
(2009) 04 GAU CK 0016
In the Gauhati High Court
Case No : Writ Petition (C) No. 442 of 2009

Nachindra Raj

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 29-04-2009

Acts Referred:

Assam Co-operative Societies Act, 1949 — Section 92

Citation : (2009) 1 GLD 576 Supp

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.K. Sharma, J.—This writ petition is against the order passed by the Registrar of Co-operative Societies, Assam holding that the particular Annual General Meeting (AGM) of the society in question was not in conformity with the provisions of the "Assam Co-operative Societies Act" and the rules thereunder and accordingly cancelling the same and constituting an Ad hoc Managing Committee of the society providing that the said committee would hold the AGM/Election within 90 days from the date of issuance of the order.

2. Briefly stated, the facts leading to initiation of the writ proceeding are that the Managing Committee of the society represented by the petitioner as its Chairman was elected in the meeting held on 27.7.2005. As per the provisions of the Assam Cooperative Societies Act, 1949 and the rules, its term was for three years. By order dated 23.5.2008, the Registrar of Co-operative Societies granted extension of the term of the Managing Committee upto 30.6.2008 for holding AGM/Election. Such extension was granted on the basis of the application filed by the Managing Committee. Further extension was granted on the basis of another application dated 16.6.2008. The extension was for three months and the order was passed on 25.8.2008.

3. The Managing Committee of the society in its meeting held on 5.11.2008

adopted resolution for holding the AGM/Election on 23.11.2008. In the same meeting, resolution was also adopted fixing 14.11.2008 to 17.11.2008 as the period for filing nomination; 18.11.2008 as the date for scrutiny of the nominations and 19.11.2008 as the date for withdrawal of nominations. The respondent No. 6 i.e. the Sr. Inspector/Auditor of Co-operative Societies scrutinized the nomination papers on 18.11.2008. Upon such scrutiny while accepting the nomination filed by the petitioner for the post of Chairman, the nomination submitted by the respondent No. 7 for the same post was found to be not in order in absence of signature of the proposer and seconder and accordingly, it was rejected. Annexure-2 series to the writ petition is the result sheets of scrutiny and the declaration of results for the post of Chairman, Vice-Chairman and Members.

4. The AGM was held on 23.11.2008 as was notified earlier and resolution was adopted in the meeting to constitute the Managing Committee with the elected members. The minutes of the proceedings of the meeting was forwarded to the respondent No. 5 i.e. the Assistant Registrar of Co-operative Societies with copy to the respondent No. 2 i.e. the Registrar of Cooperative Societies and other authorities vide letter dated 23.11.2008. When the matter was pending before the authority, the petitioner having come to know that the respondent No. 7 whose nomination was rejected alongwith some others have submitted representations to the departmental Minister for constitution of Ad hoc Body and the same was forwarded to the respondent No. 2 directing constitution of such Ad hoc Body, filed the writ petition being WP(C) No. 5165/2008. The writ petition was disposed of by order dated 19.1.2009 directing the authority to pass a speaking order on the basis of the request made by the society to accord approval to the resolution adopted in the AGM/Election held on 23.11.2008 in respect of the constitution of the Managing Committee.

5. After disposal of the writ petition in the above manner, the respondent No. 2 by his impugned order dated 29.1.2009 having rejected the prayer for approval of the constitution of the managing Committee as aforesaid and having constituted the Ad hoc Managing Committee headed by the respondent No. 7 apprehending which, the earlier writ petition was filed, the petitioner has filed the instant writ petition challenging the validity and legality of the same.

6. While it is the case of the petitioner that the AGM having been held within the extended period of time with participation of the respondent No. 7, the Registrar could not have disapproved the same on the ground assigned in the impugned order and that the basic foundation of the said order being the extraneous consideration as disclosed in the earlier writ petition, same is liable to be interfered with, it is the stand of the respondents both official and private that the AGM having been held beyond the period off extension, there was no question of approval of the same.

7. I have heard Mr. A.K. Goswami, learned Senior Counsel assisted by Mr. S. Banik, learned Counsel for the petitioner was well as Ms. R. Chakraborty, learned

Additional Sr. Government Advocate, Assam, I have also heard Mrs. M.D. Choudhury, learned Counsel representing the respondent No. 7. I have considered the rival submissions and the materials on record.

8. The entire controversy centres around the order of extension dated 25.8.2008. The order reads as follows:

GOVERNMENT OF ASSAMM ORDERS BY THE GOVERNOR OF ASSAM
NOTIFICATION

No. Coop. 173/2008/5, dated Dispur, the 25th August, 2008.

