

(2001) 05 GAU CK 0013
In the Gauhati High Court
Case No : Writ Petition (C) No. 121 of 2000

M.H. Tiabi

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 04-05-2001

Acts Referred:

Mizoram Co-operative Societies Act, 1991 — Section 31(3)

Citation : AIR 2001 Guw 128 : (2001) 2 GLT 20

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : Mr. Lalsawta, for the Appellant; Mr. T. Vaiphei, AAG and Mr. George Raju, for the Respondent

Judgement

1. By this writ application the petitioner seek to challenge the order dated 17.7.2000 issued by the Secretary to the Govt. of Mizoram Cooperation Department, as well as the corrigendum dated 10.8.2000 issued by the same authority (Annexures - 9 and 10 to the writ petition). By the aforesaid notification and corrigendum, the authority in exercise of powers conferred by section 31(3) of the Mizoram Cooperative Societies Act, 1991 (hereinafter referred to as the Act) has sought to constitute an ad hoc executive committee by superseding the elected Board of Directors of the Mizoram Cooperative Apex Bank Ltd. The factual matrix necessary for adjudication of the dispute involved lies within a short compass and is enumerated hereinunder.

2. The petitioner was elected as the Vice Chairman of the Mizoram Cooperative Apex Bank Ltd. on 19.5.2000 along with four others who were so elected as Directors. Admittedly, the Mizoram Cooperative Apex Bank Ltd. Is a cooperative society registered under the Act and the provisions of the said Act and rules framed thereunder are fully applicable to the Bank in question. It is the specific case of the writ petitioner that the election of the petitioner declared by communication dated 19.5.2000 (Annexure-5 to the writ petition) was approved by the Registrar of Cooperative Societies, Mizoram by his letter dated 2.6.2000

(Annexure-6 to the writ petition). It would be evident from the said communication dated 2.6.2000 that as the post of the Chairman could not be filled up by election, the function of the Chairman was directed to be discharged by the Board and meetings of the Board were to be chaired by the Vice Chairman till such time the office of the Chairman is filled up. The petitioner contends that though he was entrusted in law to function after being elected as Vice Chairman, the Registrar of Co-operative Societies by order dated 17.6.2000 (Annexure-8 to the writ petition) authorised the Managing Director of the Bank to exercise all powers of the Board and eventually by the impugned Memorandum dated 17.7.2000 and the corrigendum dated 10.8.2000, the elected body was superseded and in its place an ad hoc nominated body was appointed to run the affairs of the Bank in question. Aggrieved, the petitioner has come up before this Court by way of the instant petition.

3. The State has filed an affidavit resisting the contentions of the writ petitioner and asserting that though the petitioner and four other persons were elected uncontested to the Board of Directors, the said body could not function as the members required to be nominated as representative of the Govt. under clause 31 of the Mizoram Cooperative Apex Bank Ltd. Bye-laws were not appointed by respondent No. 3 and the presence of atleast one Government nominee was a mandatory requirement under Bye laws 31(d) to confer validity to any particular Board Meeting. In the affidavit filed on behalf of the State respondents, it has been stated that impugned actions were resorted to by the State Govt. by invoking section 31 of the Act on the basis of a report submitted by the National Bank of Agriculture and Rural Development, in view of which report drastic measures were called for in the management of the Bank.

4. Mr. Lalsawta, learned counsel for the petitioner has contended that section 31 of the Act under which provision the impugned action has been taken does not authorise the State Govt. to exercise any such powers. The learned counsel submits that all matters relating to dissolution of the elected body and constitution of an Ad hoc committee could only to be taken u/s 41 of the Act which requires an opportunity to be afforded to the affected party. No such opportunity having been given to the petitioner and other elected members, the actions on the basis of the impugned communications are wholly illegal. The learned counsel further submits that in any view of the matter, powers have been exercised and the impugned orders have been passed on considerations which are not at all reasonable and relevant. The impugned actions are, therefore, illegal on that count also.

5. Mr. T Vaiphei, learned Addl. Advocate General has submitted that the actions of supersession and constitution of an interim body is fully authorised by provisions Of section 31 of the Act, and section 41 of the said Act can have no application in cases where Govt. considers intervention to be necessary in the interest of members of the Society or cooperative movement in general. In such a case, the Govt. can unilaterally act as the supreme authority of the Society in

place of General Assembly. In the instant case, the powers u/s 31 of the Act have been invoked in view of the acute financial and other crisis prevailing in the Bank. The learned Addl. Advocate General further contends that as the General body has the power to elect the Board of Directors by virtue of the provisions of General Clauses Act, such powers must be deemed to include the powers to dissolve/suspend and further to appoint an interim body. It is further contended by learned Add. Advocate General that went on due consideration, the State Govt. has invoked the powers u/s 31 of the Act, applicability of section 41 of the Act does not arise. Mr. George Raju appearing on behalf of respondent No. 4 has substantially adopted the arguments advanced by the Addl. A.G. in support of his contention that the impugned actions on the basis of the orders challenged are perfectly legal and valid and the writ petition has no merit and deserve to be dismissed.

