

(1997) 09 GAU CK 0009

Gauhati High Court

Case No: Writ Appeal No. 414 of 1997

Md.Hasnur Choudhury

APPELLANT

Vs

Sisir Kumar Lahkar and Ors.

RESPONDENT

Date of Decision: Sept. 19, 1997

Acts Referred:

- Assam Co-operative Societies Act, 1949 - Section 80, 80
- Assam Co-operative Societies Rules, 1953 - Rule 27, 27
- Constitution of India, 1950 - Article 226, 226

Citation: (1998) 1 GLJ 113 : (1997) 3 GLT 628

Hon'ble Judges: M.Ramakrishna, C.J. and P.C.Phukan, J

Bench: Division Bench

Advocate: S.R.Sen , M.Bhuyan, D.A.Sur, S.S.Dey, Advocates appearing for Parties

Judgement

M. Ramakrishna, C. J.

1. Mr. Sisir Kumar Lahkar. the first respondent herein, who contested for the Chairmanship of the cooperative society called "Saraighat GPSS Ltd" registered under the Assam Cooperative Societies Act. presented a writ petition in Civil Rule No.2639 of 1997 challenging the order of the Registrar of Cooperative Societies. Assam, respondent No.3 herein, made on 29th May. 1997 and the writ petitioner had sought for quashing of the same.

2. This was contested by the respondents in the writ petition. However, the learned Single Judge of this Court by an order made on 24th June. 1997. allowed the writ petition setting aside the order of the Registrar of Cooperative Societies. Assam. Aggrieved by this order of the learned Single Judge, this appeal has been presented by the appellant, Md. Hasnur Choudhury.

3. A few facts which are necessary for disposal of the appeal are as follows:

It is not in dispute that Mr. Sisir Kumar Lahkar having contested the election, became the Chairman of the above cooperative society continuously for four years. It is also not in dispute that for the fifth year, he contested for the said office. The election was held and that he was declared elected as Chairman for the year 1997-98. However, he received a communication on 31st May, 1997, issued by the Registrar of Cooperative Societies, Assam, the third respondent herein, on 29th May, 1997, invoking the provisions of Rule 27 of the Assam Cooperative Societies Rules, 1953, hereinafter referred to as the Rules, by which, the application presented by the writ petitioner seeking permission under Rule 27 of the Rules had been rejected. It is this order which was called in question in the writ petition referred to above. The contention made by the petitioner was that in view of the provisions of Rule 27 of the Rules, referred to above, the Registrar ought to have considered the application made by the petitioner before the actual election was held for the office of the Chairman. On the other hand, he received the communication three days after the elections. Accepting the grounds of challenge made by the petitioner and holding that the impugned order of the Registrar of Cooperative Societies was illegal, the learned Single Judge quashed that order and allowed the writ petition. Hence this appeal.

4. It is necessary to mention here that the Division Bench which admitted the appeal, directed the State Govt. to file an affidavit by way of statement of objections indicating as to what is the stand of the State Govt. in this behalf because, an important legal question of public importance arose in regard to the interpretation of Rule 27 of the Rules. Hence the direction given by the Division Bench.

5. Mr. SS Dey learned Govt. Advocate brought it to our notice that as on 12th September, 1997 a detailed statement of objections by way of counter has been filed on behalf of the State. It is seen therefrom that according to the sole statement of the Registrar of Cooperative Societies of Assam, referring to the provisions of Rule 27 of the Rules and looking to the intendment of the said provisions of the law, the State is of the opinion that the disability that was set in, in respect of a person having served for four years continuously, such a person cannot contest the elections for the fifth year unless that disability is removed.

6. Mr. Dey, the learned Advocate appearing for the State Govt., rightly pointed out that by virtue of the provisions of Rule 27 of the Rules, the competent authority, viz., the Registrar of Cooperative Societies, who has to pass the order permitting such person to contest the elections, did pass an order on 29th May, 1997, one day after the elections. It is unfortunate that the order was communicated on 31st of May, 1997. Hence the submission on behalf of the State is that the view taken by the learned Single Judge is not sustainable.

7. However, the learned counsel for the appellant who is none other than the present Vice President of the society, argued that at the outset, before the writ petitioner invoked the provisions of the extraordinary power of this Court under

Article 226 of the Constitution, he could have as well availed the statutory provisions of section 88 of the Assam Cooperative Societies Act, 1949, hereinafter referred to as the Act, which provides for presenting an appeal either before the Registrar or before the State Govt., which he did not do. Therefore, the writ petition at the outset, was not maintainable.

8. Contrary to this argument of the learned Advocate appearing for the appellant, the learned counsel for respondent No. 1 in the appeal and the writ petitioner, submits that:

(i) In view of the language employed in Rule 27 of the Rules, the main section of the rule does not deal with the disability of a person though the proviso to this rule does deal with the same. Therefore, the view taken by the learned Single Judge holding that there is no disability in the writ petition, is justified and, therefore, this Court need not interfere.

(ii) The provisions of section 80 of the Act is not effective and, therefore, the writ petition had to be resorted to under the law.

9. In view of the foregoing, the following two important questions arise for decision in this appeal:

(1) Whether the view taken by the learned Single Judge of this Court interpreting the provisions of Rule 27 of the Rules and holding that the permission to be granted by the Registrar under the proviso to Rule 27 of the Rules is not mandatory, would be correct?

(2) Whether the provisions of section 80 of the Act to enable an aggrieved person to file an appeal or review would be effective?

10. We will now deal with the first question. With a view to appreciate the legal contentions urged by both the sides, we extract the provisions of Rule 27 of the Rules hereunder:

"27. Election and retirement of directors in a primary society, other than a nonagricultural credit society, (i) The directors of a primary society other than a nonagricultural credit society shall retire annually from office but shall be eligible for reelection:

Provided that except with the previous permission of the Registrar which should only be given in exceptional cases, no members shall hold office for more than four years in succession or having already held office for four years be reelected within a shorter interval than two years from the date on which he ceased to be a director.

