

(2008) 02 GAU CK 0014

Gauhati High Court

Case No: None

Ghiladhari Naduar Min S.S. Ltd.

APPELLANT

Vs

State of Assam and Others

RESPONDENT

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**Date of Decision:** Feb. 7, 2008**Acts Referred:**

- Assam Co-operative Societies Act, 1949 - Section 2(p), 3, 32, 32(2), 32(3)

**Citation:** (2009) 2 GLR 525 : (2008) 3 GLT 689**Hon'ble Judges:** Biplab Kumar Sharma, J**Bench:** Single Bench**Final Decision:** Allowed

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**Judgement**

B.K. Sharma, J.

Both the writ petitions by and between the same parties involving the impugned orders consequential to one another, have been heard together and are being disposed of by this common judgment and order.

2. The petitioner filed the first writ petition being W.P.(C) No. 4980/07 being aggrieved by the action on the part of the Registrar of the Co-operative Societies in granting approval to the proceeding of Annual General Meeting (AGM) held on 18.08.06 in respect of the Co-operative Society called M/s. Ghiladhari Naduar S.S. Ltd. The second writ petition being W.P.(C) No. 5483/07 has been filed making a grievance against the action on the part of the Zonal Joint registrar of the Co-operative Societies, Sonitpur in granting extension in respect of the term of office of the Managing Committee of the Society headed by the respondent No. 6. The writ petitioner also challenged the part of the order passed by the Registrar of the Co-operative Societies, Assam by which the Managing Committee constituted by the petitioner in the meeting held on 15.11.06 was conditionally approved.

3. The term of the Managing Committee of the Society headed by the respondent No. 6 expired on 31.07.06. However, by Annexure-6 order dated 31.07.06 by the

Zonal Joint Registrar of the Co-operative Societies, Tezpur Zone, Tezpur granted extension for 20 days purportedly exercising the power u/s 32(3) of the Assam Co-operative Societies Act, 1949. Pursuant to such extension granted, the Managing Committee headed by the respondent No. 6, held AGM and the election in the meeting held on 18.08.06.

4. As against the aforesaid position, the Registrar of the Co-operative Societies passed Annexure-2 order dated 17.08.06 appointing one Shri Diganta Saikia, Sr. Inspector of Co-operative Societies as the one man ad hoc committee to run the affairs of the society and to hold AGM/election within the stipulated period of 90 days from the date of issuance of the order. Such a course of action was adopted by the Registrar of the Cooperative Societies on the ground of expiry of the term of the earlier Managing Committee w.e.f. 31.07.06.

5. It will be pertinent to mention here that the writ petition being W.P.(C) No. 3936/06 was filed by one Shri Jatin Sarkar and another questioning the continuation of the Managing Committee headed by the respondent No. 6 even after expiry of its term on 31.07.06. An interim order was passed on 09.08.06 providing that the respondent No. 6 would not function as the Chairman of the Managing Committee in view of the expiry of his term w.e.f. 31.07.06. Subsequently the writ petition was withdrawn.

6. Pursuant to the aforesaid order dated 17.08.06 passed by the Registrar of the Cooperative Societies appointing one man ad hoc committee, he initiated the process towards holding AGM/election of the Co-operative Society. Notice in that regard was issued notifying holding of AGM/election of the society on 15.11 .06 at 11 A.M. Being aggrieved by such issuance of notice, the respondent No. 6 filed the writ petition being W.P.(C) No. 5740/06 questioning the legality and validity of the power and jurisdiction of the said one man ad hoc committee to notify election etc. in the writ petition, it was the contention of the petitioner that pursuant to extension of term granted by the Joint Registrar of the Cooperative Societies for a period of 20 days, AGM/election was held on 18.08.06 in which the Managing Committee headed by the respondent No. 6 was elected and constituted.

