
(2009) 04 GAU CK 0046
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 471 of 2009

Shri Har Kumar Das and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 09-04-2009

Acts Referred:

Citation : (2009) 2 GLD 163 : (2009) 4 GLT 844

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : G.N. Sahewalla and Md. Aslam, in WPC No. 471 of 2009, A.K. Goswami and S. Banik, in WPC No. 482 of 2009 and I. Choudhury, R.M. Deka, N.J. Khataniar and R. Goswami, in WP C No. 549 of 2009, for the Appellant; R. Chakraborty, Addl. Sr. Govt. Advocate and I. Choudhury, N.J. Khatania, in WP(C) No. 471 of 2009, R.M. Deka in WP(C) Nos. 471 and 482 of 2009 and A.K. Goswami and S. Banik in WP (C) No. 549 of 2009, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sarma, J.—All the writ petitions by and between same parties and related to each other, have been heard analogously and are being disposed of by this common judgment and order.

2. The matter relates to holding of Annual General Meeting (AGM) and election in respect of the particular Co-operative Society relating to which the rival claims have been made. While in the first and second writ petitions filed by four petitioners and single petitioner respectively, the prayer is for setting aside and quashing of the order issued by the Registrar of Co- operative Societies, Assam, by which the AGM/election of the society held on 21.12.2008 has been approved, in the third writ petition filed by two petitioners, the prayer is to set aside and quash the inquiry report dated 29.12.2008 of the Joint Inspector/Auditor of Co-operative Societies and the order dated 2.1.2009 issued by the In-charge Assistant Registrar of Co-operative Societies by which the AGM/election held on 21.12.2008 has been disapproved. Although, in terms of the impugned order

dated 30.1.2009, challenged in the first and second writ petitions, the impugned order in the third writ petition dated 2.1.2009 has become redundant but the petitioners have challenged the same as a measure of abundant caution.

3. The case has a chequered history. The Co-operative Society is known as Dibrudangori River Part-I Meen Samabay Samiti Ltd. In the year 2007, to be precise 30.5.2007, the AGM of the society was held. However, the business of the AGM could be completed only upto agenda item No. 5, whereafter the meeting had to be abandoned due to chaotic situation created by some members present in the meeting. The meeting was adjourned to 10.6.2007, on which date the adjourned meeting was held and a new Managing Committee was elected. However, the approval thereof was not accorded by the authority and instead an ad-hoc committee headed by the second writ petitioner i.e. Shri Bhokto Das was constituted. Shri Bhokto Das continued to manage the affairs of the Society till 26.6.2008.

4. With the aforesaid developments coupled with notices issued to several members of the society by Shri Bhokto Das asking as to why their names should not be deleted; as to why they should not be categorized as Class-B share holders on the ground that other members of their family are also members of the society, one Shri Bikas Das filed three writ petitions while Shri Bhokto Das also filed another writ petition. All the writ petitions were disposed of by order dated 26.6.2008 remanding the matter back to the Registrar of Co-operative Societies, Assam to consider as to whether the AGM held on 30.5.2007 and 10.6.2007 should be approved or not. The direction was also issued to consider as to whether in the given facts and circumstances, there should be fresh AGM/election of the Society. It was further provided that in the event of decision to hold fresh AGM/election, same should be held under the supervision of the Joint Registrar.

5. Pursuant to the aforesaid order dated 26.6.2008, the Registrar of Co-operative Societies, Assam, passed the order dated 4.9.2008, after hearing all the parties directing to hold AGM/election afresh as per the provision of Assam Co-operative Societies Act, Rules and bye-laws. By the said order, it was also provided that the notices referred to above should be examined by the one man ad-hoc committee appointed in the mean time and to prepare a correct voter list.

6. While it is the case of the third writ petitioner that pursuant to the said order dated 4.9.2008, a draft voter list, 2008 was prepared and objections were invited, but it is the case of the petitioners in the first writ petition that there was no wide circulation of the draft voter list. Be that as it may, the final voter list was published, duly countersigned by the Assistant Registrar of Co-operative Societies to which there was no objection. Thereafter the AGM/election was held on 21.12.2008 and the Managing Committee headed by the petitioner No. 2 in the third writ petition, as the Chairman was elected. However, on the basis of the written objections filed by the petitioners in the first writ petition, viz, Hari Kumar Das, Kalicharan Das and Sushil Das, the approval of the AGM/election was

refused to be granted by the Assistant Registrar of Cooperative Societies. Order to that effect was passed on 2.1.2009 which has been impugned in the third writ petition.

