

(2011) 09 GAU CK 0111
In the Gauhati High Court
Case No : Writ Petition (C) 4298 of 2010

Mr. Gagan Dutta

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 01-09-2011

Acts Referred:

Assam Co-operative Societies Act, 1949 — Section 11, 13, 31, 31(3), 33(1)(d)

Citation : (2012) 1 GLD 781

Hon'ble Judges : Brojendra Prasad Katakey, J

Bench : Single Bench

Advocate : D.C. Borah, Mr. A. Hussein and Mr. D. Barman, for the Appellant;
A.K. Phukan, AG, Mrs. S. Sarma, GA, Assam, for the Respondent

Final Decision : Allowed

Judgement

B.P. Katakey, J.—The petitioner, who is the elected Chairman of Lakhimpur Samabay Samity Limited, by the present petition has challenged the order dated 23rd April, 2010 suspending the Managing Committee of the said Society in exercise of the power conferred under Sub-Section (3) of Section 31 read with Section 36 of the Assam Co-operative Societies Act 1949 (in short "the Act") and appointing the Senior Inspector/Auditor of the Cooperative Societies, Lakhimpur as one man Ad-hoc Committee to manage the affairs of the Society till a new body is elected or formed or until further order. The petitioner has also challenged the order dated 12th July, 2010 passed by the Zonal Joint Registrar of Cooperative Societies, Tezpur Zone dissolving the Managing Committee of the said Society in exercise of the power conferred u/s 37 of the Act with the direction to the one man Ad-hoc Committee constituted vide order dated 23rd April, 2010 to summon the general assembly to hold the election of the said Society as per the provisions of the Act and the Rules framed thereunder as well as the registered Bye-laws of the Society. The facts relevant for the purpose of disposal of the present writ petition may be noticed as under :--

The Annual General Meeting (AGM) of the Society was held on 10th October,

2009, wherein the election of the office bearers including the Chairman was held. In the said election, the petitioner was elected as Chairman, apart from 12 (twelve) other members. The proceeding of the said AGM was duly approved by the Assistant Registrar of Cooperative Societies, as required under Rule 26 of the Assam Cooperative Rules, 1953 (in short, "the Rules"). The Managing Committee of the Society, as per the registered Bye-laws, consist of 17 (seventeen) members, which includes 12 (twelve) elected members and 5 (five) nominated members. On 16th January, 2010, 8 (eight) elected members have submitted their resignations before the Assistant Registrar of Cooperative Societies, Lakhimpur being not satisfied with the functioning of the petitioner, which were accepted by the Assistant Registrar of Cooperative Societies. The resignations by those members, however, were not placed before the Managing Committee by the Assistant Registrar of Cooperative Societies for consideration, though under the registered Bye-laws, the power to accept such resignation vest on the Managing Committee. Acceptance of such resignation has not been put to challenge by anyone. On 11th March, 2010, a meeting of the Managing Committee was convened but due to lack of quorum, as required under Bye-law 25 of the registered Bye-laws, no business could be transacted and accordingly, the meeting was adjourned. On 19th March, 2010 another meeting of the Managing Committee though was convened, the same also could not transact any business because of the lack of quorum. The same was the case on 12th April, 2010. On 23rd April, 2010, the Zonal Joint Registrar of Cooperative Societies, Tezpur Zone suspended the Managing Committee of the Society and appointed a Senior Inspector/Auditor of the Cooperative Societies, Lakhimpur to act as an one man Ad-hoc Committee to manage the affairs of the Society in purported exercise of the power conferred under Sub-Section (3) of Section 31 read with Section 36 of the Act. The said order was preceded by a show cause notice dated 29th January, 2010 issued by the Zonal Joint Registrar asking the petitioner and the Secretary of the Society to show cause as to why necessary action should be taken against the Managing Committee basically on the ground of resignations by 8 (eight) members and for its inability to hold the meeting of the Managing Committee consecutively for 3 (three) times, i.e. on 11th March, 2010; 19th March, 2010 and 12th April, 2010, due to the lack of required quorum. The petitioner, however, did not file any reply to the said show cause notice. An appeal was preferred by the petitioner on 7th May, 2010 before the Zonal Joint Registrar for revocation of the order of suspension, which was admitted for hearing on 14th May; 2010. Another appeal was thereafter, preferred by the petitioner before the Registrar of Cooperative Societies on 24th June, 2010 requesting the Registrar to call for the records of the appeal preferred before the Zonal Joint Registrar and to dispose of the same, as the Zonal Joint Registrar did not pass any order despite hearing of the appeal. No separate order has been passed on those appeals preferred by the petitioner, as the Managing Committee of the Society, in the meantime, has been dissolved vide order dated 12th July, 2010 in purported exercise of the power conferred u/s 37 of the Act. Hence, the present writ petition.

