

WP(C) 2373/2009

BEFORE

HON'BLE MR. JUSTICE H.N.SARMA

These writ petitions, arising out of almost similar facts and having given rise to common question for determination, have been finally heard analogously at the admission stage itself, in view of the order dated 18-8-09 passed in W. A. No. 231/2009, and are disposed of by this common judgment.

2. The common challenge in all these writ petitions is the legality and validity of the impugned notification issued by the Secretary of the Govt. of Assam Co-operation Department, dated 28-5-2009, exempting all Gaon Panchayat Samabai Samitees (GPSS) of the State of Assam from operation of Section 32(1) to 32(6) of the Assam Co-operative Societies Act, 1949, extending the term of the existing managing committees for a further period of six months w.e.f. 1st May, 09. It is further reflected in the notification that the order has been issued in order to give the GPSS reasonable time for holding the AGM/Election in view of the parliamentary election 2009 which has just ended. The further prayed made in W.P.(C) Nos. 2374 and 2373 of 2009 is for a direction to hold the AGM of the petitioner's society within 45 days whereas in W.P' No. 2461 it is prayed that the petitioners be allowed to hold the annual general meeting/Election of the GPSS within 31-3-2009 i.e. within the tenure of 3 years from the date of holding of the first meeting of the elected body, in terms of rule 27 of the Assam Co-operative Societies Rules.

3. Heard the learned counsels for the petitioners and Mr. P Roy, learned Adl. senior Govt. Advocate appearing on behalf of the State and official respondents in all the writ petitions.

Let us have a glance of the pleaded facts in all the writ petitions.

In W.P.(C) No. 2373

The two petitioners are shareholders of Jaluguti S.S. Ltd and the petitioner No. 1 was elected as Chairman of the managing committee of the society for the period 2002 to 2006. The petitioner no. 2 is a shareholder and Ex-officio member of the society, the petitioners are interested in constituting a democratically elected managing committee and for holding of the AGM of the society. The first annual general meeting was held on 18-6-06 in which the respondent No. 7 was elected as Chairman. The term of the managing committee expired on 31-3-09 as per the provisions of the Co-operative Societies Act, 1949. and bye-law of the Society. The committee of the respondent No. 7 having failed to hold the AGM/election of the society as per the provision of the Act, the petitioners approached the respondent No. 1 for necessary direction to that effect but without any result. Subsequently on 28-5-2009 the respondent No. 1 issued the impugned notification whereby all the GPSS were exempted from the operation of Section 32(1) to 32(6) for a period of six months and allowed the existing committee to manage the affairs of the society which is in violation of the provisions of the Co-operative Societies Act, 1949 and rules framed thereunder and the bye-laws of the society. It is further pleaded that the parliamentary election in the State was held on 16-4-2009 and 23-4-2009 and the result were declared on 25-4-2009 and as such the ground on which the exemption from operation under Section 32 of the Act so granted is wholly irrelevant and the impugned notification was passed in violation of the scope, spirit and provision of the Co-operative Societies Act, 1949.

In W.P.(C) No. 2374/09

The petitioners are the existing shareholders of Charaibahi S.S. Ltd. The petitioner No. 1 was elected as Vice President of the Managing Committee of the Society for the period of 2002 to 2006. As the AGM of the Society was held on 28-6-06

in which the respondent No. 7 was elected as Chairman of the Managing Committee of the Society, the term of the said managing committee expired on 31-3-09 as per the provisions of the Assam Co-operative Act, 1949 and the bye-law of the society. The erstwhile managing committee of the society under the Chairmanship of respondent No. 7 not having held the AGM and election of the society as per the mandate of law, the petitioner approached the respondent No. 6 for appropriate direction but without any result. Suddenly on 28-5-2009 by the impugned notification under which all the GPSS in Assam were exempted from the operation of Section 31(1) to 32(6) for a period of 6 months allowing the existing managing committee/managing body to continue, which is impugned in this writ petition. The other facts pleaded in this writ petition are identical with that of W.P.(C) No. 2373/2009.