7. From the above, what has emerged is that while it is the contention of the petitioners that Joint Registrar of the Co-operative Societies could not have granted further lease to the Managing Committee of the Society headed by the respondent No. 6 after expiry of its term w.e.f. 31.07.06, it is the stand of the respondent No. 6 that extension was validity granted and the AGM/election having been held within the period of extension, it is the Managing Committee headed by the respondent No. 6 which will continue to hold the office till expiry of its term. On the other hand, it is the contention of the petitioner that since it is the Managing Committee which was elected/constituted in the meeting on 15.11.06, it is the said body which will continue to hold the office. Be it stated here that the term of office of the elected body is for three years.

8. Writ petition being W.P.(C) No. 5740/06 was taken up along with two other writ petitions being W.P.(C) Nos. 5743/06 and 5109/06. W.P.(C) No. 5109/06 was filed by the respondent No. 6 making a challenge to the constitution of the one man ad hoc committee by the Registrar of Co-operative Societies about which mention has been made above. Further prayer made in the writ petition was for approval of the proceeding of the AGM held on 18.08.06. W.P.(C) No. 5743/06 was filed by the Secretary of the Co-operative Societies who was placed under suspension by order dated 21.09.06 passed by one man ad hoc committee.

9. All the writ petitions were heard together and were disposed of by order dated 29.08.07. The order reads as follows:

Heard Mr. J. Ahmed, learned Counsel for the petitioner and Mr. Z. Hussain, learned Counsel for the respondents. Perused the order dated 10.04.07. The order reads as follows:

In the course of hearing of the 3 (three) cases in question, it has come to the notice of the Court that on 15.11.06 another Managing Body of the Society has been elected in the Annual General Meeting convened by the One-man Committee constituted by order dated 17.08.2006 (Anenxure-X to WP(C) No. 5743 of 2006). The constitution of the said body made on 15.11.06 has not been challenged in any of the writ petitions. In the absence of such challenge, no effective order can be passed. I, therefore, adjourn the cases for a week with liberty to the petitioners to challenge the aforesaid constitution made on 15.11.2006.

List again on 30.04.2007.

It would appear from the above that these writ petitions have become infructuous in view of the constitution of a new committee. However, Mr. Ahmed submitted that the petitioners have preferred an appeal before the Registrar against their removal under the provisions of the Assam Co-operative Societies Act and the same is still awaiting disposal.

The writ petitions are disposed of with the observation that the Registrar shall, if any appeal is pending, dispose of the same in accordance with the provisions of law within a period of six weeks.

10. From the aforesaid order dated 29.08.07, it will be seen that none of the issues raised in the writ petition was decided by this Court in view of the fact that in the meantime the managing committee headed by the petitioner came into being after the AGM held on 15.11.06, it was also noticed that there was no independent challenge to the said proceeding. However, liberty was granted to the learned Counsel representing the respondent No. 6 to pursue departmental remedies.

11. During the course of hearing of the present writ petitions, Mr. J. Ahmed, learned Counsel for the respondent No. 6 has produced the appeal dated 09-02.07 purportedly made u/s 80 of the Co-operative Societies Act, 1949. The appeal was

preferred before the Registrar of Co-operative Societies, Assam. On perusal of the same, it is seen that in the said appeal the respondent No. 6 made a grievance against the constitution of the Managing Committee headed by the petitioner. There was also mention about the constitution of the earlier Managing Committee in the AGM held on 18.08.06. In the appeal the present Chairman, namely Shri Tulsi Das and the office bearers of the Managing Committee constituted in the meeting held on 15.11.06 were made party respondents. However, there is no dispute that the said appeal was never served on any of the respondents.

12. After the aforesaid disposal of the writ petitions, the Registrar of the Co-operative Societies has passed the impugned order dated 12.09.07 by which the proceeding of the AGM/election held on 18.08.06 was approved. The order has been passed purportedly in compliance of the aforesaid order dated 29.08.07 by which all the three writ petitions were disposed of.

