

Ms. Vanhmingliani, Advocate.

For the respondents :- Ms. Linda Fambawl, G.A.
for respondent Nos. 1 & 2,
Mr. Zochhuana, Advocate,
Mr. K. Lalchhanliana, Advocate,
Ms. Melody L. Pachuau, Advocate,
for respondent Nos.3 & 4.

Date of hearing :- **26-06-2013**

Date of Judgment &
Order :- **26-06-2013**

JUDGMENT AND ORDER (ORAL)

Heard Mr. N. Sailo, learned senior counsel assisted by Mrs. Dinari T. Azyu, learned counsel appearing for the petitioners. Also heard Ms. Linda Fambawl, learned G.A. appearing on behalf of the respondent Nos. 1 and 2 and Mr. Zochhuana, learned counsel appearing on behalf of respondent Nos. 3 and 4.

[2]. The petitioner Society is one of the primary Societies registered under the Mizoram Co-operative Societies Act, 2006 and is also a member and shareholder of the Mizoram Co-operative Apex Bank Ltd. The petitioner Society started with a share holding of 20 shares in the said Mizoram Co-operative Apex Bank Ltd. and w.e.f. 1.05.2006, the petitioner had 50 shares. The petitioner Society further acquired 10 additional shares w.e.f. 26.04.2013 making its total share to 60 shares.

[3]. The cause of action arose when the petitioner Society received a letter dated 16.05.2013 from the respondent No. 4 in the last week of May, 2013, informing that the 20th Annual General Assembly will be held on 19.06.2013. In the said letter, the subject contained information of Mizoram Co-operative Apex Bank Ltd. 20th Annual General Assembly, 2013. Therein, the letter dated 16.05.2013, amongst the agenda, at Sl. No. 5, the election for the Board of Directors for the period 2013-2018 was shown. Further, in the "Things to be acknowledged" at Sl. No. 7, it was stated as follows :-

"As per bye-laws No. 4 (amended on 19th July, 2005) only a Primary Cooperative Society having 50 Shares and Rs. 5000/- i.e. Rs. 100/- @ Per Share can have a voting right at the time of the Election of the Board of Directors. Besides, the affiliated Society having less than 50 Shares = Rs. 5000/- shall not have a voting right but can send its representative. (vide Resolution AOB 1 of 07.05.2013)."

[4]. The stipulation contained at Sl. No. 7 of the letter dated 16.05.2013 was on the basis of a Special Meeting of the Board of Directors of the Mizoram Co-operative Apex Bank Ltd. held on 7.05.2013 whereby a resolution No. AOB1 was passed and the same is reproduced herein below :-

“To consider and approve Individual Share Holdings : CEO explained the Agenda and the same was discussed accordingly. After, the agenda is discussed carefully by the Board of Directors’ Meeting, it is resolved that a proposal be made in this regard to the Government in as much as this Issue is not incorporated in the MCS Act and its Rules. It is further resolved that CEO may take necessary step in this regard.

Moreover, when the Agenda No.4 of the Special General Assembly held on 19.07.2005 amended the bye-law by raising the rate of one share from Rs.50/- to Rs.100/-. Therefore, on perusal of the Minute of the said Special General Assembly, it can be seen, from the wording of the Minute, that only those Societies having at least 50 shares and also at least 5000/- for the said 50 shares by calculating the rate of one share as Rs.100/- shall have a voting right. Hence, only the societies having at least 50 shares and also at least Rs.5000/- for the said 50 shares can cast their votes in the Election at the time of the upcoming General Assembly 2013. Any Society who has obtained 50 shares or Rs. 5000/- for the shares only after 31.3.13 shall not have a voting right in the upcoming General Assembly, 2013.

Only those Societies who can have a voting right shall be included in the Electoral Roll and the Roll should be named as ‘Electoral Roll 2013’ ”.

[5]. The petitioner Society also received another letter dated 16.05.2013 issued by the Chief Executive Officer of the Mizoram Co-operative Apex Bank Ltd. on the same subject matter. However, the contents in the letter were different from the other letter having the same date. Being aggrieved by the aforesaid resolution and both the letters dated 16.05.2013, the instant writ petition.

[6]. It is the contention of Mr. N. Sailo, learned senior counsel assisted by Mrs. Dinari T. Azyu, learned counsel appearing on behalf of the petitioners that the Special Board of Directors could not have, under any circumstances, passed the resolution allowing only those Society having 50 shares and also Rs. 5000/- for the said 50 shares by calculating the rate of 1 share at Rs. 100/- to have a voting right. He submits that the said resolutions are absolutely detrimental to the petitioner Society and the same would surely affect the rights of the petitioner Society to cast their votes in the upcoming election and the other rights which the petitioner had for being one of the shareholders/members of the Mizoram Co-operative Apex Bank Ltd. He also submits that the resolution of the Special Board of Directors held on 7.05.2013 is in direct conflict with the Bye-Law No. 4 of the Mizoram Co-operative Apex Bank Ltd. Bye-Law (in short "Bye-Law").

