

GAHC010027522023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/763/2023

BOARD OF DIRECTOR OF GREATER BADARPUR PRIMARY MILK
PRODUCTION CO-OPERATIVE SOCIETY LIMITED AND ANR
HEAD OFFICE AT S.T. ROAD, BADARPUR,
P.O.- BADARPUR, DISTRICT- KARIMGAJ, PIN- 788806.
BRANCH OFFICE- JUMBASTI, P.O. BADARPUR, DISTRICT- KARIMGANJ,
ASSAM, PIN- 788806.
(REPRESENTED BY ITS CHAIRMAN).

2: ABDUL LATIF
SON OF LATE MAKROM ALI

RESIDENT OF VILLAGE- ALEKHARGOOL

P.O.- ANGLARBAZAR

DISTRICT- KARIMGANJ
ASSAM
PIN- 788806.
(CHAIRMAN
GREATER BADARPUR PRIMARY MILK PRODUCTION COOPERATIVE
SOCIETY LIMITED)

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
COOPERATIVE DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE REGISTRAR OF COOPERATIVE SOCIETIES
ASSAM
KHANAPARA
GUWAHATI-22.

3:THE ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES
KARIMGANJ
P.O. AND DIST.- KARIMGANJ
ASSAM

PIN- 788

4:MATILAL DEY
SON OF LATE MONORANJAN DEY

RESIDENT OF VILLAGE- JUM BASTI

P.O.- BADARPUR
PIN- 788806

DISTRICT- KARIMGANJ
ASSAM

Advocate for the Petitioner : DR. B AHMED

Advocate for the Respondent : SC, CO OP

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA

For the petitioners	: Mr. P.K. Roy Choudhury, Advocate.
For State respondent Nos.1 to 3	: Mr. S.K. Talukdar, standing counsel.
For respondent No.4	: Mr. M.H. Laskar, Advocate.
Date of hearing	: 05.04.2024.
Date of judgment	: 15.07.2024.

JUDGMENT AND ORDER

(CAV)

Heard Mr. P.K. Roy Choudhury, learned counsel for the petitioners as well as Mr. S.K. Talukdar, learned standing counsel for the Cooperation Department, representing respondent nos. 1 to 3 and Mr. M.H. Laskar, learned counsel for respondent no.4.

Case of the petitioners and submissions by their learned counsel:

2) The petitioner no.1 is the Board of Directors of Greater Badarpur Primary Milk Production Co-operative Society Ltd. (hereinafter referred to as "GBPMPCS Ltd." for short), represented by its Chairman, and the petitioner no.2 is the Chairman of the said cooperative society.

3) By filing this writ petition under Article 226 of the Constitution of India, the petitioners have prayed for issuance of a writ in the nature of certiorari for setting aside the order dated 01.02.2023, passed by the Registrar of Co-operative Societies, Assam, by which direction was issued to constitute a new Board as per section 41(6) of the Assam Cooperative Societies Act, 2007 (hereinafter referred to as "ACS Act" for short); and for issuance of a writ in the nature of mandamus, directing the respondents to allow the petitioners to continue as Board of Directors of GBPMPCS Ltd.

4) The case of the petitioners is that in the Annual General Meeting-cum-elections held on 17.04.2022, the petitioner no.1 Board of Directors of the GBPMPCS Ltd. was elected for the term 2022-23 to 2026-27. In the same Annual General Meeting (hereinafter referred to as "AGM" for short), a new Secretary was permanently appointed by replacing the respondent no.4. The respondent no.4 had submitted an appeal dated 25.04.2022, before the Registrar of Cooperative Societies, Assam (respondent no.2), *inter alia*, alleging that the petitioner no. 2 had manipulated the date of AGM for the year 2001-22 and thus, it was prayed that no approval of the new Board should be granted. Upon hearing both sides, by order dated 04.08.2022, the respondent no.2 had dismissed the said appeal. Thereafter, the respondent no. 4 filed a review petition, wherein he had prayed for a direction to allow him to continue as Secretary. The respondent no. 4 had also filed a writ petition before this Court

for a direction to the respondent no. 2 to dispose of the review petition. Accordingly, W.P.(C) 5805/2022, filed by respondent no. 4 was disposed of by order dated 05.09.2022, directing the respondent no. 2 to dispose of the review petition within 4 (four) weeks by passing a speaking order. Thereafter, by order dated 01.02.2023, which is impugned herein, the approval order dated 09.10.2021, for the AGM for the year 2021-22 was set aside, by further directing that the Board of the society is to be constituted as per section 41(6) of the ACS Act.

