

(2023) 08 GAU CK 0047

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4691 Of 2023

Mazibur Rahman And 4 Ors.

APPELLANT

Vs

State Of Assam And 6 Ors.

RESPONDENT

Date of Decision : 16-08-2023

Acts Referred:

Assam Cooperative Societies Act, 2007 — Section 2(h), 31, 39, 40, 40(4)(a), 40(4)(e), 41(2), 130A

Citation : (2023) 08 GAU CK 0047

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : P K Roychoudhury

Final Decision : Disposed Of

Judgement

1. The instant writ petition has been filed by the petitioners seeking a mandamus upon the respondents to allow the petitioners, who were earlier the Board of Directors of Tengaguri SS Ltd for participating in the AGM as well as in the election of the Board of Directors of Tengaguri SS Ltd, Morigaon for the year 2023-2024, which is to be held on 27.08.2023.

2. From a perusal of the writ petition, it transpires that the petitioners herein were elected as the Board of Directors of Tengaguri SS Ltd (for short 'the Cooperative Society') on the basis of an election held on 20.07.2017. In terms of the provisions of Section 31 of the Assam Cooperative Societies Act, 2007 (for short, the Act of 2007), the term of the said Board of Directors was to expire on 19.07.2022. Be that as it may, by an order dated 20.04.2021, the Zonal Joint Registrar of Cooperative Societies had dissolved the management of the Cooperative Society as it had failed to hold AGM/election for the year 2020-2021 as was required under Section 39 of the Act of 2007. By the same order, one Shri Bipul Kumar Bora, Senior Inspector/Auditor of Cooperative Societies was appointed as an Officer on Management and was entrusted to convene the AGM/Elections of the Cooperative Society to constitute the Board of Directors within

90 days.

3. It further reveals from the records that one Abdul Subhan and nine others had filed a petition on 12.05.2021 praying for restoration of the Board of Directors of the Cooperative Society. The learned counsel for the petitioner, however, submits that the petitioners herein were not amongst the 10 persons who approached the Zonal Joint Registrar of the Cooperative Societies then.

4. Be that as it may, the Zonal Joint Registrar of Cooperative Societies by an order dated 13.05.2021 stayed the order dated 20.04.2021 till a date is fixed by the Assistant Registrar of Cooperative Societies as deemed fit and proper within seven days for holding of the AGM in terms of the order passed in WP(C) No.8891/2019 dated 05.12.2019. The Assistant Registrar of Cooperative Societies, Morigaon, thereafter by communication dated 21.06.2021 informed the said Abdul Subhan who was the Vice-Chairman of the Cooperative Society to conduct the Board of Directors meeting within seven days and to take necessary steps for holding the AGM of the said Society.

6. It further reveals that on 22.06.2021, an emergency meeting of the Board of Directors of the said Cooperative Society was held. In the said meeting, only the petitioner No.1 and 5 were present along with other Members of the Board of Directors. It was resolved in the said meeting that the AGM would be held on 16.07.2021 in the godown house of the Cooperative Society at 10 am. Thereupon, the said Abdul Subhan along with the Secretary of the said Cooperative Society sought for permission from the Deputy Commissioner, Morigaon for holding the AGM of the said Society for the year 2020-2021 on 16.07.2021 at the premises of the Cooperative Society at 10 am. This request was made on 28.06.2021 to the Deputy Commissioner, Morigaon.

7. It is not clear from the records whether any permission was granted by the Deputy Commissioner, Morigaon to the Board of Directors for conducting the AGM as well as election of the Society on 16.07.2021. This Court finds it relevant to take judicial notice that during this period the country was under the second wave of Covid and there were various restrictions imposed by the Disaster Management Department of the Government of Assam as well as the Home Ministry of the Government of India.

8. In the meantime, the orders dated 13.05.2021 and 21.06.2021 were stayed by this Court. Under such circumstances, as the said meeting could not be held, the order dated 20.04.2021 stood restored. It further reveals that on 12.11.2021, the One Man Committee issued a notice for holding the AGM/election of the Cooperative Society thereby fixing it on 27.11.2021 at 10 am. The Board of Directors of the Cooperative Society including some of the petitioners challenged the said notice by a writ petition, which was registered as WP(C) No.6097/2021. This Court vide an order dated 22.11.2021 issued notice and further directed that the Cooperative Department including the One Man Management Committee of the Society, in question, shall not proceed to hold the

AGM of the said Cooperative Society and further also directed that no AGM of the Cooperative Society in terms of the notice dated 12.11.2021 of the President/Ad hoc committee of the said Cooperative Society be held.