13. Prior to the aforesaid impugned order dated 12.09.07, Registrar of the Co-operative Societies by his order dated 17.05.07 allowed the Managing Committee headed by the petitioner to function as such till finalization of the aforesaid writ petition being W.P.(C) No. 5740/06 in which the action of the one man ad hoc committee towards notifying and holding of AGM/election was challenged. The conditional approval granted to the proceeding of the AGM in which the petitioner was elected, has been put to challenge" in the writ petition being W.P.(C) No. 5483/07. As noticed above, further challenge in the writ petition was to the extension granted in favour of the respondent No. 6 by the Joint Registrar of the Co-operative Societies for a period of 20 days.

14. I have heard Mr. Z. Hussain, learned Advocate led by Mr. H.R.A. Choudhury, learned Sr. Counsel for the petitioners as well as Ms. R. Chokraborty, learned State counsel. I have also heard Mr. J. Ahmed, learned Counsel led by Mr. A. M. Majumdar, learned Sr. counsel for the respondent No. 6. I have also considered the materials on record.

15. In W.P.(C) No. 5483/07, it is the specific case of the petitioner that the Joint Registrar of the Co-operative Societies could not have granted extension to the Managing Committee headed by the respondent No. 6 whose term had already expired. In this connection, the petitioner has made specific averments in paragraphs 14 and 16 of the writ petition. According to the petitioner, as per provision of the aforesaid Act, it is the Registrar alone who is empowered to grant such extension and not the Zonal Joint Registrar. In this connection, learned Counsel for the petitioner has referred to Section 32(2) of the Act. Sub-section 2 of Section 32 provides that such a meeting shall be held within 60 days from the date of expiry of the preceding co-operative year. However, if for any reason the meeting cannot be held within the date fixed by the Registrar, any society may, by application made within the aforesaid period of 60 days and addressed to the Registrar, pray for extension of time for holding the meeting stating the grounds for which, in the

opinion of the society, the meeting cannot be held.

16. Sub-section 3 of Section 32 provides that in case of making such application, the Registrar may grant such extension for forming an opinion that there are good grounds for which the meeting could not be held within the stipulated time.

17. Section 2(p) of the Act defines Registrar as the person appointed to perform the duties of a Registrar of Co-operative Societies under this Act. Section 3 deals with the term "Registrar". The State Government may appoint a person to be a Registrar of Cooperative Societies. Under Sub-section 2 of Section 3, the State Government may also appoint persons to assist the Registrar and may, by general or special order in writing, delegate to any such person or to any other Government Officer all or any of the powers of the Registrar under this Act.

18. Upon a reference to the aforesaid provisions of the Act, it is the definite case of the petitioner that the extension granted in favour of the respondent No. 6 by the Joint Registrar of the Co-operative Societies was unauthorized and without jurisdiction. It has been stated in paragraph -16 of the writ petition that the said Joint Registrar was not authorized by the Registrar of the Co-operative Societies towards exercising of power to grant extension.

19. In the affidavit in opposition filed by the Registrar of the Co-operative Societies specific plea of the petitioner is that the Joint Registrar was not authorized to grant extension, has not been denied. As per the provisions of the Act, it is the Registrar to whom the application seeking extension is to be addressed and it is the Registrar who is empowered to grant such extension. The respondent No. 6 made the application seeking extension of its terms and the same was forwarded to the Zonal Joint Registrar of Co-operative Society, Tezpur Zone by the Assistant Registrar of the Co-operative Societies, Tezpur by his letter dated 27.07.06. From the materials on record, it appears that the respondent No. 6 made the application to the Assistant Registrar of the Co-operative Societies, Tezpur who in turn forwarded the same to the Joint Registrar of the Co-operative Societies. Thus, the application was not addressed to the Registrar of the Co-operative Societies as required as per the aforesaid provisions of the Act. Even otherwise also, in absence of any power and jurisdiction, the Joint Registrar of the Co-operative Society was not competent to grant the extension in respect of the term of the Managing Committee headed by the respondent No. 6 which already expired on 31.07.06.

20. The aforesaid position was virtually accepted by the Registrar of the Co-operative Societies when he constituted the one man ad hoc committee by his letter dated 17.08.06 mentioning therein that the term of the earlier Managing Committee expired on 31.07.06. The one man ad hoc committee conducted the AGM/election in the meeting held on 15.11.06 in which the Managing Committee headed by the petitioner was elected.

