

(1985) 08 GAU CK 0003

Gauhati High Court

Case No: Civil Rule No. 540 of 1985

Tinsukia Barbeel Min Silpa
Samabay Samiti Ltd.

APPELLANT

Vs

Registrar of Co-Operative
Societies and Others

RESPONDENT

Date of Decision: Aug. 8, 1985

Acts Referred:

- Assam Co-operative Societies Act, 1949 - Section 36

Citation: (1985) 2 GLR 412

Hon'ble Judges: T.C. Das, J; S. Haque, J

Bench: Division Bench

Advocate: G.K. Talukdar, C.C. Deka and N.C. Phukan, for the Appellant; A.K. Phukan and B. Choudhury, Govt. Advs., for the Respondent

Final Decision: Allowed

Judgement

T.C. Das, J.

Tinsukia Barbeel Min Silpa Samabay Samiti Ltd. the writ Petitioner has challenged the order dated 3-7-85 issued by the Deputy Registrar, Co-operative Societies, Jorbat in temporarily suspending the Executive Committee of the Petitioner society and appointing the Senior Inspector, Co-operative Societies, Colaghat, as Executive Officer of the said society. The Petitioner society has therefore prayed for issuance of a writ of mandamus us and or any other appropriate writ or direction against the authority concerned and to quash the order dated 3-7-85.

2. Writ of mandamus is often used as an adjunct to certiorari if a tribunal or authority acts in a matter where it has no power to act at all. If there is power to act but the power is exercised in breach of natural justice or by committing an error on the face of the record, certiorari will quash and mandamus may issue simultaneously for a proper re-hearing. Although both certiorari and mandamus are

discretionary remedies, the court's direction must be limited by the basic rules of judicial Control, Can it be said that every administrative action be treated as judicial act If it adversely affects any person's right and entail a penalty? The answer would be to in affirmative if such decision or action affects the right of a citizen what he enjoys under provision of Law and the Constitution, The next question will arise: whether in all cases the principle of natural justice is applicable while discharging the administrative function by the authority? In Administrative Law natural justice is well defined which comprises of two fundamental rules-(a) a fair procedure and (b) that a man may not be a Judge of his own cause and that the defence must always be fairly heard. They apply equally to administrative power and sometimes also by power created by contract. In judging the standard of reasonableness the power must be exercised reasonably taking in view that this is of no less important doctrine. If a discretion is allowed that discretion must be exercised reasonably. The discretion must not be unreasonable. The authority must exclude from consideration the matters which are irrelevant to what it has to consider.

3. The writ Petitioner's case is that the Deputy Registrar, Co-operative Societies, Jorhat, by the order dated 3.7.85 in unreported application of the provision u/s 36 of the Assam Co-operative Societies Act, 1949 (as amended) "in short the Act" suspended the Executive Committee and also appointed an Executive officer to manage the affairs of the society till a new Executive committee is elected by the Annual General Meeting of the Society or until further order that may be issued by the Department, The Petitioner-society is a registered Co-operative Society comprising of the actual fishermen belonging to the Scheduled Caste having an area of operation with Rangamati Sensowa Gaon and Nakkati Bhakat Cpahari within Golaghat Sub-division in the district of Jorhat, By order under Memo No. CSGG.3/81/Pt.I/188 dt. 29-6-85, the Assistant Registrar, Co-operative Societies, Golaghat, issued a direction to all registered Co-operative Societies within Golaghat Sub-division to hold Annual General Meeting of the Societies including the Petitioner-society for election of a new Executive Committee before 29-8-85 and to get the same approved by him. It is stated by the Petitioner that the existing Executive Committee of the Petitioner-society which was duly elected and approved on 11-9-84, smoothly managed the affairs of the Petitioner-society and the term of the Executive Committee is to expire on and from 29-8-85, According to the Petitioner, election would be held in the Annual General Meeting to elect a new Executive Committee to function on and from 29-8-85 for a period of one year. Therefore, the Executive Committee wanted to hold it meeting on 25-7-83 and issued notice dt. 8-7-85 to all members of the society intimating that the election would be held on 25-7-85.