In W.P.(C) No. 2461/2009

The pleaded case of the petitioners is that the petitioner No. 1 and 2 are shareholders of Nagabanda S.S. Ltd., the petitioner Nos. 3 and 4 are shareholders of Dalaigaon S.S. Ltd, Similarly the petitioners No. 5 and 6 are shareholders of Dhunkura S.S. Ltd, petitioners 7 and 8 are shareholders of Tengaguri S. S. Ltd., petitioner 9 and 10 are shareholders of Buragaon S.S. Ltd. and petitioners 11 and 12 are shareholders of Pabakali S.S. Ltd. All the aforesaid societies are registered co-operative societies within the meaning of the Assam Co-operative Societies Act, 1949. The managing body/administrative council of the above societies were duly constituted for the period of three years by their shareholders. The period of three years of the managing committees have expired on 30-4-09. The Samabai Samittees with certain other societies made an application before the registered co-operative societies, Assam in the month of may, 2009 for extension of time to hold the annual general meeting for the year, 2009- 2010, on which the Registrar allowed extension of time for holding of such AGM for a period of 30 days w.e.f. 30-11-2009 vide order dated 20-5-2009. Thereafter the Secretary, Co-operative department vide impugned notification dated 28-5-09 exempted all the GPSS within the State of Assam from the operation of Section 32(1) to and 32(6) for a period of 6 months w.e.f. from 6.5.09 allowing the existing committees/managing bodies to run the affairs of their respective societies for this period. The aforesaid exemption was granted when the parliamentary election in the State was held on 16-4-2009 and 23-4-2009 and the result was declared on 25-4-09. It is further pleaded that vide letter dated 23-6-09 the Registrar of Co-operatives Societies, Assam intimated to all the Asstt. Registrars of Co-operatives Societies that the Govt. of Assam has accepted the conditions set forth for implementation of revival package for reviving the term of the Co-operative societies. Accordingly a MOU was signed with the NABARD and Govt. of India and as per the terms and conditions of MOU certain activities are to be completed within this specified time frame and one of this condition for entitlement of the benefit under the package is that all the societies must constitute a democratically managing committees. Accordingly the officers who were in charge of a society were requested to ensure the constitution of democratically managing committee within 28-6-2006 in case of govt officials holding the charge were directed to complete such election within the stipulated period, failure of which would attract disciplinary action against them. It was further noted in the said letter dated 23-6-09 that although there is exemption to hold the AGM as per the notification dated 28-6-2009 for a period of six months that do not debar the societies from holding the AGM/election on any date within a period of six months from 1-6-09 and that should not be a plea for not holding the AGM/Election. The petitioner Nos. 1, 2 and 3 thereafter submitted petitions before the Registrar of Co-operative Societies praying for direction for holding the AGM of the Societies to elect new managing committees in terms of the letter dated 23-6-2009 in order to avail the benefit under the package mentioned in the letter. Accordingly the impugned notification dated 28.5.09 is in conflict with the aforesaid earlier order passed by the Registrar. It is further pleaded that the tenure of three years term of the elected managing committee of the petitioner's society expired on 30-4-2009 and acco

rdingly under section 32(2) of the Act, the AGM/election of the society ought to have been held within 60 days from the expiry of the preceding co-operative year .

In the aforesaid circumstances the petitioners have challenged the impugned notification dated 28-5-09.

4. The pointed grievance raised on behalf of the petitioners is that the impugned notification dated 28-5-2009 is illegal, unjust and improper and is against the scope and spirit of the Assam Co-operative Societies Act, 1949 and the rules framed thereunder, apart from being violative of the Bye-laws of the Societies. It is further contended that the grounds on which the exemption was granted to all the GPSS Ltd from the operation of Section 32(1) to 32(6) of the Act, allowing the existing managing committees to continue after expiry of their terms is not permissible under the relevant statute/rules and Bye-laws of the Society and as such the impugned notification is liable to be quashed, allowing the petitioners' Societies to hold the AGM and elect members to form the managing committees as per the provisions of Section 32 of the Act. Further contention of the learned counsels are that the ground on which the aforesaid exemptions are granted is a non-existent one and the parliamentary election in Assam having been completed in the month of May, 2009, itself there was no occasion for exempting the societies from the operation of Section 32 of the Act for another 6(six) months and to extend the life term of the managing body/administrative council of the Societies which have otherwise expired.

5. Per contra, the learned State counsel submits that the State Govt. has the power and competence to exempt any societies from any provision of the Act by general or special order under Section 92 of the Act and the impugned general notification dated 28-5-2009 having issued in exercise of the aforesaid power, in view of the just ended parliamentary election it requires no interference. The learned State counsel has also produced the connected records.

Mr. A.K. Goswami, learned senior counsel appearing for the respondents in W.P.(C) No. 2374 of 09 contends that Section 92 of the Act having authorised the State Govt. to exempt from operation of any of the provisions of the Act and the said exemption having been made in compliance with the relevant provision of law the impugned notification is justifiable in law. It is further contended that Rule 27 of the Assam Co-operative Societies Rules, having authorised a member of the managing committee to hold its office for the period of 3 years from the date of its first meeting the provisions of Section 32(2) shall not be applicable till expiry of three years from the date of first meeting.

