

(1993) 04 GAU CK 0005
In the Gauhati High Court
Case No : Civil Rule No. 2809 of 1992

Sanjay Kumar Mahanta and Another APPELLANT
Vs
State of Assam and Others RESPONDENT

Date of Decision : 05-04-1993

Acts Referred:

Assam Co-operative Societies Act, 1949 — Section 32(4)
Assam Co-operative Societies Rules, 1953 — Rule 26

Citation : (1993) 2 GLR 170

Hon'ble Judges : S.K. Hom Choudhury, J

Bench : Single Bench

Advocate : D.N. Choudhury, B.P. Kataki and B.D. Goswami, for the Appellant;
S.A. Laskar, Sr. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.K. Homchaudhuri, J.—The Petitioners are share holders of the Gauhati Co-operative Urban Bank Limited, hereinafter mentioned as the Bank. The Bank is registered under the provision of the Assam Co-operative Societies Act, 1949, hereinafter mentioned as the Act. The Petitioners have impugned the order dated 8(9)-12-92 passed by the Assistant Registrar of Cooperative Societies, Assam intimating the General Manager of the Bank that proceedings of the 23rd Annual General Meeting held on 31.10.92 could not approved as (sic, in) the annual general meeting election was not properly conducted as required under the Rules and is found to have been vitiated by gross irregularities.

2. Petitioners' case is that prior to holding of the last annual general meeting on 31.10.92 annual general meeting of the Bank was held on 27.8.89 and the Board of Directors of the Bank were elected in that meeting. But by Order dated 30.9.91 the Registrar, Co-operative Societies dissolved the Board of Directors, in exercise of power under provision of Section 32(4) of the Act. By the said order the Registrar appointed an Executive Officer to manage the Bank. The annual general meeting of the Bank not having been held after dissolution of the Board

of Directors. Shri Nagen Deka, one of the share holders of the Bank impugned that said order dated 30.9.91 passed by the Registrar Co-operative Societies purporting to dissolve the Board of Directors in Civil Rule No. 4408/91. The said writ petition was disposed of by this Court by order dated 24.12.91 directing the Registrar, Co-operative Societies to arrange holding of annual general meeting of the Bank in accordance the law within a period of 2 months from the date of receipt of that order, as provided under the Act. It was further directed that till the proceedings of the general meeting was approved, the Executive Officer would continue with the management of the society/Bank. No annual general meeting as per direction of this Court in Civil Rule No. 4408/91 having been held, Shri Nagen Deka again approached this Court in Civil Rule No. 1898/92. This Court by order dated 18.9 91 disposed of the said Civil Rule directing the Registrar, Co-operative Societies to hold the annual general meeting within 2 months from that date. It was further directed that if the Registrar Co-operative Societies could not hold the meeting within two months, he should come before this Court for modification of the order so that contempt proceeding may not be initiated. Thereafter, the annual general meeting of the Bank was held on 31-10-92. The notices of the holding of 23rd Annual General Meeting on 31-10-92 at Lakhiram Barua Sadan, Guwahati was issued to all the share holders on 9-10-92. In the said meeting as per decision of the house as well as, as per the request of the Chairman election of the incoming Board of Directors was conducted by Shri A. Munna, Senior Auditor of Co-operative Societies, Guwahati as Returning Officer of the election. The election was conducted under the Supervision of Shri A.K. Bhattacharjee, SRCS assisted by Shri Madhusudan Goswami and Shri Bhabani Sankar Roy, Sr. Inspectors, who attended the meeting as observers. Thereafter, the General Manager of the Bank forwarded the proceedings of the annual general meeting to the Assistant Registrar, Co-operative Societies for according approval.

3. I have heard Mr. D.N. Choudhury, learned Counsel for the Petitioners and Mr. S.A. Laskar, learned Sr. Govt. Advocate for the Respondents.

4. Mr. Choudhury, learned Counsel for the Petitioners submits that the Asstt. Registrar, Co-operative Societies have acted illegally, and arbitrarily in passing the impugned order refusing to accord approval of the proceedings of the 23rd Annual General Meeting of the Bank held on 31.10.92. After the present Board or Directors were elected on 31.10.92, the Assistant Registrar should have accord approval without loss of time so that management of the Bank could be conducted in accordance with the provision of the Act by the elected Board of Directors, particularly when the Bank was deprived of the service of the elected Board of Directors since the earlier Board of Directors was dissolved by the order dated 30.9.91. There was no cogent reason for withholding the approval for a long time and ultimately passing the impugned order on 9.11.92. Mr. Choudhury has drawn my attention to the report and parawise comments of the Returning Officer, who was a Senior Auditor of the Co-operative Societies, Gauhati and submits that the report clearly indicate that the election was conducted fairly,

properly and impartially and there was no complaint from any quarter against the conduct of the election. The Returning Officer has categorically reported that he did not receive any complaint from any quarter or share holders. The election started at 3 P.M. and the counting was completed by 8 P.M. The Returning Officer submitted a report to the Asstt. Registrar of Co-operative Societies stating that all the candidates in writing expressed their view that election was conducted fairly and properly and they had no complaint against conducting of election. The Asstt. Registrar instead of acting on the report of the Officer, who is a non-interested person and who is a key person in the election, has acted illegally and without jurisdiction in placing reliance on the so-called complaints made by some share holders which are apparently after thought and the so-called finding in the enquiry report made on the basis of the complaint.

