
(2017) 01 GAU CK 0056
In the Gauhati High Court
Case No : Writ Petition No. 6602 of 2016

Md. Abdul Kasim	Vs	APPELLANT
State of Assam		RESPONDENT

Date of Decision : 02-01-2017

Acts Referred:

Assam Co-operative Societies Act, 1949 — Section 2(g), Section 39

Citation : (2017) AIRCC 1067 : (2017) 2 GauLR 286

Hon'ble Judges : Arun Kumar Goswami, J.

Bench : Single Bench

Advocate : Ms M. Hazarika, Ms M.K. Borah, Advocates, for the Petitioners; Dr. B. Ahmed, Standing counsel, Cooperation Department, for the Respondent No's. 1 to 4

Final Decision : Dismissed

Judgement

Arun Kumar Goswami, J. (Oral) - Heard Ms M. Hazarika, learned senior counsel for the petitioners assisted by Mr. M.K. Borah, learned counsel as well as Dr. B. Ahmed, learned standing counsel, Cooperation Department appearing for the respondent Nos. 1 to 4. None appears for respondent Nos. 5 to 7 despite service of notice.

2. This writ petition is filed challenging the order dated 4.10.2016 issued by the Zonal Joint Registrar of Cooperative Societies, Tezpur Zone wherein it is recorded that as the Management of Bordolguri Samabai Society Ltd., for short, the Society, registered under the Assam Cooperative Societies Act, 2007, for short, the Act, had failed to hold the Annual General Meeting (AGM) for the year 2016-2017, by operation of Section 39 of the Act, the Managing Committee of the Society stood automatically dissolved. Accordingly, by the said order dated 4.10.2016, in exercise of powers conferred under Section 41(6) of the Act, a one man ad hoc committee was constituted to manage the affairs of the Society as per the Bye-laws of the Society and to hold the election within 90 days from the date of issuance of the order dated 4.10.2016.

3. Prayer is also made for setting aside the order dated 25.10.2016 passed by the Registrar of Cooperative Societies directing holding of AGM and fresh election of the Society. The order dated 25.10.2016 was passed on an appeal filed by some of the writ petitioners.

4. The society consists of 7619 share holders and the Board of Directors of the Society were elected on 3.7.2013 and their term was to expire in the month of June 2018.

5. It appears that the petitioner No. 1 was the Ex-Chairman of the Society and consequent upon his removal, one Kuldip Nath (respondent No. 7) was elected as Chairman on 13.7.2016 for the remaining term.

6. Sections 26(3) and 39 of the Act, which are relevant for the purpose of this case, are quoted here in below for better appreciation:

"26?????.

(3) The Chief Executive of every cooperative society within twenty days of closure of the previous cooperative year, shall prepare a list of members with the right of vote, and a list of members without the right of vote, valid for the current financial year. The list shall be affixed on the notice board of the Head office of the cooperative society for information of all members and any member not satisfied with specific instances of inclusion or non-inclusion of members in the lists, may appeal to the Board within ten days from the date of the affixing of the lists on the notice board, for re-examination of the records, and the Board shall within forty days of closure of the previous cooperative year, review the lists, finalise it, and have it affixed on the notice board of the Head office of the cooperative society:

Provided that a member who is an employee or member of Employees Union of such Society shall not be entitled to vote-

(i) at election of a member of the Board of such society;

(ii) in any general meeting convened for framing the bye-laws of such society or any amendments thereto.

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39. Annual General Meeting.—A general meeting to be termed as Annual General Assembly of a registered Cooperative Society shall be held at least once in every Co-operative year within a period of six months of close of the financial year to transact the business as provided in this Act. The Board shall automatically stand dissolved for not holding Annual General Meeting in accordance with the provisions of the Act and bye-laws within six months from the expiry of every Financial year."

7. It is submitted by Ms Hazarika that on 29.9.2016, AGM was convened but in the said meeting the Chairman of the Society was absent and as such the Vice-

Chairman of the Society had presided over the said meeting. As there was lack of quorum, it was decided to hold the meeting again on 4.10.2016 at 10.00 AM and accordingly, the meeting was held on 4.10.2016 and many important decisions were taken. Ms Hazarika has submitted that for dereliction on the part of the Chairman and the Secretary of the Society in not holding the AGM at earlier point of time, the other members of the Board of Directors ought not to be penalized and they should be allowed to continue.

8. Dr. Ahmed has submitted that a duty is cast on the Board and therefore, the plea taken by the present petitioners that some of the members of the Board are only responsible cannot be countenanced. He has also submitted that the voters list was not prepared and therefore, there is no sanctity in the meeting held on 29.9.2016. That apart, 15 days" prior notice which is required to be given for holding the AGM, was also not been given in the instant case. Accordingly, it is submitted by him that there is no merit in the writ petition and the same is liable to be dismissed.

9. I have considered the submission of the learned counsel for the parties and also perused the materials on record.

10. Section 2(g) of the Act defines "Board" to mean the Board of Directors or the Governing Body of a Cooperative Society to which the direction and control of the management of the affairs of a Society is entrusted to.

11. Cooperative year is defined in Section 2(h) to mean the period beginning and ending on such dates as may be fixed by the Registrar for the purpose of drawing up the balance sheets of registered societies and for all other purposes under this Act.

12. There is no dispute at the bar that the Cooperative year ends on 31st March every year. 13. In terms of Section 39 of the Act, the last date for holding of the AGM is 30th September of every year. It is also explicit that the AGM has to be held in accordance with the provisions of the Act and the Bye-laws failing which the Board gets automatically dissolved. 14. The Bye-laws of Gaon Panchayat level cooperative societies provide that 15 days" notice shall ordinarily be given before the general assembly is convened. This general assembly is also called the AGM.

15. In the instant case, the notice for holding the AGM, as annexed in the petition has no date. But it appears from the minutes of the meeting held on 24.9.2016 that decision was taken to do the necessary preparation for holding the AGM on 29.9.2016. It is also recorded in the said resolution that the members of the Board of Directors had taken the responsibility to serve the notice on the share holders door to door. The said resolution manifestly demonstrates that 15 days" notice was not given. Out of 7619 members, only 85 members were present in the meeting held on 29.9.2016.

16. In view of the above, I am of the considered opinion that there is substance

in the argument of Dr. Ahmed that there was failure on the part of Board of Directors in holding the AGM of the Society in accordance with provisions of the Act and the Bye-laws within the time prescribed and therefore, it automatically got dissolved. The Board is an entity and in the context of the scheme of the Act, all the members of the Board will have to take collective responsibility for the failure to hold the AGM and therefore, the argument of Ms Hazarika that the members of the Board of Directors who are not directly involved with the holding of the AGM should be allowed to continue has no force.

17. In that view of the matter, I find no merit in this petition and accordingly, the same is dismissed. No cost.