In exercise of powers conferred u/s 92 of the Assam Co-operative Societies Act, 1949 (Act-I of 1950) as amended the Governor of Assam is pleased to exempt the Saikhowa Saidya Min Samabai Samity Ltd., Tinsukia from operation of the Sections 32(1), 32(2), 32(3), 32(4), 32(5) and 32(6) as the case may be of the Assam Co-operative Societies Act, 1949 for a period of 3 (three) months subject to condition that AGM is to be held within the extended period.

Sd/- D.N. Das Deputy Secy. to the Govt. of Assam, Cooperation Deptt.

9. By the said order, the society was exempted from operation of the said provisions of the Act, subject, however, to the condition that AGM would be held within the exempted period. The provisions which were exempted by the said order are Sections 32(1), 32(2), 32(3), 32(4), 32(5) and 32(6), which are quoted below:

32. Annual Meeting of General Assembly.-(1) A General meeting to be termed the annual general meeting of the General Assembly of a registered society shall be held at least once in every cooperative year for the purpose of:

(a) electing members of the Administrative Council, managing body and other committees of the society, the Chairman, Vice-Chairman and other office bearers, as may be provided in the bye-laws, and fixing such fees, salaries or other remuneration as prescribed in the bye-laws provided that the Government may prescribe by rules the qualification necessary for office-bearers and employees;

(b) electing an internal auditor or auditors, who shall not be members of the Administrative Council of governing body and fixing the remuneration;

(c) considering the annual report of the Administrative Council or, if there be no Administrative Council, of the managing body, audit report and audited annual accounts and balance-sheets and reviewing the working of the society during the preceding Cooperative year;

(d) deciding how profits are to be distributed in accordance with the bye/laws;

(e) passing the annual budget and approving the programme of work for the ensuing year;

(f) fixing the maximum amount of liability to be incurred during the ensuring year and the maximum rate of interest payable on deposits; and

(g) considering such other business as may be placed before the meeting in accordance with the bye-laws.

[Provided that notwithstanding anything to the contrary contained in this Act or Rules made thereunder or bye-laws of any society, the Registrar may direct that the first annual general meeting of any registered society shall be held on a date to be fixed by him (which shall be a date within one hundred and eighty days of the registration of the society) to elect the office bearers of the society, according to the procedure and manner prescribed in the bye-laws of the society and the office bearers so elected shall assume office on the conclusion of the general meeting in which they are elected in replacement of the managing committee elected at the time of the inaugural general meeting of the society.]

(2) Such a meeting shall be held within 60 days from the date of expiry of the preceding Co-operative year:

Provided that if for any reason the meeting cannot be held within the date fixed by the Registrar, any society may by application made within the aforesaid period of 60 days and addressed to the Registrar, pray for extension of time for holding the meeting stating the grounds for which, in the opinion of the society, the meeting cannot be held. The grounds for which the Managing Body should not stand dissolved under Sub-section (4) below should also be stated in the application, if any made for extension. The period for which the extension is sought for shall also be specifically stated in the application.

(3) When an application for extension is made under the preceding sub-section, the Registrar may, if he is of opinion that extension should be granted and that there are good grounds for which the Managing Body should not stand dissolved under Sub-section (4) below by order grant extension for any period not exceeding 30 days from the date of passing the order. If the Registrar is of opinion that no extension should be granted he shall by an order passed to that effect reject the same. In both the cases, the order passed shall be communicated under registered post to the society applying for extension.

(4) If any society fails to hold the meeting within the period of 60 days mentioned in Sub-section (2) or when an application is made for extension under the proviso to Sub-section (2) within the period so extended or when no extension is granted, before the expiry of 2 days from the date on which the order rejecting the application for extension is communicated, the Administrative Council and/or the Managing Body of the society shall stand dissolved from the date of expiry of the aforesaid period.

(5) When the Administrative Council and/or Managing Body are dissolved under Sub-section (4), the Registrar may appoint an officer or officers or any ad hoc body to manage the affairs of the society and to perform the functions of the

Administrative Council and Managing Body till the new Body is elected or formed.

(6) The officer or officers or the ad hoc body appointed by the Registrar under Sub-section (5) shall arrange to hold the annual meeting of the general assembly which shall be held within ninety days of the appointment Provided that the State Government may allow in its discretion such further time, as may be considered necessary but not exceeding one year for holding of such meeting.

10. As per the aforesaid provisions of the Act, the AGM of a registered society is to be held once in every co-operative year for the purpose of election etc., subject however to the condition in the proviso to Section 32(1); holding of the meeting within 60 days from the date of expiry of the preceding co-operative year; application for extension and the consequence of non-granting of extension; the consequence of dissolution of the Managing Committee and the duty cast on the ad hoc body. These provisions are the basic provisions regarding holding of AGM at least once in every co-operative year; extension thereof and the consequence of such extension etc. By the aforesaid notification dated 25.8.2008, the society in question was exempted from the operation of the said provisions. If that be so, the society was under no obligation rather could not have held the AGM/Election during the period when, it remained under exemption from operation of the said provisions.

