

(2001) 09 GAU CK 0037

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4863 of 2001

J.C.Bharali

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 04-09-2001

Acts Referred:

Assam Co-operative Societies (Amendment) Rules, 1992 — Rule 27, 27
Assam Co-operative Societies Act, 1949 — Section 32(4), 32(4), 32(5), 32(5)

Citation : (2002) 1 GLT 212

Hon'ble Judges : P.G.Agarwal, J

Bench : Single Bench

Advocate : H.K.Sharma, B.D.Goswami, B.D.Das, A.Deb, Advocates appearing for Parties

Judgement

P.G. Agarwal, J.—Heard Mr B.D. Das, learned counsel for the petitioner and Sri B.D. Goswami, learned counsel for the respondent No. 4 and B. J. Talukdar, learned counsel for the respondent Nos. 1, 2 and 3.

2. Luhit Erasuti Mach Mahal Samabay Samity Ltd. herein after referred as Samabay is a registered Cooperative Society under the Assam CoOp. Societies Act, 1949 for short "Act". An election was held on 26.5.2000 wherein, the Managing Committee was elected with the petitioner Jogen Chandra Bharali as president of the said Samabay. Although, term of the Management Committee is for 3 (three) years, as required under the Rules, the annual general meeting of the Samabay was held on 30.5.2001. However, the proceeding of the said Annual General Meetings were disapproved by the Zonal Joint Registrar of the Coop. Societies on the ground that the AGM (Annual General Meeting) was held not in conformity with the Rules and Byelaws. Thereafter, Sri Jogen Mahanta, Senior Inspector of Coop. Societies of Majuli was appointed as Officer in Charge to manage the affairs of the Samabay. The said Mahanta issued notice, (Annexure 5) informing that the Annual General Meeting of the Samabai will be held on 13.7.2001. However, before the scheduled date of election, the Zonal Joint

Registrar of Coop. Societies vide impugned order dated 6th of July, 2001, (Annexure6) constituted an adhoc committee under the Chairmanship of Sri Bhimeswar Medhi, as respondent No. 4.

3. The case of the petitioner is that the term of the duly elected Management Committee under the Presidentship of the petitioner was for 3 (three) years. Amendment of Rule 27 of the Assam Cooperative Societies (Amendment) Rules, 1992 reads as follows:

"Rule 27. Election and Recruitment of Directors in a Cooperative Society:

The Directors or members of the Board of Directors or any managing body, as the case may be of a Cooperative Society shall retire on the expiry of a term of three years from the date of its first meeting, but shall be eligible for reelection:

Provided that at the commencement of this rule the existing elected members of the Administrative Council, Managing Body or Board of Directors, as the case may be, shall also hold office for three years effective from the date of its first meeting".

4. There is no dispute at the bar that the tenure of the Managing Committee of the Cooperative Societies is for three years and the Management Committee under the petitioner was elected on 26.5.2000 and the term to be expired in the month of May, 2003. Under Section 32 of the Act, annual general meeting of the General Assembly of the registered Society is to be held at least once in every Cooperative year which is from 1st July to 30th June and accordingly, the annual general meeting was held on 30.5.2001, but as the proceeding of the said meeting was not approved, respondent No. 3 appointed Sri Jogen Mahanta to manage the affairs of the Samabai and to hold annual general meeting as per notification No. GPSS 28/ 87/83 dated 24th June, 1998. The annual general meeting to be held every year for the purpose of transacting of other business of the Samabai, but the election of the office bearers may not be held in every such meeting.

5. Annexure5 is the notice issued by the said Jogen Mahanta, Executive Officer to hold AGM of the Satnabai on 13th of July, 2001. The petitioner has got no grievance against that. However, before the scheduled date, respondent No. 3 issued Annexure6 constituted an adhoc committee to hold annual general meeting of the Samabai within a period of 90 days. The learned Government Advocate could not give any single satisfactory explanation for issuance of Annexure6 the respondent No. 3 whereas, the Executive Officer, vide Annexure5 issued notice to convene meeting, which was scheduled to be held after few days or 7 (seven) days, then what is the need for constituting an adhoc committee for the same purpose i.e. to hold annual general meeting. The action of the respondent No. 3 is apparently arbitrary and illegal.

6. The learned counsel for the petitioner further submits that once an officer has been appointed under SubClause (5) there is no provision for appointing an

adhoc committee. Subclause 5 of Section 32 reads as follows:

"When the Administrative Council and/or Managing Body are dissolved under SubSec. (4) the Registrar may appoint an officer or officers or any adhoc body to manage the affairs of the Administrative Council and Managing Body till the new Body is elected or formed."

