
(1990) 03 GAU CK 0012
In the Gauhati High Court
Case No : Civil Rule No. 1005 of 1989

Md.Abdul Hussain

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 15-03-1990

Acts Referred:

Assam Co-operative Societies Act, 1949 — Section 32(2), 32(2)

Citation : (1990) 1 GLJ 337

Hon'ble Judges : S.Haque, C.J. and M.Sharma, J

Bench : Division Bench

Advocate : K.C.Mahanta, D.N.Konwar, B.P.Bora, Advocates appearing for Parties

Judgement

S. Haque, C.J. (Acting)

1. The petitioner Md. Abdul Hussain had been elected President of the Managing Committee of Uttar Rampur Village Panchayat Cooperative Society Ltd. in the Annual General Meeting held on 4.6.1989. By this writ petition under Article 226 of the Constitution of India the petitioner assails the order No. CKGC2/89/Pt56, dated 24. 6. 1989 passed by the Assistant Registrar of Cooperative Societies, Gauhati setting aside the proceedings of the Annual General Meeting of Uttar Rampur Village Cooperative Society Ltd. held on 4.6.1989 electing new Managing Committee of the Society for the year 198990 and directing the Secretary of the Society to convene the Annual General Meeting within 30 days from the issue of this order at Village Norhiratha instead of in the Society's office.

2. The respondents are the State of Assam, the Registrar of Cooperative Societies, Assam and the Assistant Registrar of Cooperative Societies, Gauhati. They filed affidavit in opposition dated 7th August, 1989.

3. The petitioner is one of the 1781 shareholder members of Uttar Rampur Gram Panchayat Samobai Samiti Ltd., in short URG PSS. The Annual General Meeting (adjourned) of URG PSS was held on

4. 6. 1989. Notice for holding the meeting was published well ahead on 25. 4. 1989 describing the agenda of 12 items including resignation of the old Managing Committee and formation of a new Managing Committee against item No. 4 of the agenda on 4. 6. 1989. The Assistant Registrar of Cooperative Societies by his order under Memo No. CKGG. U/82/PtIII/316A. dated Gauhati the 19th April, 1989 appointed Shri Rameswar Choudhury as Assistant Returning Officer for the Annual General Meeting of URG PSS fixed on 28.5. 1989. Accordingly, the President of the previous Managing Committee Shri Tarini Talukdar issued notice requesting all the share holders to be present in the Annual General Meeting at the Society's office at 1000 A. M. on Sunday 28. 5. 1989 and to take part in the agenda items. Annexure *A" to the writ petition was that notice. Admittedly, the Annual General Meeting of the Society was held as per direction of the notification dated 19th April, 1989 on the fixed date the 28.5. 1989, however, by resolution No. 1 dated 28.5. 1989, in accordance with the Rules of the Cooperative Societies, the meeting was adjourned for lack of quorum within the appointed hour of the meeting as well as incessant rains all over and resolved to hold the said adjourned meeting as per the previous agenda on Sunday 5. 6. 1989 at the said Society's office at 1000 A. M. Annexure II in the affidavit in reply of the petitioner dated 8. 2. 1990 is that resolution dated 28.5.1989.

4. Thereafter, the adjourned Annual General Meeting was held on 4.6.1989 after observing all formalities as per statute. The notified Annual General Meeting having been duly and competently adjourned on reasonable grounds and followed by the " State Government appointed Returning Officer conducted election of the adjourned Annual General Meeting on 4. 6. 1989 through out the day and night right upto the 1000 A. M. in the next morning of 5. 6. 1989 and declared the election of the President and all the Executive Members of URG PSS for the year 198990, after publicly counting votes polled and signed/endorsed the proceedings of the Annual General Meeting in token of his approval as Presiding Officer.

5. The petitioner alleges that it is not now open for the respondent No. 3 the Assistant Registrar of Cooperative Societies to make feeble attempt to fall back upon the general provision of section 32 (2) of the Assam Cooperative Societies Act by taking plea that the Annual General Meeting was not held within 60 days from the close of the Cooperative year, and as such the impugned order dated 24. 6. 1989 (Annexure C to the writ petition) was manifestly malafide and illegal and that the order was product due to succumbing the respondent No. 3 Assistant Registrar of Cooperative Societies to undue influence by extra legal authorities including the respondent No. 2. the Registrar of the Cooperative Societies, and as such the impugned order deserves quashing.

6. The respondents in their affidavit in opposition stated that the Annual General Meeting of the Cooperative Societies was held as per notification dated 28. 5. 1989 and was adjourned till 4. 6. 1989, however, in the proceeding of the meeting dated 4.6.1989 there was no mention that the same was an adjourned

Annual General Meeting, so the meeting was defective. That as per provision of section 32, the Annual General Meeting of the Cooperative Societies is to be held within 60 days from the close of the Cooperative year which ended on 31. 3. 1989 and the Annual General Meeting having not held before 30. 5. 1989 so, there was violation of section 32 (2) of the Act as there was no extension of the period by the Registrar of the Cooperative Societies and so, the impugned order should stand. Whatever the respondents have stated, but by the very impugned order, the respondents have admitted that the Annual General Meeting on 4. 6. 1989 was the adjourned meeting.

