

1. I have heard Mr. B.B. Nazari, learned Sr. counsel assisting by Mr. S. Chouhan, learned counsel for the petitioner as well as Mr. J. Abedi, learned counsel for the private respondents. I have also heard Ms. R. Chokraborty, learned Adl. Sr. G.A.

2. Both the writ petitions pertaining to the same matter have been heard together and are being disposed of by this common judgment and order.

3. The petitioners are the elected members of the Managing Committee of Buragaon Co-operative Society. They are also share holders of the society. They are aggrieved by the cancellation of the approval earlier accorded to the AGM/election held on 30.05.07.

4. The sole petitioner in the first writ petition being W.P.(C) No. 4128/07 is the elected Chairman, while the petitioners in the second writ petition, i.e. W.P.(C) No. 4829/07 are the elected members. The election was held on 30.05.07. While the petitioner in the first writ petition was elected as Chairman securing 754 votes, his nearest rival who is the respondent No. 6 in the second writ petition secured 460 votes. The respondent No. 5 in the first writ petition was the election agent of the respondent No. 6 in the second writ petition.

5. It is on record that both the respondents No. 5 and 6 fully participated in the election process on the basis of the voter list that was published prior to holding the election. They also signed in the proceeding of the meeting held on 30.05.07 and the declaration of results without any objection (Annexure-B). After the petitioners were so elected, the records pertaining to the AGM and election were sent to the Assistant Registrar of the Co-operative Society for approval. The Assistant Registrar on perusal of the records and being satisfied with the aforesaid declaration and the report of the returning officer accorded necessary approval to the AGM/election and passed the order dated 11.06.07.

6. In the meantime, the agent of the defeated candidates for the post of Chairman who are the respondent No. 5 and 6 indicated above, filed the complaint before the Assistant Registrar of the Co-operative Societies regarding the election held on 30.05.07. The Assistant Registrar of the Co-operative Societies thoroughly enquired into the matter and on being satisfied to the proceedings of the meeting held on 30.05.07 approved the AGM/election. The enquiry was conducted by the Senior Inspector/Auditor of the Circle and the enquiry report dated 11.06.07 is annexed to the writ petition as Annexure-E.

7. After assumption of charge by the newly elected Managing Committee of the Society headed by the petitioner as the Chairman, started transacting business of the Co-operative Society. However, by the impugned order dated 23.07.07 (Annexure-H) the Joint Registrar of the Co-operative Societies, Guwahati Zone in the name of allowing the appeal filed by the respondents No. 5 and others set aside the approval accorded by the Assistant Registrar of the Co-operative Societies to the AGM/election held on 30.05.07.

8. It is the case of the petitioners that although the respondent No. 5 preferred an appeal before the Joint Registrar of the Co-operative Societies, but the elected body was not made party to the appeal and that no notice was served on the petitioners before cancellation of the approval accorded on 11.06.07 by the impugned order dated 20.03.07 adversely affecting the interest of the petitioners who are the elected members of the elected body.

9. In paragraph-8 of the writ petition the petitioner has categorically stated about the violation of the principles of natural justice in passing the impugned order behind their back. Neither the official respondents nor the respondent No. 5 have denied the same. While the official respondents have not filed any counter affidavit, the respondent No. 5 in his counter affidavit has not dealt with the aforesaid plea of the petitioner in paragraph-8 of the writ petition.

10. Apart from the above, the appeal was entertained by the Joint Registrar of the Co-operative Societies but as per the provision of Section 80 of the Assam Co-operative Societies Act, 1949, it is the Registrar of the Co-operative Societies to whom the appeal or review lies. On being asked as to the authority of the Joint Registrar of the Co-operative Societies to entertain the appeal and to pass the impugned order allowing the appeal, learned counsel for the respondent No. 5 as well as the learned State counsel could not point out anything.

11. The fact that the petitioners were not provided with the opportunity of being heard before passing the impugned order dated 23.07.07 is explicit on the face of the order dated 23.07.07. Although the appeal was filed against the election of the petitioners, but they were not made party respondents to the appeal and consequently the Joint Registrar of the Co-operative Societies did not feel it necessary to issue any notice to the petitioners and passed the order dated 23.07.07 adversely affecting their interest. The petitioners were not put to any kind of notice and thus there was gross violation of the principles of natural justice. On this score alone, the impugned order dated 23.07.07 is liable to be set aside and quashed.