[7]. It is also submitted by the learned senior counsel that the Board of Directors of the Mizoram Co-operative Apex Bank Ltd.

had acted illegally beyond the scope of their power and in contravention of section 121 of the Mizoram Co-operative Societies Act, 2006 (in short "the Act of 2006"). He, therefore, submits that as the resolution of the Special Board of Directors are in conflict with Bye-Law and also the Act of 2006, both the letters dated 16.5.2013, has no basis and therefore has no legal status. Under the circumstances, he submits that the resolution dated 7.05.2013 and both the letters dated 16.05.2013 should be quashed and set aside as being arbitrary and illegal.

[8]. The respondent Nos. 3 and 4 has filed their affidavit-in-opposition. In the said affidavit-in-opposition, the deponent has failed to indicate the source of the deponent's averment made in the said affidavit-in-opposition. Accordingly, with the permission of this Court, the respondent Nos. 3 and 4 has filed Civil Misc. Appln. No. 62 of 2013 praying for amendment of the said affidavit-in-opposition. However, instead of allowing the respondent Nos. 3 and 4 to file an amended affidavit-in-opposition, this Court, seeing the urgency of the matter has decided that the Civil Misc. Appln. No. 62/2013 be allowed to form a part of the affidavit-in-opposition filed by the respondent Nos. 3 and 4.

The counsel for the respondent Nos. 3 and 4 submits that, on being informed about some dissatisfaction with the voter list by some Societies having less than the share value of Rs. 5000/-, they had sought the opinion of the legal adviser of the

Mizoram Co-operative Apex Bank Ltd. On receipt of the opinion from the legal adviser, the respondents had prepared a new voter list including all those Societies having 50 shares, even if their shares value is less than Rs. 5000/- and the new voter list was finalized on 31.05.2013. The new voter list was affixed on the notice board of the head office as well as all its branches. In the new said revised voter list, the petitioner Society also appeared at Sl. No. 15 and on the basis of that revised voter list, the petitioner No. 2 was allowed to file his nomination and his nomination papers have also been accepted for the post of Chairman alongwith 4 others. It is also submitted that the petitioner No. 2 alongwith others had issued a declaration stating that they had no complaints upon the scrutiny of their nomination papers for the election to the Mizoram Co-operative Apex Bank Ltd. conducted under the supervision of the Election Officer. Amongst the declarants, the name of the petitioner No. 2 appears at Sl. No. 6 therein. It is also submitted that on 12.06.2013, the petitioner No. 2 had withdrawn his application for the post of Chairman of Mizoram Co-operative Apex Bank Ltd., of his own freewill.

The learned counsel also produced a photo copy of a Notification dated 14th January, 2013 which was published in the Mizoram Gazette on 16.01.2013. By the said Notification, the Mizoram Co-operative Societies Act, 2006 was amended whereby under Section 55 subsection 4 and 5 stood deleted. He, therefore,

submits that, in view of the development that has taken place, nothing survives in the writ petition.

[9]. I have considered the rival submissions forwarded by both the parties. To appreciate the present matter in hand, it is worthwhile to quote certain sections from the Mizoram Co-operative Societies Act, 2006. By Notification dated 14th January, 2013, under Section 55 subsections 4 and 5 stood deleted.

[10]. By the same amendment Section 53 of the Act was also amended which reads as follows :-

“In Section 53 of the Principal Act,

(1) *Sub-section (1) shall be substituted as follows, namely:-*

“The term of the office of the Board of Management Committee of the Primary Cooperative, Secondary Cooperative and the Federal Cooperative Societies shall be five years from the date of election and the term of office bearers shall be coterminous with the term of the board.”

(2) *The first and second proviso of sub-section (3) shall be substituted as follows, namely:-*

“Provided that no member shall hold office for more than 10 years in succession, or having already held Office for 10 years, whether in succession or not, be re-elected within a shorter interval than five years from the date on which he ceased to be member of such Council or Body.

Provided further that if election cannot be held for any reason, the gap period so occasioned shall not be counted to form part of the interval period of five years.”

Explanation : *Notwithstanding this Amendment, the tenure of the existing Management Committee elected and constituted under the pre-amended Act shall remain unchanged and election under the*

amended Act shall be held for such Management Committee before the expiry of their normal tenure for which they were elected.