Section 32 and 92 of the Act having relevance with the issues involved are quoted below :

Section 32 - Annual meeting of General Assembly -(1) A general meeting to be termed the annual general meeting of the General Assembly of a registered society shall be held at least once in every Co-operative year for the purpose of -

a) electing members to the Administrative Council, managing body and other committees of the society, the Chairman, Vice- Chairman, and other office bearers, as may be provided in bye-laws, and fixing such fees, salaries or other remuneration as prescribed in the bye-laws ; provided that the Govt. may prescribe by rules the qualifications necessary for office bearers and employees ;

b) electing an internal auditors, who shall not be members of the Administrative Council of governing body, and fixing the remuneration ;

c) considering the annual report of the Administrative Council or, if there be no Administrative Council of the managing body, audit report and audited annual accounts and balance sheets and reviewing the working of the society during the

preceding co-operative year ;

d) deciding how profits are to be distributed in accordance with the bye-laws ;

(e) passing the annual budget and approving the programme of work for the ensuing year ;

(f) fixing the maximum amount of liability to be incurred during the ensuing year and the maximum rate of interest payable on deposits ; and

(g) considering such other business as may be placed before the meeting in accordance with the bye-laws :

Provided that notwithstanding anything to the contrary contained in this Act or Rules made thereunder or bye-laws of any society, the Registrar may direct that the first annual general meeting of any registered society shall be held on a date to be fixed by him(which shall be a date within one hundred and eighty days of the registration of the society) to elect the office bearers of the society, according to the procedure and manner prescribed in the bye-laws of the society and the office bearers so elected shall assume office on the conclusion of the general meeting in which they are elected in replacement of the managing committee elected at the time of the inaugural general meeting of the society

[2) such a meeting shall be held within 60 days from the date of expiry of the preceding co-operative years :

Provided that 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. The grounds for which the Managing Body should not stand dissolved under sub- section (4) below should also be stated in the application, if any, made for extension. The period for which the extension is sought for shall be specifically stated in the application.

(3) When an application for extension is made under the preceding sub section, the Registrar may, if he is of opinion that extension should be granted and that there are good grounds for which the Managing Body should not stand dissolved under sub-section (4) below, by order grant extension for any period not exceeding 30 days from the date of passing the order. If the Registrar is of opinion that no extension should be granted he shall by an order passed to that effect reject the name. In both the cases, the order passed shall be communicated under registered post to the society applying for extension.

(4) If any society fails to hold the meeting within the period of 60 days mentioned in sub-section (2) or when an application is made for extension under the provision to sub-section (2) within the period so extended, or when no extension is granted, before the expiry of 20 days from the date on which the order rejecting the application for extension is communicated, the Administrative Council and/or the Managing Body of the society shall stand dissolved from the date of expiry of the aforesaid period.

(5) When the Administrative Council and/or Managing Body are dissolved under sub-section (4), the Registrar may appoint an officer or officers or any ad hoc body to manage the affairs of the society and to perform the functions of the Administrative Council and Managing Body till the new Body is elected or formed.

(6) The officer or officers of the ad hoc body appointed by the Registrar under sub-section(5) shall arrange to hold the annual meeting of the general assembly

ly which shall be held within ninety days of such appointment :

Provided that the State Government may allow in its discretion such further time , as may be considered necessary but not exceeding one year for holding of such meeting.]

Section \92 - Power to exempt Societies from provisions of the Act - The State Government may, by general or special order, exempt any registered society, of class of registered societies from any of the provisions of this Act or may direct that such provisions shall apply to such society with such modifications as may be specified in the order.

5. The submission of the learned counsels received due consideration of the Court.

6. In the awake of grievance raised by the petitioners and the defence forwarded on behalf of the respondents, it is considered appropriate to quote the impugned notice dated 28-5-09 which is as follows : -

In exercise of the power conferred under Section 92 of the Assam Co-operative Societies Act, 1949, (Act -I of 1950), as amended, the Governor of Assam is pleased to exempt all Gaon Panchayat Samabai Samitee(GPSS) of the state from operation of Section 32(1), 32(2), 32(3) mad 32(4) and 32(6) of the said Act for a period of 6(six) months with effect from 1st May/2009 allowing extension of the term of exiting Managing Committee/Managing Body for this period, subject to the condition that the G.P.S.S. should hold Annual General Meeting/Election within this period.

