filing a writ petition, under Article 226 of the Constitution of India, the petitioner put to challenge not only the order, dated 13.11.2009, whereby the Assistant Registrar had cancelled his nomination for the office of the Chairman of the said Society, but also the order, 26.05.2010, whereby the Registrar had dismissed the appeal and directed, as a sequel thereto, that the election to the office of the Chairman of the said Society be held within the period as indicated above. The said writ petition gave rise to WP(C) No. 3228 of 2010, which is hereinafter referred to as the "second" writ petition".

10. It may, now, be noted that the Court passed, on 25.06.2010, an order, in the "second" writ petition, allowing the election for the office of the Chairman of the said Society to be held, on 26.06.2010, as was already scheduled to be held, but the Court made it clear that if the elections were held, the result thereof would remain subject to the further order(s) to be passed in the writ petition.

11. It may also be noted that, in the election, which was scheduled to be held on 26.06.2010, the present petitioner could not have contested the election inasmuch as his nomination already stood cancelled. As scheduled, the election to the office of the Chairman was held on 26.06.2010, whereupon the present petitioner sought for, in the "second" writ petition (i.e., WP(C)No. 3228 of 2010), a direction suspending the impugned order, dated 13.11.2009, whereby respondent No. 4 had cancelled petitioner's nomination as well as the order, dated 26.05.2010, whereby the respondent No. 2 had dismissed the petitioner's appeal. By its order, dated 17.08.2010, passed in the "second" writ petition, the Court declined to pass any order suspending the said two impugned orders, dated 13.11.2009 and 26.05.2010. In its order, dated 17.08.2010, the Court also made it clear that since the election to the office of the Chairman of the said Society had already been held on 26.05.2010, where respondent No. 6 herein stood elected, and the proceedings thereof had already been approved by the respondent No. 4 on 29.06.2010, there was no purpose in suspending the said two orders, namely, the order, dated 13.11.2009, and the order, dated 26.05.2010.

12. As the proceedings of the election, held on 26.05.2010, had already been approved, on 29.06.2010, the petitioner filed yet another writ petition, under Article 226 of the Constitution of India, which gave rise to WP(C) No. 5853 of 2010 (hereinafter referred to as "the "third" writ petition"), whereby the petitioner has challenged the result of the election held for the office of the Chairman of the said Society on 26.05.2009 and the approval thereof by the respondent No. 3 on 29.06.2010.

13. As already indicated above, the petitioner's nomination was cancelled on two

counts, namely, that he was not qualified to be a member of the Managing Committee under ByeLaw 22(1) and that he was not even eligible to become a Class" A individual member of the Society, because of the embargo placed by Byelaw 6(1). The relevation provisions of the Byelaws 22(1) and 6(1) are, therefore, reproduced hereinbelow:

"22(1) No person shall be eligible for election or continuance as a member of the Managing Committee, if he,

(i).....

(ii).....

(iii).....

(iv).....

(v) is interested directly or indirectly in any contract made with the society or in any sale or purchase made by the society, privately or in any auction or in any contract or transaction of the society (other than investment and borrowings) involving financial interest.

6(1) Any person not below eighteen years of age, who is competent to contract and is residing within the area of operations of the society referred to in Bye law No. 1, shall be eligible for admission as an individual member. Provided that no person whose Principal source of livelihood is any trade or business undertaken by the Society or moneylending shall be eligible to be an "A" class individual member.

Provided also that not more than one member from a family shall be entitled for admission as an "A" class individual member."

14. From a careful reading of Byelaw 22(1)(v), what becomes clear is that no person shall be eligible for election or continuance as a member of the Managing Committee if he is interested, directly or indirectly, in any contract made with the society or in any sale or purchase made by the society, privately or in any auction or in any contract or transaction of the society (other than investment and borrowings) involving financial interest. If, therefore, the fact that the petitioner's father is a "dealer" is an aspect, which has been rightly taken into account by the appropriate authority for determination if the petitioner can be treated as a person, who is, if not directly, indirectly interested in the contract, which his father has with the Society as a "dealer", the decision cannot be faulted at.

15 Coupled with the above, the second proviso to Byelaw 6(1) shows that not more than one member from a family shall be entitled for appointment as "A" Class individual member. If, therefore, the petitioner and his father constitute one family, the petitioner cannot be, and could not have been, admitted as "A" Class individual member of the said Society.

16. The chronology of the events, as depicted above, clearly indicate that the petitioner's nomination was accepted by the Returning Officer on 11.11. 2009. On a complaint made against the acceptance of nomination of the petitioner by the respondent No. 6 on the ground that the petitioner's nomination ought not to have been accepted by the Returning Officer, an order was passed, on 13.11.2009, by the Assistant Registrar, cancelling the nomination. The reasons, assigned for such cancellation, read as under:

"As per complain lodged by the complainant that the candidate Sri Fayzul Haque Mazumder is residing in the same holding No. 80 with his father Sri Ajob Uddin Mazumder who is an Agent of the Rajyswarpur S.S. Ltd which disqualifies Sri Faizul Haque Mazumdar from contesting the election for the post of Managing Committee of the Society vide Section 22(1)(v) of the Bye laws of the society.

