

(1999) 06 GAU CK 0020
In the Gauhati High Court
Case No : Civil Rule No. 5508 of 1998

Sontoli Gaon Panchayat Samabay Samity Ltd. and Others	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision : 18-06-1999

Acts Referred:

Assam Co-operative Societies Act, 1949 — Section 32(4)
Constitution of India, 1950 — Article 226

Citation : (1999) 3 GLT 66

Hon'ble Judges : P.C. Phukan, J

Bench : Single Bench

Advocate : N.S. Deka, for the Appellant; T.C. Chutia and M.A. Sheikh, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Phukan, J.—I have heard Mr. N.S. Deka, learned Counsel for the Petitioners as well as Mr. T.C. Chutia, learned Government Advocate appearing on behalf of the State Respondents and Mr. M.A. Sheikh assisted by Mr. A. Ali, leaned counsel for the Respondent Nos. 4 to 7.

2. This writ petition under Article 226 of the Constitution has been filed by the Petitioners against the order dated 2.11.98 passed by the Joint Registrar of Co-operative Societies, Assam, setting aside the order passed on 4.9.98 by the Assistant Registrar of Co-operative Societies approving the proceedings of the Annual General Meeting (AGM in short) of Sontoli Gaon Panchayat Samabay Samiti Limited (Sontoli GPSS in short) held on 4:9.98.

3. The relevant facts which are necessary for disposal of this writ petition may be summarised as follows. The Petitioner No. 2 Mobarak Hussain was elected as Chairman of the above mentioned GPSS in the AGM held on 23.11.97. The term of the elected (as distinguished from ad-hoc) Managing Body, which was one year, has been made 3 years by an amendment. But the AGM has to be held every year for the purpose of transacting business other than election, failing

which, the Managing Body shall stand dissolved as per provision of Section 32(4) of the Assam Co-operative Societies Act, 1949. However, the State Government stayed the operation of Section 32(4) of the Act for a period upto 31.8.98. In case, any Managing Body failed to hold the AGM within 31.8.98, it stood dissolved with effect from 31.8.98 (vide annexure-C to the Addl. Affidavit filed by the Petitioner No. 2).

4. The Petitioner No. 2 claims that the AGM of Sontoli GPSS was duly held on 30.8.98, i.e. before the expiry of the period ending on 31.8.98, and that the Assistant Registrar of Co-operative Societies duly approved the proceedings of the said AGM on 4.9.98. Against such approval, the Respondent Nos. 4 to 7 filed a petition (Annexure-6 to the Writ petition) before the Assistant Registrar with a copy to the Registrar of Co-operative Societies. On 28.10.98 the Joint Registrar of Co-operative Societies (vide Annexure-1 to the affidavit-in-opposition filed by the Respondent No. 2) heard the matter and passed the order dated 2.11.98 impugned in this Writ petition. The entire order is reproduced below, not as a ready reference, but as it would facilitate better appreciation of facts of the case:

2.11.98. The date of hearing was fixed on 28.10.98. Notice was also served to all concerned. The Appellant, the Asstt. Registrar of Co-operative Societies, Guwahati, the Chairman of the Society and the Secretary of the Society attended the hearing.

In the appeal the Appellant prayed for setting aside the order of approval of the proceedings of the Annual General Meeting for 1998-99 by the Asstt. Registrar of Co-operative Societies, Guwahati held on 30.8.98 on the following grounds:

- (1) Notice of Annual General Meeting was served before nine days in place of fifteen days. And detail agenda was not incorporated in the notice.
- (2) All share holders were not invited in the meeting.
- (3) Only supporters of the Secretary and the Chairman were invited in the meeting by separate letters.
- (4) Attendance of share holders were obtained in a separate book which was not the approved book.
- (5) In the hearing the Appellant submitted again that the proceeding of the said Annual General Meeting has shown to discuss the audit report of the Society for the year 1997-98 but actually the Depts. Audit report of the Society for 1997-98 is yet to be completed.

Heard the Society represented by the Secretary and the existing Chairman and the Asstt. Registrar of Co-operative Societies, Guwahati and gone through the records.

The Annual General Meeting of the Sontoli GPSS Ltd. was held on 30.8.98. The Society had gone postering and made wide publicity of the date of Annual General Meeting by loudspeaker and dhool in the local Market. But it is a fact

that the Society did not incorporate detail agenda in the poster. It is a mandatory requirement under by-laws of the Society to issue proper notice with agenda. The Chairman stated that invitation letter was printed for all the members and if some of the letters was not despatched, he can not be held responsible.

About taking signature in an unauthorised book, the Society intimated that the book where attendance have been taken is used as the proceedings book and was duly certified.

From the records, it revealed that the audit of the Society for the year 1997-98 is yet to be completed and as such the proceedings as recorded under resolution No. 3 is not factually correct.

Under the above circumstances the order of approval of the proceedings given by the Asstt. Register of Co-operative Societies, Guwahati of the said Society is set aside.

As the time for holding of Annual General Meeting afresh by the existing management have expired, a void have been created in the management of the Society.

Therefore, I, Shri S.A. Mazumdar, Zonal Joint Registrar, of Co-operative Societies, Guwahati, as empowered u/s 32(5) of the Assam Co-operative Societies Act, 1949 do hereby appoint Shri Chidananda Das, Sr. Inspector of Co-operative Societies, Guwahati as one-man ad hoc committee of the Society to hold the Annual General Meeting of the Society. He will function till a new committee is elected or formed.

