

(1985) 11 GAU CK 0006
In the Gauhati High Court
Case No : Civil Revision No. 15 of 1985

Saidur Rahman

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 16-11-1985

Acts Referred:

Assam Co-operative Societies Act, 1949 — Section 39B
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1985) 1 GLR 438

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : J.M. Choudhury and U. Baruah, for the Appellant; P. Roy, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

T.N. Singh, J.—I propose to dispose of this application u/s 115 CPC on merit after hearing learned Counsel for both sides. Because the 3rd Respondent, whose right and interest was likely to be mainly affected has, by a caveat, entered appearance through his counsel Mr. P. Roy, to contest the matter.

2. What is challenged in this case is the order of learned District Judge, Nowgong, passed on 22.12.84, by which he modified the order of temporary injunction rendered by the trial Court. He has given relief to both sides and balanced equities fairly. He held that the order of temporary injunction was not warranted but the Petitioner, who was the Respondent before him, with still control to some relief.

3. In the trial Court the Petitioner, by filing a suit, had impugned the order passed by the Deputy Registrar, Co-operative Societies (2nd Respondent) on 7.12.83 (Anuexme-7) suspending him pending drawal of proceedings and finalisation thereof. The Petitioner sought temporary injunction to stay operation of this order and he succeeded in the trial Court. Learned District Judge, however, reached different findings and conclusions. He held that material proof of

prima facie case would not entitle the Petitioner to a temporary injunction if there was no question of irreparable injury, He categorically held that the Petitioner, a Secretary, used to draw fixed salary and he could be compensated in respect thereof In case he succeeded (sic)re it also a finding by bird on the question of balance of convenience bought on both (sic)res learned Counsel for the Petitioner disputes the position. His finding is that balance of convenience would not be in favour of the Petitioner as who would suffer if the injunction was not granted was not the Petitioner but the Respondent, if it was granted. He weighed equities on both sides.

4. Before me, learned Counsel for the Petitioner, Mr. Choudhury, has not availed, indeed rightly, the fair direction of the learned District Judge but has milled his decision on the jurisdictional competence of the 2nd Respondent to pass the impugned order. Mr. Choudhury submits that the 2nd Respondent had no jurisdiction to pass the impugned order u/s 39B of the Assam Co-operative Societies Act, 1949, for short, the Act, though this submission relate merely to one of the pre-requisites of the remedy of temporary injunction, namely the question of prima facie case of the Petitioner - Plaintiff. Still, I propose to deal with the contention. Indeed, before doing so I would like to make it clear that I am conscious of the settled law that it is not only prima facie case which is required to be considered by the Court in exercising its discretion in an injunction matter. As rightly held by the learned trial Court below there must be a concurrence of all the three pre-requisites. The Court must consider not only the question of Plaintiffs prima facie case but the question of balance of convenience and irreparable injury before exercising its discretion in a particular manner.

5. What Section 39B contemplates, on a plain reading thereof, appears to me is the case of a person who is not covered by the provision of Section 31(3) of the Act. Action can be taken u/s 39B against the Chairman, the Vice-Chairman, the Secretary any member or office-bearer or employee of a registered society. The question, therefore, is whither the Petitioner was such a person. Learned District Judge on a perusal of an Order (dt. 15.2.82) passed by the 2nd Respondent has recorded the finding that he was not such a person. This finding cannot be challenged because no material to the contrary to dispute the finding has been placed before me and the finding is binding on me. Mr. Roy, has produced zerox copy of the order, the authenticity of which is not disputed by Mr. Choudhury. Indeed, in the Court below parties were heard on it which is referred to in the impugned judgment. The said order explicitly refer to the provision of Section 31(3) of the Act and states that the Petitioner "was allowed to perform the function of the Secretary", with effect from the date of taking over charge from the departmental officer in place of one Manik Bandopadbaya. The fact that the Petitioner "was allowed to perform the functions of the Secretary" takes his case into the confines of Section 31(3) and out of Section 39-B. This position appears clear to me on a conjoint reading of the two provisions. By Section 31(3) the State Government or Registrar (including Deputy Registrar) is empowered to make appointment of any offices to hold any office of the society in the

circumstances mentioned therein. The section contemplates that "the supreme authority of the Govt. or the Registrar "may be so exercised in the interest of the members of the Society or the Co-operative movement in general". The Govt. or the Registrar, as the case may be, shall fix the salary of any such officer and declare it to be charge on the society. What is further contemplated it crucial for the decision in this case Power to cancel appointment so made is conferred both on the Govt. and the Registrar. I have no manner of doubt therefore that what was done by the 2nd Respondent was well within the authority conferred on him u/s 31(3) of the Act. It is true that in Annexure-1, 2nd Respondent did not refer to any provision but for that reason, I cannot accept the submission that it may be deemed to have been passed u/s 39B. He did not exceed his jurisdiction to pass the order u/s 31(3) and it is not shown that in fact the order was passed u/s 39B. The grievance that only the state Govt. had the jurisdiction to act u/s 39B in this case is therefore meritless.

6. There is no doubt that Section 39B does not control or exclude the jurisdiction of the Registrar to act u/s 31(3) because the two provisions are mutually exclusive and deal with different situations and cases of different persons. Power u/s 39B can be exercised in the circumstances and on fulfilment of the conditions mentioned therein in respect of, what appears obvious to me from the content and collection of words used in Sub-section (1) thereof, an Selected Secretary and not a person appointed by the Registrar or the State Govt. u/s 31(3) to perform the functions of a Secretary. Power u/s 31(3) is exercised in respect of an "appointed officer" and the power to cancel the appointment is thus vested in the appointing authority without attaching thereto any pre-condition. Officers appointed u/s 31(3) "to hold any of the office of the Society" held such office during the pleasure of the appointing authority subject to the provisions of the Rules and the Bye-laws.

7. Learned Counsel for the Petitioner Mr. Choudhury, however, submitted that the 2nd Respondent, who was Appellant No. 2 before the District Judge, himself relied on the provisions of Section 39B. To this contention there is very short and simple answer. It is for the Court to decide on the facts of the case what provision of law is applicable and not for the parties to concede or dictate the applicability" of any particular provision. On the facts of the case and the material available to him particularly, the order dt. 15.2.82. the finding recorded by the learned District Judge, in my opinion, is unassailable. He rightly held that the action was taken u/s 31(3) of the Act which finding cannot be set aside for valid reasons, as alluded.

8. I find no merit in the submission of Mr. Choudhury that although the learned Munsiff came to categorical findings on the question of irreparable injury and balance of convenience in granting the temporary injunction learned District Judge failed, to do so. I have already observed that the learned Judge took account of all the three elements necessary to be considered in the matter of granting or refusing an injunction, This is apparent from the fact that he has

categorically set aside the findings of the trial Court on the two elements of balance of convenience and irreparable injury.

9. The most important consideration which weighed me in refusing to interfere is the fairness of the order in that the learned District judge has fairly balanced equities on both sides. He has taken care of the grievance of the Petitioner by directing the 2nd Respondent to complete the process of departmental proceeding within a period of 6 months so that the Petitioner's interest (employment) is not jeopardised, That apart, he has also made provision for subsistence allowance to be given to the Petitioner, He has not merely rejected the prayer of temporary Injunction and allowed in to the appeal mechanically, The order rendered by the learned District Judge is very fair and equitable and cannot be interfered at this and. The discretion vested in him has been rightly exercised in a judicial manner in refusing to grant temporary injunction to stay departmental inquiry for valid reasons.

10. In the result the application is found to be meritless and is dismissed in limine.