Secondly, there cannot be 2 (two) A class members from the same holding/family as per Byelaws provision 6(1). It appears from the Electoral Roll 2008 of VillageRajyeswarourVII, RS. No. 64, L.A. 6, Hailakandi that Sri Fayzul Haque Mazumder, S/O Ajob Uddin Mazumder belongs to same holding No. 80 of the same voter list. Sri Fayzul Haque Mazumder the contesting candidate could not refute the complain brought against him."

17. Though the writ petitioner had challenged the order, dated 13.11.2009, by way of a writ petition, which had given rise to WP(C) No. 4975 of 2009, and which has been referred to as the "first" writ petition, the fact remains that the "first" writ petition was disposed of by providing that the petitioner may prefer a statutory appeal against the order cancelling the nomination. The petitioner, accordingly, preferred an appeal, which was dismissed by order, dated 26.05.2010. Following the order, dated 26.05.2010, the election was held for the office of the Chairman of the said Society on 26.06.2009 and the same has received approval of the Assistant Registrar on 29.06.2009. If, therefore, the orders, dated 13.11.2009 and 26.05.2010, are upheld by this Court, the result of the election, held on 26.06.2009, and approval thereof cannot be interfered with inasmuch as the petitioner's grievance is that the cancellation of his nomination was illegal.

18. On reverting to the reasons assigned for cancelling the petitioner's nomination, what can be clearly noticed is that one of the grounds for cancellation of the petitioner's nomination was that the petitioner and his father resided in the same house with the same holding number and, hence, under the Byelaw of the Society, two persons from the same family cannot be "A" Class members and when the petitioner's father was already a Class "A" member, the petitioner was not qualified to be a Class "A" member of the said Society. In this regard, the petitioner contends that he does not reside with his father. In the face of the specific finding of fact, which the Assistant Registrar had reached, it becomes a disputed question of fact as to whether the petitioner does or does not really reside with his father. Such a disputed question of fact cannot be determined in a proceeding of present nature inasmuch as it would require

holding of roving inquiry and that would necessitate taking of evidence.

19. More importantly, the petitioner's father is, admittedly, a "dealer" of the said Society and under the Byelaw 22(1), a person will not be qualified to be a member of the Managing Committee "if he is interested directly or indirectly in any contract made with the society or in any sale or purchase made by the society, privately or in any auction or in any contract or transaction of the society (other than investment and borrowings) involving financial interest". When the petitioner's father is a "dealer", he obviously has a contract, as "dealer", with the said society. In such circumstances, the petitioner's father's transactions, with the said society, would involve financial interests.

20. In the face of the above unavoidably noticeable facts, it cannot be said that the petitioner is a person, who has no direct or indirect interest in any transactions of the said society, which involves financial interest. It is not the petitioner's case that he and his father are enmity to each other. In such circumstances, the petitioner, if I may reiterate, cannot be said to have no direct or indirect interest in seeing that his father prospers. At the same time, as an ideal Chairman if the petitioner wishes to be an ideal Chairman he would be required to advance the interest of the said society. There would be, thus, ex facie clash of interest.

21. Clearly, therefore, when an administrative authority, such as, respondent No. 4, has taken a decision by taking into account all relevant facts and by eschewing from his consideration any such fact, which was irrelevant, such a decision cannot be interfered with by invoking the extraordinary jurisdiction of the High Court under Article 226. Even if there were two views possible and the State respondents have taken one of the views, the same cannot be interfered with by this Court unless this Court reaches a clear conclusion that the view taken by the administrator is wholly irrational or mala fide. Far from this, in the facts and circumstances of the present case, the petitioner cannot be described as a person, who would have no direct or indirect interest in the affairs of the said society, which would involve transactions having financial interest. At any rate, the order passed, on 13.11.2009, by the Assistant Registrar, cannot be said to be an order without any basis or foundation nor can the said order be described as an order, which is irrational, mala fide or devoid of legal foundation.

22. Situated thus, when the order, dated 13.11.2009, is found by this Court as not fit for being interfered with, the question of interfering with the subsequent order, namely, the order, dated 26.05.2010, does not arise. When the order, dated 13.11.2009, and the order, dated 26.05.2010, are found not fit to be interfered with, the question of interfering with the result of the election, which was held on 26.06.2010 and approval thereof accorded on 29.06.2010, cannot be interfered with either.

23. In the result and for the foregoing reasons, both these writ petitions fail, the same are not admitted and shall, accordingly, stand dismissed.

24. No order as to costs.