7. After the said order dated 2.1.2009, the matter having been placed before the Registrar of Co-operative Societies, he has passed the impugned order in the first two writ petitions dated 30.1.2009, according approval to the AGM/election, held on 21.12.2008, challenging which the said two writ petitions have been filed.

8. I have heard Mr. G.N. Sahewala, learned senior counsel assisted by Md. Aslam, learned Counsel for the four petitioners in the first writ petition i.e. WP(C) 471/2009 as well as Mr. A.K. Goswami, learned senior counsel assisted by Mr. S. Banik, learned Counsel for the petitioner in the second writ petition i.e. WP(C) 482/2009. I have also heard Mr. I. Choudhury, learned Counsel representing the petitioners in the third writ petition i.e. WP(C) 549/2009. Ms. R. Chakraborty, learned Addl. Senior Govt. Advocate has argued on behalf of the State respondents.

9. Mr. I. Choudhury, learned Counsel appearing for the two petitioners in the third writ petition, in his elaborate arguments cited number of decisions to bring home the points he urged relating to suppression of material facts, non-joinder of necessary parties, principles relating to reluctant approach of the writ Court when disputed question of facts are involved, waiver and estoppels, principles relating to revival of illegal order in case of setting aside the order under challenge, collusive litigation etc. On the other hand, Mr. G.N. Sahewala and Mr. A.K. Goswami, learned Counsels appearing for the petitioners in the first and second writ petitions, submitted that the Registrar of Co-operative Societies could not have passed the impugned order dated 30.1.2009 sitting on appeal over the order passed by the Assistant Registrar of Co-operative Societies refusing to accord approval to the AGM/election of which the petitioners in the third writ petition are the beneficiaries. They submitted that on the face of the impugned order dated 30.1.2009, same is contrary to the records. According to them, the order dated 30.1.2009 has been passed on extraneous consideration.

10. I have considered the submissions made by the learned Counsel for the parties and the materials on record. Before I proceed further with the matter, one aspect of the matter about which Mr. I. Choudhury, learned Counsel for the petitioner in the third writ petition raised serious objection needs to be attended to. Same is the striking out of the alphabet "i" from the word "Hari" which is the name of the first petitioner in the first writ petition, from the entire records of the writ petition i.e. WP(C) 471/2009, such deletion of the alphabet "i" is by way of making use of whitener. On verification of the records, what I find is whitener has been used to strike out "i" from the High Court file as well as from the writ petition filed with the Registry. It is clearly discernible that originally, the same was "Hari" but latter on, same was made "Har" by striking out alphabet "i" with the help of whitener.

11. Above aspect of the matter will have a bearing while deciding the issue at hand. As stated above, the fresh AGM/election was held on 21.12.2008 to which the four petitioners in the first writ petition raised objection. Their allegation was that the voter list was not given due publicity and the same was made final towards holding the AGM/election. The written objection was filed on 23.12.2008 (Annexure-II). In the objection dated 23.12.2008, it was one Hara Kumar Das and not either Hari Kumar Das or Har Kumar Das. It is in this context, Mr. Choudhury, learned Counsel for the third writ petitioner questioned the very identity of the first petitioner in the first writ petition.

12. In the objection filed by Hara Kumar Das, Kalicharan Das and Sushil Das, who are the petitioners in the first writ petition, along with three others, the basic plea raised was that the petitioners were seriously prejudiced by holding of the AGM/election behind their back and that they being the share holders and members of the Society, were entitled to get prior notice relating to finalisation of the voter list and holding of the AGM/election.

13. The written objection addressed to the Registrar of Co- operative Societies was marked to the Deputy Registrar of Cooperative Societies by the Registrar with the following endorsement on the body of the objection:

DRSC-please enquire into the matter and if there is anomaly in the voter's list steps may be taken for correction of the voter's list and re-election may be held. In the mean time ad hoc committee continue.

14. After the aforesaid objection and the endorsement, it appears that an inquiry was entrusted to Junior Inspector/Auditor of the Co-operative Societies who in turn submitted his report to the Assistant Registrar of Co-operative Societies by his letter dated 29.12.2008. In the report, it was indicated that the objections raised by the four petitioners in the first writ petition are genuine and correct and that they are entitled to enlist their names in the voter list of the Society. It was further observed that the draft voter list of 2008 was not circulated and published in the area of operation of the Society and that the same was furnished to only two persons, which included the petitioner in the second writ petition i.e. Shri Bhokto Das.