This comes into operation with immediate effect.

Sd/- S.A. Mazumdar, Joint Registrar Co-op Societies, Guwahati Zone, Dispur, Guwahat-6.

5. The Joint Registrar in the above order categorically says that the notice of the AGM in question did not incorporate the detailed agenda, a mandatory requirement under the by laws of the Society. Nowhere in the writ petition, the Petitioner No. 2 states that the notice incorporated the Agenda. Also in para 4 of the affidavit-in-opposition, the Joint Registrar (Respondent No. 2) reiterates that the notice did not incorporate the Agenda. The Respondent Nos. 4 to 7 also in para 6 of the affidavit-in-opposition have stated that the Society did not issue any notice with the Agenda. No reply of affidavit has been filed by the Petitioner No. 2 denying this, nor in the additional affidavit filed by him there is any such denial. Hence, it has to be held that the mandatory requirement under the by-laws of the Society to issue notice with the Agenda of the AGM was not complied with in the instant case.

6. The resolution No. 3 (vide Annexure A&B to the Writ Petition) passed in AGM in question says, inter-alia "The meeting discussed thoroughly on the audit report of accounts. The meeting expressed satisfaction for the profit acquired amount to

Rs. 59, 373, 97 by the Co-operative Society as per the audit report." But in the impugned order the Joint Registrar says:

From the records, it received that the audit of the Society for the year 1997-98 is yet to be completed and as such the proceedings as recorded under resolution No. 3 is not factually correct.

7. Moreover, the Respondent Nos. 4, 5 and 6 in paragraph 14 of the affidavit-in-opposition say that upto 16.10.98 the said Society was not audited by the departmental auditor and annex Annexure-5 dated 20.10.98 by which several persons including two internal auditors alleged that "Annual General Meeting of Sontoli GPSS Ltd. was held on 30.8.98. The Secretary of the Society read out the audit report of 1997-98 in the meeting which was a counterfeit one." The Respondent Nos. 6 and 7 in para 6 of the affidavit-in-opposition has stated that being share-holders they were entitled to receive notice of the AGM but the Society did not serve any such notice on them. They further added--"It is true that there was postering without agenda...but the postering was done only 9 days ahead of AGM. But it is mandatory under by-laws to issue proper notice with agenda 15 days ahead of the Annual General Meeting". The Petitioner No. 2 has no filed any reply affidavit to deny the above averments. The same have been left uncontroverted and hence deem to have been admitted.

8. In view of the above it has to be held that the AGM in question was held in gross violation of mandatory requirements justifying disapproval of its proceedings. Against disapproval, Mr. N.S. Deka, learned Counsel for the Petitioners, refers to a decision in Sanjoy Mahanta's case reported in (1993) 2 GLR 170 wherein it has been held that the approval authority should not lightly disapprove the proceedings of Annual General Meeting where incoming Managing Committee is elected. In the AGM in question, there was no election for the Managing Committee. In any case, that decision is clearly distinguishable.

9. It is contended that the Respondent Nos. 4 to 6 are not share-holders of the above mentioned GPSS an hence they have no right to challenge the order of approval of the Assistant Registrar. Annexures A/1 and 2 to the affidavit-in-opposition filed by these Respondents are certificate issued by the Secretary of the said GPSS showing that Respondent Nos. 6 and 4 are share-holders of the said GPSS with Sl. Nos. 493 and 49 respectively in the Member Register.

10. The next contention is that the Joint Registrar, an Officer junior to the Registrar, could not have passed the impugned order dated 2.11.98 setting aside the order of approval recorded by the Assistant Registrar on behalf of the Registrar. Be that as it may, the fact remains that the order of approval was passed by the Assistant Registrar, and from such an order an appeal lies u/s 80(1) of the Assam Co-operative Societies Act, 1949. The Joint Registrar has been empowered to exercise powers u/s 80(1) as well as u/s 32(5) of the Act vide Government Notification dated 20.11.86 Annexure-1 to the affidavit-in-opposition filed by the Respondent No. 2 issued by the Governor in exercise of

powers conferred by Section 3(2) of the Act. It is clear from the above that the Joint Registrar of the Co-operative Societies has rightly set aside the order of approval of the proceedings of the AGM in question accorded by the Assistant Registrar. The proceedings not approved become non-set and inoperative Sanjoy Mahanta's case (1993) 2 GLR 170. Since no legally valid AGM was held within 31.8.98, the Managing Body of the Sontoli GPSS of which Petitioner No. 2 was the Chairman stood dissolved with effect from 31.8.98. That being the position, the Joint Registrar in exercise of powers u/s 32(5) of the Co-operative Societies Act, could appoint a senior Inspector of Co-operative Societies as one member Ad hoc body to hold AGM of the above mentioned GPSS.

11. Section 32(6) of the Act requires such Officer or the Ad hoc body to hold the AGM within 90 days of such appointment or within such further time allowed by the State Government in exercise of powers under the proviso to Sub-section (6) of Section 32 of the Act.

12. In view of the above, there is no merit in this writ petition and the same is dismissed. No costs.