(1975) 05 GAU CK 0010

In the Gauhati High Court

Case No : Civil Rule No. 691 of 1972

Karuna Kanta Karikar APPELLANT

Vs

The State of Assam and others RESPONDENT

Date of Decision : 23-05-1975

Acts Referred:

Assam Co-operative Societies Act, 1949 — Section 23, 24, 25, 63(1), 80
Constitution of India, 1950 — Article 226

Citation : AIR 1976 Guw 33

Hon'ble Judges : M.C. Pathak, C.J;D. Pathak, J

Bench : Division Bench

Advocate : B.K. Das and A.B. Choudhury, for the Appellant; J.C. Medhi, Advocate General, Assam, P. Choudhury, A. Kalita, P.C. Kataki and M. Laskar, for the Respondent

Final Decision : Dismissed

Judgement

Pathak, C.J.—By this application under Article 226 of the Constitution of India the petitioner has challenged the vires of Rule 20(1) of the Assam Co-operative Societies Rules, 1953, hereinafter referred to as ''the Rules'', and also has prayed for quashing the orders dated 20-8-1970 and 29-5-1971 passed by the Assistant Registrar of Co-operative Societies and the order dated 4-7-1972 passed by the Joint Secretary, Government of Assam, Co-operative Societies Department, and also for a direction to Respondents 5 and 6 to admit the petitioner as a shareholder in the Assam Co-operative Silk House Ltd.

2. The facts of the case are as follows: Respondent No. 6, Assam Co-operative Silk House Ltd, is a co-operative Society constituted under the Assam Co-operative Societies Act, 1949, hereinafter referred to as ''the society''. One Kaliram Karikar was a member of the society holding ten shares valued at Rs. 100/- each during his lifetime and he was a share-holder of the society till his death. The society was registered in the year 1941 under the provisions of the Societies Act. It is stated in the petition by the petitioner that said Kaliram

Karikar during his lifetime nominated his two sons, namely, Karuna Kanta Karikar (the petitioner) and Govinda Karikar who predeceased his father. The petitioner is the only surviving son on the death of his father Kaliram Karikar. After his father''s death, the petitioner filed an application on 31-10-1968 to the society for transferring the shares of his father in his name. The Secretary of the society, Respondent No. 5, by letter dated 17-4-1969 informed the petitioner as follows:-

With reference to your letter dated 19-1-1969 regarding shares, I beg to state that if he becomes a member of the society, he should be connected in production and in other things.

We are not inclined to transfer the shares of the deceased. Therefore, it will be considered only after you apply afresh. Further, we are calling forth a report from the local Branch at Soalkuchi to examine as to how he is presently connected with the development of silk industries.

Against this decision communicated by the Respondent No. 5, the petitioner filed an application u/s 63(1) of the Societies Act to the Registrar of Co-operative Societies. The Assistant Registrar, Co-operative Societies, informed the petitioner that he was not entitled to the shares of his deceased father according to the bye law of the society and directed him to approach the Secretary of the Society, Respondent No. 5 for consideration of his case on merits. Thereafter the petitioner filed an application for review of the said order and that application was rejected. The petitioner then filed an appeal before the Minister of Co-Operative Societies under sub-section (3) of Section 80 of the Assam Co-operative Societies Act, 1949, hereinafter referred to as ''the Act''. With reference to his appeal, the petitioner was sent a copy of order No. Coop. 383/71/16 dated 4-7-1972, issued under the signature of the Joint Secretary to the Government of Assam, Co-operation Department by which the Secretary of the society was informed that since the Managing Committee did not want to admit the petitioner as a member, the society should pay the share money of late Kaliram Karikar to his rightful nominee without delay and the Secretary also should ascertain whether Karuna Kanta Karikar was the legal nominee or not before the payment was made. From Annexure ''X'' to the application filed on 14-5-1975, it appears that with reference to letter dated 4-7-1972 the Registrar was informed that share money of Rs. 250/- only was refinded to the rightful nominee of late Kaliram Karikar, that is, to Karuna Kanta Karikar, on 13-4-1969 as per Resolution No. 7 of the Managing Committee meeting held on 6-4-1969. The said sum was credited to the personal account of Karuna Kanta Karikar on 13-4-1969 and a copy of that letter, which was sent to the Registrar of Co-operative Societies, was also sent to the petitioner with a request to take the deposited amount with interest thereon at any moment or any day he liked. The present Rule has been obtained by the petitioner thereafter.

3. Mr. B.K. Das, the learned counsel for the petitioner, submits that since late Kaliram Karikar, who was a share-holder of the society, during his lifetime nominated his two sons, namely the petitioner and Govinda Karikar and since

Govinda Karikar had predeceased his father, the petitioner was the only nominee and therefore, under Sections 23 and 24 of the Act the petitioner has a right to be admitted as a member of the society and the Respondents 5 and 6 have a duty to admit the petitioner as a member in place of his father.