7. It has now become an admitted fact that the Annual General Meeting dated 28. 5. 1989 was adjourned as per Resolution No. 1 dated 28. 5. 1989 wherein the next date of Annual General Meeting was fixed on 4. 6. 1989 (Sunday) at the same hour and venue and the resolution had been duly signed by the President. Therefore, there could be no any iota of doubt that the Annual General Meeting on 4.6. 1989 conducted by Government's appointed Returning Officer was an adjourned meeting and such an adjourned meeting does not come within the mischief of the provision of section 32 of the Act for not holding the Annual General Meeting within the period of 60 days from expiry of cooperative year. The Resolution No. 7 dated 5. 6. 1989 at 900 A. M. signed by the Returning Officer, Shri Paban Baruah has disclosed that he conducted the election in the adjourned Annual General Meeting on 4. 6. 1989 at day time and through out the night upon 900 A. M. in the next day i. e. 5. 6. 1989 and have duly declared the election of the President and all the Executive Members of the URGPS for the year 198990 after publicly counting votes polled and then on his satisfaction signed and endorsed the proceeding of the Annual General Meeting in token of his approval as Presiding Officer. Annexure "B" of the writ petition is that Resolution No. 7 under the signature of Returning Officer dated 5. 6. 1989 at 900 A. M.

8. Learned counsel Mr. D, N. Konwar has drawn our attention to the extraneous factors for succumbing of Assistant Registrar Cooperative Societies to undue influence by extra legal authorities including the respondent No. 2, the Registrar of the Cooperative Societies. In this regard we read the contents of the letter of the Minister of State, Education dated 7.6.1989 in the subject matter. The contents were that complaints including receipt of additional ballot papers with regard to Cooperative election of 4th June, 1989 of URGPS have been received by the Minister, and he asked Registrar, Cooperative Societies to withhold giving approval to the newly elected committee of the Cooperative Society until the complaints are examined and also discuss with him in this connection over phone. It is submitted that the Minister in the picture was not a Minister for Cooperation at the relevant time, if it was so, we refrain to comment as to the justifiability of his order by that letter in the subject of Cooperation. The order of the Minister reads as :

"Registrar, Cooperative Deptt., Assam Panbazar, Gauhati.

Please withhold giving approval to the newly elected Committee of the Cooperative Society until the complaints are examined and also discuss with me in this connection."

It was with reference to that letter of the Minister, the Joint Registrar of Cooperative Societies, Assam Shri B. N. Deka wrote to Assistant Registrar Cooperative Societies by his letter No. GPSS 8/89/17 dated Gauhati the 9th June, 1989 directing to cause a thorough inquiry into the allegation against the election held on 4. 6. 1989 and submit detail report and a copy of the Minister's letter was enclosed and further stating that he had telephonic discussion with the Minister on that day the 9th June, 1989 Annexure C1 to the writ petition is that letter dated 9.6. 1989 of the Joint Registrar to the Assistant Registrar of Cooperative Societies enclosed with the letter of the Minister. This followed the impugned order No. CKGC2/89/Pt/56, dated 23/24th June, 1989. No enquiry of any kind was ever made. The proceedings regarding election of the Annual General Meeting held on 4.6. 1989 (adjourned) was set aside, and the Secretary of the Society was directed to make effort to hold its Annual General Meeting within 30 days at Village Korhiratha, middle place of the Gaon Panchayat vide the impugned order.

9. The allegation submitted by Mr. Konwar on behalf of the petitioner that the respondent No. 3 had to succumb to the undue influence has substance in view of the facts described above. The letter of the Minister as well as that of the Joint Registrar did not disclose of any written complaint. It was certainly due to the letter of the Minister of State, Education and his telephonic talk with the Joint Registrar caused the respondent No. 3 Assistant Registrar of Cooperative Societies to succumb for passing the impugned order. Interference in the business and election of Cooperative Societies in the manner as done in this case by a Minister cannot be ranked as appreciable. When the statute provides remedy, interference in the manner done simple implies disregard to law. Unwarranted interferences by Minister compelled the subordinate officers to succumb to the acts in contravention of the statutes. For such action, and interference manifestly indecent, did keep away a duly elected body from functioning in its usual course. We discourage such actions with the view not to reiterate by the higher authority.

10. The impugned order is bad in law and liable to be quashed.

11. This writ petition is allowed. The impugned order No. CKGC2/89/PI/56, dated 23/24th June, 1989 passed by the Assistant Registrar, Cooperative Societies in respect of the proceedings of the election of the Annual General Meeting dated 4. 6. 1989 of the URGPS is hereby quashed. We direct the respondent No. 3 Assistant Registrar, Cooperative Societies, Gauhati to approve the elected Managing Committee shown in Resolution No. 7 dated 5.6.1989 by the Returning Officer in respect of URGPS forthwith and to issue direction forthwith allowing the elected body to run the affairs of the URGPS.

12. The Rule is made absolute. The respondents shall pay cost of Rs. 500/ (Rupees five hundred only) in favour of the petitioner.