
(1997) 05 GAU CK 0025
In the Gauhati High Court
Case No : Civil Rule No. 183 of 1990

Md.Taher Ali

APPELLANT

Vs

State of Manipur

RESPONDENT

Date of Decision : 29-05-1997

Acts Referred:

Manipur Co-operative Societies Act, 1976 — Section 104(1), 104(1), 164(2), 164(2)
Manipur Co-operative Societies Rules, 1977 — Rule 102, 102

Citation : (1997) 2 GLJ 213

Hon'ble Judges : J.N.Sarma, J

Bench : Single Bench

Advocate : Th.Ibohal Singh, P.C.Singh, Jotindra Singh, Advocates appearing for Parties

Judgement

1. This writ application has been filed challenging the legality and validity of the order dated 27.12.89 passed by the Commissioner cum Secretary, Cooperation, Govt of Manipur in Cooperative Misc Appeal Case No.1 of 1989, fa Annexure A/1 to the writ application.

2. The only ground on which the legality and validity of this order is challenged is that under section 104 (1) of the Manipur Cooperative Societies Act, 1976. an appeal lies to the State Govt and as such the Secretary is not competent to hear and dispose of this appeal.

3. In this connection one may look at Rule 102 of the Manipur Cooperative Societies Rules, 1977. Rule 102 is quoted below:

"102. Constitution of an authority by State Govt to hear appeal which lie to that Govt The appeal which lie to the State Govt under the Act may be heard by such officer/officers not below the rank of a Deputy Secretary to Govt. as may from time to time be specified by the State Govt in this behalf."

4. In pursuance of this rule on 19th of September, 1979 the Govt of Manipur issued the following order:

"No. 101/15/79 Cooperative: In pursuance of Rule 102 of the Manipur Cooperative Societies Rules, 1977, the Governor, Manipur is pleased to specify the Secretary to the Govt of Manipur in the Cooperation Department as the authority to hear and dispose of such appeals which lie to the State Govt under the Manipur Cooperative Societies Act, 1976 with immediate effect and until further orders."

5. So there is no denying of the fact that this order was issued in pursuance of Rule 102 and it gives power to the Secretary to hear and dispose of the appeal. So the contention that the Secretary does not have the power to hear and dispose of the appeal is without any merit.

6. The learned Advocate for the petitioner submits that the power given to the Secretary to hear the appeal is to investigate the matter and to report his findings to the State Govt and the State Govt must pass the appropriate order.

There the Secretary on his own cannot pass the final order. It is also submitted by the learned counsel for the petitioner that this delegation of power to the Secretary is beyond the rule making power and as such Rule 102 of the Manipur Cooperative Societies Rules are not valid. This contention has also no force inasmuch as Section 164 (2) (ix,xii) provides as follows:

"(ix,xii) Prescribed in the case if appeals lying to the State Govt the authority to which power of hearing appeals may be delegated; "

7. It was in exercise of this power that Rule 102 of the Manipur Cooperative Societies Rule, 1977 was framed. Accordingly there is no merit in this writ application and the same is dismissed.

8. I leave the parties to bear their own costs.