4. Sections 23 and 24 of the Act may be quoted.

23. Nomination of transferee. - If the bye-laws of a registered society so permit any member of the society may, in accordance therewith nominate a person or persons in whose favour the society shall dispose of the shares or interest of such member on his death.

24. Transfer of interest of dead member, - When a member of a registered society dies his shares and interest in the society shall, subject to the provisions of this Act, be transferred-

(a) to the person, if any nominated in accordance with the provision of Section 23. or

(b) if there be no such nominee or if the nominee is not available or is difficult to be ascertained by the managing body, or if for any other cause such transfer cannot be made without unreasonable delay or difficulty, to the person as may appear to the managing "body to be the heir or legal representative of the deceased-member; provided that ninety days have elapsed from the date of the member''s death. No new claim shall be entertained after the said period of ninety days.

5. u/s 23 of the Act, a member of a co-operative society may nominate a person or persons in whose favour the society shall dispose of the shares or interest of such member on his death provided the bye-laws of the registered society so permit and the nomination also shall be in accordance with the bye-laws.

6. So the first point that arises for consideration is whether there was any provision for nomination in the bye-laws of the society in question, as laid down in Section 23 of the Act. It is common case that the present case is covered by the bye-laws of the society accepted in 1941. We find that, and it is admitted by the learned Counsel of both the parties, there is no provision for nomination in the bye-laws of the society that were accepted at the time of constitution of the society. But subsequently new bye-laws have been accepted by the society, which have come into force with effect from 28-2-1970. Kaliram Karikar, a share holder of the society, died on 1-7-1968. Therefore, so long he was a member of the society, the society was governed by the earlier bye-laws wherein there was no provision for nomination. That being so the earlier bye-laws will govern the present case. We have not got the exact date of the nomination stated to have been made by Kaliram Karikar. Anyway, the nomination that was made by Kaliram Karikar must be prior to 1-7-1968. Hence when this nomination was made there was no provision in the bye-laws of the society for nomination and that being so, such nomination even if made will not come within the scope of

Sections 23 and 24 of the Act. Hence, the petitioner, who claims to be a nominee of his father, will not get any right whatsoever as a nominee as contemplated under Sections 23 and 24 of the Act. In the absence of any provision for nomination in the bye-laws at the relevant time, the provision of nomination of transferee as contemplated u/s 23 of the Act is not available and so the petitioner as a nominee is not entitled to have any right of transfer of the shares of the society as contemplated under Sections 23 and 24 of the Act. The transfer of shares to a legal heir other than a nominee as contemplated under clause (b) of Section 24 is also subject to other provisions of the Act. This point we shall discuss later.

7. Admittedly two persons were jointly nominated by the said nomination and one of them predeceased his father. In that circumstance, if one of the two joint nominees died and there was no fresh nomination whatsoever, it is doubtful whether the petitioner would be the sole nominee under the said nomination even if there were provisions in the bye-laws for nomination. Clause 7 of the bye-laws that govern the present case lays down the circumstances when a member ceases to be a member and one of the circumstances is that when a member dies he ceases to be a member. Clause 10 of the bye-laws provides how the dues of a ceased member are to be paid. In the instant case, in accordance with Clause 7 of the bye-laws Kaliram Karikar ceased to foe a member on his death on 1-7-1968. That being so, the petitioner, who is not a nominee as contemplated under Sections 23 and 24, is not entitled to become a member of the society as of right under the Act. But his case will be governed by Section 25 of the Act and before the shares of his deceased father may be transferred to the petitioner, his eligibility as contemplated u/s 25 will have to be examined and determined. Section 25 provides the procedure for disposal of share or interest of a ceased member. A member may cease to be a member as provided in the Act. Rules or bye-laws. Under clause 7 of the bye-laws that are applicable in the case, a member on his death ceases to be a member. So on the death of Kaliram Karikar, his shares or interests will be transferred to the person eligible for the same.

8. When the petitioner wanted that he should be admitted as a member In respect of the shares of his deceased father, the society directed him to file an application for becoming a member and that his application for membership would be considered on merits. But the petitioner has refused to file any application for membership. Instead he applied to the Assistant Registrar of Co-operative Societies as well as to the Government in this connection. The Assistant Registrar as well as the Government pointed out that under the then bye-laws the petitioner was not entitled to be admitted as a member but he may approach the society for consideration of his prayer for membership.

9. Mr. B.K. Das, the learned counsel for the petitioner, has referred to some provisions of the new bye-laws which came into effect from 28-2-1970 wherein there is some provision for nomination in Clause 5(7). But it is common case that this new bye-law is not applicable in the instant case.

10. The learned counsel for the petitioner then submits that Rule 20(1) of the Rules is ultra vires Section 23 of the Act. Rule 20(1) reads as follows:-

20. Nomination of transferee:-

(1) A member may by writing under his hand deposited with the society during his lifetime, or by a statement signed by the member made in any book kept by the Society, nominate any person or persons to whom u/s 23 his share or interest in the society or so much thereof as may be specified in such nomination, shall be paid or transferred on his death. A nominee may become a member only if admitted by the Managing Committee.