11. As to when the AGM/Election was to be held after the period of exemption was over i.e. after 24.11.2008, if the period of three months is taken from the date of the notification dated 25.8.2008 and 30.9.2008, if the period of extension is counted from 30.6.2008 i.e. the date on which the earlier extension expired, was not notified by any subsequent notification. However, in the notification dated 25.8.2008 itself, while notifying that the aforesaid provisions would remain under exemption, it was also notified that the AGM was to be held within the extended period. If the society remained under exemption from the operation of the aforesaid provisions for the period specified in the order, it could not have held the AGM/Election within the said period. If the AGM was to be held within the exempted period as stipulated in the notification dated 25.8.2008, same would run counter to the exemption itself. Moreover, in the notification, there was no indication that the exemption was with retrospective effect. In the normal circumstances, any notification issued unless specifically specified to be operative retrospectively, it becomes effective only prospectively.

12. After the aforesaid notification dated 25.8.2008 was issued, the society taking the same to be prospective in operation notified the AGM/Election. The AGM was to be held on 23.11.2008 and before that the dates relating to filing of nominations, making scrutiny of the same etc. were notified. Nominations were filed and the respondent No. 6, a Government official was nominated to scrutinize the same, which he accordingly did on 18.11.2008 and thereafter in the AGM held on 23.11.2008 declaration was made in respect of election of the elected members. It will be pertinent to mention here that the respondent No. 7, who is the beneficiary of the impugned order dated 29.1.2009 had also

submitted nomination for the post of Chairman, but is nomination was rejected being defective.

13. The stand of the Registrar of Cooperative Societies is that since the society was granted extension for holding AGM/Election upto 30.6.2008, the subsequent notification dated 25.8.2008 would be operative from 1st July, 2008 upto 30.9.2008 and thus the action towards holding the AGM/Election during the period from 14.11.2008 to 23.11.2008 was beyond jurisdiction being at a time when the Managing Committee seized to have its existence. Such stand is fallacious. As noted above, there was no indication in the notification dated 25.8.2008 that the exemption of three months would be retrospective. Had that be in the intention, it would have been spelt out specifically in the notification. If the kind of interpretation, which is sought to be given by the Registrar to the notification dated 25.8.2008 is to be accepted, the Managing Committee of the Society could not have functioned beyond 30.6.2008 upto which date similar exemption was granted by order dated 23.5.2008. If the Managing Committee could continue beyond 30.6.2008 so as to get the benefit of the notification dated 25.8.2008 and the same very authority which has passed the impugned order accepted the said position, a different stand could not have been taken so as to say that the society failed to hold the AGM within the stipulated period of time i.e. 30.9.2008.

14. The Managing Committee of the society duly notified the election within the permissible limit understanding the notification of exemption dated 25.8.2008 as prospective covering the period upto 24.11.2008. Not only that the departmental officer also participated in the process of AGM/Election, scrutinized the nomination papers and duly certified the results thereof, pursuant to which a final decision was taken on 23.11.2008 i.e. the date notified for holding the AGM. Nothing was done by the Registrar so as to indicate that the Managing Committee became functus officio after 30.9.2008. It was only after the AGM/Election was held and resolution thereof were adopted in the AGM held on 23.11.2008, the Registrar suddenly woke up so as to contend that the said AGM/Election was not within the stipulated period. There is no denial that the Managing committee continued to function beyond 30.9.2008 and there was no objection from any corner. Thus, there was implied and/or tacit approval of the same very Registrar, who has now passed the impugned order 29.1.2009 holding otherwise.

15. There is another aspect of the matter, both in the earlier round of litigation as well as in this proceeding it is specific case of the petitioner that the respondent No. 7 duly participated in the election process and submitted his nomination for the post of Chairman. It is another thing that his nomination was rejected being defective. Having participated in the election process he could not have turned around the same so as to project himself as the Chairman of the Ad hoc Managing Committee, which has the backing of the Minister concerned. It was on the basis of his representation, the Ad hoc Committee headed by him was

recommended and the Registrar readily acted upon the same unmindful of the fact and position that the AGM/Election was already held. Thus, the democratic process towards constitution of Managing Committee was set at naught at the behest of the respondent No. 7, who unsuccessfully submitted his nomination participating in the election process.

16. For all the aforesaid reasons, I am inclined to interfere with the impugned order dated 29.1.2009 (Annexure-6) passed by the Registrar of Co-operative Societies, Assam with the direction to grant approval to the AGM/Election already held in respect of the society. This direction is issued keeping in mind the fact that the only ground on which, the approval has been refused to be accorded has not appealed to the Court and the impugned order in which the said ground is the solitary round towards not according approval to the AGM/Election has been interfered with.

17. Writ petition is allowed, without, however, any order as to costs.