



GAHC010161902020

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

Case No. : WP(C)/4799/2020

LAMBUDHAR GOGOI
S/O. LT. RAJEN GOGOI, VILL. GORACHOCK, BEBEJIA, P.O. CHAPANALA,
P.S. SAMAGURI, DIST. NAGAON, PIN-782135, ASSAM.

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, COOPERATION
DEPTT., DISPUR, GUWAHATI-781006, ASSAM.

2:THE DEPUTY COMMISSIONER

NAGAON
PIN-782002
ASSAM.

3:THE DY. DIRECTOR

FOOD AND CIVIL SUPPLIES AND CONSUMER AFFAIRS
NAGAON
ASSAM.

4:THE REGISTRAR OF COOPERATIVE SOCIETIES

ASSAM
KHANAPARA
GUWAHATI-781022.

5:THE ZONAL JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES

GUWAHATI ZONE
BHANGAGARH
GUWAHATI-781005
ASSAM.



6:THE ASSTT. REGISTRAR OF CO-OPERATIVE SOCIETIES

KALIABOR.

7:THE MANAGING COMMITTEE OF CHAPANALA COOPERATIVE SOCIETY LTD.

CHAPANALA
NAGAON

PIN-783135 REP. BY THE CHAIRMAN CUM PRESIDENT SRI GOKUL NAYAK

Advocate for the Petitioner : MR. P MAHANTA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

Date of hearing : 20.06.2023.

Date of judgment : 20.06.2023.

JUDGMENT & ORDER (Oral)

Heard Mr. P. Mahanta, learned counsel appearing for the writ petitioner. Also heard Mr. G. Bordoloi, learned Standing Counsel, Cooperation Department, Assam appearing for the respondent Nos.1, 3, 4, 5 and 6, Mr. T. C. Chutia, learned Additional Senior Government Advocate, Assam appearing for the respondent No.2. Mr. F. Khan, learned counsel has appeared for the respondent No.7.

2. The writ petitioner herein was appointed as the Office Assistant of the Chapanalala Cooperative Society Limited. By the order dated 16.05.2011 issued by the Additional Registrar of Cooperative Societies (Admin), Assam, he was allowed to function as the in-charge Secretary of the said Society. While the petitioner was

discharging his duties as the In-charge Secretary of the Chapanalala Cooperative Society Limited, by the order dated 05.06.2020, he was placed under suspension for a period of 90 days, based on a resolution adopted by the Board of Directors of the Chapanalala Cooperative Society Limited. Thereafter, by the impugned order dated 02.09.2020 the service of the petitioner was terminated. The instant writ petition has been filed assailing the order of termination dated 02.09.2020 primarily on the ground that the impugned order has been issued in violation of the principles of natural justice as well as the statutory provisions.

3. By referring to the materials available on record, Mr. Mahanta has argued that as per the provisions of Section 38 of the Assam Cooperative Societies Act, 2007 (hereinafter referred to as 'the Act of 2007') read with Rule 27 of the Byelaws framed thereunder, the Board of Directors could not have removed the petitioner from service without serving him a show cause notice and also without obtaining the approval of the Registrar of Cooperative Societies. Therefore, it is a clear case where the respondents have not only acted in violation of the principles of natural justice but also in contravention of the provisions of the Act of 2007 as well as the Byelaws framed thereunder.

4. Mr. G. Bordoloi, learned Standing Counsel, Cooperation Department, Assam has referred to the counter-affidavit filed by the respondent No.6 to contend that the action on the part of the Board in removing the petitioner from service was not found to be valid by the department as a result of which, instructions were issued to reinstate him. However, despite such instruction issued by the authorities, no action



has been taken in the matter by the Board. Mr. Bordoloi further submits that the departmental enquiry conducted into the allegations brought against the writ petitioner has disclosed, that the petitioner was not involved in any irregular activities, as a result of which, he has been exonerated in respect of the allegations brought against him.