7. The Assam Co-operative Societies Act, 1949 was enacted with a view to facilitate the formation and working of Co-operative Societies for the purpose of thrift, self-help, mutual aid and creating the quality of credit worthiness among agriculturists, artisans and other persons with common economic needs so as to bring about a higher standard of living, better business, better methods of production, equitable distribution and exchange and for that purpose to consolidate and amend the law relating to the Co-operative Societies in the Province of Assam. However, a registered society shall be deemed to be a body corporate by the name under which it is registered, with perpetual succession and common seal, and with a power to hold property, to enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purpose for which it was constituted. The provisions relating to management of co-operative society is provided in Chapter IV of the Act covering Sections 31 to 39.

8. Under Section 31(1) of the Act a general assembly of a registered society consists of all those who are eligible to vote at general meeting of the society. The supreme authority of a registered society is vested in the general assembly under Section 31(3) of the Act. However, during the pendency of any loan or service from the Govt. or any other creditor secured at the instance of the Govt., the supreme authority in respect of any matter adversely affecting the interest of the Govt. or the said creditor touching such loan or loan shall be vested in the State Government or the Registrar, as may be provided in the bye-laws, or any person authorised by them in writing, and may extend to the appointment of the officers to hold any of the offices of the society or any person to be ex-officio members of the administrative council, managing body or any committee of the society even if not members of the society. This supreme authority of the Govt. Assam or Registrar may also be exercised in the absence of any loan or service when the Govt. or Registrar, as the case may be, deem their intervention to be necessary in the interests of the members of the society or the co-operative movement member in general.

9. Section 32 of the Act, as quoted hereinabove, provides for holding the general meeting of the general assembly of a registered society at least once in

every co-operative year for the purpose mentioned thereunder. Such meeting shall be held within the period of 60 days from the date of expiry of the preceding co-operative year.

The co-operative year as defined in Section 2 (f) means the period beginning and ending on such dates as may be fixed for drawing up the balance-sheets of registered societies. It is not disputed at the Bar that as per the notification issued by the Registrar of Co-operative Societies, Assam, co-operative year begins on the 1st of April of a year and ends on 31st March of the next calendar year. It coincides with the financial year of the state. Accordingly as per Section 32 (2) of the Act, an annual general meeting of a Society for the purpose as mentioned under 32(1) (a) to 32 (1)(g) of the Act is statutorily required to be held within 31st May of the next co-operative year extending the period of 60 days as provided under Sub-section (2) of S. 32. However, the proviso to Section 32(2) of the Act, provides that, if for any reason, the AGM cannot be held within the statutory period any society may by application made within the aforesaid period of 60 days to the Registrar pray for extension of time for holding meeting stating the grounds for which the meeting cannot be held, and also the grounds for which the managing body should not stand dissolved under Section 32(4). The period for which extension is sought for shall also be specifically stated in the application. When such an application for extension of time is made and the Registrar is of the opinion that it should be granted, and that there are good grounds for which the managing bodies should not stand dissolved, by an order grant extension for any period but not exceeding thirty (30) days from the date of passing of the order. If the Registrar is of the opinion that no extension should be granted he shall by an order reject the same. In both cases, the order passed by the Registrar is required to communicate by registered post to the society applying extension. The consequence of failure to hold meeting within the period of 60 days from the date of expiry of the preceding co-operative year or within the extended period as may be granted by the Registrar on the application of the society or when no such extension is granted before the expiry of twenty (20) days from the date of communication of the order of Registrar, the administrative council and/or the managing body of the society shall stand dissolved from the date of expiry of such period. Thus on the happenings of the aforesaid events and eventual failure of the society to hold the AGM, the managing body of the society is dissolved automatically without passing any further order to that effect. In the event of such dissolution, the Registrar is authorised under section 32(4) to appoint officer/officers or to form an ad hoc body to manage the affairs of the society and to perform the functions of the managing committee till a new body is elected or formed. If such an officer or an administrative body appointed by a Registrar under Section 32(4) it shall arrange to hold the AGM of the General Assembly of the society within 90 days from such appointment. However, the State Govt. counsel may allow in its discretion further time to hold the AGM, not exceeding 1 year under proviso to S. 32(6) of the Act.

The AGM of a society is required to be held under Section 32 of the Act for the purpose of continuing its function as a co-operative society and to discharge the functions and responsibilities as defined under the Act, Rules and bye-laws of the Society, at the end of the cooperative year. The holding of the AGM once in a co-operative year is a mandatory requirement under the statute. The consequence of not holding such meeting can be visualised from a bare reading of Clause (a) to (g) of Sub-section (1) of S. 32 of the Act. The AGM of the General Assembly of the society is to adopt resolution fixing the maximum amount of liability to incur during the ensuing year and the maximum rate of interest payable on the deposit, for electing an internal auditor, for passing the annual budget and approving the programme of works for the ensuing year deciding how the profits are to be distributed in accordance with the bye-laws and to consider such other business as may be placed before the meeting in accordance with the bye-law, apart from electing the members to the administrative council/managing body and other committees of the society, the chairman, Vice Chairman and other office

r bearers as provided under the Bye-law. Thus holding of the election to constitute a new managing body is not the only agenda in the AGM. There are also other business to be conducted in the AGM as indicated in S. 32(1) without which the function of the society would come to a standstill and here lies the importance of holding the AGM of the society once in every co-operative year.