A nominee thus admitted shall be exempted from payment of admission fees.

11. The precise submission of the learned counsel is that Rule 20(1) to the effect that the nominee may become a member only if admitted by the Managing Committee is beyond the scope of Section 24 of the Act which lays down that when a member of the registered society dies, his shares and interest in the society shall be transferred to the nominee. Strictly speaking, this point is not necessary to be decided in this case. The petitioner is not a nominee as contemplated under Sec. 23 of the Act, inasmuch as there was no provision for nomination in the bye-laws at the relevant time. Therefore the transfer contemplated u/s 24 is not at all applicable to him. That apart, when Rule 20(1) provides that a nominee may become a member only if admitted by the Managing Committee, it means that the Managing Committee will admit a nominee provided he is nominated as provided u/s 23. The provision for nomination is subject to bye-laws. We find a provision for nomination in Clause 5(7) of the new bye-laws wherein it is found that each member may nominate a person as nominee who will inherit the share or interest of the member on his death, but this is made subject to the decision of the Managing Committee. Since Section 23 refers to bye-laws and bye-laws make the inheritance by nominee subject to decision of the Managing Committee, the impugned provision in Rule 20(1) that a nominee may become a member only if admitted by the Managing Committee may not be ultra vires Section 23 or Section 24 of the Act. If any member dies then it will necessarily be the concern of the society as a whole whether the legal heir of the deceased member, if legally nominated, may be accepted as member. This acceptance has double consequences: firstly, the Managing Committee may think that acceptance of the nominee as a member in place of the deceased member may not be in the interest of the society as a whole and in such circumstance the society may not accept him as a new member, and secondly, a nominee of a deceased member may not himself like to become a member seeing the condition and state of affairs of the society itself. In such a circumstance the society cannot thrust the membership upon an unwilling nominee or legal heir of a deceased member. There is always an element of voluntariness in such society.

12. In the circumstances we find that the provision that a nominee may become

a member only if admitted by the Managing Committee is not beyond the scope of Sections 23 and 24, inasmuch as, the nomination itself is conditioned by the bye-laws and the bye-law also provides for membership of the nominee subject to decision of the Managing Committee.

13. The learned counsel for the petitioner further submits that under clause (b) of Section 24 of the Act, the legal heir is entitled to be admitted as a shareholder even if he is not a nominee. We have already quoted clause (b) of Section 24. Provisions of Section 24 are subject to the other provisions of the Act. u/s 25 a member ceases to be a member if it is so provided by the Act or Rules or byelaws. Bye-laws of the Society provide that on the death of a member he ceases to be a member. So when Kaliram Karikar died, he ceased to be a member. There is no legally valid nomination in this case. So the disposal of the share and interest of ceased member Kaliram Karikar will be in terms of Section 25. u/s 25, the shares or interests of a ceased member are to be transferred to another eligible person. The eligibility of the person will be determined by the society, that is its Managing Committee. Hence the Managing Committee asked the petitioner to file a petition for membership to be considered, but the petitioner has doggedly refused to file any application for membership. That being so, his case may not be considered by the society at all because clause (b) of Section 24 is subject to Section 23 and Section 25 which bring in forcefully the bye-laws as well. So in the absence of a valid nomination, and in view of the bye-laws, on his death Kaliram Karikar ceased to be a member and his share or interest will be disposed of u/s 25 where the question of eligibility to membership arises and the petitioner has refused to file the application for membership.

14. The learned counsel for the petitioner then submits that by letter dated 13-7-1972 the Secretary of the Society informed the Registrar of Co-operative Societies that the share money of Rs. 250/- only was refunded to the rightful nominee of late Kaliram Karikar, that is, to the petitioner, on 13-4-1969 as per Resolution No. 7 of the Managing Committee meeting held on 6-4-1969 and the said amount was credited to the personal account of the petitioner on 13-4-1969. On the basis of this letter (Annexure ''X'' to application dated 14-5-1975), the learned Counsel submits that the Society accepted the petitioner as the rightful nominee and, therefore, they are not entitled to go back now to state that the petitioner is not the rightful nominee. But this submission ignores the main question that in the absence of any bye-law to that effect a member cannot nominate a person in whose favour the society is required to transfer the share or interest of such member on his death. We have already discussed that in the earlier bye-laws there was no provision permitting a member to make nomination. The Resolution No. 7 dated 6-4-1969 does not show that the petitioner was admitted as a member of the Society by the Managing Committee. That being so, the submission of the learned Counsel holds no water.

15. In the result, the petition fails and is accordingly dismissed and the Rule is discharged. There will be no order as to costs.

D. Pathak, J.

16. I agree.