5. Mr. T. C. Chutia, learned Additional Senior Govt. Advocate, Assam has adopted the submissions made by Mr. Bordoloi reflected herein above.

6. Mr. F. Khan, learned counsel representing the respondent No.7 on the other hand, submits that there were serious allegations against the petitioner which were found to be correct as per the domestic enquiry conducted by the Board of Director of the Chapanal Cooperative Society Limited prompting them to issue the order of termination dated 02.09.2020. It is also the submission of Mr. Khan that show cause notices were issued to the petitioner to which he had failed to respond. The learned counsel for the respondent No.7, however, could not deny the assertion that no such show cause notice was issued to the petitioner before the order of termination dated 02.09.2020 was issued.

7. I have considered the submissions advanced at the bar and have also gone through the materials available on record.

8. Since the impugned order dated 02.09.2020 had been issued by the Board of Directors of a Gaon Panchayat Samabai Samiti Ltd. (GPSS), the learned Single Judge had framed an issue on the question of maintainability of the writ petition, which is evident from the order dated 02.01.2023 passed in the present proceeding.

9. To satisfy this Court that the writ petition is maintainable in law, Mr. Mahanta, learned counsel for the petitioner, has submitted that this is a clear case of violation of the provisions of the statute. Since the GPSS in question was involved in discharge of duties and functions which were in the nature of public duties, hence, in view of the law laid down by the Supreme Court in the case of **Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and others vs. V. R. Rudani and others** reported in **(1989) 2 SCC 691** as well as in **Zee Telefilms Ltd. & another vs. Union of India and others** reported in **(2005) 4 SCC 649** the writ petition would be maintainable in the eyes of law. Mr. Mahanta has also submitted that in the affidavit filed by the respondent No.7, it has been clearly stated that a show cause was issued to the petitioner on 15.03.2020. Therefore, it is apparent that even the respondent No.7 was conscious of the fact that the Board ought to have served a show cause notice upon the petitioner before issuing the order of termination. However, the show cause notice was issued only after the impugned order of termination, thus having a vitiating effect on the said order.

10. From a reading of Section 3 of the Act of 2007, I find that the Registrar of Cooperative Societies, to be appointed by the Government of Assam is an officer who would have the responsibility of overall supervision, assistance and counsel and also the duty for all round development of the cooperative movement in the State with such other powers and responsibilities as may be provided under the Act or Rules or Byelaws framed thereunder. As per Rule 27 of the Byelaws of the GPSS Ltd. the Executive Committee is required to obtain the approval of the Registrar before appointment or dismissal of a regular salaried Director/Secretary. It is for this reason,



the order of appointment of the petitioner as Secretary of the GPSS had the approval of the Additional Registrar of Cooperative Societies. However, there is no dispute about the fact that no approval of the Registrar of Cooperative Societies was obtained before issuing the order of termination dated 02.09.2020.

11. In the case of **Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and others** (supra) the Supreme Court has observed that the term "authority" under Article 12 of the Constitution of India would not be confined only to statutory authorities and instrumentalities of State but they may cover any other person or body performing public duty. In the case of **Zee Telefilms Ltd. & another** (supra) it has been held that under the Indian jurisprudence there is always a just remedy for violation of a right of a citizen. An aggrieved party can seek remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution. The aforesaid observations were made in the context of dealing with the question as to whether, the Board of Control for Cricket in India, which is a registered society but discharges functions which can be said to be akin to public duties or State functions would be amenable to writ jurisdiction under Article 226 of the Constitution of India.

12. After the decision of the Supreme Court in the case of **Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and others** (supra) and **Zee Telefilms Ltd. & another** (supra) law is firmly settled that action of any organization involved in discharge of duties or functions of public nature would be amenable to writ jurisdiction under Article 226 of the Constitution of India.