5. Mr. S.A. Laskar learned Sr. Govt. Advocate on the other hand submits that there was complaint alleging gross irregularities and illegalities in conducting the election, by a number of share holders. An enquiry was held and after the Inquiry Officer gave a finding that there was irregularities in holding the election, the Registrar of Co-operative Societies on the basis of the finding of the Inquiry, officer has passed the impugned order. There is no illegality or infirmity in the impugned order. Mr. Taskar further submits that against the impugned order the Petitioners should have availed of the alternative remedy by way of preferring an appeal to the Registrar of Co-operative Societies as per provision of Section 80 of the Act. The Petitioners not having exhausted the alternative remedy, this petition is liable to be rejected.

6. I have considered the submissions made on behalf the Petitioners as well as on behalf of the Respondents and have perused the relevant records produced before this Court by Mr. Laskar. From the records it appears that Shri A. Munna, Senior Auditor of Co-operative Societies who functioned as Returning Officer in the election of the Board of Directors of the Bark in its annual general meeting held on 31-10-92 submitted a report on 3-11-92 to the District Deputy Registrar of Co-operative Societies about the election as follows:

To

The Dist. Dy. Registrar of Coop. Societies, Kamrup Guwahati

Sub: Observation of the A.G.M. & Election of the Guwahati Coop Urban Bank Ltd. held on 31-10-92.

Ref: Your order No. 490/70/Pt/146 dt 27th Oct, 1992

Sir,

With reference and the subject quoted above I have the honour to state that I along with other Officers attended the A.G.M. of the Guwahati Coop. Urban Bank Ltd. held on 31.10.92 in the Sahitya Sabha Bhaban Premises as observers, When the formation of new Board of Directors came the house unanimously decided to conduct the Election by the Departmental Officers present. The Chairman at the

request of the house requested the under signed to conduct the Election of Board of Directors as R.O. under supervision of Shri A.K. Bhattacharya, S.R.C.S. and with the assistance of Shri Madhu Sudan Goswami and Shri B.S. Roy, Sri Inspectors who also attended as observers.

The house unanimously decided to conduct the election by secret Ballot papers. The Ballot papers were cyclostyled on the spot and the election was started at 3.30. P.M. After counting results could be announced at 8 P.M. The votes were taken by the Share holders present and put signatures on the Proceeding Book. The above named officers actively took part in the election work and with the help of the officers election could be completed smoothly.

No complaint or objections were raise by any shareholders at the time of election.

The result sheet of the elected Board of Directors are enclosed herewith. The used Ballot papers and other documents are submitted herewith for safe custody. This is for favour of your information and necessary action.

Encl:

(a) Used Ballot papers for Chairman

for Vice Chairman = 156

for Board of Directors = 156

Yours faithfully

Sd/- 3/11/92 Abdul Mannaf Sr. Auditor of C.S., Guwahati.

It appears from the record that 61 persons claiming themselves as share holders of the Bank made a complaint to the Assistant Registrar of Co-operative Societies in vernacular (Assamese) making vague and indefinite allegations that election of the Board of Directors in the 23rd Annual General Meeting of the Bank was held irregularly on 31-10-92. Complaint was received by the Asstt. Registrar on 9-11-92 and after receipt thereof he passed an order on the body of the complaint asking Mr. B.N. Barman, S.R.C.S. to enquire and submit a report. The Complaint was typed in Assamese language. The date of that complaint has been inserted as 31.10.92 in English. Bare reading of the contents of the complaint disclose that it was written on a date subsequent to 31.10.92, Besides, the allegations made in the complaint are apparently self-contradictory. The Sub-Registrar of Co-operative Societies submitted his report on 21-11-92 but his finding in the report is based on mere conjecture and surmisees. It further appears that 5 share holders made complaint in English before the Assistant Registrar on 6.11.92 and after receipt of the complaint parawise comments was called for from the Returning officer, namely, Shri Abdul Munnaaf, Senior Auditor. After receipt thereof, the Returning Officer submitted his parawise comments as follows--

As regards objection No. 4 it is to be stated that the Election was started at 3.30

P.M. after doing all formalities. As because the Election was started at 3.30 P.M. i.e. the day time, question of electric light practically did not arise. The Election process including counting of votes concluded at 8 P.M. When the election process was continuing there was a sudden fall of electricity which was lasted for about 40 minutes. The Management of the Bank provided us with candles and one Gas light which we used for conducting the Election. As we were very busy with conducting the Election, it was not known whether some share holders could not casted their votes due to failure of electricity or for some other reasons which were best known to them. In this respect no objection was raised by any share holders. On the other hand most of the candidates for Chairman and Vice Chairman or their representatives admitted the smooth conduction of the election in writing. A photo copy of the same is enclosed herewith.

