

(2025) 12 GAU CK 1700
In the Gauhati High Court
Case No : WPC Of 6948 Of 2022

Tultul Hussain

APPELLANT

Vs

State Of Assam And 12 Ors

RESPONDENT

Date of Decision : 04-12-2025

Acts Referred:

Assam Cooperative Societies Act, 2007 — Section 9, 41(9), 43(5)

Citation : (2025) 12 GAU CK 1700

Hon'ble Judges : Rajesh Mazumdar, J

Bench : Single Bench

Advocate : K N Choudhury, N Gautam, S K Talukdar, P Hazarika

Final Decision : Disposed Of

Judgement

Manish Choudhury, J

1. Heard Mr K N Choudhury, learned Senior Counsel, assisted by Mr N Gautam, learned counsel appearing for the petitioner. Also heard Mr S K Talukdar, learned counsel appearing for the respondent Nos. 1 to 3; and Mr P Hazarika, learned counsel appearing for the respondent Nos. 6 to 13, who are the elected members of the Board of Directors of the Kheremia Samabay Samiti Limited, Tingrai Chariali, Hoogrijan, Dibrugarh, Assam.

2. This writ petition had been instituted in the year 2022 by the petitioner, who professes to be a duly elected Director of the Kheremia Samabay Samity Limited (hereinafter, referred to as-"the Society", for short).

3. The case of the petitioner is that the term of the Board of Directors of the Society expired in the year 2021, and due to reasons not explained in the writ petition, the election to the Board of Directors could not be conducted immediately. When the process for election to the Board of Directors was initiated in the year 2022, the date fixed for filing of nomination papers by the candidates intending to participate in the election was fixed on 08.08.2022. The nomination of 14 numbers of the members of the Society including the petitioner

was declared to have been found valid. The general meeting and election of the Society was held on 18.08.2022, and the petitioner was found to have been elected to one of the 15 (fifteen) posts of Directors in the Society. Relevant to state here that there were 14 candidates contesting for the 15 (fifteen) posts of Director. Although the petitioner was declared to have been elected uncontested to the post of Director, he filed a representation before the Assistant Registrar of Cooperative Societies on 31.08.2022, with a request not to give approval to the proceedings, till the matter of disqualification acquired by some of the elected Directors was decided in terms of the applicable bylaws, the Act and the Rules. The petitioner, thereafter, preferred WP(C) No. 6095/2022, before this Court, praying for directions to the respondents to hold fresh elections of the general meeting of the Society. The said writ petition was disposed of at the prayer of the petitioner to withdraw the same and avail alternative remedy.

4. The election of 11 numbers of Directors out of the 14 numbers of the candidates participating in the contest for the post of Director had been approved by the Assistant Registrar of Cooperative Societies, Dibrugarh, on 20.09.2022. The election of 3 (three) numbers of defaulters was not approved. The Secretary of the Society, thereafter, informed the petitioner and others that the first meeting of the newly elected Board of Directors would be held on 22.09.2022, at 11:00 am, for election of President and Vice President of the Society. It is alleged in the writ petition that in the said meeting, the petitioner and 2 (two) others had raised objections to the proposal to hold elections for the post of President and Vice-President of the Society, till the settlement of the issue of the defaulter members of the Society. It is further alleged in the writ petition that the proposed election to the post of President and Vice President was proceeded with, despite the objections raised by the petitioner and two other members. The Assistant Registrar of the Cooperative Societies had approved the proceedings of the meeting dated 23.09.2022, on the same day itself. The writ petition claims that a representation was filed on 28.09.2022 before the Assistant Registrar, which, however, had remained unanswered till the filing of the writ petition. The writ petition challenges the approval given to the election of the President and the Vice President of the Kheremia Samabay Samity Limited, with further prayers for cancelling/quashing the approval afforded to the meeting dated 22.09.2022 and for further directions to the respondents to ensure holding of election for filling up the vacant posts of Board of Directors of the Society before holding fresh elections for the posts of President and Vice-President of the Society.

5. By the order dated 02.11.2022, the Board was restrained from taking any major policy decision in respect of the Society, until further orders and notices were issued in this case on 10.11.2022. The respondent No. 3 has filed the affidavit in response to the writ petition, which has not been replied to by the petitioners.

6. Mr K N Choudhury, learned Senior Counsel appearing for the petitioner has submitted that the bylaw-21 of the Kheremia Samabay Samiti Limited provides

that the Board of Directors shall consist of 15 (fifteen) Directors, including the President and the Vice President. Appropriate provisions have been made for reservation for women and members belonging to the Scheduled Castes/ Scheduled Tribes. The ex-officio members and the Secretary would be in addition to the aforesaid 15 (fifteen) Directors.

7. Mr Choudhury, learned Senior Advocate has submitted that from the above, it is apparent that the Board of Directors has to be constituted with 15 (fifteen) Directors, and, therefore, when only 14 (fourteen) Directors had been elected and even out of them, three of them were not approved, leaving only 11 Directors to participate in an election for the post of the President and the Vice President, the quorum as required under the bylaw was not fulfilled, and, therefore, the election of the President and Vice-President of the Board of Directors of the Society, is not sustainable in law.

8. The learned Senior Counsel has also drawn our attention to the provisions of Section 43 (5) of the Assam Co-operative Societies Act, 2007, to emphasize that the quorum for a meeting of the Board shall be such as would be specified in bylaws, but shall not be less than 50% of the total number of Directors of the Board. According to Mr Choudhury, learned Senior Advocate, the bylaw do not stipulate that the meeting for election to the post of President and Vice President can be held in the absence of all the 15 Directors of the Board, and, therefore, conduct of the meeting on 22.09.2022 deserves an interference of this Court.