4. However, in the meantime the impugned notice/order dt. 3-7-85 came in between, and as such, the proposed election to be held on 25-7-85 could not take place. In other words the effect of the notice of the Executive committee of the Petitioner-society issued on 8-7-85 remained ineffective.

5. Mr. G.K. Talukdar, the learned Counsel for the Petitioner has attacked the impugned notice mainly on two grounds, namely (1) that the impugned notice is illegal on the face of the order of the Assistant, Registrar, Co-operative Societies issued on 29-6-85 directing the Petitioner-society to hold the Annual General Meeting to elect the members of the Executive Committee, before 29-8-85 on which date the term, of the present body would expire and (2) that the impugned notice and/or order is in violation of the provisions of Section 36 of the Act., as because it is mandatory for the authority to follow the provisions of Sections 60 and 61 of the said Act before taking up any decision under the said provisions of Section 36 of the Act, On the above two grounds, Mr. Talukdar, the learned Counsel has challenged the impugned order dt. 3-7-85.

6. Mr. A.K. Phukan, the learned Govt. Advocate who opposes this application has urged before us that the arguments advanced by the learned Counsel for the Petitioner cannot sustain on the ground that the Deputy Registrar, Co-operative Society being the delegated authority was competent to dissolve and/or suspend the Executive Committee and to elect and/or to appoint an Executive Officer to manage the affairs of the Society by virtue of the provision of Section 36(1) of the Act. With regard to the earlier order dt. 29-6-85 issued by the Assistant Registrars Co-operative Societies to hold Annual General Meeting, Mr. Phukan the learned Govt. Advocate has submitted that the said order was issued in general to all registered societies and was not meant only for the Petitioner society. Therefore, it cannot be treated as a direction solely issued to the Petitioner society to hold the Annual General Meeting as directed therein. It is further submitted that the authority can act under the proviso to Section 36(1) of the Act if it desires to do so. It is further submitted by Mr. Phukan that there is ample evidence on record to show that the order dt. 3-7-85 suspending the Executive Committee was necessary as an emergent measure for the interest of the Petitioner-society.

Before scrutiny of the rival contentions of the learned Counsel of the parties let us now look to the provisions of Section 36(1) of the Act, which is quoted herein below:

36(1) Dissolution or reconstruction of the Administrative Council, managing body or any committee of a society—(1) when the Registrar is satisfied, after an inspection or inquiry u/s 60 or 61 for reasons to be recorded in writing, that the Administrative Council, managing body or any committee of a registered society is not functioning properly or according to this Act, rules or bye-laws, he may, after giving the offending body an opportunity to state its case, direct under clause(d) of Sub-section (1) of Section 33, that a special general meeting of the General Assembly be called within a time to be specified to dissolve the Administrative Council, managing body or committee concerned and to elect a new one.

Provided that, if in the opinion of the Registrar, it is necessary as an emergent measure to suspend the offending body forthwith, he may do so and shall appoint a person, on such conditions as prescribed by him to be in full control of the

suspended body until a new body has been elected or action has been taken in accordance with Section 37.

