

(2022) 07 GAU CK 0005

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4392 Of 2022

Md Khairul Islam

APPELLANT

Vs

State Of Assam And 7 Ors

RESPONDENT

Date of Decision : 08-07-2022

Acts Referred:

Assam Co-Operative Societies Act, 2007 — Section 41(6)

Citation : (2022) 07 GAU CK 0005

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : M Dutta

Judgement

Heard Mr. S. R. Gogoi, the learned counsel appearing on behalf of the Petitioner and Mr. S.K. Talukdar, the learned counsel appearing on behalf of the Respondent Nos.1, 2, 3, 4 and 5. I have also heard Mr. P. J. Saikia, the learned Senior Counsel assisted by Mr. K. J. Saikia appearing on behalf of the Respondent No.8.

By the instant writ petition, the Petitioner has challenged the order dated 14.06.2022. A perusal of the said order shows that the said order has been passed by the Registrar of Co-operative Societies, Assam whereby an order dated 27.04.2022 passed by the President One man Committee, Kathiatoli Co-operative Society Ltd. have been reviewed. Further to that it also appears that the entire decision has been based upon the observations of the Division Bench of this Court in its order dated 21.09.2021 in Writ Appeal No.141/2021. As the said order of the Division Bench is relevant for the purpose of consideration of the interim prayer, the said order quoted hereinbelow.

"The matter is taken up through video conferencing.

Heard Mr. P.J. Saikia, learned counsel for the appellant. Also heard Mr. S.K. Talukdar, learned standing counsel, Co-operation Department, appearing for the respondent Nos.2 to 7.

This writ appeal has been filed against the order dated 19.03.2021 passed by the learned Single Judge in WP(C) No.5879/2019, by which it was directed that the writ petitioner, who was suspended from service, be given a show cause notice and be heard in a departmental proceeding.

This order has been challenged by the Co-operative Society on various grounds such as that the writ petition itself was not maintainable, etc., against the primary agricultural society.

Without going into this aspect and keeping this question open whether the writ petition was maintainable or not, the fact remains that by now the departmental proceeding has already been concluded and the finding has gone against the writ petitioner whose services have also now been terminated.

In view thereof, this writ appeal itself has become infructuous.

Dismissed as infructuous.”

A perusal of the above order would show that the said Writ Appeal was filed by Kathiatoli Samabai Samitee Ltd. against the judgment and order dated 19.03.2021 passed in WP(C) No.5879/2019. This Court vide the said order dated 19.03.2021 had directed that the writ petitioner herein who was also the writ petitioner in the said proceeding to be given a show cause notice and be heard in a departmental proceedings.

It further appears from a perusal of the order passed by the Division Bench that a submission was made before the Division Bench to the effect that the departmental proceedings have already been concluded and the finding has gone against the writ petitioner whose services have been terminated. On the basis of the said submission, the Division Bench have held that the writ appeal was infructuous and consequently dismissed the said writ appeal.

Therefore, it would be seen that vide the order dated 21.09.2021, there has been no adjudication of merits by the Division Bench as regards the rights of the petitione inter se with the rights of the Respondent No.8 herein. However, a perusal of the order impugned in the instant proceeding prima facie shows that the entire order is based upon the observations made by the Division Bench in its order dated 21.09.2021.

Another question which is very relevant for the purpose of the instant writ petition is as to whether the Registrar of Co-operative Societies would have the jurisdiction to review an order passed by One Man Committee appointed under Section 41(6) of the Assam Co-operative Societies Act, 2007.

In that view of the matter, this Court therefore, issues notice returnable on 05.08.2022.

Extra copies be served upon the learned counsel for the said respondents within a period of 3 (three) days from today.

Taking into account the order passed on 21.09.2021 by the Division Bench of this Court, wherein there has been no decision on merits regarding the rights of the petitioner vis-à-vis the Respondent No.8, this Court is of the opinion that the impugned order dated 14.06.2022 prima facie suffers from non application of mind, for which, this Court stays the said order dated 14.06.2022.

It seems that there is a dispute as to who is presently running the affairs of the Secretary of the Co-operative Society in question. This Court deems it proper to direct the parties to maintain the status quo as regards the post of the Secretary of the Co-operative society in question till the next date. Further to that, till the next date fixed, the Secretary of the Co-operative Society in question shall not take any financial decision without the concurrence of the Respondent No.3.

List accordingly.