9. It further reveals that the said writ petition bearing WP(C) No.6097/2021 was disposed of along with three other writ petitions by a common judgment and order dated 17.06.2022 whereby this Court directed the Registrar of Cooperative Societies to look into the matter, make an enquiry so as to ascertain the correct facts and circumstances and thereafter pass appropriate orders paving a way for holding the AGM at the earliest after giving an opportunity of hearing to both the sides. It was further directed that until such decision was taken, the status quo as on that date shall be maintained.

10. Thereupon, vide an order dated 28.02.2023, the Registrar of Cooperative Societies after hearing both the parties observed that since five years term of the Board of Directors of the Society expired on 19.07.2022, therefore, the Board of Directors of the Society had no locus standi to hold the AGM and, as such, order dated 20.04.2021 of the Zonal Joint Registrar of Cooperative Societies, Guwahati Zone, Guwahati was upheld and the Officer on Management of the Cooperative Society was directed to hold AGM of the Society, in question, as early as possible.

11. It is relevant to observe that the said order dated 28.02.2023 passed by the Registrar of Cooperative Societies was not put to challenge by the petitioners herein and the same attained finality. Be that as it may, on 17.07.2023, a notice was issued by the One Man Committee for the purpose of intimating that the AGM as well as the election of the Cooperative Society would be held on 27.08.2023 at 9 am and the last date for submission of nomination is 17.08.2023 from 10 am to 2 pm.

12. The petitioners herein, who were Members of the erstwhile Board of Directors of the Society being apprehensive that if they submit nominations, their nominations would be cancelled in terms with the provisions of Section 40 (4)(a) and Section 40(4) (e) of the Act of 2007 had approached this Court by filing the present writ petition.

13. Mr. P.K. Roy Choudhury, the learned counsel for the Petitioners had drawn the attention of this Court to various orders passed by the coordinate Benches wherein on account of non- holding of the election due to Covid, this Court held that the petitioners therein shall not suffer disqualification under Section 40 (4) (a) and (e) of the Act of 2007 and that they would be entitled to participate in the elections of the Board of Directors of the said Society. The learned counsel for the petitioners further submitted that the instant writ petition also requires to be given a *pari materia* treatment.

14. I have also heard Mr. S.K. Talukdar, the learned counsel appearing on behalf of the Respondent Cooperation Department, who submitted that the facts in the instant writ petition are not similar to the orders, which have been passed by the Coordinate Benches. He submits that the petitioners herein have not sought for

extension, which have been sought for in those cases under Section 130A of the Act of 2007 and as such there is a fundamental difference in those matters compared to the present lis. He further submitted that the petitioners herein are guilty of laches and, as such, they cannot seek equitable relief in exercise of extra-ordinary jurisdiction of this Court. Mr. Talukdar further submitted that the instant writ petition is premature on the ground that the petitioners have till date not submitted their nomination forms and whether such nominations would be cancelled under Section 40 (4)(a) or (e) of the Act of 2007 is yet to be decided by the Returning Officer, in question.

15. Mr. P.K. Roy Choudhury, the learned counsel, rejoining to the said submissions made by Mr. Talukdar had drawn attention of this Court to the notice dated 17.07.2023 wherein it has been mentioned amongst other criteria that the candidate must have the voting rights and eligibility as per Section 40 of the Act of 2007.

16. I have heard learned counsels for the parties and have also perused the materials on record.

17. The fact that the earlier Board of Directors was constituted on 20.07.2017 is an admitted fact and the period of five years would be completed on 19.07.2022. This aspect of the matter is also clear from the order dated 28.02.2023 by the Registrar of Cooperative Societies.

18. Now a perusal of Section 39 of the Act of 2007 shows that the Annual General Meeting of a registered Cooperative Society is required to be held at least once in every cooperative year, i.e., within a period of six months of close of the financial year to transact the business as provided in the Act of 2007. The consequences for not holding the AGM would automatically dissolve the Board by operation of law. Now coming to the order dated 20.04.2021, it would show that on account of not holding AGM for the year 2020-2021, the Board was dissolved. It is further relevant to observe that though the Act of 2007 defines "Cooperative Year" in Section 2(h) of the Act of 2007 as the period beginning and ending on such dates as may be fixed by the Registrar for the purpose of drawing up balance sheets of the registered societies and for all other purposes under the Act of 2007 but the term "financial year" is not defined in the Act of 2007. Under such circumstances, the term "financial year" has to be deemed as the period from 1st April to 31st March.