5) The learned counsel for the petitioner had elaborated that the previous Board of Directors of the GBPMPCS Ltd. for the period 2017-18 to 2021-22 was constituted on 25.05.2017. The last AGM for the year 2021 was held on 30.09.2021 and the said AGM was approved by the Assistant Registrar of Cooperative Societies, Karimganj (respondent no.3) on 09.10.2021. It was submitted that the erstwhile Board of Directors in its meeting held on 09.02.2022, had resolved to release the respondent no. 4 from the post of Secretary of the said GBPMPCS Ltd. and the respondent no. 4 was accordingly, relieved vide letter dated 10.02.2022.

6) Thereafter, notice dated 01.04.2022 was issued under the signature of petitioner no. 2 to hold the AGM and Election of the new Board for term 2022-23 to 2026-27 on 17.04.2022 at 10.00 AM. to 12.00 noon and General Meeting from 12.00 AM to 3.00 PM at Jumbasti M.E. School. Accordingly, the AGM/ Election was held on 17.04.2022 and vide resolution no.7, the petitioner no. 1, being the new Board of Directors was constituted, which received approval of the respondent no. 3 on 02.05.2022. Thereafter, the first meeting of the new Board was held on 08.05.2022, where the petitioner no. 2 was selected as Chairman, and the Vice Chairman was also selected, which

received approval from the respondent no.3 on 27.05.2022.

7) Thus, it was highlighted by the learned counsel for the petitioner that the appeal dated 25.04.2022, by the respondent no. 4 was filed after 17.04.2022, i.e. after the AMG and elections had already been held. However, the said appeal was dismissed by the respondent no.2 by order dated 04.08.2022. Against the said appellate order, a review petition dated 12.08.2022, under section 111(2) was filed by the respondent no. 4 before the respondent no.2.

8) In the meanwhile, on 29.04.2022, during the pendency of the appeal, the respondent no. 4 had also submitted another representation dated 12.04.2022, before the respondent no. 3 for conducting an enquiry against illegalities committed by the outgoing Board of Directors against the petitioner. However, notice dated 06.05.2022, was issued in respect of the acts of the outgoing Board was issued to the new Board of Directors.

9) In terms of order dated 05.09.2022, passed by this Court in W.P. (C) No. 5805/2022, the Registrar of Cooperative Societies, Assam (respondent no.2), set aside the approval order dated 09.10.2021, with a direction to constitute the new Board Directors under section 41(6) of the ACS Act. In that regard, it was submitted that the said order was implemented and thereafter, the AGM and elections were also held.

10) Submissions were made on specific allegations against the respondent no.4, which is not elaborated herein for the reasons which would be given later.

11) In support of his submissions, the learned counsel for the petitioner has referred to the following case citations, viz., (i) *O.N. Mohindroo v.*

The District Judge, Delhi & Anr., (1971) 3 SCC 5, (ii) Advanta India Ltd. v. B.N. Shivanna & Anr., (2018) 14 SCC 666, (iii) Chairman, Brahmaputra Kholoibil Fishery Cooperative Society Ltd. v. State of Assam & Ors., 1995 (3) GLT 232.

Submissions of the learned Standing Counsel for State respondent nos. 1, 2 and 3:

12) Per contra, the learned standing counsel for the respondent nos. 1 to 3 has submitted that the Supreme Court of India, in the case of *Grindlays Bank Ltd. v. Central Government Industrial Tribunal & Ors., 1980 (Supp) SCC 420*, has held as follows:-

13. ... Furthermore, different considerations arise on review. The expression review is used in two distinct senses, namely, (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the Court in Patel Narshi Thakershi case [Patel Narshi Patel Thakershi v. Pradyummansinghji Arjunshinghi, (1971) 3 SCC 844: AIR 1970 SC 1273], held that no review lies on merits unless a statute specifically provides for it, obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every Court or Tribunal.

13) It was submitted that following the principles laid down in the case of *Patel Narshi Patel Thakershi (supra)*, as followed in the case of *Grindlays Bank (supra)*, the Supreme Court of India did not found fault with the order of review passed by the Industrial Tribunal, though power of review was not conferred under the statute owing to inherent power of the Tribunal to do *ex debito justitiae*. Hence, it was submitted that it was permissible for the Tribunal to exercise power of review.

14) Moreover, it was submitted that notwithstanding that the appeal

of the respondent no. 4 was disposed of by order dated 04.08.2022, however, as this Court had issued a direction vide order dated 05.09.2022 in W.P.(C) 5805/2022, to dispose of the review petition, the respondent no.2, being bound by the said order, had disposed of the review petition dated 12.08.2022, filed by the respondent no.4, in accordance with law.

15) In support of his submissions, apart from referring to the two cases referred herein before, the learned standing counsel for the State respondent nos. 1, 2 and 3 has further relied on the case of *Kapra Mazdoor Ekta Union v. Birla Cotton Spinning and Weaving Mills Ltd. & Anr., (2005) 13 SCC 777*.

