
(2009) 06 GAU CK 0047
In the Gauhati High Court

The Laskar Bhalukmari Samabai Samiti Limited	APPELLANT
Vs	
The State of Assam and Others	RESPONDENT

Date of Decision : 04-06-2009

Acts Referred:

Citation : (2009) 4 GLT 622

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hrishikesh Roy, J.—Heard Mr. B C Das, learned senior counsel appearing for the petitioner. Also heard Mr. R K Bora, learned Govt. Advocate who appears for the respondent Nos. 1 to 5. Mr. S S Dey, learned Counsel appears for the respondent No. 6.

2. This petition has been filed by the Laskar Bhalukmari Samabai Samiti Ltd. (hereinafter referred to as "the Society") represented by its Chairman to challenge the order dated 6.8.2008 (Annexure 5) of the Registrar of Co-operative Societies (hereinafter referred to as "the ROC") whereby the resolution passed by the Managing Committee of the Society on 16.6.2008 purporting to remove the respondent No. 6 from the position of Secretary, has been disapproved and set aside. The impugned order has been passed by the ROC by noting the findings of the enquiry report dated 4.7.2008 and also on the ground that, the action of the Society was not in conformity with the provisions of the Assam Co-operative Act and the Rules and also the bye laws of the Society.

3. It is contended on behalf of the petitioner that by the resolution passed by the Managing Committee on 16.6.2008, a decision to suspend the respondent No. 6 was taken and no decision for his removal and under such circumstances, since the ROC assumed that the respondent No. 6 has been "removed" and proceeded on that basis, the entire action of the ROC, is vitiated.

4. Mr. B C Das, learned senior counsel refers to the provisions of the Assam Co-

operative Societies Rules, 1953 (Hereinafter referred to as "the Rules") and submits that under the Rule 35, the Managing Committee of the Society has the power to suspend an officer of the Society and since the bye-laws permit such action against the Secretary, there was no justification for the ROC to set aside the resolution on the ground that the action taken by the Managing Committee is contrary to the Rules and the byelaws.

4.1. To establish that the Managing Committee has the power to take action against the Secretary of the Society, the learned Counsel refers to the provisions of the bye-law 27(1) of the Society, which reads as under:

27. Secretary:

1) The appointment and removal of the Secretary who shall be full time paid officer shall be made by the Managing Committee with the prior approval of the Registrar of Co-operative Societies and the Financial Bank. Provided further that the Registrar, Co- operative Societies may also appoint the Secretary if he deems fit and proper

4.2. It is also contended on behalf of the petitioner that only because the Secretary was defying the order of the Chairman, a decision on his suspension was taken in the meeting of the Managing Committee held on 16.6.2008 and the said resolution was subsequently approved by the I/C. Asstt. Registrar of Co-operative Societies, Hojai by order dated 21.6.2008 and under such circumstances, the ROC ought not to have interfered with the action taken against the respondent Secretary by the Managing Committee.

5. To support the impugned order of the ROC, Mr. R K Bora, learned Govt. Advocate refers to the counter affidavit filed by the Joint Registrar of Co-operative Societies. The learned Govt. Advocate submits that the meeting of the Managing Committee was convened on 16.8.2008 by the Chairman himself at his own initiative by telephonically requesting a section of the members of the Managing Committee and since the said meeting had been convened in violation of the procedure prescribed by the Rules, the decision taken by the Managing Committee in the said meeting was rightly interfered with by the ROC.

5.1. The learned Govt. Advocate contends that action against the Secretary of the Society was taken in an irregularly convened meeting and that too, without affording any opportunity to the respondent No. 6 and in such backdrop, the ROC has rightly disapproved of the action taken by the Managing Committee.

6. Representing the Secretary (Respondent No. 6) Mr. S S Dey, learned Counsel firstly submits that he has been functioning as the Secretary of the Society for more than 23 years and had always discharged his responsibility in the best interest of the Society and there should have been no occasion for the Society to take any action against the Secretary. The learned Counsel submits that the impugned resolution for his suspension was taken only at the behest of the Chairman of the Society who took a perverse personal interest in the matter

without ascertaining the views of the other members of the Managing Committee in an irregularly convened meeting and under such circumstances, the impugned action is vitiated by mala fide and also malice in law.

6.1. The learned Counsel refers to the enquiry report dated 4.7.2008 of the Dy. Registrar of the Co-operative Societies, Nagaon and submits that the said report clearly reveals that the Chairman had not convened the Managing Committee's meeting on 16.6.2008 by affording requisite notice time in terms of the requirement of Rule 34 of the Rules, which speaks of "at least 4 days notice" for a meeting of the Managing Committee. But in the instant case no such notice was given to any of the members of the Managing Committee and no information was also furnished about the agenda of the meeting.