2. I have heard Mr. D.C. Borah, learned counsel for the petitioner and Mr. A.K. Phukan, learned Advocate General assisted by Mrs. S. Sarma, learned Government Advocate appearing for the respondents.

3. The learned counsel for the petitioner submits that the Zonal Joint Registrar of Cooperative Societies cannot dissolve the Managing Committee of the Society on the ground that 8 (eight) out of 12 (twelve) elected members resigned from the Office resulting in the lack of quorum for holding the meeting of the Managing Committee, since the registered Bye-law of the Society lays down the procedure for filling up of the vacancy caused due to resignations by any members of the Managing Committee. It has also been submitted that the Zonal Joint Registrar instead ought to have taken steps for convening the meeting of the general assembly to fill up the vacancy caused due to resignations by 8 (eight) members, in terms of the registered Bye-laws of the Society. It has also been submitted that in any case, the Zonal Joint Registrar cannot dissolve the Managing Committee of the Society under Sub-Section (3) of Section 31 read with Section 36 of the Act without issuing any notice to show cause as to why the Society should not be dissolved. According to the learned counsel, though initially on 29th January, 2010, a notice was issued to show cause as to why appropriate action should not be taken against the Managing Committee of the Society, after suspending the Managing Committee of the Society, no show cause notice asking the petitioner to show cause as to why the Managing Committee should not be dissolved has been issued. In any case, according to the petitioner, the resignations of the 8 (eight) members of the Managing Committee cannot be the ground for dissolution of the Managing Committee, when the registered Bye-laws provide the procedure how such casual vacancies are to be filled up. The learned counsel further submits that the Managing Committee of the Society cannot be dissolved by invoking the power conferred u/s 36 of the Act without a resolution being adopted at a special general meeting of the general assembly of the Society for dissolution of the Managing Committee and thereafter, to elect a new one. It is the submission of the learned counsel that the Zonal Joint Registrar has exercised the power conferred u/s 36 of the Act without directing holding of a special general meeting of the general assembly as required u/s 33(1)(d) of the Act for the purpose of dissolution of the Managing Committee. The learned counsel, therefore, submits that the order of suspension as well as the order of dissolution of the Managing Committee, therefore, cannot stand the scrutiny of law, the same being contrary to the provisions of the Act and the registered Bye-laws of the Society.

4. Mr. Phukan, learned Advocate General, on the other hand, supporting the impugned order passed by the Zonal Joint Registrar has submitted that since Bye-law 25 of the registered Bye-laws of the Society provide that 9 (nine) members would form the quorum and 8 (eight) elected members resigned from their office, the Managing Committee cannot function, as it cannot transact any business because of lack of quorum, which resulted in a situation where the Zonal Joint Registrar had to intervene and keeping in view the object of the Acts

and formation of the Society, initially suspended the Managing Committee and thereafter, dissolved the same. The learned Advocate General further submits that bye-law 23 of the registered Bye-laws of the Society is not applicable in the case in hand, as the vacancies caused due to resignations by 8 (eight) elected members cannot be treated as casual vacancies, so as to fill up the same by holding another election for that purpose. The learned Advocate General submits that it is in the best interest of the shareholders of the Society and Cooperative movement, the order of dissolution of the Managing Committee had to be passed as without the required quorum the other members of the Managing Committee cannot transact the business thereby violating the provisions of the Act as well as the registered Bye-laws.

5. The submissions of the learned counsel appearing for the parties received my due consideration. The Society in question has been registered u/s 11 of the Act. The registering authority accordingly registered the Bye-laws of the Society under Sub-Section (2) of Section 11 of the Act. The Bye-laws of the Society having been registered by the registering authority under the provisions of the Act, those are binding on all party concerned, unless of course, the Bye-laws are amended by invoking the power conferred u/s 13 of the Act.