7. The Legislature is however conscious of the fact that due to certain exigencies it might not be possible for the society to hold the AGM strictly within the period fixed under Section 32(2) of the Act for which the provisions for extension to hold such meeting provided under Section 32(3) of the Act is incorporated. But such extension is not to exceed beyond thirty (30) days. Again proviso to Section 6 indicates that whether the society is under the management of an ad hoc body formed by departmental officers in such cases the State Govt. may allow further time beyond the statutory fixed period of ninety (90) days, in its discretion but not exceeding one year.

8. Over and above the aforesaid provisions, Section 92 of the Act empowers the state Govt. by a general or special order, to exempt any Registered society or a class of such societies from the provisions of the Act or may direct that such provisions shall apply to such societies with such modification as may be specified in the order.

9. The impugned notification dated 28-5-2009 stated to have been passed in exercise of power under Section 92 disclose that the exemption was granted to all the GPSS from the operation of Section 32 of the Act which includes holding of the yearly AGM for the purpose of providing reasonable time for holding the AGM in view of the parliamentary election which has just ended. The parliamentary was held on 16-4-2009 and 23-4-2009 in the State and counting was over and results were declared on 25-4-09. Under the model bye-law only 30 days time is necessary for issuing necessary notice for holding the meeting but Section 92 does not prescribe any time limit for which a registered society may be exempted from operation of any provisions of the Act. In such a situation considering the aims, object and purpose and requirement of holding the annual general meeting of the society and looking into the provisions and schemes of the Act an interpretation authorising the State Govt. to grant exemption from operation of any of the provisions of the Act for a longer period would go against the scope, spirit, purpose and the object of the co-operative movement. Such period, though has not been mentioned in the Act is to be a restrictive one of considerably shorter period as mentioned in Section 32 (3) of the Act. A contrary interpretation may make the aforesaid section unworkable and inconsistent with the scope and purpose of the Act as well the co-operative movement as well as the provision of S. 32(3) of the Act.

From the records so submitted by the learned State counsel no justifiable reasons could be found for granting exemption of the GPSS Ltd. of Assam from operation of Section 32 of the Act for a period of six months. The ex-facie ground as disclosed in the impugned notification as well as from the record so produced, is only to prepare the society for holding the AGM after the parliamentary which has ended, is totally an irrelevant consideration. The learned counsel for the respondents could not highlight the manner, extent and need of the societies after completion and declaration of the result of the parliamentary election for being not able to discharge their statutory obligations by holding the A.G.M. of the Societies. The impugned notification thus having passed taking into consideration of certain irrelevant consideration ignoring the relevant considerations as regards the adverse affect due to non holding of the AGM of the society indicates clear non application of mind and error in the decision making process while passing the impugned order. The impugned notification was issued without considering the adverse affect and impact that fell upon these primary Co-operative Societies functioning at the grass root level virtually closing their operations in accordance with the provisions of the Act, Rules and Bye-laws of the Soci

ety.

10. The term of the managing committee of a society is fixed by the Act under S. 32, as well as the Bye-law of the society. Neither the Act nor the rules nor the Bye-Law of the society empowers that the managing committee whose term has already expired can be allowed to be continued for further period of six months. Accordingly such extension of the life of the expired committee is wholly unauthorized and without jurisdiction. After expiry of the term of an elected body, unless the statute otherwise empowers the State Govt, is not entitled to extend its life for any further period, under the colour of its purported power conferred under Section 92 of the Act. The exercise of power under Section 92 of the Act in the instant case is nothing but colourable exercise of power without any bona fide intention behind to meet the object of the Act. No nexus was found to exist between the direction issued under the impugned notification with the object of the Act.

11. In view of the aforesaid discussions the impugned notification dated 28-5-2009 stands quashed. If even passing of the interim order staying the operation of the impugned order, the societies have not held their AGM and the election (where necessary) within this period the operation of Section 32(4) would come in to play and the managing bodies of such societies stand dissolved and the Registrar is directed to act accordingly to manage the affairs of the respondent societies further directing them to hold the AGM within a fixed period. In the result all the three writ petitions stand allowed. No costs.