13. In the present case, it is to be noted herein that the Chapanalala Cooperative Society Limited is a GPSS is involved in procurement/storage, transportation and distribution of commodities to the consumers who are mostly the BPL families, through the Public Distribution System (PDS) network. Therefore, the GPSSs in the State of Assam are a part of the Government machinery put in place so as to fulfill the policy objectives of the Government under the National Food Security Act, 2013. It is for this reason certain functions of the Board of Directors of the GPSS have been made subject to approval of the Registrar of Cooperative Societies. A close reading of the provisions of the Act of 2007 and the Byelaws framed thereunder goes to show that the State of Assam, through the office of the Registrar of Cooperative Societies, has sufficient control over the functioning of the GPSS, more particularly in the matter of appointment/ removal of the Director/Secretary. Therefore, this Court finds force in the submission of Mr. Mahanta that the GPSS Limited would come within the definition of other "authorities" within the meaning of Article 12 of the Constitution of India. As such, this Court is of the opinion that the actions of the Chapanalala GPSS would be amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India. The question of maintainability of the writ petition is answered accordingly.

14. Coming to the next issue as to whether the order of termination from service dated 02.09.2020 suffers from illegality on account of violation of the rules of *audi alteram partem* as well as the statutory provisions, it is to be noted herein that the respondent No.7 had in fact issued a show cause notice to the writ petitioner but the same was done only after the order of termination dated 02.09.2020 was issued. The above development clearly goes to show that even the respondent No.7 was

conscious of the fact that the order of termination was required to be preceded by a show cause notice served upon the petitioner so as to give him an opportunity of being heard in the matter. However, no such opportunity was given to the writ petitioner in this case. As such, it is evident that the principles of natural justice has not been adhered to in this case. There is also no approval obtained from the Registrar of Cooperative Societies before removing the petitioner from office. As a matter of fact, the Registrar of Cooperative Societies had disapproved the suspension of the petitioner for 90 days and issued instructions to the Board of Directors to allow the petitioner to continue as the Secretary of the GPSS after the expiry of the 90 days suspension period, which fact is evident from a bare perusal of the letter dated 08.09.2020 issued by the Assistant Registrar of Cooperative Societies, Kaliabor. However, the instructions issued by the Assistant Registrar of Cooperative Societies was not followed by the Board of Directors.

15. It would also be pertinent to note herein that as per the respondent No.7, there was serious complaint against the petitioner of having committed irregularities committed in the matter of storage of food grains, more particularly 'atta' which had prompted to the GPSS to take action against him in the matter. If that be so, it was all the more necessary for the Board to serve a show cause notice upon the petitioner so as to give him an opportunity to submit his reply before issuing the order of termination from service. The failure to do so, in the opinion of this Court, assumes great significance in view of the departmental communications placed on record which go to show that the petitioner had no role to play in the shortage of 'atta' storage of the GPSS. Viewed from that angle also the impugned order dated



02.09.2020 appears to have been issued in utter contravention of the principles of *audi alteram partem* as well as the provisions of the Act of 2007 and hence, is liable to be set aside by this Court on such count.

16. For the reasons stated herein above, this Court is of the opinion that the petitioner has made out a good case for interference with the impugned order of termination from service dated 02.09.2020. As such, this writ petition succeeds and is hereby allowed. The impugned order dated 02.09.2020 is hereby set aside.

17. The respondent No.7 is directed to reinstate the petitioner back in service forthwith. The respondent Nos.1 and 3 to 6 will ensure compliance of the order of this Court. Upon such reinstatement, it would be open for the Board of Directors of the GPSS to take fresh action in the matter, if so advised but after serving show cause notice upon the petitioner. In the event any enquiry is proposed to be held against the petitioner, the same shall be done in strict compliance of the requirement of the Act of 2007, the Byelaws framed thereunder as well as the principles of natural justice.

With the above observation, the writ petition stands disposed of.

There would be no order as to cost.

JUDGE

T U Choudhury/Sr.PS

Comparing Assistant