The above quoted Section 36(1) of the Act is the relevant provision as being applied in this case, Though Mr. Phukan placed reliance to the provisions of Section 31(3) of the Act to be read along with Section 36(1) of the Act, but on bare perusal of the provisions of Section 36(1) of the Act it appears that if the Registrar of the Co-operative Societies after inspection and/or inquiry u/s 60 or 61 of the Act is satisfied for reasons to be recorded in writing that a particular committee or body of a registered society is not functioning properly in accordance with the Act, rules or byelaws, the Registrar after giving the offending body an opportunity to state its case, may direct to hold a special general meeting of the General Assembly within a time that may be specified to dissolve the Administrative Council, managing body or the committee concerned and to elect a new one. This shows that this part of Section 36(1) of the Act empowers the Registrar of Co-operative Societies to issue a direction as enumerated therein and hold an inspection or enquiry u/s 60 and 61 of the Act if the Registrar is satisfied that the Society was not functioning properly. The Registrar of the Co-operative Societies can also direct the offending body to hold the annual general meeting for the purpose of election of the new committee or body as the case may be. If this procedure is adopted then naturally it might be a time consuming process and to avoid this and to take an immediate measure if necessary, an emergency power has also been given to the Registrar, Co-operative Societies to take immediate steps to suspend the offending body as per proviso to the Section 36(1) of the Act, The proviso is only applicable to take an interim measure and if in the opinion of the Registrar it was necessary to take an emergent measure to issue the order of suspension, this may be done under the proviso to the Section 36(1) of the Act. An alternative arrangement is to be made if it is necessary for taking an emergent measure and not otherwise, In general, the normal procedure must be followed in view of the terms as laid down u/s 36(1) of the Act.

7. Mr. G.K. Talukdars the learned Counsel for the Petitioner, in support of his contention has cited before us two decisions of this Court, namely, 1976 ALR 277 (R.K. Jaichandra Singh v. The Registrar, Co-operative Societies, Manipur) and (1984) 2 GLR 263 (Baladmari Gobindipur Machmara and Jalbowa Samabay Samity v. The State of Assam), In R.K. Jaichandra (supra) this Court had the Occasion to deal with the provisions of Sections 36, 60 and 61 of the Act, It was held that u/s 36(1) of the Act, the Registrar could only pass an order directing for calling of the special general meeting of the society to dissolve the Managing Committee and to elect a new one after giving the offending body an opportunity to state its case. Issuance of notice to the offending body is a sine-qua-non in the exercise of the power under this section. It was further held that no action either of suspension or dissolution can be made by the Registrar against any body or council or committee unless it is an "offending body". The learned Counsel of both the parties have relied on paragraph 6 of the

judgment which we quote herein below:

On a bare, perusal of the order of suspension dated 23-12-1975 It is appa(sic) that the same was grounded on (1) that the Board of Directors failed to conduct the Special General Meeting of the Bank held on 21-12-1975 in the manner expected of them and that the meeting proceeded in an uproarious manner (2) that there was unusual withdrawal of deposits since 22nd December, 1975. Admittedly and apparently, after 21-12-1975 no notice was served on the Board of Directors giving them any opportunity to state their case in respect of the aforesaid allegations. Under the main part of the Sub-section, the Registrar could only pass an order directing the calling of the Special General Meeting of the Society to dissolve the Managing Committee and to elect a new one "after giving the offending body an opportunity to state its case.

It is further submitted by Mr. Talukdar that unless the first part of Section 36(1) comes in, the proviso cannot be attracted. It is submitted by the learned Counsel that the body of a Co-operative Society must be adjudged as an offending body and that too can be done only by an enquiry or inspection as provided u/s , 60 and 61 of the Act, After such enquiry or inspection, as the case may be, if the Registrar of the Co-operative Societies is satisfied then and then only the Registrar can come to the conclusion to adjudge a committee or body to be an offending body. If a particular body or Managing Committee or Executive Committee is an "offending body", the proviso may be attracted to suspend the body by way of an emergent measure, Mr. Talukdar has contended that the proviso to Section 36(1) of the Act is only attracted if an emergent measure is necessary to suspend the offending body. A body or committee of the Society cannot be adjudged as an offending body unless the first part of Section 36(1) is complied with. The Registrar can only take an emergent measure to suspend only the offending body in charge of the management of the Co-operative Society. What Mr. Talukdar has insisted is that the Executive Committee of the Petitioner society upon whom the impugned notice is issued was not adjudged as an offending body and that a body or Executive Committee of the society cannot be said to be offending body unless the provisions of Section 36(1) of the Act as to its terms are complied with. This Court already held in R.K. Jaichandra (supra) that no action either of suspension or dissolution can be made by the Registrar against any body or council unless it is an offending body. The Registrar of Cooperative Societies or any authority before enquiry to be held u/s 60 or 61 of the Act cannot adjudge, or even reasonably consider any Managing Committee or body of a Society to be an offending body only for the purpose of the application of the proviso to Section 36(1) of the Act.