As regards objection No. 4(a) it may be mentioned that in most of the time of coasting the Ballot papers there was no electricity but we used the candles and gas light supplied by the management. As the Election process started during the day time i.e. at 3.30 P.M. as such there was no alternative than to continue the same till its completion. There was no trouble for us as we all use spectacles regularly. It has already been mentioned in my report dated 3-11-92 that the Ballot papers were cyclostyled on the spot by the management and supplied to us.

As regards objection No. 5 it is to be stated here that the list of contesting candidates for "Board of Directors" were placed before the General Manager of the Bank by us well as by the House to know whether any of them were defaulters. The General of the Bank certified on the body of the list that no one was a defaulter. A photo copy of the same AS enclosed herewith which is self explanatory.

It may be mentioned here that the election was conducted as per decision of the House as well as per request of the Chairman. The Election was conducted under the supervision of A.K. Bhattacharya, S.R.C.S. (A) and with the active assistance of Shri Madhu Sudan Goswami and Shri Bhabani Sankar Roy, Senior Inspectors who attended the meeting as observers.

This is for favour of your information and necessary action.

7. From the report of the Returning Officer dated 3-11-92, the para wise comments on the complaint submitted on 26-11-92 and documents enclosed thereto, it becomes apparent that no inconvenience in conducting the election was caused due to temporary stoppage of supply of electricity to the premises for about 40 minutes. It is also on record that the General Manager certified that none of the share holders who participated in the election was a defaulter. All the candidates also expressed in writing that the election was conflicted properly and they had no grievance. There was no complaint from any of the share holders that he was inconvenienced in casting his vote because of printing of names of candidates in English in the ballot papers. I find, the Asstt. Registrar Co-

operative Societies committed manifest errors of law apparent on the face of the records in not considering the report of the Returning officer, his parawise comments and contemporaneous documents enclosed thereto. This failure has vitiated the decision. As already observed, in the so-called complaint written in Assamese a number of persons claimed themselves as a share holders, which was received by the Asstt. Registrar on 9-11-92, contained vague and contradictory allegations. Besides, the fact of inserting the date of the complaint as 31-11-92, in English, cast doubt about the genuineness of the complaint. It is not at all safe to act on such vague and doubtful complaint. On the other hand, a Govt. servant of the Cooperative Society who conducted the election under the supervision of other officers, in his report dated 3-11-92 and parawise comments with contemporaneous documents, disclose that the election of the Board of Directors was held fairly and properly. There cannot be any reason to discard the report and parawise comments submitted by the Returning Officer.

8. Rule 26 of the Assam Co-operative Societies Rules provides that--proceedings of all meetings of General Assembly shall be submitted to the Registrar or to the person/persons in the manner as may be prescribed by him from time to time for approval and until such approval is obtained, proceedings of such meeting shall not be valid. Thus it is apparent that unless the proceedings of a meeting including the Annual General meeting is approved, the entire proceedings become nonest and inoperative. Election of the Board of Directors or Managing Committee of Co-operative Society becomes inoperative if the proceedings of Annual General Meeting is disapproved. The power of approval or disapproval contemplated u/s 26 of the Co-operative Societies Rules is not arbitrary. The power can not be exercised arbitrarily or capriciously. The approving authority should not a must not lightly disapprove the proceeding of a annual general meeting where the incoming Board of Directors or Managing Committee is elected and must be slow and retrospect before disapproving the proceedings. Election of a Managing Committee Board of Directors of a Co-operative Society in annual general meeting should normally be approved at the earliest so that the body elected can manage the affairs of the society and that according approval of the proceeding of the annual general meeting should be taken as the Rule and the disapproval of the proceeding it an exception. The election of Managing Committee or Board of Directors of a co-operative society in annual general meeting can be disapproved only under exceptional and compelling circumstances when it becomes apparent from the records that the election was held with gross, irregularity and in gross violation of Rules and procedure. Mere irregularity will not justify such disapproval. In the instant case, as indicated above, the report and parawise comments of the Returning Officer who was a Senior Auditor of the Cooperative Society and the contemporaneous documents enclosed in the report and parawise, comments, clearly disclose that there was no irregularity far less serious irregularity in the matter of election of the Board of Directors, which warrant disapproval of the proceedings.

9. The submission of Mr. Laskar, that the Petitioners have alternative remedy by

way of preferring appeal u/s 80 of the Act, may be correct. But, in the instant case the Rule has been issued and the petition has been heard on merit and that apart, the co-operative year came to an end on 31.3.93, and consequently the Board of Directors of the Bank is to be elected by holding 24th Annual General Meeting. At this belated stage it will not be just and proper to reject the petition and to ask the Petitioners to avail of alternative remedy by way of preferring appeal.

10. For the reasons stated above, the petition is allowed. The impugned order dated 8/9-12-92 passed by the Assistant Registrar of Co-operative Societies, is set aside.

The Respondent No. 4 (I), the Asstt. Registrar of Co-operative Societies is directed to pass appropriate order under Rule 26 of the Rules within a period of 7 (seven) days from the date of receipt of of this order. It is further directed that the 24th Annual General Meeting of the Bank shall be held within 2 (two) months thereafter.

I make no order to costs.