
(2020) 08 GAU CK 0004
In the Gauhati High Court
Case No : Writ Petition (C) No. 2927 Of 2020

Joynal Abedin Laskar And 4 Ors

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 11-08-2020

Acts Referred:

Assam Cooperative Societies Act, 2007 — Section 41(6)

Citation : (2020) 08 GAU CK 0004

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : J M A Choudhury

Final Decision : Disposed Off

Judgement

1. Heard Mr. A.B.T. Hoque, learned counsel for the petitioner. Also heard Ms. M.D. Bora, learned counsel for the respondents No. 1, 2, 3 and 4 and

Mr. G. Bordoloi, learned counsel appearing for the respondent No.5.

2. An order dated 02.07.2020 was passed by the Zonal Joint Registrar of Cooperative Societies, Silchar Zone, by which in exercise of the power

under Section 41(6) of the Assam Cooperative Societies Act, 2007, (in short Act of 2007) Mustafa Hussain Tapadar Senior Inspector/Auditor of

Cooperative Societies in the Office of the Assistant Registrar Cooperative Societies, Karimganj was appointed as an One Man Committee to manage

the affairs and to hold the Annual General Meeting/election of the North East Badarpur C.S. Ltd. Karimganj within a period of 90 days. On

05.08.2020 when the matter was moved, we raised a question as to whether the condition precedent of Section 41(6) of the Act of 2007, i.e. the

Cooperative Society concerned had failed to arrange for holding of the election, was satisfied before invoking the power under Section 41(6). Section

41(6) of the Act of 2007 is extracted below:-

41(6) Where a Board fails to arrange for holding election before the expiry of the term of the Board or delegates or where there are no Directors

remaining on the Board, the Registrar shall convene a General Meeting by appointing an Officer of the Cooperative Department for Constitution of

the Board within ninety days from the date of such appointment and the officer so appointed shall perform all functions of the Board during the said

period of ninety days at the cost of the Society.

3. In reply thereof, another order dated 05.08.2020 of the Zonal Joint Registrar of Cooperative Societies, Silchar Zone has been produced before the

Court, wherein, in paragraph-1 it is stated that the term of the office of the earlier Board of Directors came to an end on 24.05.2020. But however,

although the Cooperative Society had sought for permission to hold the Annual General Meeting/election before expiry of the term, the Deputy

Commissioner, Karimganj had refused the permission on account of Covid-19 Pandemic. The refusal by the Deputy Commissioner itself is an

indication that the petitioner Cooperative Society had not failed to arrange to hold the election and as because the permission was not granted

therefore, the meeting could not be held.

4. Accordingly, we are of the view that the condition precedent of invoking Section 41(6) of the Act of 2007 had not been fulfilled in the instant case.

Consequent thereof, the earlier order dated 02.07.2020 by which an One Man Committee was appointed as well as the subsequent order dated

05.08.2020 by which the same was reiterated, although by the order dated 05.08.2020 the earlier order dated 02.07.2020 was withdrawn, both stands

unsustainable.

5. Ms. M.D. Bora, learned counsel for the Cooperative Societies department refers to the provision of Article 243 ZJ(2) to urge upon that the term of

the elected members of the Board of Directors of Cooperative Societies and its office bearers shall be 5 years from the date of election. In the instant

case, we take note of that although the election was held on 24.05.2015, whereby the present Board of Directors were elected but for the reasons

beyond their control, the elected committee was not allowed to assume office up to 15.12.2018.

6. We are of the view that the constitutional requirement of Article 243 ZJ(2)

limiting the period of the term of the elected members of the Board and its office bearers to be 5 years from the date of election would also have to be read in conjunction with the provision of Section 41(6) of the Act of 2007.

7. For the reasons above, the two orders dated 02.07.2020 and 05.08.2020 requiring the One Man Committee to take over the petitioner Cooperative

Society be not given its effect. The Cooperation department through the Registrar of Cooperative Societies and the Zonal Joint Registrar of

Cooperative Societies, Silchar Zone are directed to ensure that the Annual General Meeting/election of the petitioner Cooperative Society be held at

the earliest and for the purpose the Deputy Commissioner shall ensure that the holding of the Annual General Meeting/election is done by following

the required protocol to be followed in view of the Covid-19 Pandemic. It is provided that any date fixed by the respondent authorities in the

Cooperation department on holding the Annual General Meeting/election be duly notified to all the share holders/petitioner Cooperative Society by

following all the requirement of the provision of law so as to enable them to participate in the Annual General Meeting/election. In the meantime, no

major decision be taken by the existing Board of Director other than to conduct the Annual General Meeting/election on the date to be fixed as

required under the law.

8. We are inclined to pass the aforesaid direction in view of the prima facie case being made out, the balance of convenience of the parties as well as

the irreparable loss that the petitioner may suffer and also from the point of view that by issuing a notice and staying the order dated 02.07.2020 and

05.08.2020 would lead to stalemate on one hand and on the hand if not stayed would lead to a situation where the One Man Committee would be

allowed to function without satisfying the condition precedent of Section 41(6) of the Act of 2007.

9. Writ petition stands disposed of.