16) Per contra, the learned counsel for the respondent no. 4 has also opposed this writ petition. It was submitted that without any basis, it was being projected as if the service of the respondent no. 4 was terminated by the erstwhile Board of Directors of GBPMPCS Ltd. It was also submitted that it is a false projection by the petitioner that the respondent no. 4 had raised allegations against the management of GBPMPCS Ltd. after the appointment of the new Secretary in his place only after the election of the Board of Directors of the said Society for the term 2022-23 to 2026-27. In this regard, it was submitted on coming to know about the alleged fraudulent acts of the petitioner no.2, of changing the date of AGM, the respondent no.4 had submitted a representation dated 19.10.2021 before the respondent no.3. It was submitted that the respondent no.4 had also filed another representation dated 12.04.2021, before the respondent no.2. It was also submitted that the petitioners have not annexed any document in the writ petition to show that the service of respondent no. 4 had ever been terminated as projected. It was also submitted that the petitioner no. 2 had lodged a baseless complaint case, which

was registered as CR Case No. 834/2022, alleging that the respondent no. 4 had misappropriated the money of the GBPMPCS Ltd., whereas the respondent no. 4 had given a notice dated 28.12.2020, to the Vice Chairman of the said society to return the proceeding books and all other records, which he had taken away from the office in the month of November, 2020, which was duly served on the then Vice President.

17) To counter the allegations made in respect of the respondent no.4, by referring to the statements made in the affidavit-in-opposition of the respondent no. 5, the learned counsel for the respondent no.4 had made his submissions on specific reply as well as in respect of his allegations against the petitioner no.2, which are not elaborated herein for the reasons which would be given later.

18) It was submitted that the AGM was held on 03.10.2021, on the basis of forged records and therefore, the respondent no. 4 had submitted a complaint dated 19.10.2021, before the respondent no.3, which was not immediately acted upon due to Covid-19 pandemic. However, clandestinely, the notice of AGM and election of the Board of Directors was issued on 01.04.2022 by the respondent no.2, although under the ACS Act, the notice is required to be issued by the Secretary. Therefore, the respondent had submitted another representation dated 12.04.2022 before the respondent no.3, who ordered the Senior Inspector of Cooperative Societies to enquire into the matter. It was submitted that the respondent no. 4 was dissatisfied with the manner in which enquiry was made. Nonetheless, AGM and elections were held on 17.04.2022, on the strength of a manipulated voters list with 436 names, whereas the membership strength of GBPMPCS Ltd. was 400 only.

19) It was submitted that therefore, the respondent no. 4 had filed an

appeal dated 25.04.2022 before the respondent no.2, to declare the Board of Directors and all consequential acts as null and void. It was also submitted that the said appeal was filed before approval of the AGM dated 17.04.2022 was granted by the respondent no. 3.

20) It was submitted that the respondent no. 2 had dismissed the appeal on 04.08.2022. However, a finding was given to the effect that the records were tampered, but it was observed that the tampering of records could have been done by the respondent no. 4 as the same were in his custody. It was submitted that in the said appellate order, (i) the petitioner was referred to as former Secretary; and that (ii) the Board was competent to remove the Secretary; and (iii) the AGM was held on 30.09.2022.

21) Hence, it was submitted that a review petition under section 111(2) of the ACS Act was filed by the respondent no. 4 on 12.08.2022, and as it was not taken up, the respondent no.4 had moved this Court by filing a writ petition and this Court by order dated 05.09.2022, passed in W.P.(C) 5805/2022. Pursuant to the said order dated 05.09.2022, the respondent no. 2, after hearing the parties and on a perusal of records, passed an order dated 01.02.2023, with a finding that the proceeding of AGM held on 03.10.2021, was tampered by changing the date to 30.09.2021, which was done by the respondent no. 2, who was having the custody of the records. Resultantly, the approval granted to the AGM was set aside and further directed to constitute the Board of Directors as per section 41(6) of the ACS Act.

22) Accordingly, it was submitted that this writ petition deserves to be dismissed.

Discussion and decision:

23) Perused the writ petition, affidavit-in-opposition by the respondent no.4, affidavit-in-reply by the petitioner, as well as documents annexed thereto.

24) In paragraphs 10 and 17 above, it has been mentioned that the specific allegations against the respondent no. 4 and the petitioner no.2 were not elaborated for reasons to be assigned later. The reason is that the personal allegations made against the petitioner no.2 and the respondent no. 4 appear to be a highly disputed questions of fact, which cannot be decided without examining the correctness of the notice dated 04.09.2021, by which AGM cum Election of Board of Directors was proposed on 03.10.2022 (allegedly altered to 30.09.2022); record of proceeding of the AGM, etc. Such an exercise should be left to be done by the Registrar of Cooperative Societies, Assam; or by a Civil Court and/or Criminal Courts, if otherwise permissible in law, and as the parties may be so advised. This writ Court would be slow to substitute the finding of fact by the jurisdictional authority i.e. Registrar of Cooperative Societies, Assam (respondent no.2).