6. Sub-Section (3) of Section 31 provides that the supreme authority of a registered Society is vested on the general assembly. The supreme authority in respect of any matter, however, shall be vested on the Government or the Registrar, as may be provided in the Bye-laws, or any person authorized by them in writing, during pendency of any loan or service from the Government, or any other creditor secured at the instance of the Government, when the functioning of the Society adversely affects the interests of the Government or such creditor touching such loan or service. Such authority in that case may also extend to the appointment of officers to hold any of the offices of the Society or any person as ex-officio members of the Administrative Council, Managing Body or any Committee of the Society even if not members of the Society. The said provisions has also empowered by the State Government or the Registrar to exercise the supreme authority even in the absence of any loan or service when the Government or Registrar deem their intervention to be necessary in the interest of the members of the Society or of the Cooperative movement in general.

7. Section 36 of the Act confers the power on the Registrar to dissolve and reconstruct the Administrative Council, Managing Committee or any Committee of a Society. Sub-Section (1) of Section 36 provides that if the Registrar is satisfied, after an inspection or enquiry under Sections 60 or 61 for reasons to be recorded in writing, that the Administrative Council, Managing Committee or any Committee of a registered Society is not functioning properly or according to the Act, Rule or Bye-laws, he may, after giving the offending Body an opportunity to state its case, issue direction u/s 33(1)(d) of the Act to call a special general meeting of the general assembly within a time to be specified for dissolution of the Administrative Council, Managing Body or Committee concerned and to elect

new one. The power of suspension of such Council/Body/Committee can also be exercised by the Registrar, if it is necessary as an emergent measure. Section 37 of the Act empowers the Registrar to dissolve the Administrative Council, Managing Body or any Council of a Society if such body is not dissolved or reconstituted within the time specified by the Registrar u/s 36 of the Act and to appoint a person or persons to manage the affairs of the Society for such period not exceeding 1 (one) year, which, however, can be extended to a maximum period of 3 (three) years. The power u/s 37, therefore, can be exercised by the Registrar only in the event of failure to comply with the direction issued by the Registrar to hold the special general meeting of the general assembly to dissolve the Administrative Council, Managing Body or any Committee, subject to fulfillment of the conditions stipulated in Section 36 of the Act and not otherwise.

8. As discussed above, the Bye-laws of the Society has been registered on registration of the Society u/s 11 of the Act. Bye-law 23 of the registered Bye-laws provides the manner in which the vacancy caused due to the death, removal, resignation etc. are to be filled in. The Bye-laws of the Society having been registered, the same has to be complied with unless of course the same is amended under the provisions of the Act. Bye-law 23(Ka)(5) of the registered Bye-laws provides that in the event any vacancy of the member of the Managing Committee is caused during the period of its continuance, such vacancy has to be filled up from Class-I or Class-II shareholders, who elected such members and in case the vacancy in the nominated members occurs that has to be filled up by the Registrar or by the concerned Bank as the case may be. Bye-law 23(kha) provides that if any vacancy in the office of the member of the Managing Committee caused due to the death, removal, resignation or for any other reason, such vacancy has to be filled up by such class of shareholders representing such members and such newly elected member will hold the office for the remaining period for which the earlier member was elected.

9. The power conferred on the Government as well as the Registrar of the Cooperative Societies u/s 31(3) as well as under Sections 36 and 37 of the Act are panel in nature. Under Sub-Section (3) of Section 31, the State Government or the Registrar can appoint officers to hold any office of the Society or persons to be the ex-officio members of the Administrative Council, Managing Body or any Committee of the Society but cannot dissolve an elected body. The power of dissolution of an elected body is vested on the Registrar u/s 36 as well as u/s 37 of the Act. The State Government has, however, power u/s 39A of the Act to remove any Council, Body or Committee subject to fulfillment of the conditions stipulated therein. The Registrar can exercise the power u/s 36 of the Act in the eventuality of the registered Society unable to function properly or in accordance with the Acts, Rules or Bye-laws. In exercise of such power, the Registrar can direct a special meeting of the general assembly be called u/s 33(1)(d) within a specific time to dissolve the Administrative Council, Managing Body or Committee and to elect a new one, provided the registered Society is not functioning properly or according to the provisions of the Act, Rules or Bye-laws and if the

