
(2021) 06 GAU CK 0133

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3083 Of 2021

Pub-Barkhetri Bahumukhi Samabay Samity Ltd.

APPELLANT

Vs

State Of Assam And 3 Ors

RESPONDENT

Date of Decision : 23-06-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Assam Cooperative Societies Act, 2007 — Section 31, 39, 41(4), 41(6), 41(8)

Citation : (2021) 06 GAU CK 0133

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : S Muktar

Final Decision : Allowed

Judgement

1. Heard Mr. S. Muktar, learned counsel for the petitioner as well as Mr. S.K. Talukdar, learned Standing counsel for the respondent nos.1, 2 and 3

and Mr. K. Goswami, learned Additional Senior government advocate appearing for the respondent no.4.

2. Apprehending adverse orders in exercise of power under section 41(6) of the Assam Cooperative Societies Act, 2007, the present writ petition has

been filed by the petitioner Society by projecting that they had applied for permission for holding AGM as required under the said Act but due to

Covid-19 pandemic situation, the requisite permission has not yet been granted by the competent authority i.e. the respondent no.4 to hold an AGM.

Accordingly, the aggrieved petitioner Society has filed the present writ petition under Article 226 of the Constitution of India.

3. In pursuance to order dated 22.06.2021, the learned Additional Senior Government Advocate has shared through Video Conference the instructions

received by him from the Deputy Commissioner, Nalbari and it is submitted that the Society has more than 4000 members and therefore, in view of

the Covid-19 pandemic situation it was not possible for the said authority to allow holding of AGM.

4. Upon instructions, the learned Standing counsel for the Cooperation Department, submits that he is instructed to inform the Court that there are

many societies within the state who had missed out to hold the AGM in view of the Covid-19 pandemic situation. Therefore, the State is contemplating

to either bring about an amendment or issue an executive order to relax and/ or to enlarge time for holding AGM, and accordingly, it is submitted that

all the societies similarly situated like the petitioner would not suffer the consequences of section 41(6) of the Assam Cooperative Societies Act, 2007

(hereinafter referred to as the 2007 Act) as in force on date and accordingly, he prays that awaiting the decision by the State, the matter may be

adjourned and kept pending.

5. It appears that as per the section 31 of the 2007 Act, the term of Board of Directors is 5(five) cooperative years and as per section 39 of the said

Act if the AGM is not held atleast once in every coopeartive year, the Board stands dissolved automatically. It appears from section 41(4) of the 2007

Act that when a Board fails to arrange for holding the election of the Directors or delegates, before the expiry of the term of their office, the Directors

shall cease to be Directors on the expiry of the period of 5 years. As per section 41(6) of 2007 Act, when a Board fails to arrange for holding election

before the expiry of the term of the Board, the Registrar shall convene a general meeting by appointing an officer of the Cooperative department for

constitution of the Board as per the time provided therein and the said officer shall perform functions of the Board. And accordingly, the recourse to

section 41(8) of the 2007 Act would also follow.

6. Having considered the submission made at the Bar, the Court is of the considered opinion that even if the matter is kept pending it would not enable

the Court to decide of the present case on merit. In the present case in hand, the petitioner's society has been able to demonstrate that they had

sought for permission to hold an AGM meeting for holding election and that the Deputy Commissioner, Nalbari (respondent no.4) could not allow the

meeting to be held in view of the Covid-19 situation. Therefore, the Court finds

that the petitioner society had taken all reasonable steps as permissible in law to hold the meeting and that though they are ready and willing to hold election by holding AGM, they are being prevented by lawful reason by the respondent no.4 to hold such meeting in view of the Covid-19 pandemic.

7. Therefore, the Court is inclined to dispose of the writ petition by taking note of the submission made by the learned Standing counsel for the

respondent nos.1, 2 and 3 that the State is in seisin of the matter and is contemplating to take appropriate measures to either amend the 2007 Act or to

issue Executive Instructions so that those Societies who are ready to hold AGM would not be considered to be defaulters and no coercive action

would be taken. Under such circumstances, the Court is of the considered opinion that neither the State or any other stake holders would be aggrieved

if the present writ petition is disposed of with a direction that in the event the respondent no.4 and other competent authorities are not in a position to

permit the petitioner Society to hold the election on or before 26.06.2021, they would permit the petitioner Society with a reasonable time to hold the

AGM and election and till then the respondent shall not take any coercive action against the petitioner Society by invoking the provision of section

41(4) and 41(6) of the 2007 Act, and would not take over the Board.

8. It is needless to say that in the event there is an amendment of the 2007 Act or if any Administrative/Executive Instructions as projected by the

learned Standing counsel, Cooperation Department, are issued, the petitioner Society would be bound by the same.

9. Accordingly, this writ petition stands allowed to the extent as indicated above at the motion stage without issuing notice on the respondents.