8. Mr. Phukan, the learned Govt. Advocate in reply to this submission has argued vehemently that there are sufficient materials on record for which it was necessary for the authority concerned to suspend the Executive Committee of the Petitioner society. In support of the contention, the learned Govt. Advocate has produced

before us the records and pointed out few documents for our perusal. We perused them. On perusal we have found that on 2nd March '85 a report was submitted by the Assistant Registrar, Comparative Societies to the Sub-divisional Officer, Golaghat regarding certain allegations (sic) the Petitioner-society and an enquiry was made by the Sub-divisional Officer, Golaghat and by the report dt. 23rd March '85 the Sub-divisional officer, Golaghat, stated:

It transpires from the enquiry report that the Executive Committee of the Tinsukia Barbeel Min Silpa Samabay Samiti Ltd. does not appear to be functioning properly as per rules and bye-laws.

In one of the reports dated 2nd March/85 it has been alleged that the management of the Petitioner-society subject the fishery in question to one Suki Sahani and the fishery was in their possession, it was also alleged in the said report that the Assistant Registrar of the Cooperative Societies who made the report dt. 2nd March 85 noticed certain irregularities in the account books, cash memos, non entries of the accounts etc. to the prejudice of the share-holders. By letter dt. 6th April '85 the Deputy Registrar, Co-operative Societies submitted a report to the Registrar and pleaded for constitution of adhoc committee for the management of the Petitioner society as public had complained against them relating to the internal functioning of the society. Basing those reports, the Govt. Advocate has submitted that these reports are sufficient materials on record for the application of the proviso to the Section 36(1) of the Act and the authority had to take this recourse for suspension of the Executive Committee of the Petitioner-society. According to the learned Govt. Advocate it was not necessary for the authority to comply with the first part of the provisions of Section 36(1) of the Act, inasmuch as, on the basis of those materials on record, the body could be adjudged as an "offending body". Referring to the provisions of Section 31(3) of the Act, Mr. Phukan has submitted that the Registrar of the Co-operative Societies is the supreme authority to take action in accordance with law against the Petitioner society. Mr. Phukan has further contended that the Petitioner-society is not entitled to any relief in this writ petition as because the Executive Committee of the Society was not functioning properly as it could reveal from order dated 3.7.85. for which an Executive Officer had to be appointed by the order dt. 3.7.85. The Executive Officer shall call for the Annual General Meeting scheduled to be held on 29.8.85. According to the learned Counsel, as the term of the committee of the society shall expire by 29.8.85, no prejudice shall be caused to the share holders of the society in any manner whatsoever Mr. Phukan has drawn our attention to a Supreme Court case reported in [Jt. Registrar of Co-operative Societies Madras and Others Vs. P.S. Rajagopal Naidu and Others](#), (Joint Registrar of Co-operative Societies v. P.S. Rajgopal Naidu, Govinda-rajulu). Referring to para 8 of the decision of their Lordships Mr. Phukan has submitted that if there are cogent materials on which the Registrar can form the opinion that the society is not functioning properly, appropriate action can be taken by him as prescribed u/s 36(1) of the Act, In the present case at hand, as submitted by Mr. Phukan that the

materials on record justify the authority concerned to apply the proviso to Section 36(1) of the Act. On perusal of the records as produced before us we find those alleged enquiry or complaints were of the period between March and April, 1985. Till 3.7.85 no action was taken. We do not get anything from record that any short of enquiry was made against the Petitioner-society by the authority to ascertain those facts on the basis of which the report was made. Even inspite of those allegations, a direction was issued on 29.6.85 to hold the election of the Executive Committee on or before 29.6.85. It also appears from record that the Jt. Registrar, Co-operative Societies was not satisfied on those reports to resort to the provision of Section 36(1) of the Act. Therefore, the Jt. Registrar by letter dt. 26th June '85 issued a direction to the Deputy Registrar, Co-operative Societies, Jorhat, to the following effect:

With reference to above I am to instruct you to initiate steps for suspending the present Board of Management u/s 36 of the Assam Co-operative Societies Act after serving show cause notice to the existing Board of Management and appoint an Executive Officer to manage the affairs of the Society.