12. Learned State counsel has produced the parawise comments furnished to her by the Zonal Joint Registrar of the Co-operative Societies. As per the said parawise comments, there was anomalies in the voter list and consequently the election held was not proper. As regards the notice to the petitioners, it has been contended in the parawise comments that since the Secretary of the Society was asked to attend the hearing of the records, same sufficiently complied with service of notice on the petitioners. Such a contention on behalf of the Zonal Joint Registrar is not at all acceptable. Mere asking the Secretary of the Co-operative Society to attend the hearing does not mean service of notice on the elected members. It is not the case of the official respondents that the petitioners were put to notice before passing the impugned order dated 23.07.07.

13. According to the petitioners there was publication of voter lists asking objection if any, but no objection was received and accordingly after finalisation of the voter list, the election was held in presence of officials deputed by the department. The complaint lodged against AGM/election was thoroughly enquired into through the responsible departmental officer and thereafter approval was accorded on 11.06.07. The returning officer in whose presence the election was held opined that AGM/election was held perfectly and peacefully.

14. Apart from the above, it is an admitted position that both the respondents No. 5 and 6 fully participated in AGM and the election process. In fact, the respondent No. 6 was the candidate for the post of Chairman and the respondent No. 5 was his agent. After due participation and having lost the election, the respondent No. 5 surreptitiously filed the complaint, although in the meantime both of them duly certified that the election was held properly on 30.05.07.

15. The defeated candidate, i.e. the respondent No. 6 did not lodge any complaint, but it is his agent, i.e. the respondent No. 5 lodged the complaint and that too without making the petitioners party respondents. The appeal was heard behind their back which resulted in the impugned order dated 23.07.07. Democratically elected body could not have been unseated by the Joint Registrar of the Co-operative Societies without affording them any opportunity of being heard.

16. In view of the above, the impugned order dated 23.07.07 (Annexure-H) is set aside and quashed and consequently the Managing Committee elected in the meeting held on 30.05.07 and the approval accorded on 11.06.07 by the Assistant Registrar of the Co-operative Societies are restored.

17. At this stage, Mr. Abedi, learned counsel for the private respondents submits that there being suppression of material fact, the writ petition is not maintainable. According to him since at the time of filing of the writ petition, the appeal preferred by the petitioner in the first writ petition was pending before the Registrar of the Co-operative Societies and the same having not been mentioned in the writ petition, the writ petitions are not maintainable. A copy of the compliant dated 08.08.07 lodged by the petitioner in the first writ petition against the impugned order passed by the Zonal Joint Registrar, has been annexed to the affidavit in opposition filed by the respondent No. 6 in the second writ petition. On a bare perusal of the same, same cannot be said to be an appeal as envisaged u/s. 80 of the Act. Same was a mere protest against the action of the Zonal Joint Registrar for passing the impugned order dated 23.07.07.

18. There is another aspect of the matter. The first writ petition was filed on 10.08.07 immediately after filing of the complaint dated 08.08.07. Although the complaint was filed, at the time of filing of the writ petition, same was not entertained by passing any order. When the entire action on the part of the respondent Nos. 5 and 6 itself was surreptitious, it does not lie on their mouth to find fault with the petitioners in not making any reference to the complaint dated 08.08.07. Firstly the respondents No. 5 and 6 contested the election without any reservation and when they got defeated, surreptitiously lodged the complaint against the petitioners in the form of an appeal before the Zonal Joint Registrar who was not the appellate authority. Secondly, the Joint Registrar of the Co-operative Societies passed the impugned order dated 23.07.07 without issuing any notice to the petitioners although the said order adversely affected their interest. It was in that manner an elected body was set at naught.

19. In view of the above, both the writ petitions deserve to be allowed which I accordingly do. Both the impugned orders, i.e. the order dated 23.07.07 and 30.07.07 (Annexure H and I), are set aside and quashed, as a consequence of which the Managing Committee elected in the meeting held on 30.05.07 and the approval accorded on 11.06.07 are restored.

20. The writ petitions are allowed leaving the parties to bear their own costs.