6. I have considered the rival submission of the parties as well as provisions of the Act. Section 41 of the Act which is relevant for consideration of the scope and ambit of the provision of section 31 is extracted herein below :

"41. Removal of Administrative Council, Body or Committee -

(1) Notwithstanding anything contained the Govt. may, it is of opinion that in this Act, the Administrative Council, the Managing body, other committee or body of a registered society is not competent to perform or persistently make default in the performance of the duties imposed by or under this Act or exceed of abuse the powers imposed by or under this Act. at any time after giving an opportunity of showing cause against the actions proposed, remove any such council, body or committee.

(2) The Government may, at any time, suspend any such council. Body or Committee pending removal under sub-section (1) from office if in opinion of the Government immediate action is necessary and the continuance of such Council, Committee or Body in office is in advisable on any of the ground on which it could be removed under sub-section (1) or on the ground of public interest.

(3) When an Administrative Council, Managing Body, Committee or other body of a registered society is suspended under subsection (2) the Government may make such arrangement as may deemed necessary for discharging the duties, functions and obligations of the Administrative Council Managing Body, Committee or other body so suspended till the termination of the order of suspension or when a body or person is removed under sub-section (1) till the vacancy is filled up in accordance with the provisions made by or under this Act.

(4) Notwithstanding anything contained in this Act, if the term of office body expires during the continuance of any order passed under sub-section (2) placing any such council Body or Committee under suspension such council Body or Committee shall cease to function with effect from the date of such expiry and the arrangement made by the State Government under sub-section (3) will continue till vacancies caused by such expiry are filled up in accordance with the

provision made by or under this Act."

Section 41 of the Act empowers the State Govt. to remove the elected body managing the affairs of society, by whatever name it may be called, on the grounds narrated therein. However, such removal has to be proceeded by giving an opportunity to show cause. Sub-sections (2) and (3) of section 41 of the Act empowers the Govt. to keep a Managing Body under suspension-pending removal and in the interim appoint an ad hoc body to run and manage the affairs of the Society.

7. Section 31 deals with powers of General Assembly. The purport of section 31 is to declare that the supreme authority of the Society is the General Assembly but in certain cases such Supreme authority can rest either in the State Govt. or in the Registrar. Section 31 does not expressly deal with the question of removal or suspension of an elected body managing the affairs of the Society or the appointment of any interim body. When the legislature in its wisdom has made a specific provision for the removal/ suspension of an elected body and appointment of an interim body and has engrafted the requirement of an opportunity to show cause prior to taking any such action, it will be difficult to hold that similar powers to remove/suspend/appoint an interim elected body without affording any opportunity of show cause has been conferred by section 31 of the Act. It is an elementary principle of interpretation of statutes that the expressed provisions as contained in the statute must be given effect to and where power is expressly conferred to be exercised in a particular manner and after fulfilment of certain conditions there ought not to be any implied conferment of any such power to be exercised in any contrary manner. When any particular provision in the Statute mandates the requirement of an opportunity to show cause, it will be against all canons of interpretation to negate the said requirement by an implied conferment of powers. Consequently, in the teeth of the clear language of section 41 of the Act, it is difficult to uphold the exercise of powers in the instant case without complying with the mandatory requirement of affording an opportunity to show cause. Section 31, in my considered view, would enable the State Government or the Registrar to exercise only such powers as are vested by the Act in the General Assembly and all such incidental powers and function but the said section would exclude from its sweep all other powers and functions that are provided for by other specific provisions of the Act. Section 41 of the Act having laid down an elaborate procedure, consistent with the principles of natural justice in the matter of removal and suspension of an elected body and appointment of an ad hoc body, the exercise of powers in the instant case on the basis of the impugned orders, by invoking section 31 can not be approved by this Court.

8. In view of the conclusions already reached regarding the invalidity of the impugned orders dated 17.7.2000 and 10.8.2000 (Annexures 9 and 10) it would not be necessary for this Court to go into the second contention advanced on behalf of the petitioner namely, that the powers, if any, have not been exercised

reasonably and fairly.

However, it can not be overlooked that on the admitted facts of the case the elected body sought to be superseded and replaced by the nominated body, on the basis of the impugned orders, had not even started functioning. In that view of the matter there could have been, perhaps, no reasonable basis for the actions impugned in the present writ petition.

9. Having held and adjudged actions on the basis of the orders dated 17.7.2000 and 10.8.2000 (Annexures 9 and 10) to be legally infirm, the next question is regarding the relief that the petitioner would be entitled to in the facts and circumstances of the case. The question assumed significance because of the fact that the term of the elected body including that of the petitioner is only upto 31.5.2001. I have given my anxious consideration to this aspect of the matter and notwithstanding the conclusions reached and recorded in the earlier paragraphs, I am not inclined to issue any prerogative writ in exercise of extraordinary powers under Article 226 to enable the petitioner to discharge the functions of Vice Chairman of the Bank in view of the fact that the petitioner's term is coming to an end shortly, a declaration that the actions complained of in the instant writ petition are illegal and void will suffice. No further relief, in the facts and circumstances of the case, is called for. The writ Petition stands disposed of in terms of the above order No. Costs.