19. A perusal of the order dated 20.04.2021 would show that the Board was dissolved for not holding the AGM/Election for the year 2020-2021 meaning thereby that the AGM/Election of the Cooperative Society was required to be held for the year 2020-21 within the outer limit of 30th September, 2021 and the financial year for 2020-2021 would be from the 1st day of April 2020 to 31 st March 2021. However, the provisions of Section 39 of the Act of 2007 was applied and the Board wherein the Petitioners were Directors was dissolved. This Court cannot also be unmindful of the provisions of Section 130A of the Act of

2007 as well as the various restrictions so imposed on account of Covid for which admittedly the State of Assam had granted exemptions from the operation of Section 39 and 41(2) of the Act of 2007 as regards those Cooperative Societies who approached the Government claiming benefit under Section 130A of the Act of 2007. The Court further finds it relevant herein to observe that a perusal of Section 130A of the Act of 2007 does not postulate the necessity of filing any application for claiming benefit in the circumstances of the present kind wherein there was existence of Lockdowns, restrictions on account of Covid.

20. Be that as it may, it further reveals that there was an attempt being made by some of the Members of the Board of Directors by seeking review of the order dated 20.04.2021 before the Zonal Joint Registrar of Cooperative Societies. The Zonal Joint Registrar had on 13.05.2021 stayed the order dated 20.04.2021 subject to the erstwhile Board of Directors of the Cooperative Society holding the AGM and election within a period as may be fixed by the Assistant Registrar of Cooperative Societies within seven days. The records further reveals that the Assistant Registrar of Cooperative Societies thereupon directed the erstwhile Board of Directors to hold an emergency meeting so that steps could be taken for holding the AGM of the Cooperative Society. Thereupon, an emergency meeting was held on 22.06.2021 whereby it was decided that the AGM would be held on 16.07.2021. It further reveals that for the purpose of holding the AGM and election on 16.07.2021 permission was sought from the Deputy Commissioner, Morigaon. It is not known as to whether permission was granted by the Deputy Commissioner, Morigaon. However, from the perusal of the materials on record, it transpires that the order dated 13.05.2021 as well as the order dated 20.06.2021 was put to challenge in various proceedings before this Court and this Court had stayed the said orders for which the AGM/Election could not be held on 16.07.2021 as proposed in the Meeting of the Board of Directors on 22.06.2021.

21. Thereafter, on 12.11.2021, a notice was issued by the One Man Committee. The notice on 12.11.2021 was put to challenge before this Court and this Court had stayed the same.

22. Subsequent thereto, vide judgment and order dated 17.06.2022, this Court after taking into account the various litigations directed the Registrar of Cooperative Societies to take a decision in the matter after hearing both the parties and till then, status quo was directed to be maintained.

23. The date on which the direction was given, i.e., on 17.06.2022 and the directions were to be complied within three weeks from the date of receipt of the certified copy. However, the Registrar of Cooperative Societies took another eight months to decide pursuant to the order passed by this Court on 17.06.2022. In the meantime, the tenure of the Board of Directors expired on 19.07.2022. The Registrar of Cooperative Societies thereupon directed the One Man Committee to hold the election/AGM vide the order dated 28.02.2023. The One Man Committee thereupon issued notice on 17.07.2023, i.e., almost after another five months.

24. From the above analysis and more particularly the order dated 28.02.2023 of the Registrar of Cooperative Societies, it would be seen that the Registrar of Cooperative Societies had passed the order dated 28.02.2023 without taking into consideration the relevant materials while deciding the validity of the order dated 20.04.2021 as observed above, for which the orders dated 20.04.2021 dissolving of the Board was not proper. This Court however is of the opinion that taking into consideration that as on date of the order dated 28.02.2023, the tenure of the Board of Directors had elapsed, the directions to the One Man Committee to hold the AGM/Elections cannot be held to be wrong or erroneous.

25. Under the circumstances, the apprehension of the petitioners on the basis of the order dated 28.02.2023 and Notice dated 17.07.2023 that they would be disqualified under Section 40 (4)(a) and Section 40(4) (e) is well founded. As observed supra, it was not on account of the fault of the petitioners that the AGM could not be held for which the Petitioners should suffer disqualification and as such appropriate directions are required to be passed.

26. Under such circumstances, this Court disposes of the writ petition with an observation that the petitioners cannot be disqualified if they submit their nominations on the ground of disqualifications as set out in Section 40 (4)(a) and Section 40(4)(e) of the Act of 2007 in respect to the ensuing election of the Cooperative Society.

27. With the above observations, the instant writ petition is disposed of. Mr. S.K. Talukdar, the learned counsel, shall inform the Respondents about the order so passed today so that the nominations, if submitted by the Petitioners, are not rejected on the grounds of Section 40(4)(a) and Section 40(4)(e) of the Act of 2007.