9. Mr S K Talukdar, learned counsel for the respondent Nos. 1, 2, and 3, on the other hand, has submitted that the election to the Board of Directors is not under challenge, and, therefore, the election of the 14 candidates, out of which 11 were approved, has attained finality. The learned counsel has submitted that since 11 Directors were available and all of them had attended the meeting of 22.09.2022, despite the fact that the petitioner and two other members have abstained from exercising their privilege, the fact remains that the other 8 (eight) Directors had participated in the meeting, and, therefore, there is no flaw in the impugned proceedings. The learned counsel for the respondents has drawn out attention to Section 9 of the Assam Cooperative Societies Act, 2007, to stress that the Cooperative Society shall frame their own bylaws and the affairs of the Cooperative Society shall be managed in accordance with the terms, conditions and procedures specified in the bylaws. The functioning of every cooperative society shall be regulated by the bylaws, which however, cannot supersede the provisions of the Act. By referring to the provisions of the bylaws of the Society, the learned counsel has submitted that as per Bylaw-25, 9 (nine) members form the quorum and when there were 11 Directors approved for the post after the elections, and all 11 had attended the meeting, the challenge of the petitioner regarding the non-compliance of the quorum, does not carry any merit. The learned counsel has further drawn the attention of this Court to the provisions of Bylaw-21 (4) (Unga), to emphasize that even if any post of Director is vacant, the members would not be entitled to question any proceedings of

elections, qualifications or any other proceedings, if such objections are baseless or do not deserve consideration or are not relevant. He has further submitted that as per Bylaw-21 (4) (Ja), in case any post in the Board of Directors remain vacant or the required numbers of Directors are not present, then the ex-officio members may also be co-opted to complete the quorum for the meeting. He has submitted that the inclusion of co-opted members is not precluded by the provisions of the Act and the bylaws. The co-opted members have been referred to as the ex-officio members. He has referred to the provisions of Section 41(9) of the Act of 2007. He has, therefore, submitted that there is no illegality in the election held for the post of President and Vice-President of the Society, and has prayed for dismissal of the present petition in the present form.

10. We have considered the submissions made by the learned counsels appearing for the contesting parties and we have also gone through the provisions of the Act, and the materials available on record with the writ petition.

11. The facts which are not in dispute in this writ petition are that the petitioner along with 14 other candidates had participated in the election to the posts of Directors in the Kheremia Samabay Samiti Limited. It is also not in dispute that one of the participating candidates had retracted his nomination and thereby, 14 candidates, including the petitioner had been declared elected uncontested to the post of Directors. Three of the candidates were found to be defaulters and, therefore, the approval of their election was not accorded and ultimately, 11 numbers of Directors were found to be eligible and, therefore, accorded approval to hold the posts of Director. It is also not in dispute that all the 11 members had attended the meeting called for the election to the post of President and Vice-President of the Society, and that the petitioner and two other Directors had refrained from participating since they had their objections regarding the holding of the meeting itself.

12. The bone of contention is, with 11 members present and 8 of them participating in the election process, whether the election process is sustainable in view of the provisions of the Assam Cooperative Societies Act, 2007 and Bylaws of the Society in issue.

13. Bylaw 21 of the Society provides that the 15 Directors are to be elected including the President and the Vice President to run the affairs of the Society. Provision-25 of the Bylaws provide that 9 Directors would form the quorum. Although it is correct to say that the bylaw does not provide for circumstances where lesser number of Directors are declared and approved to be elected to the post, with the quorum having been set at 9, this Court is of the opinion that with the presence of at least 9 Directors in a meeting, the quorum will be complete and the proceedings of a meeting cannot be said to be either illegal or unlawful merely because, 15 Directors were not elected.

14. The argument made on behalf of the petitioner that in the absence of all the 15 Directors holding the post, no meeting of the Board could be said to be lawful

or legal, does not appeal to this Court since such an interpretation would stall the very functioning of the cooperative society, which cannot be the intent of either the Act of 2007 or the bylaws of the Society itself. The Act and the Bylaws have provided for situations, where the presence of a lesser number of Directors can still allow the Board to function, so that the cooperative society can survive and thrive. In the present case, it is an admitted position that 11 Directors were functioning in the Society and all of them had attended the meeting for the purposes of electing the President and the Vice-President, and therefore, the quorum of 9, as required under the bylaws have been fulfilled. It is another matter that three of the members refrained from participating in the process, but the same cannot be held to be a situation, where the quorum required for proceeding with the meeting have not been achieved.

15. This Court does not find force in the submissions made on behalf of the petitioner that the Board of Directors must consist of 15 members at any point of time, rather this Court is of the opinion that once the quorum required is reached, the cooperative society is required to be allowed to function even if the 15 Directors are not available at all times. The challenge made in the writ petition, therefore, fails. It is, however, noticed that the Society is presently functioning with 11 Directors and such a vacancy in the Board of Directors of a Cooperative Society needs to be redressed by the appropriate authorities, in accordance with the provisions of the relevant Act and bylaws.

16. It is expected that the respondent authorities would take immediate and urgent steps to fill up the posts of Directors as required under the law.

17. The interim order passed earlier, shall merge with this order.

18. Writ petition accordingly stands disposed of.

19. No order as to costs.