
(2013) 07 GAU CK 0022
In the Gauhati High Court
Case No : W.A. No. 172 of 2013

Nagen Deka

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 26-07-2013

Acts Referred:

Citation : (2014) 1 GLT 677

Hon'ble Judges : Adarsh Kumar Goel, C.J;A.K. Goswami, J

Bench : Division Bench

Judgement

A.K. Goswami, J.—Question raised in this appeal is that in view of Ninety-seventh Amendment to the Constitution of India, term of elected Body of a Co-operative Society is five years under Article 243ZJ(2) and the State of Assam has also amended the State law to that effect. Thus, the appellant is entitled to continue in office for five years, which is not yet over. There is no question of retrospectivity as the three years term of the appellant is not yet over. Question of retrospectivity will apply only when the term of the elected body is already over before the amendment. Learned counsel for the State has not been able to dispute the above legal position.

Article 243ZJ(2) reads as follows:

243ZJ(2) - The term of office of elected members of the board and its office bearers shall be five years from the date of election and the term of the office-bearers shall be conterminous with the term of the board.

Article 243ZT reads as follows;

243TZ. Continuance of existing laws -Notwithstanding anything in this Part, any provision of any law relating to co-operative societies in force in a State immediately before the commencement of the Constitution (Ninety-seventh Amendment) Act, 2011, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent

Legislature or other competent authority or until expiration of one year from such commencement, whichever is less.

2. The amendment has come into force on 15.2.2012. The State Act i.e. Assam Cooperative Societies Act, 2007 has been amended on 5.2.2013 as follows:

31. Term of the Board - The term of the Board shall be five Cooperative year.

3. In view of above position, the term of office of the elected members is five years and is applicable to all such elected members who are holding office as on 5.2.2013. In view of above, we allow this appeal and quash the notice dated 28.06.2013 for holding the fresh election.

The Registrar, Co-Operative Societies, Assam may issue appropriate general orders in above terms to avoid any further litigation.