

(2008) 01 GAU CK 0059
In the Gauhati High Court

Prafulla Rajkhowa and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 23-01-2008

Acts Referred:

Assam Co-operative Societies Act, 1949 — Section 31(3), 36

Citation : (2008) 1 GLT 874

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.K. Sharma, J.—Heard Mr. R. P. Hazarika, learned Counsel for the petitioners as well as Mr. D. C. Borah, learned Counsel appearing for the respondents No. 7 and 8.1 have also heard Ms. R. Chakraborty, learned State counsel.

2. The seven petitioners who are the members of the managing committee of the society called Raidongia Samabai Samity Ltd. have filed this writ petition challenging the legality and validity of the order dated 30.08.07 passed by the Joint Registrar of Cooperative Societies, Guwahati Zone. By the said order one Shri Tapan Kumar Saikia, Senior Inspector of Cooperative Societies, Nagaon has been appointed as Executive Officer to manage the affairs of the society until further order. As reflected in the order, such a course of action has been taken on the ground that seven members of the managing committee submitted their resignation in view of which the managing committee had no quorum in its meeting. The order has been passed in purported exercise of the power u/s 31(3) of the Assam Cooperative Societies Act, 1949.

3. As per the submissions made by the learned Counsel for the parties, the managing committee of the society comprises of 12 members out of which 9 are elected and 3 are co-opted members. On the other hand, in the affidavit filed by the said respondents, it has been stated that altogether there are 15 members. In absence of the notification, it is not discernible as how many members

constituted the managing committee. However, learned Counsel appearing for the respondent Nos. 7 and 8 submits that in fact, the managing committee consists of 12 members out of which 9 members are elected and 3 are co-opted.

4. The seven petitioners are stated to be the members of the managing committee and it is their case that the purported resignation tendered by 7 members of the managing committee is not borne on facts. According to them had there been any such resignation of 7 members, the instant writ petition could not have been moved by 7 members. Their further stand is that if there are 7 members in the managing committee out of 12, the question of lack of quorum as indicated in the impugned order does not arise.

5. In the affidavit in opposition filed by the official respondents the stand taken is that there was a report furnished by the Assistant Registrar of the Co-operative Societies and that in view of resignation tendered by 7 members a stalemate having been created, the impugned order had to be passed.

6. Mr. Borah, learned Counsel appearing for the respondents 7 and 8 has produced a copy of the purported resignation letter signed by 7 members of the managing committee. The said resignation was tendered on 23.08.07. He has also produced the copy of the report dated 17.07.07 submitted to the Registrar of the Co-operative Societies, Assam by the Assistant Registrar of Co-operative Societies, Nagaon.

7. The documents produced by the learned State counsel as well as Mr. Borah, learned Counsel for the respondent Nos. 7 and 8 do not go to indicate that the purported resignation tendered by the seven members to the managing committee in fact, was accepted. The said resignation letter was signed by 7 persons, but there is nothing to indicate that the same was accepted. In the affidavit in opposition also it is not the case of the official respondents that the resignation tendered by the 7 members of the managing committee has been accepted.

8. Apart from the affidavit in opposition, the impugned order dated 30.08.07 also speaks of the report of the Assistant Registrar of the Co-operative Societies, Nagaon copy of which has been produced by Mr. Borah, learned Counsel for the respondents No. 7 and 8. The report does not deal with the purported resignation tendered by the seven members of the managing committee. It speaks of chaotic situation which purportedly occurred in the AGM of the Co-operative Society held on 27.05.07. The report is in respect of approval of the minutes of the AGM held on 27.05.07. The Assistant Registrar of Co-operative Societies communicated his decision not to approve the proceeding of the AGM in view of anomalies noticed in the meeting.

9. The impugned order dated 30.08.07 has been passed not only on the basis of the purported resignation tendered by the 7 members of the managing committee of the society, but also on the basis of the aforesaid report submitted by the Assistant Registrar of the Co-operative Societies, Nagaon. Leaving aside

the question of the purported resignation tendered by the 7 members out of 12 members of the managing committee of the society, if any action is taken against the managing committee towards its dissolution, such action can be taken only after providing an opportunity of being heard. Section 36 of the Act deals with dissolution or reconstruction of the Administrative Council, Managing Body or and Committee of a society. If the Registrar is satisfied after an inspection or enquiry u/s 60 for reasons to be recorded in writing, that the Administrative Council, Managing Body or any Committee of a registered society is not functioning properly or according to this Act, rules or bye laws, he may, after giving the offending body an opportunity to state its case, direct under Clause (d) of Sub-section (1) of Section 33, that a special meeting of the General Assembly be called within a time to be specified to dissolve the Administrative Council, managing body or committee concerned and to elect a new one.

10. An exception to the aforesaid provision is provided in the proviso to Section 36. If in the opinion of the Registrar it is necessary as an emergent measure to suspend the offending body forthwith, he may do so and shall appoint a person or persons, on which conditions as prescribed by him, to be in full control of the suspended body until a new body has been elected or action has been taken in accordance with Section 37.

11. The effect of the impugned order dated 30.08.07 as has been agreed to by the learned Counsel for the parties, is that the managing committee of the society has been dissolved and that fresh election will have to be held. If this is the effect of the impugned order dated 30.08.07, then in that case, the opportunity as contemplated u/s 36 of the Act ought to have been provided to the managing committee of the society headed by the petitioner No. 1.

12. As regards the question of purported resignation tendered by 7 members of the Society, the position will have to be judged from the fact that the instant writ petition has been filed by the 7 members of the managing committee of the society. Even if other 5 members, 2 of whom are party respondents to this proceeding (respondents No. 7 and 8), are left side, then also the majority of the members are still in the managing committee headed by the petitioner No. 1. In paragraph-13 of the writ petition, the petitioners have stated that the purported resignation and/or consensus arrived at was obtained by dubious method to which there is no reply from the official respondents in their counter affidavit.

13. In the counter affidavit, it is stated that the Assistant Registrar of the Co-operative Societies, Nagaon had furnished report that 7 members out of 15 of the managing committee submitted resignation at their own will. However, the report by the learned Counsel for the respondents No. 7 and 8, there is no such indication. Further as stated by the learned Counsel for the petitioner and the respondents No. 7 and 8, the managing committee consists of 12 members and not 15 members.

14. By the impugned order dated 30.08.07 a democratically elected body has

been set at naught and has been replaced by an Officer of the respondents. Such a course of action has been adopted solely on the ground that 7 members of the managing committee purportedly submitted resignation and that there was a report from the Assistant Registrar of the Co-operative Societies. These aspects of the matter have been discussed above. There is nothing on record to show that the resignations tendered by the 7 members of the managing committee have been accepted. In the report of the Assistant Registrar, this aspect of the matter finds no mention.

15. In view of the above, the impugned order 30.08.07 passed by the Joint Registrar of Cooperative Societies, Guwahati Zone is set aside and quashed. The matter requires a fresh consideration by the Registrar of the Cooperative Societies, Assam. He will pass appropriate order consistently with the observations made above upon furnishing the certified copy of this order by the petitioners as expeditiously as possible but not later than 15.02.08.

Writ petition is allowed to the extent indicated above.