(Emphasis by us)

This letter and/or direction was issued with reference to the report under letter No. CSP. 19/85/209 dt. 6.4.85. But inspite of such instruction and/or direction, a direct measure was taken to suspend the Committee by the Deputy Registrar under purported application of the proviso to Section 36(1) of the Act as communicated under Memo, No. CSP. 19/36/230 dt. 3.7.85. Reliance is further sought to be placed in another decision of this Court reported in (1984) 2 GLR 265. In that case It was held by this Court.

When the Managing Committee fails to function properly or in accordance with the provisions of the Act, rules and bye laws, the provisions of Section 36(1) come into play.

It was further held that:

If a Managing Committee is not functioning properly or in accordance with the Act, rules and bye-laws the Registrar must make an enquiry or inspection u/s 60 or 61 of the Act, record a finding to that effect and there after ha must give an opportunity to the offending body to state its case, If ha is not satisfied with the causes shown he may direct the Co-operative Society to convene a special general meeting of the General Assembly with a prescribed period to dissolve the Managing Committee and to elect a new one. However, as an emergent measure he may forthwith suspend the offending body and appoint a person to take control of the suspended body.

One bare perusal of the impugned order in the present case in hand, it appears that there is no indication as to the existence of emergent situation for which the proviso

to Section 36 of the Act was to be applied in the case of the Petitioner society. There is also nothing on record to this effect. Moreover, the authority can only suspend the "offending body" but there is nothing on record to show that the Executive Committee of the Petitioner society was ever adjudged as "offending body". On going through the records produced before us and in particular, the documents referred to us by the learned Govt. Advocate, we do not find any material that any such situation arose Justifying to take emergent measures to suspend the Executive Committee of the Petitioner society without taking recourse to the enquiry or inspection as provided u/s 60 or 61 of the Act. We have perused the affidavit in opposition filed by the Respondents in Misc. Case No. 636/85. We have gone through the contentions made in paragraphs 4 and 5 of the same as referred to us by the learned Govt. Advocate. What we have noticed in para 5 of the affidavit-in opposition is that there had been innumerable complaints from the share holders as to the internal management of the Managing Committee of society in question and ultimately it led to the departmental enquiry by various authorities. We do not get any piece of such document. Those contentions are not supported by any cogent and material documents on record. The documents produced before us clearly speaks that the Jt. Registrar being not satisfied on such report rightly issued a direction to the Deputy Registrar to issue a show cause notice before taking any action u/s 36(1) of the Act. That has not been done in this case. Has it not caused a clear violation of the principle of natural justice ? An Executive Committee has been condemned on the allegation that it was incapable of managing the affairs of the Society and mismanagement of the aforesaid Society. A body cannot be condemned unless the said body gets an opportunity to defend its case. However, in this case we do not find anything on record that the management of the Petitioner-society was ever given an opportunity of being heard on those allegations for which authority had to take such recourse to suspend the body even without notice under the proviso to Section 36(1) of the Act, The above action therefore, cannot be held to be justified on the facts and circumstances of the present case.

Upon bearing the learned Counsel of the parties and on perusal of the records and going through the decisions cited before us, we are convinced that the impugned order dated 3-7-85 must be set aside being passed in violation of the mandatory provisions of law. It cannot sustain in the eye of law. Accordingly, we quash the impugned order dt. 3-7-85 passed by the Deputy Registrar, Co-operative Societies.

In the result the petition is allowed. The Rule is made absolute. But in view of the facts and circumstances of the case we leave the parties to bear their own costs.