15. On the basis of the aforesaid inquiry report, the incharge Assistant Registrar of Co-operative Societies passed the impugned order dated 2.1.2009 refusing to accord approval to the AGM/election held on 21.12.2008. Being aggrieved, the petitioners in the third writ petition, preferred an appeal before the Registrar of Co-operative Societies. In the appeal, it was stated that there were five departmental observers present in the meeting and the proceedings of the meeting was smoothly concluded and thus there was no justification in refusing to grant approval by the Assistant Registrar of Co-operative Societies. Thereafter, the Registrar of Co-operative Societies, passed the order dated 30.1.2009 according approval to the AGM/election held on 21.12.2008. While doing so, he has considered the aforesaid inquiry report and the order passed by the Assistant

Registrar of Co-operative Societies.

16. Shri Bhokto Das in his writ petition being WP(C) No. 482/2009 has also challenged, like that of the four petitioners in the first writ petition, the order dated 30.1.2009 by which the Registrar has granted the approval to the AGM/election held on 21.12.2008 of which the petitioners in the third writ petition are the beneficiaries. Like that of the petitioners in the first writ petition, it is the case of the petitioner that there was objection by six share holders with regard to non-inclusion of their names in the voter list. It appears that after the initial order passed by the Assistant Registrar of Co-operative Societies refusing to accord approval to the AGM/election held on 21.12.2008, process for holding fresh AGM/election was initiated with the publication of voter list etc. The fresh AGM/election was held on 30.1.2009 and the petitioner was elected as the Chairman. However, on the same day, the impugned order dated 30.1.2009 by setting aside the earlier order of disapproval dated 2.1.2009 passed by the Assistant Registrar of Co-operative Societies was issued and the AGM/election held on 21.12.2008 was approved.

17. As stated above, the third writ petition has been filed by the petitioners who are the beneficiaries of the impugned order dated 30.1.2009, as a measure of abundant caution. By the said writ petition, the prayer made is to set aside and quash the order dated 2.1.2009 passed by the Assistant Registrar of Co-operative Societies refusing to accord approval to the AGM/election held on 21.12.2008 and so also to set aside and quash the inquiry report dated 29.12.2008, on the basis of which the earlier order dated 2.1.2009 was passed. Further prayer made in the writ petition is to interfere with the fresh process initiated towards holding the AGM/election on 30.1.2009, of which the second writ petitioner is the beneficiary.

18. The basic grievance of the petitioners in the first writ petition is that they being the bona fide members of the Cooperative Society are entitled to get their names included in the voter list and then to participate in the AGM/election, but the same having not been done, they have been deprived of their rights as members of the Society. As noted above, the alphabet "i" has been deleted from the entire records of the writ petition and the name "Hari" has been replaced by "Har" making use of whitener, but on the other hand the objection filed on 2.1.2009 (Annexure-II), on the basis of which the inquiry was conducted and the consequential order dated 2.1.2009 was passed by the Assistant Registrar of Co-operative Society, the petitioner No. 1 is named as "Hara". Thus, 3 (three) names have emerged which are "Hara, Hari and Har". When the very identity of the said petitioner is doubtful, it is difficult for the writ Court to entertain the grievance raised by such person. Moreso, when it is the case of the petitioner No. 1 that he is a bona fide member of the Society but he does not know as to by which name he is identified. It is in this context, the petitioners in the third writ petition has raised the aforesaid objection.

19. As regards the petitioner No. 2 in the first writ petition, it is the case of the

petitioners in the third writ petition that he is not at all a bona fide member of the society. Although, the name of the petitioner No. 2 is Kalicharan Das but he is the son of one Late Rotilal Das. There is another person by name Kalicharan Das, son of Shri Tula Ram Das, who is a member of the society. This fact has been brought on record by the petitioners in the third writ petition. Apart from this position, another vital aspect of the matter is that in the objection petition dated 23.12.2008, it was stated that he had purchased a share of the said society on 20.6.1976. If that be so, going by the age declared in the writ petition, which is 48 years, he would have been only 15 years of age in 1976, disentitling him to be a member of the society by virtue of Clause 5 of the Assam Co-operative Societies Act, 1949 read with Clause 5(1)(a) of the Bye-laws of the Society.

20. As regards the petitioner No. 3 Shri Sushil Das is concerned, it is the stand of the petitioners in the third writ petition that he cannot be a member of the society as two of his brothers, namely, Shri Sukumar Das and Shri Sunil Das, are already members of the society, whose names were included in the draft and final voter list published in the year 2008. In this connection, Clause 5(4)(a) of the Bye-laws of the Society may be referred to, in terms of which, it is only Shri Sukumar Das, who could be a Class-A member after the demise of his father Navadeep Das.