(ii) The vacancies caused by the retirement of the directors shall be filled up by election at the annual meeting of, the general assembly at which they retire."

11. Looking at the language of the headline of the rule, referring to the election and retirement, etc. it goes to show that the main provision of Rule 27 deals with the question of election or retirement of a person who is not eligible. Secondly, "looking at the plain language employed in the main rule, it is clear that retirement of a person, either direct or otherwise, of a primary society annually is the main object of this rule. Thirdly, looking at the proviso to the rule, it is made clear that this proviso to Rule 27 is acting as reader to the main rule. In other words, the Court will have to interpret the provisions of the law not only taking into consideration the main rule but also the proviso, in order to understand the totality of the object or intendment of the legislation. Therefore, we will have to see as to what is the intendment of the legislation in this behalf.

12. By a careful consideration of the language employed both in the main rule or in the proviso, undoubtedly, it is made clear that the legislation intended that a person who had been holding office of the Chairman continuously for a period of four years, has a disability set in by virtue of the proviso inasmuch as unless the said person obtains permission in writing from the Registrar, that disability will sustain or it does not vanish.

13. Indeed, as a matter of fact, knowing the above intention of the legislation, the writ petitioner did apply before the Registrar to seek for his permission. But, as submitted, because of the delay in passing of the order by the Registrar, he had to contest the elections. The Hon'ble Supreme Court had the occasion to deal with a similar question in the case of Abdul Jabbar Butt & another vs. State of Jammu & Kashmir as reported in AIR 1957 SC 281. In that case, the question was when a detention is made under the provisions of Jammu & Kashmir Preventive Detention Act (4 of 2011 Smt), the words and phrase "As soon as may be indicated . the period of time beginning to run from the time of detention and to communicate the grounds "as soon as may be" may well be said to mean to do so within a reasonable time with an understanding to do it within the shortest possible time. Whenever the question of reasonableness arises in computing the period of time the Court has perforce to have regard to the particular circumstance of the case in which the question arises for decision, viz, whether it is made with a view to prevent the detenu from acting in a manner prejudicial to the manner as enumerated under section 3(1) of the said Act; and whether such person (detenu) bases upon grounds provided in the order, can challenge a declaration made by the competent authority ?

14. Referring to the provisions of section 8(1) of the above Jammu & Kashmir Detention Act in regard to the time for making a declaration under the provision under that section, a Bench of five Judges of the Supreme Court in the Abdul Jabbar's (supra) case, held as follows :

"It is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso. Therefore, the

proviso to section 8 (1) has to be construed harmoniously with the provisions of subsection (1) to which it is a proviso, (emphasis supplied)

In paragraph 12 of the judgment, their Lordships however, observed as follows:

"The authority vested in the Govt. to make a declaration contemplated by the proviso must be exercised before the expiry of the span of time predicated by the expression "as soon as maybe" occurring in subsection (1)." (emphasis supplied)

15. In the light of the law declared by the Supreme Court interpreting the provisions of section 8 (1) of the Jammu & Kashmir Act (supra), it is made clear that the salutary principle of interpreting a statute is to read both, the main section as well as the proviso to that section or rule as the case may be, in order to enable the Court to understand the intendment of the legislation and that, such intendment must be given effect to, unless it is contrary to the Constitution. It is nobody's case that the proviso to Rule 27 of the Rules, is contrary to the provisions of the Constitution of India. Hence the learned Single Judge ought to have seen as to what is the intendment of the legislation in interpreting the language found in Rule 27 of the Rules. Secondly, the learned Single Judge failed to apply his mind to the salutary principles required to be followed in interpreting a statute of this kind. Resulting effect is that the conclusion arrived at is contrary to the law. Therefore, on the first part, we hold in favour of the appellant.

16. Dealing with the provisions of section 80 of the Act. it is clear that any person aggrieved by any action including the action of the respondent No.3, the Registrar, in delaying the passing of appropriate order on the application made by the petitioner under Rule 27 of the Rules, would have been called in question under the law. If on the other hand, the writ petitioner is of the opinion that there cannot be an appeal against the order of the Registrar, who is a competent authority, in such an event, under subsection (3) of section 80 of the Act. he could have as well filed an appeal before the State Govt.. It appears to us that the provisions of law as provided under section 80 are more effective to give relief to an aggrieved person. Thus, the writ petitioner need not invoke the provisions of section 80 of the Act with a view to get relief before approaching this Court. On this ground also, the writ petitioner/respondent No. 1 fails.

17. When a material question arose between the petitioner/respondent No. 1 and the appellant in this appeal regarding locus standi of the present appellant to file this appeal, who is the Vice Chairman of the society in question and not being the office bearer of the Chairman, we are of the view that in the instant case, we feel that the declaration of the law as provided under Rule 27 of the Rules is more important than the question of locus standi. Therefore, we do not intend to deal with this question.

18. In the result, the order of the learned Single Judge is set aside.

19. The election of the writ petitioner to the office of the Chairman is quashed. However, it is made clear that election to the office of Chairman shall be held afresh in accordance with the law.

20. We, therefore, direct that the Registrar of Cooperative Societies, the third respondent, shall make arrangements to hold election to the office of the Chairman of the above cooperative society within a period of three months from the date of receipt of this order. All eligible candidates including the writ petitioner may apply with a view to contest for the office. However, the writ petitioner/ respondent No. 1 has to obtain necessary orders from the Registrar in pursuance of Rule 27 before contesting the election.

Parties to bear their own costs.