25) It is seen that on 25.04.2022, an appeal was filed by the respondent no.4 before the respondent no.2. The prayer in said appeal was to take action against the fake committee of the GBPMPCS Ltd., and not to provide any approval. The said appeal dated 25.04.2022, by the respondent no. 4 was dismissed by the respondent no.2 by order dated 04.08.2022.

26) By filing a review petition on 12.08.2022, the respondent no. 4 had prayed before the respondent no.2 to set aside the order dated 04.08.2022, by which the appeal of the respondent no. 4 was dismissed and to further declare that the Board of Directors was dissolved in terms of section 39 of the ACS Act.

27) Thereafter, this Court, by order dated 05.09.2022, passed in W.P. (C) 5805/2022, had directed the Registrar of Cooperative Societies, Assam (respondent no.2), to dispose of the review application filed by the respondent no.4. Thus, it appears that the learned coordinate Bench of this Court was aware that the appeal of the respondent no. 4 was dismissed and yet, the learned Bench had taken a conscious decision to direct the appellate authority i.e. the respondent no. 2 to exercise power of review under section 111(2) of the ACS Act. The said order dated 05.09.2022 of this Court had attained finality.

28) The provision of section 111 of the ACS Act, 2007 is quoted below:-

111. Appeal or Review- (1) Except where otherwise expressly provided to the contrary an appeal shall lie to the Registrar from the decisions made under this Act or Rules framed thereunder by any Government Officer liquidator appointed under Section 95.

(2) The Registrar may review any order passed by him at any time within sixty days from the communication of such order.

(3) Save as otherwise provided in this Act or Rules, no appeal shall lie to the State Government against any order of the Registrar, except on a question of law, and provided such appeal is preferred within sixty days of the communication of such order.

(4) Any appellate authority and the Registrar in case of review may pass any stay order pending any appeal or review before such an authority, and may award costs against any party appealing or petitioning for review if such appeal or review petition is considered false, vexatious or frivolous by the authority concerned.

(5) Notwithstanding anything contained in this Act where with the previous sanction in writing or on requisition by the Reserve Bank of India, a Cooperative Bank-

(a) is being wound up; or

(b) in respect of which a scheme of amalgamation or reorganization is given effect, no appeal thereof shall lie or be permissible without the sanction or requisition of the Reserve Bank and that shall not be liable to be called in question.

29) The learned counsel for the petitioner had urged that the power

of review must be exercised as per the provisions of section 114 read with Order XLVII, Rule 1 CPC. In this regard, it appears from the provision of sub-section (2) of section 111 of the ACS Act that the said provision does not put any fetters on the power of the respondent no. 2 while exercising power of review. If the State Legislature was having any such intention, then the Legislature would have prescribed such limitation, which was not done.

30) Thus, the respondent no.2, in terms of the said order dated 05.09.2022, passed in W.P.(C) 5805/2022, exercised power for review and had set aside the approval order dated 09.10.2021, with a direction to constitute the new Board Directors under section 41(6) of the ACS Act.

31) The contention of the learned counsel for the petitioners that the exercise of power of review was not proper, if accepted, would amount to entertaining a collateral and/or veiled challenge to the order dated 05.09.2022, passed by this Court in W.P.(C) 5805/2022, which has otherwise attained finality. The petitioners had accepted the notice of review and participated in the hearing of the review petition and this, allowed the said order of this Court dated 05.09.2022 to attain finality.

32) Therefore, in light of the discussions above, this writ petition fails and accordingly, this writ petition is dismissed.

33) Before parting with the records, it is seen that the last AGM and Election of the Board of Directors for the cooperative tenure of 2022-23 to 2026-27 was held on 17.04.2022, which was approved by respondent no.3 on 02.05.2022, and the First Meeting of the Board of Directors was held on 08.05.2022, which was also approved by respondent no.2 on 08.05.2022. The appeal of the respondent no. 4 was dismissed by order dated 04.08.2022, and

the review by respondent no. 4 was allowed by order dated 01.02.2023. Therefore, the Court is of the considered opinion that the members of the Board of Directors of the erstwhile Board for the tenure 2022-23 to 2026-27 including the petitioner no. 2, have been able to demonstrate that their new Board was constituted, which was later on found *non est*, the Members of the erstwhile petitioner no.1 and the petitioner no.2 shall not be debarred by the respondent nos. 2 and 3 from contesting the fresh election for the Board of Directors of GBPMPCS Ltd.

34) There shall be no order as to cost.

JUDGE

Comparing Assistant