21. The moot question which comes up for consideration is as to whether the draft voter list, before finalization was duly published or not and even if not published, what would be the effect of AGM/election held on 21.12.2008. While raising the issue of prejudice being caused to the petitioners in the first writ petition, the petitioners will also have to establish that their names all along appeared in the earlier voter lists and that they were not aware of the draft voter list, final voter list and the AGM/election held on 21.12.2008, even after applying due diligence.

22. From the materials on record, it appears that the draft voter list was duly published and due notice was issued for holding the AGM/election. It was only after holding the AGM/election, the objection was filed on 23.12.2008 by six persons of which the four petitioners involved in the first writ petition are before us. In the normal course, an election held with the declaration of results should not be set at naught unless some glaring commission or omission on the face of it is noticed. In the instant case, the objection was filed on 23.12.2008, which was endorsed to the Deputy Registrar of Co- operative Societies by the Registrar. The endorsement has been noticed above.

23. It is not known as to under what circumstances, the inquiry was conducted by the Junior Inspector/Auditor of Cooperative Societies. It is also not known as to under what authority, the in-charge Assistant Registrar of Co-operative Societies passed the order dated 2.1.2009. The things moved in quick succession. The objection was filed on 23.12.2008, it was endorsed to the Deputy Registrar of Co-operative Societies on 24.12.2008 followed by further

objection dated 26.12.2008. Within two days thereafter, the Junior Inspector/Auditor submitted his report dated 29.12.2008 followed by the impugned order in the third writ petition i.e. the order dated 2.1.2009 refusing to accord approval to the AGM/m election held on 21.12.2008. As to what transpired thereafter has been noted above which is the impugned order dated 30.1.2009 in the first two writ petitions, which has been passed on the basis of the representation/appeal preferred by the petitioners in the third writ petition.

24. The election having been held on 21.12.2008, merely on the basis of raising an objection by only six purported members of the society, the said election could not have been set at naught and that too without putting the elected members to any kind of notice. The elected members, by the time the impugned order dated 2.1.2009 had been passed, had the mandate of the electorates in their favour. However, acting on the objection by only six purported members, of which only four are before this Court, an inquiry was conducted behind the back of such elected members and the entire AGM/election was interfered with by the in-charge Assistant Registrar of Cooperative Societies.

25. Clause 3 of the Co-operative societies Act, 1949 describes "the Registrar". u/s 3(1), the State Government may appoint a person to be Registrar of Co-operative Societies for registration, supervision, assistance, counsel and control of registered societies. u/s 3(1)(2), the State Government may also appoint persons to assist the Registrar and may by general or special order, in writing, delegate to any such persons or to any other Government Officer all or any of the powers of the Registrar. Clause 8 of the Act vests the Registrar with the power to decide certain questions. All disputes regarding membership for the purpose of the formation, registration or continuance of a society under the Act shall be decided by the Registrar. Section 45 requires that every office bearer of a registered Co-operative Society shall produce documents and books of accounts etc. and appear before the Registrar for furnishing information etc. u/s 55, the Registrar is responsible for audit etc. Section 60 empowers the Registrar to hold an inquiry or direct some other person authorized by him by order in writing in this behalf, to hold an inquiry into the constitution, working and financial condition of a registered society. Section 61 provides that every registered society shall be liable to inspection at any time by the Registrar or any person authorized by him in this behalf by general order.

26. Referring to the aforesaid provisions of the Act, Mr. Choudhury, learned Counsel appearing for the petitioners in the third writ petition, submitted that the action on the part of the in-charge Assistant Registrar of Co-operative Societies in passing the order dated 2.1.2009 was without any competence and jurisdiction. Nothing has been brought on record to suggest that the in-charge Assistant Registrar of Cooperative Societies has been authorized by any general order passed either by the State Government or by the Registrar of Cooperative Societies empowering him in the matter of according approval to the AGM/election. The power vested with the Registrar could not have been exercised by

the Assistant Registrar and that too while acting in the capacity as in-charge of Assistant Registrar.

