

(2023) 10 GAU CK 0025

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 8305 Of 2022

Nazrul Islam

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 09-10-2023

Acts Referred:

Assam Cooperative Societies Act, 2007 — Section 38, 38(2), 44, 92, 93

Citation : (2023) 10 GAU CK 0025

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : S Borthakur, G Bordoloi, Mk Hussain, Nnb Choudhury

Final Decision : Dismissed

Judgement

1. The instant writ petition has been filed challenging an order dated 14.12.2022 passed by the Registrar of Cooperative Societies, Assam in an appeal preferred by the respondent no. 5. By the impugned order dated 14.12.2022, the matter regarding appointment of Secretary of the Dhupaguri Samabai Samitee Ltd. (hereinafter referred to as the Samitee) in the district of Nagaon was set aside.

2. It is the case of the petitioner that he was appointed as the Salesman-cum-Loan Collector for the Samitee. On 21.09.2022, the Secretary of the Samitee had expired whereafter the occasion had arisen for filling up the said post in which, along with the petitioner, there was another contender, viz, the respondent no.5. In the resolutions of the Samitee dated 14.10.2022, more specifically, the Resolution No. 4, an unanimous decision was taken for referring the matter to the ARCS to take a decision for appointment of the Secretary whereafter, the present petitioner was appointed. The said order of appointment was the subject matter of challenge in the appeal before the Registrar of Cooperative Societies which has been disposed of vide the impugned order dated 14.12.2022. By the said order, the impugned resolution was set aside and the matter was remanded to the Society to take a fresh decision for appointment of the Secretary as per Section 38 (2) of the Assam Cooperative Societies Act, 2007 (hereafter referred

to as the Act) and to take a decision by majority by following Section 44 of the Act.

3. I have heard Shri S Borthakur, learned counsel for the petitioner as well as Shri G Bordoloi, learned Standing Counsel, Cooperation Department, Assam. I have also heard Shri NNB Choudhury, learned counsel for the respondent no. 4 whereas the respondent no. 5 is represented by Shri MK Hussain, learned counsel.

4. Shri Borthakur, learned counsel for the petitioner has submitted that though there is no dispute with regard to the appellate provisions and the powers to be exercised by the Registrar of Cooperative Society as the Appellate Authority, there was no consideration of the relevant materials at all. He submits that the decision to refer the matter to the ARCS by the impugned resolution was the decision of the Board taken by majority and therefore, without going into that aspect of the matter, the Appellate Authority had remanded the matter by ignoring relevant aspect, including the aspect of seniority. It is the contention of Shri Borthakur, learned counsel that while the petitioner was appointed in the Board from the year 2003, the respondent no. 5 was appointed as Office Assistant in the year 2011. The learned counsel further submits that when the meeting of the Board could not come to a decision whom to appoint, they had come to an unanimous decision to refer the matter of appointment to the ARCS and the ARCS on such reference, having made the decision, the same was not liable to be interfered with on some irrelevant factors. He, accordingly submits that the impugned order dated 14.12.2022 be set aside or in the alternative, the matter may be remanded to the Appellate Authority for a fresh consideration by taking the relevant factors into account.

5. Per contra, Shri Bordoloi, learned Standing Counsel, Cooperation Department has submitted that Section 38 of the Act lays down the powers and functions of the Board. He submits that such powers are to be exercised in terms of Section 44 which lays down that decision by the Board are to be taken by a majority. He submits that the resolution taken in the meeting held on 14.10.2022 would also disclose that the reference was made to the ARCS on the background that while eight members of the Board were in favour of the respondent no. 5, five members were in favour of the petitioner and under that circumstance, the decision was taken to refer the matter to the ARCS. He submits that in the present dispute, the role of the Department would be minimal and the order passed by the Registrar appears to be reasonable as the powers to make such appointment is vested with the Board.

