

**(1993) 03 GAU CK 0022**  
**In the Gauhati High Court**  
**Case No : Civil Rule No. 2569 of 1992**

Nalin Chandra Hazarika

APPELLANT

Vs

State of Assam and Others

RESPONDENT

**Date of Decision :** 10-03-1993

**Acts Referred:**

Assam Co-operative Societies Act, 1949 — Section 32, 32(1), 92  
Assam Co-operative Societies Rules, 1953 — Rule 24(iii)

**Citation :** (1994) 1 GLR 1

**Hon'ble Judges :** U.L. Bhat, C.J.; R.K. Manisana, J

**Bench :** Division Bench

**Advocate :** H. Roy, B.D. Das, H.N. Goswami and H.N. Sarma, for the Appellant;  
S.N. Bhuyan, General and B.C. Das, for the Respondent

## **Judgement**

U.L. Bhat, C.J.—This writ petition relates to Sibsagar District Central Co-operative Bank Ltd. Jorhat and has come up before us on a reference made by one of us (Manisana, J.). We have heard both sides. This institution is referred to as "Society" in the Judgment.

2. For the last 18 years the society did not have an elected administrative council or office bearers. It was managed by successive administrative council nominated by the Registrar of Co-operative Societies. Petitioner was the Chairman of the last such nominated administrative council with mandate to hold annual general meeting for the purpose of election within a period prescribed in the order. The council consists of 21 members out of which 18 posts are elected by the share-holders of the Bank and one third among them retire every year and the share-holders are required to elect 1/3rd elected Directors each year. Since no election had been conducted for the last 18 years, the AGM was held on 21-7-1991 where 18 new members of administrative council were to be elected. The Petitioner was elected to the administrative council on 21.7.91 and was elected as Chairman by the Directors. The Registrar dissolved the council by an order dated 13th November, 1992 and that order was challenged in this Court in

Civil Rule No. 4642/1991 and by an order of stay passed by this Court the council elected on 21.7.91 was directed to continue to function. That writ petition has since been disposed of as infructuous. This petition relates to co-operative year 1991--92 and the AGM was required to be held in the year 1991. Of the 18 members who in turn elected the Petitioner as Chairman, 1/3rd were to retire and their places were to be filled up by election scheduled to be held on 28.5.92. The Government by issuing notification u/s 92 of the Assam Co-operative Societies Act, 1949 exempted all the co-operative societies from the operation of Section 32(1) and 32(2) of the Assam Co-operative Societies Act, 1949 (for short "the Act") until 31.7.92. The period was however extended till 31.10.92. The society convened the AGM on 27.10.92 by taking necessary steps. The meeting was held on that date but business could not be transacted in the absence of quorum and it was announced that the adjourned meeting will be held on 6.11.92, as per Rule 24 (iii) of the Assam Co-operative Societies Rules, 1953, for short "the Rules". The adjourned AGM was held on 6.11.92. Five new Directors were elected as against six vacancies and the proceedings were submitted before the Registrar for approval. By an order dated 13th November, 1992 the Registrar declared the administrative Council to be dissolved u/s 32(4) of the Act and appointed an officer to manage the affairs of the Society till the new body is elected or formed. This order is challenged in this writ petition.

3. Section 32(1) of the Act requires that the AGM of the Society shall be held at least once in every co-operative year for the purpose of electing members to the administrative council and other offices indicated therein. Section 2(f) states that "Co-operative Year" means the period beginning and ending on such dates as may be fixed by the Registrar for the purpose of drawing up the balance sheets of the society. It is agreed that Registrar has fixed 1st April of one calendar year as the beginning and 31st March of the next calendar year as the ending of the Co-operative year. Section 32(1) of the Act requires holding of election on or before 31st March of every year.

4. Section 32(2) of the Act provides that such a meeting shall be held within 60 days from the date of expiry of the preceding co-operative year. Therefore the AGM must be held within 60 days on or before 30th May of a year.

5. Section 92 of the Act provides that the State Government may, by general or special order, exempt any registered society or class of registered societies from any of the provisions of the Act. It is common ground that by such order the State Government exempted all co-operative societies from the operation of the provisions of Section 32(1) and (2) of the Act until 31.10.92. It is therefore clear in the light of the Government order that the date 31.10.92 is substituted for the date of expiry of 60 days from the date of expiry of the year. That being so there can be no doubt that the AGM should be held on or before 31.10.92.

