

(2015) 05 GAU CK 0022
In the Gauhati High Court
Case No : W.A. Nos. 84 and 85 of 2015

Milon Kanti Roy and Others	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 29-05-2015

Acts Referred:

Citation : (2015) 05 GAU CK 0022

Hon'ble Judges : K. Sreedhar Rao, A.C.J; Prasanta Kumar Saikia, J

Bench : Division Bench

Advocate : S.S. Dey, M. Nath and D.P. Borah, for the Appellant; B. Ahmed, SC, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Prasanta Kumar Saikia, J.

1. These appeals are directed against the judgment dated 07.04.2015, passed by learned Single Judge in W.P.(C) No. 5293/2015 and W.P.(C) No. 5298/2015 praying for (a) staying the operation of the common judgment dated 07.04.2015, (b) staying the proceedings/resolution of the Annual General Meeting held on 18.05.2013/27.06.2013 of Hojai Kumarakata and Dakhin Jugijan Samabai Samity electing new Board of Directors of the Society aforesaid and (c) allowing the Managing Committee of Dakhin Jugijan Samabai Samity constituted on 28.06.2010 to perform the functions of such Society.

2. We have heard Mr. S.S. Dey, learned Senior Counsel assisted by Mr. M. Nath for the appellants. We have also heard Dr. B. Ahmed, learned Standing Counsel appearing for respondents No. 1 to 4 and Mr. SK Singha, learned counsel appearing for respondent No. 7 in WA No. 84/2015 and respondent No. 5 in WA No. 85/2015.

3. The case projected in W.P.(C) No. 5293/2015 in short, is that the Annual General Meeting of Dakhin Jugijan Samabai Samity (in short, "Samity") was held on 18.04.2010 and vide resolution No. 2 the petitioner No. 1 was elected as

Chairman of the Managing Committee whereas the petitioner No. 2 and petitioners No. 3 to 11 were elected as Vice Chairman and members of the Managing Committee respectively. The proceeding of the Annual General Meeting was approved on 30.04.2010 and its 1st meeting of the newly Managing Committee was held on 16.05.2010.

4. On 16.04.2013, the Zonal Joint Registrar of the Cooperative Society who was arraigned as respondent No. 3 in the writ petition aforesaid addressed a letter to all Chairman/Secretaries including the petitioners of the Society to hold the Annual General Meeting for the year 2013-2014 as per the Act and Rules framed there-under. The petitioner No. 1 received such order on 03.05.2013. Another letter dated 18.05.2013 was issued by respondent No. 3 u/s. 41(2) of the Act of 2007 to all Chairman/Secretaries of the petitioner society directing that the election of Directors of a board shall be conducted before the expiry of the term of the Board so as to ensure the newly elected members of the Board assume office immediately on the expiry of the office of members of the outgoing Board.

5. In view of repeated directions, election of the Society was held on 18.05.2013 and result of the election of the Board of Directors was declared on 19.05.2013. In such election the petitioner No. 1, 2, 5, 8 and 11 and respondent No. 7 to 15 were elected. By an order dated 21.05.2013, respondent No. 3 herein accorded approval to the proceeding of the Annual General Meeting held on 18.05.2013. Respondents No. 7 and 10 were elected as Chairman and Vice Chairman respectively on 04.06.2013. The writ petition aforesaid, however, initiated praying for setting aside and quashing (a) Resolution No. 2 of Annual General Meeting adopted on 18.05.2013, (b) Resolution dated 21.05.2013 and (c) election of respondents No. 7 and 10 as Chairman and Vice Chairman respectively and (d) for a direction to reinstate the Managing Committee constituted on 08.04.2010.

6. In W.P.(C) No. 5298/2013, it has been stated that on 28.06.2010 the Annual General Meeting of Dakhin Jugijan Samabai Samity was held and vide Resolution No. 1, the Managing Committee of the petitioner No. 1 was constituted therein as Chairman and one Abdul Matin (respondent No. 17) was appointed as Vice President. Nine other persons were elected as members of the Managing Committee and subsequently, they were co-opted as members of the said Society.

7. The proceeding of the aforesaid Annual General Meeting was approved by Asstt. Registrar, Cooperative Societies (respondent No. 4 therein) on 10.07.2010. On 06.04.2013 the Zonal Joint Registrar, Cooperative Societies, respondent No. 3 therein addressed a letter to all Chairman/Secretaries of the Cooperative Societies of the writ petitioners in W.P.(C) No. 5298 of 2013 to hold Annual General Meeting for the year 2013-2014 as per the Act of 2007 and Rules framed there-under. Another letter dated 18.05.2013 was issued by the respondent No. 3 under Section 41 (2) of the Act of 2007 to all the Chairman/Secretaries of the Cooperative Societies directing that the election of the Directors shall be

conducted before the expiry of the term of the Board so as to ensure the newly elected members of the Board assume office immediately on the expiry of the office of members of the outgoing Board.

8. In view of repeated directions, election of the Society was held on 27.06.2013 and result thereof was declared on 28.06.2013. In such election, respondent Nos. 1, 2, 3, 4 as well as respondents No. 5 and 15 therein were elected. By an order dated 08.07.2013, the respondent No. 3 therein accorded approval to the proceeding of the Annual General Meeting held on 26.07.2013. In the meeting held on 15.05.2013 vide Resolution No. 1, the respondents No. 5 and 6 were elected as Chairman and Vice Chairman respectively. The Writ Petition (Civil) No. 5298/2013 was therefore, initiated seeking similar relief as sought for in the Writ Petition (Civil) No. 5293/2013.

9. Both the proceedings were contested by respondents therein alleging that there was no infirmity in holding election of the AGM of the Society following which a new Board was constituted in accordance with law which was duly approved by the authority. Therefore, both the proceedings are liable to be dismissed.

10. Refuting such contention, Mr. S.S. Dey, learned Senior Counsel appearing for the respondents contends that in the terms of Article 243ZJ (2) and Section 31 of the Act of 2007 the Boards aforesaid were entitled to complete the term of 5 (five) years from the date of election held in 2010. However, because of pressure exerted by the State respondents, the petitioners in the aforesaid writ petitions were forced to hold the Annual General Meeting and election before the expiry of the period of earlier Boards which is unsustainable in law. Therefore, the petitioners are entitled to reliefs sought for therein.

11. We have considered the rival submissions, having regard to the submissions advanced by the learned counsel for the parties. On considering the submissions advanced by the learned counsel for the parties, the learned Single Judge was pleased to reject the same on concluding that the claim of the petitioners is unsustainable since according to learned Single Judge instead of giving in to the alleged pressure tactics of State instrumentalists, they ought to have resisted the same and ought to have approached the Court seeking quashing of such an illegal order. Instead, they had acted in accordance with the directions of the State instrumentalists which they alleged to be illegal and participated in the election and allowed the new committee to come into existence in place of the outgoing one. According to learned Single Judge, having done so, the appellants are not entitled to claim the relief sought for. For ready reference, the relevant part of the judgment is reproduced below:--

12. The learned counsel for the parties have repeated their submissions which they have advanced before the learned Single Judge.

13. In view of above, we are of the opinion that there is no infirmity in the reasoning of the learned Single Judge or for that matter the decision arrived at

on such reasoning. Being so, the present appeals lack merit and same are accordingly dismissed.