21. The Registrar of the Co-operative Societies by his order dated 17.05.07 made the provision to the effect that the Managing Committee headed by the petitioner who was elected in the AGM held on 15.11.06 was constituted to manage the affairs of the society till finalization of the aforesaid writ petition being W.P.(C) No. 5740/06 by this Court. As noticed above in the writ petition, the challenge made was to the action of the one man ad hoc committee towards holding of AGM/election on 15.11.06.

22. In the aforesaid order dated 17.05.07 passed by the Registrar of the Co-operative Societies, Assam various aspects relating to the affairs of the Co-operative Societies have been mentioned. It has also been mentioned that the term of the earlier Managing Committee headed by the respondent No. 6 expired on 31.07.06 and that the one man ad hoc committee was constituted thereafter. It also mentions about holding of the AGM/election on 15.11.06 pursuant to the task entrusted to the one man ad hoc committee. In the order it was clearly indicated that the elected body represented by the petitioner was functioning.

23. From the above, it will be seen that the Registrar of the Co-operative Societies virtually granted the approval to the proceeding of AGM/election held on 15.11.06. However, same was stated to be subject of the final outcome of the writ petition being W.P.(C) No. 5640/06 in which the very action of the one man ad hoc committee towards holding the AGM was put to challenge by the respondent No. 6.

24. The fate of the aforesaid writ petitions including the writ petition being W.P.(C) No. 5740/06 has been noted above. The writ petitions were disposed of by the above quoted order dated 29.08.07 clearly indicating that the same had become infructuous in view of holding of the AGM/election on 15.11.06. It was also noted that there was no independent challenge to the same. However, liberty was granted to the contesting parties to make a challenge to the same. It was noticed that no such challenge was made. As regards the appeal preferred by the respondent No. 6, same has been discussed above.

25. Learned Counsel representing the respondent No. 6, submits that the impugned order dated 12.09.07 (Annexure -8) is not on the basis of the appeal preferred by the respondent No. 6. If that be so, it is not understood as to on what basis the Registrar of the Co-operative has passed the impugned order dated 12.09.07. If the same has been passed on the basis of the appeal preferred by the respondent No. 6 in which the managing committee headed by the petitioner was made party respondent, having been passed without providing opportunity of being heard, on that score alone, the impugned order is liable to be set aside and quashed.

26. The Registrar of the Co-operative Societies has passed the impugned order dated 12.09.07, showing the same to be in compliance to the aforesaid order dated 29.08.07 passed by this Court in the three writ petitions. This Court never issued any direction while disposing of the said writ petition. In the order liberty was granted to

pursue departmental remedy for which appeal was preferred. The respective challenge made in the writ petitions was never answered by this Court, but at the same time it was observed that all the writ petitions had become infructuous. It was noticed that there was no individual challenge to the proceeding of the AGM held on 15.11.06.

27. In view of the above, it is not understood as to why the Registrar of the Co-operative Society could have granted approval to the AGM held on 18.08.06 after more than one year of such proceeding and that too unmindful of the fact that it was he who had constituted the one man ad hoc committee upon failure of the respondent No. 6 to hold the AGM in time. It was also he, who had observed that the term of the earlier Managing Committee expired on 31.07.06.

28. The earlier order of the Registrar of the Co-operative Societies virtually granting approval to the proceeding of the meeting on 15.11.06 was however, subject to the outcome of the writ petition being W.R(C) No. 5740/06. The outcome of the same has been noticed above. The said writ petition has been disposed of holding the same to be infructuous. If that be so, the Registrar of the Co-operative Societies could not have approved the proceeding of the purported AGM held on 18.08.06.

29. For the forgoing reasons and discussions, the writ petitions are allowed setting aside the impugned orders in question. It is hereby declared that the Managing Committee headed by the petitioner is the duly elected Managing Committee and it will hold the office till expiry of its term or coming to an end of its term as per the provisions of the Act and the Rules holding the field.

The writ petitions are allowed. There shall be no order as to costs.