6. Shri NNB Choudhury, learned Counsel for the respondent no. 4, however, submits that by the Resolution No. 4 of the meeting dated 14.10.2022, the Board was unanimous in referring the matter to the ARCS which has to be construed as a decision by the majority which was accordingly acted upon by the ARCS. He further submits that the Inquiry Report dated 23.11.2022 would also establish that the decision was unanimous. He also submits that on a reading of the

impugned order dated 14.12.2022, it does not appear that the aforesaid factors were taken into consideration. Shri Choudhury, learned counsel submits that he has also filed an affidavit-in-opposition.

7. Shri Hussain, learned counsel for the respondent no. 5, however, submits that the resolutions taken in the meeting dated 14.10.2022 would clearly establish that majority members of the Board was in favour of appointing the respondent no. 5 in the ratio of 8:5 and therefore, there was no occasion at all to refer the matter to the ARCS as Section 38 read with Section 44 vests all such powers with the Board to be exercised on the basis of majority. He has also assailed the order of the ARCS in appointing the petitioner which took into account Sections 92 and 93 of the Act which he contends are not at all applicable in the instant case. By referring to the aforesaid Sections 92 and 93 of the Act, Shri Choudhury, learned counsel has submitted that all such powers are vested with the Registrar and without there being any delegation, the ARCS could not have exercised such powers and in any case, such powers are only for a reference or settlement of a dispute and in the instant case, there was no dispute at all. He also submits that the Registrar has only remanded the matter to the Board and the Board is yet to take a final decision and in absence thereof, he even raises the issue regarding lack of any cause of action in the present case. He has also filed an interlocutory application which this Court, in an earlier order, observed that the same would be considered as an affidavit-in-opposition.

8. The rival contentions of the learned counsel for the parties have been considered. The materials placed before this Court have also been duly examined.

9. There is no dispute at the Bar that the appointment of the Secretary of a Cooperative Society is an internal matter of the said Society and such powers are to be exercised by the Board in accordance with the provisions of Section 38 read with Section 44 of the Act. Section 44 of the Act makes it clear that decisions are to be taken by a majority. The resolutions pertaining to the appointment of the Secretary taken by the Board on 14.10.2022 make it clear that indeed, the majority was in favour to appoint the respondent no. 5 in the ratio of 8:5. However, in spite of that, the matter was left to the ARCS to take a decision. Whether the said reference would constitute a dispute is itself debatable. In any case, even assuming the same to be a dispute, the reference is to be made to the Registrar under Sections 92 and 93 of the Act who may, in an appropriate case, delegate the powers to the ARCS which, however, are not the facts in the instant case. The provision to prefer an appeal before the Registrar is also not a dispute. In the impugned resolution, the Registrar has taken note of Section 38 and Section 44 of the Act. Though much emphasis has been laid down by the learned counsel for the petitioner, Shri Borthakur regarding the aspect of seniority, this Court is of the opinion that when such prescription is not discernible from the statute holding the field, including the bye-laws which have been placed on records, such aspect cannot be held to be mandatory. It is another matter if the Board takes such aspect into consideration which is not the

instant case. The decision of the Registrar to remand the matter per se, does not appear to be unreasonable or arbitrary or rather, appears to be in consonance with the legal requirements by which the Board of the Society is to take a final decision.

10. In course of his arguments, Shri Borthakur, learned counsel for the petitioner has also placed before this Court certain Rules regarding the terms of employment and working conditions of the employees of the Cooperative Societies. The learned counsel, however, has been fair in informing this Court that he is not aware as to whether the Rules are actually in operation. Shri Bordoloi, learned Standing Counsel of the Department, however, confirms that such Rules are yet to be made operative.

11. In view of the aforesaid discussions and the facts and circumstances, this Court is of the view that no case for interference is made out and accordingly, the writ petition is dismissed.

12. The interim order is, accordingly vacated. Consequently, the Board is directed to take a final decision on the appointment of Secretary in accordance with law.

13. No costs.