The members who have not completed ten years but whose re-election for another term is likely to exceed ten years provided under the amended Act shall also not be eligible for re-election before five years cooling off period."

[11]. Section 17 of the Mizoram Co-operative Societies Act, 2006 (1) and (2) reads as under :-

"(1) Every co-operative shall have the authority to amend or delete any of its existing bye-laws or add new bye-law provisions by a resolution passed by majority of two thirds of members present and voting at a general body meeting of the co-operative called for the purpose.

(2) The said resolution shall be valid only when it is passed by general body after giving a twenty days clear notice of the proposed amendment to all its members."

[12]. The relevant portion of Section 46 Subsection (1) and (2) of the said Act are also reproduced herein below :-

"(1) It shall be the duty and responsibility of existing board of management committee of every co-operative to call the annual general meeting within ninety days after the closure of the financial year, for the purposes specified under sub-section (2) of this section.

(2) The annual general body meeting shall deal with all or any of the following subject matters :

(a) Election of Chairman, Vice Chairman and Directors of the Board of Management Committee in the State Level Cooperative Societies, Secondary and Primary Cooperative shall be conducted biennially and the term of office shall be two years."

[13]. Relevant portions of Rule 28 of the Mizoram Co-operative Rules, 2012 reads as under :-

- “(1) *It shall be the duty and responsibility of existing Board of Directors or Management Committee of every Co-operative to call the Annual General Meeting within ninety days after the closure of the financial year, for the purpose specified in the Act.*
- (3) *Thirty clear days’ notice of the General Body Meeting specifying the date, place and hour, with agendas to be transacted thereat shall be sent to every member of the Cooperative Society.*
- (5) *Where the Board or Management Committee of any Cooperative failed to convene the Annual General Body Meeting within the period specified under sub-section (1) of Section 46 of the Acts without cogent and convincing reasons, the Registrar shall convene such Annual General Body Meeting within a period of sixty days from the date of expiry of the period mentioned under sub-section (1) of Section 46 of the Act, and the expenditure incurred for calling such meeting shall initially be borne by the Cooperative Society concerned, which amount shall be recovered from the Board or Management Committee responsible for not calling such meeting as per law.”*

[14]. As provided under Section 17(1) & (2) of the Act of 2006, any amendment or deletion of the existing bye-laws can be done only by a resolution passed by majority of two thirds of the members present and voting at a general body meeting. The Special Board of Directors, therefore, could not have deviated from bye-law No. 4 by allowing only Societies having 50 shares and also Rs. 5000/- to have voting rights in the election at the time of the upcoming General Assembly, 2013. The resolution dated 7.05.2013 being *ultra vires* the bye-laws, this Court has no

hesitation to declare the same as illegal and therefore, the same requires interference by this Court.

[15]. The respondent Nos. 3 and 4, while reissuing new voter list, has also not issued any notification/orders recalling the letters both dated 16.05.2013 and also the AOB 1 resolution passed by the Special Board of Directors. As stated above, the resolution dated 17.05.2013, being illegal, the letters dated 16.05.2013 being offshoots of the said resolution also cannot stand the test of law.

[16]. Accordingly, the AOB 1 resolution dated 7.05.2013 passed by the Special Board of Directors is quashed and set aside. The letters both dated 16.05.2013 are also set aside and quashed.

[17]. While considering the amendments made to Section 55 of the Act, it is also important to note that by the same amendments Section 53 of the Act was also amended. Therein, the explanation to Section 53(2) provides that notwithstanding this Amendment, the tenure of the existing Management Committee elected and constituted under the pre-amended Act shall remain unchanged and election under the amended Act shall be held for such Management Committee before the expiry of their normal tenure for which they were elected.

[18]. This Court, under Article 226 of the Constitution of India, could have extended the period of 90 days for holding the Annual General Meeting for conducting of elections w.e.f.

1.04.2013. However, considering the fact that the Special Board of Directors had violated bye-law No. 4 as well as Sections 17(1) & (2) of the Act of 2006, this Court does not consider it proper to extend the period beyond 90 days.

[19]. In the writ petition the Registrar has not been made a party respondent. However, the Secretary, Co-operation Department, Mizoram has been impleaded as respondent No. 2. It is, therefore, directed that the Annual General Meeting for conducting of elections be completed within 90 days w.e.f. 1.04.2013. In the event, if the conduct of elections cannot be completed within 90 days, the respondent No. 2 is directed to cause upon the Registrar, under the Act, to invoke Section 46(3) of the Act of 2006 and Rule 28(5) of the Rules of 2012 and take appropriate steps as provided under the provisions of law.

[20]. With the above observations and directions, this writ petition is allowed. No costs.

JUDGE

Sushil