27. The AGM/election held in respect of the Co-operative Society could not have been set at naught by the in-charge Assistant Registrar of Co-operative Societies on the basis of the acts done hurriedly and behind the back of the elected members. The petitioners in the first writ petition have miserably failed to bring on record their very existence as members of the Cooperative Society and if they had been the members, their continuation thereof till date. It is in this context, the voter lists of earlier years showing incorporation of their names were relevant which the petitioners have failed to produce. A case is not taken up and or decided merely on asking for it with some facts but without the basic foundation of such fact. It is unbelievable that the petitioners, if they are the members of the Co-operative Society, will be oblivious of the litigations pertaining to the said society and the fall out of the same. We will also have to see as to what would be the effect of the kind of situation which would emerge, even if the plea of the petitioners is accepted.

28. The plea of the petitioners has been noted above. Their identity has also been noted. With the kind of litigation they have brought, an election held in respect of the Co-operative Society could not have been disapproved by a stroke of pen as was done by the Assistant Registrar of Co-operative Societies while acting as in-charge. Although the petitioners have projected prejudice being caused to them but they have failed to demonstrate the basic foundation of the same which they could have established by bringing on records the voter lists of earlier years showing incorporation of their names. Even assuming that they were members of the society at some point of time, but without anything more and without establishing the fact of continued membership, they cannot invoke the writ jurisdiction, so as to frustrate the democratic process of AGM/election, which was held on 21.12.2008. It is in this context, learned Counsel for the petitioners in the third writ petition made submissions of collusive litigation between the petitioners in the first writ petition and the petitioner in the second writ petition, who are the beneficiaries of the order passed by the in-charge Assistant Registrar of Co-operative Society.

29. The decisions on which Mr. Choudhury, learned Counsel for the petitioner in the third writ petition has placed reliance are on the points and principles noted above. In view of the aforesaid revelation and conclusion arrived at, the said decisions need not be referred to in details. Suffice it to refer the same in the context of the principles underlining the said decisions.

1. Gross suppression and misrepresentation:

1997 (2) GLT 318; 2005 (1) GLT 365.

2. Non-joinder of necessary parties:

2004 (1) GLT 117; AIR 1963 SC 786; AIR 1985 SC 167.

3. Non-existence any legal right:

(2008) 2 SCC 280; (1973) 1 SCC 485; (1977) 4 SCC 147 ; (1977) 1 SCC 486.

4. Disputed question of fact:

2009 (1) GLT 523.

5. Principle of material effect:

2009 (1) GLT 523; AIR 1966 SC 824; (2002) 1 SCC 160; (2000) 8 SCC 216.

6. Waiver and estoppel:

AIR 1957 SC 425; AIR 1975 SC 2428.

7. Collusive litigation:

(1993) 4 SCC 216; AIR 1956 SC 593; AIR 1964 SC 1889; AIR 1975 SC 2451.

8. Delegatus non-potest delegare:

AIR 1955 SC 188; (1998) 3 SCC 132; (1996) 4 SCC 708; (1995) 5 SCC 302; (2004) 2 SCC 65.

9. Enquiry report dated 29.12.2008 and the order of the ARCS dated 2.1.2009 is without jurisdiction:

AIR 1966 SC 828; (1992) 2 GLR 384.

10. Writ Court would not exercise the extraordinary powers merely on the making out of a legal point:

(2000) 2 SCC 617; (2003) 2 SCC 673.

30. The above decisions on the principles and the points which the learned Counsel for the petitioner in the third writ petition so strenuously argued duly support the case of the petitioners in the said writ petition.

31. The Registrar of Co-operative Societies, Assam, by his impugned order dated 30.1.2009 has considered all aspects of the matter. It was found that the AGM/ election was duly held on 21.12.2008 following the procedure laid down in this regard. It has also been found that there was due publication of draft voter list and thereafter the final voter list. Much have been said about the purported contradiction in the order regarding the order passed by the Assistant Registrar of Co-operative Societies on 2.1.2009. This aspect of the matter need not detain us in view of the findings recorded above. When the basic foundation of the case of the petitioners falls through, other grounds are immaterial. In view of the findings recorded above, in respect of the writ petitions, the claim made by the petitioners in the first and the second writ petition is inconsequential and cannot be granted. Consequently, the third writ petition deserves to be allowed.

32. For all the aforesaid reasons, the first and the second writ petitions, namely,

WP(C) 471/209 and WP(C) No. 482/2009 are without any merit and accordingly stand dismissed. The third writ petition being WP(C) 549/2009 stands allowed with the prayers made therein. Consequently the order dated 30.1.2009 passed by the Registrar of Co-operative Societies, impugned in the first and second writ petitions shall hold the field with all the consequences thereof.

33. The writ petitions are answered in the above manner leaving the parties to bear their own costs.