6. Learned Advocate General contends that the AGM in the instant case was not held on or before 31.10.92. Learned Counsel for the Petitioner contends that it was held on 27.10.92. There is no controversy that the administrative council

decided to convene the AGM on 27.10.92 and took requisite steps for issuing notice to the share-holders. There is also no controversy at the bar that only 23 share-holders turned up. 23 share-holders are not sufficient to constitute quorum within the meaning of Rule 24(1) of the Rules which provides that the quorum of a meeting of the general assembly shall be one-fifth of the total number of members. The AGM was adjourned in terms of Rule 24(iii) of the Rules fixing 6-11-92. There is no controversy at the bar that the adjourned AGM was conducted on 6-11-92. business transacted and election conducted, The impugned order states that the society stood automatically dissolved as it failed to hold the AGM for 1992-93 within the stipulated period.

7. Sub-rule (1) of Rule 24 of the Rules provides that the quorum of a meeting of the general assembly shall be one fifth of the total number of members. Sub-rule (2) provides that no business shall be transacted at any meeting of the general assembly unless there is a quorum at the time when the business of the meeting is due to commence. Sub-rule (3) provides, inter alia, that the meeting shall stand adjourned ordinarily on the same day in the next week at die same lime and place but the Chairman of the meeting may, however, decide to adjourn the meeting to a date not later than fourteen days or as may be provided in the bye-laws of the society. Sub-rule (4) provides, inter alia, that die business can be transacted at the adjourned meeting even without a quorum.

8. Examining the facts in the light of the provisions of Rule 24, it is clear that the AGM was convened on 27-10-92 and only 23 share-holders turned up but the business could not be transacted for want of quorum.

The meeting was adjourned till 6-11-92. On 6-11-92 the adjourned AGM was held and election was held. Adjourned meeting is continuation of the meeting held earlier. It is stated at page 41 of Shackleton on "The Law and Practice of Meetings" (Sixth Edition) that an adjournment, if bonafide, is only a continuation of the meeting and the notice that was given for the first meeting holds good for and includes all the other meetings following upon it. If, however, the meeting is adjourned sine-die, a fresh notice must be given. It is also stated at page 66 of the said Book that an adjourned meeting is deemed to be a continuation of the former meeting and no new notice is necessary unless the regulations so prescribed or the adjournment has been sine die. Learned Counsel has also drawn our attention to the decision of the Supreme Court in the case of Chandrakant Khaire Vs. Dr Shantaram Kale and Others, where reference is made to the above passages in the "Law and Practice of Meetings".

9. The adjourned meeting is, in the eye of law, continuation of the former meeting; the meeting held on 6-11-92 was a continuation of the meeting held on 27-10-92. The administrative council of the Society, could hold the AGM on or before 31-10-92. The same stood adjourned for want of quorum and the adjourned meeting took place after a few days. The administrative council of the society has abided by the requirements of Section 32 (2) of the Act That being so the view taken by the Registrar that there was dissolution of the administrative

council u/s 32(4) of the Act is legally unsustainable. Consequently the impugned order dated 13-11-92 is quashed.

10. The proceedings of the AGM have been submitted to the Registrar as required by law. The Registrar will apply his mind in accordance with law and pass an order in regard to approval and communicate the order to the society. Till such communication to the society, the administrative council shall be allowed to function.

11. Before parting with the case, we would like to point out a few factors which encourage unnecessary litigation. Section 32(2) of the Act requires election to be held within 60 days from the end of a co-operative year. Thereafter the proceedings of the AGM shall be submitted to the Registrar for approval. Registrar, who is a busy functionary takes considerable time to pass orders. This Court is flooded with a number of writ petitions either to require the Registrar to pass expeditious orders or to quash the orders passed by the Registrar. This results in further delay in the official procedure. Even after the lapse of several months, finality is not achieved regarding the election held. The State Government may consider whether it would not be advisable to have election conducted within 60 days before expiry of the co-operative year so that formalities of approval could be over by the time the co-operative year expires. This may require amendment to the Act.

12. Section 80 of the Act provides that no appeal shall lie to the State Government from any order of the Registrar except on a question of law. No appeal lies on question of fact. This leads to the filing of a large number of writ petitions. It is for the State Government to consider whether it is not advisable to have a Judicial Tribunal presided over by a District Judge to be the appellate authority from the orders of Registrar. We feel that constitution of such a Tribunal would provide justice to all including the cooperators, public and the Co-operative Department. Implementation of these suggestions, in our view, will help to reduce the volume of writ petitions in this Court and secure speedy and successful implementation of the provision of the Act.

Copies of this Judgment be sent to the Chief Secretary and to Secretary to the Govt. of Assam in the Co-operative Department.