7. The learned counsel for the petitioner places reliance on the decision of this Court in Civil Rule No. 791/96 passed on 18.3.96 wherein such an action to appoint officers and adhoc committee was found unsustainable. In view of the above, the appointment of the adhoc committee, vide Annexure6, dated 6th of July, 2001 is hereby set aside and the officers appointed vide Annexure4 by the Zonal Joint Registrar of Coop. Societies is directed to hold annual general meeting of the Samabai within 45 days from the date of receipt of this order. AGM shall be convened and held as per the Rules and byelaws of the Societies.

8. At this stage, Mr Goswami, learned counsel has submitted that the respondent No. 4 has got no objection about the continuation of the Executive Officer, Sri Jogen Mahanta of the Samabai, so that new Managing Committee may be appointed. Mr Das on the other hand submits that in view of the provision (amended provision) of law, there is no scope for holding of election of Office bearers as the committee constituted for annual general meeting held on 26.5.2001 is still continue. The Executive Officer has been appointed to hold the AGM only to transport the other business as required under the law.

9. Subclause4 of Section 32 of the Act reads as follows:

"If any Society fails to hold the meeting within the period of 60 days mentioned in subS(2) or when an application is made for extension under the proviso to subS(2) within the period so extended or when no extension is granted, before the expiry of 20 days from the date on which the order rejecting the application for extension is communicated, the Administrative Council and/or the Managing Body of the society shall stand dissolved from the date of expiry of the aforesaid period."

10. Mr Das has submitted that in this case, the Managing Committee did not fail to hold annual general meeting within the required period, as a matter of fact, annual general meeting was held within the stipulated period. I find no force in the above because the competent authority disapproved the proceeding, which amounts that there was no proper annual general meeting in the eye of law. In this connection, guidelines Nos. 1 & 2 of 1998 Govt. notification dated 24th June, 1998 may be considered. Guidelines Nos. 1 and 2 are as follows:

"1. As per amended provision of Rules 27, the elected managing body shall hold the office for a period of 3 years from the year of its election. It has also been clarified in the 2nd para of the Rule 27 that the counting of 3 years term in cases of existing elected managing bodies shall be counted from the year in which the managing body had been elected. Moreover, there is no necessity on the part of

the members of the Managing Body to obtain prior permission of the Registrar of the Coop. Societies to seek reelection after their completion of 4 years in office in succession.

2. Though election of Managing Body of Cooperative Societies shall be held once in every 3 years but it is mandatory on the part of the management to convene the annual general meeting in every year for the purpose of transacting of mandatory agenda as mentioned under Section 32(l)(b) to (g) of the Act.

It may also be noted that provision of Section 32(4) shall be attracted for failure of the managing body to hold the AGM within the specified date of every year even though election of office bearers may not be held in every such meeting".

11. The learned counsel for the petitioner submits that earlier tenure of the Managing Committee is for one year and as such provision of subclause 4 of Section 32 were relevant, but in view of the amended provision, enhancing the term of the Managing Committee for 3 years. Subclause (4) has got no application and in case of failure to hold the AGM, the concerned authorities, may hold AGM only by an Officer of Samabay or through another adhoc body and in such AGM, other matters shall be considered, but the election of the office bearers is not necessary to be held. In view of the guidelines quoted above, more particularly, in para 2 of guideline No. 2, it is crystal clear that the provision of Section 32(4) shall be attracted for failure of the Managing Committee to hold the AGM within the specified/stipulated period as stated above, when the proceedings are disapproved by the competent authority, it amounts that there was no annual general meeting in accordance with law.

12. Mr Das further submitted that vide impugned order dated 15.6.2001, the Managing Committee under the petitioner was not dissolved. Although, in words "dissolution" has not been specifically mentioned. It has been stated that due to disapproval of the proceeding of the AGM, there was vacuum of the Managing Committee. There would not have been vacuum, unless the Managing Committee is nori existence. As quoted above, the provision under subclause 4 of Section 32 is to be applied in the present case and the powers u/s 32(5) can be exercised only when the act u/s 32(4) has been taken.

13. It is, therefore provided that in the annual general meeting to be convened by the Executive Officer, Majuli, Jorhat, election of the office bearers of the Samabai for a period of 3 years shall be held.

14. With the above observation and direction, writ petition stands disposed of.