Registrar is satisfied, after an inspection or enquiry under Sections 60 or 61, for which the reasons are required to be recorded in writing. The Registrar, however, has the power to suspend such Council, Body or Committee if it is necessary as an emergent measure. The power u/s 37 of the Act can be invoked by the Registrar only in the event of failure of the general assembly to hold the special general meeting to dissolve and reconstitute the Committee, as required u/s 36 of the Act. Before exercising the power under Sections 36 and 37 of the Act, a reasonable opportunity of being heard must be afforded to the concerned Council, Body or Committee, as by invoking such power, an elected body is sought to be removed on the basis of certain allegations.

10. In the instant case, it appears from the impugned order dated 12th July, 2010 that the Managing Committee of the Society has been dissolved only on the ground that 8 (eight) out of 12 (twelve) elected members have resigned, which resulted in lack of quorum to transact business by the Managing Committee and consequently inability of the Managing Committee to hold the meeting on 3 (three) consecutive dates. There is no other allegation against the Managing Committee about its functioning against the interest of its shareholders or against the cooperative movement or acting in violation of the Acts, Rules or the registered Bye-laws. The Registrar before invoking the power conferred u/s 37 of the Act dissolving the Managing Committee did not issue any direction calling for a special general meeting of the general assembly of the Society for the purpose of dissolution of the Managing Committee and to elect a new one u/s 33(1)(d) of the Act, under which provision, the Registrar has been empowered to call a special meeting of the general assembly. As noticed above, the power conferred u/s 37 can be exercised by the Registrar only in the event of failure of the Society to hold a special meeting of the assembly, as directed by the Registrar by invoking the power u/s 36 of the Act and not otherwise. No direction having been issued by the Registrar or the Zonal Joint Registrar to call a special general meeting of the general assembly u/s 33(1)(d) of the Act by invoking the power u/s 36 of the Act, the Zonal Joint Registrar cannot exercise the power of dissolution u/s 37 of the Act, as has been done in the case in hand. That apart, as noticed above, the Society in question has been dissolved on the ground that 8 (eight) out of 12 (twelve) elected members have resigned, which resulted in lack of quorum of the Managing Committee to transact its business. Bye-laws 23(Ka)(5) and 23(Kha) of the registered Bye-laws, which are noticed above, provides the procedure to fill up such vacancies caused due to resignation of the members. The Registrar or the Zonal Joint Registrar of the Cooperative Societies, therefore, ought to have issued the direction to call a special general meeting of the general assembly of the Society to deliberate upon the eventuality of such resignation and to take a decision in that regard taking into account the provision of filling up of the vacancy caused due to resignation as provided under Clause 23 of the registered Bye-laws, the general assembly being the supreme authority, which has not been done by the respondent authorities and instead dissolved the Society.

11. The contention of Mr. Phukan, learned Advocate General that the provision of Bye-Law 23 of the registered Bye-laws do not apply in the case in hand, as the large scale resignations of the members do not constitute the casual vacancy, cannot be accepted in view of the provision contained in Bye-law 23 of the registered Bye-laws and as the "casual vacancy" under the Bye-law means a vacancy occurred by death, resignation or removal etc.

12. That being the position, the order of dissolution of the Managing Committee dated 12th July, 2010 passed by the Zonal Joint Registrar of Cooperative Societies, Tezpur Zone is interfered with being contrary to the provisions of the Act and the registered Bye-laws of the Society and accordingly set aside. The Registrar of Cooperative Societies is directed to invoke the power u/s 33(1)(d) of the Act within 15 (fifteen) days from today and to call for a special meeting of the general assembly fixing the time limit for holding such meeting, to deliberate upon the eventuality caused due to resignation of 8 (eight) members and to take a decision in that regard keeping in view the provision contained in Bye-laws 23(Ka)(5) and 23(Kha) of the registered Bye-laws of the Society. Till the general assembly of the Society takes a decision as indicated above, the Society in question shall be managed by the one man Ad-hoc body already appointed, so that the shareholders do not suffer because of inability of the elected body to transact any business due to lack of required quorum. The writ petition is accordingly allowed to the extent indicated above. However, keeping in view the facts and circumstances of the case, there would be no order as to costs.