6.2. Mr. Dey submits that it is apparent from the statement of the witnesses, who were members of the Managing Committee that information of the meeting on 16.6.2008 was given over telephone by the Chairman only to chosen members on 15.6.2008 and some others were informed only on the actual date of meeting and under such circumstances, the so called meeting of the Managing Committee was not convened in accordance with the provisions of Rule 34 of the Rules and therefore, any decision taken in the said meeting of the Managing Committee would stand vitiated in law.

6.3. Mr. Dey also points out that the Chairman only by his letter dated 13.6.2008, had directed the Secretary to convene a meeting of the Managing Committee within 20.6.2008 and while the Secretary was making arrangement for convening the meeting on 19.6.2008, the Chairman took the initiative on his own to convene the meeting of the Managing Committee by telephonically informing the Members and such a meeting was held on 16.6.2008, when a resolution for suspension was passed. The counsel submits that the suspension was ordered on the ground that the Secretary had not complied with the direction of the Chairman for shifting the Office of the Society from the rented house to its own building but it is pointed out by Mr. Dey that he informed the Chairman that unless renovation is done on the building of the Society, shifting may not be immediately feasible and in fact the issue of shifting was also to be discussed and decided in the meeting which was being convened by the Secretary scheduling it on 19.6.2008 but even before the Secretary could take necessary action, the resolution was passed 3 days earlier on 16.6.2008 in an irregularly convened meeting of the Committee.

6.4. The learned Counsel further submits that bye-laws of the society permits actions to be taken against the Secretary by the Managing Committee only with the prior approval of the ROC and in the instant case, the action has been taken for the Secretary's suspension without obtaining such prior approval and as such the impugned action has rightly been interfered with by the ROC.

6.5. The locus standi of the Society to institute the present litigation has also been questioned by Mr. Dey by contending that no authorization to the Chairman

to file the instant writ petition was given by the Society when the case was filed on 13.8.2008 and since the Society is not a legal entity, without the benefit of an authorization, this case could not have been filed by the Society through the Chairman claiming to espouse the interest of the Society.

7. Mr. B C Das, learned senior counsel in his reply submits that after filing of the writ petition on 13.8.3002, an Executive meeting of the Society was held on 4.9.2008 and in the said meeting post-facto approval of the action taken by the Chairman to file the case in the High Court to challenge the ROC's order dated 16.8.2008 and such post-facto approval would regularize the action taken by the Chairman on behalf of the Society.

7.1. The learned Counsel also relies upon a decision of the Apex Court in *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, to contend that issue of locus standi cannot be so narrowly interpreted to exclude a challenge by a society or its Chairman who have suffered a legal injury by the action of the ROC and under such circumstances, the technical objection raised by Mr. Dey should not to come in the way of the Court, in considering on merit the grievances raised in the instant case.

7.2. In support of his contention that the Managing Committee was empowered by the bye-laws to place the Secretary of the Society under suspension, the learned Counsel has referred to a Full Bench decision of this Court in *U.G. Koring Singh Lyngdoh v. Executive Committee, District Council* reported in AIR 1971 A&N 129 to contend that the expression "with prior approval of the Registrar of Co-operative Societies" would empower the Managing Committee to take action and thereafter seek approval and in such situation the only difference would be that the action taken by the Managing Committee would not operate immediately but will operate only from the date of approval by the ROC.

8. On reading of the judgment of the Full Bench in *U G Koring Singh Lyngdoh (Supra)*, I find that the Court in this case was interpreting an expression "subject to the approval" and was not interpreting an expression "with the prior approval" and therefore, in my view this decision relied upon on behalf of the petitioner will have no application in the present case.

9. I read from Rule 34 of the Rules that at least 4 days notice with a statement of the business to be discussed in such meeting has to be given and in the instant case not talk of 4 days notice, I find that no agenda or notice of the meeting scheduled on 16.6.2008 was circulated. In fact the meeting was convened at the personal initiative of the Chairman, who telephonically informed a section of the members and under such circumstances, it is obvious that the meeting that was held on 16.6.2008 was in contravention of the provisions of Rule 34 of the Rules.

10. While it is seen that the Managing Committee of the Society is empowered under Rule 35 of the Rules to suspend an Officer but such suspension can be ordered only in the manner provided by the bye-laws of the Society. The bye-

laws of the Society as is already noted, permits action against a Secretary only with the prior approval of the ROC and under such circumstances, the resolution passed in the meeting of the Managing Committee on 16.6.2008 without prior approval of the ROC, cannot be sustained as the Managing Committee was not authorized to act in such manner.

11. As the meeting of the Managing Committee is found to be convened in contravention of Rule 34 and since the decision taken in the meeting is found to be in contravention of Rule 35 and also the bye-laws of the Society, I find enough justification for the ROC to pass the impugned order setting aside the action taken by the Managing Committee against the Secretary of the Society.

12. Accordingly, I do not find any force in the submissions made by the petitioner that the action of the ROC was not warranted in law.

13. Having taken the aforesaid view, I see no justification to burden this judgment with a discussion on the issue of locus standi of the petitioner.

14. This writ petition is accordingly dismissed without any order on cost.