

GAHC010097482022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/180/2022

NILOY BHUSAN SINGHA
S/O NRIPENDRA SINGHA R/O VILL. RONGPUR PT-III P.O. SAHABAD, DIST.
HAILAKANDI, ASSAM, PIN-788163

VERSUS

1. THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
COOPERATION DEPTT., DISPUR, GUWAHATI-06

2:THE REGISTRAR OF COOPERATIVE SOCIETIES, ASSAM,
KHANAPARA, GHY-781022

3:THE ZONAL JOINT REGISTRAR OF COOPERATIVE SOCIETIES,
SILCHAR ZONE, SILCHAR
CACHAR, PIN-788001

4:THE ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES,
HAILAKANDI, ASSAM,
P.O. HAILAKANDI, PIN-788151.

5:THE BRANCH MANAGER OF UNION BANK OF INDIA,
KATLICHERRA BRANCH,
P.O. KATLICHERRA, DIST. HAILAKANDI,
ASSAM, PIN-788161

6:THE OFFICER ON MANAGMENT OF RONGPUR,
P.O. SAHABAD DIST. HAILAKANDI ASSAM
PIN-788163.

7:JIABUR RAHMAN LASKAR,
S/O LT. NURUDDIN LASKAR R/O SAHABAD PART-II P.O. SAHABAD
DIST. HAILAKANDI PIN-78816.

Linked Case : WA/98/2022

THE REGISTRAR OF CO OPERATIVE SOCIETIES, ASSAM
KHANAPARA, GUWAHATI 22.

VERSUS

1. JIABUR RAHMAN LASKAR,
S/O- LATE NURUDDIN LASKAR,
R/O- SAHABAD PART-II,
P.O. SAHABAD, DIST.- HAILAKANDI,
ASSAM, PIN- 788163.

2:NILOY BHUSAN SINGHA,
S/O- NRIPENDRA SINGHA,
R/O- VILL.- RONGPUR PT-III,
P.O. SAHABAD, DIST.-HAILAKANDI,
ASSAM, PIN- 788163.

3:THE STATE OF ASSAM,
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
COOPERATION DEPARTMENT,
DISPUR, GUWAHATI-06.

4:THE ADDITIONAL REGISTRAR (I/C)
OF COOPERATIVE SOCIETIES,
ASSAM, KHANAPARA, GHY-22.

5:THE ZONAL JOINT REGISTRAR OF COOPERATIVE SOCIETIES,
SILCHAR ZONE, SILCHAR, CACHAR,
PIN- 788001.

6:THE ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES,
HAILAKANDI, ASSAM, P.O. HAILAKANDI, PIN- 788151.

7:THE OFFICER ON MANAGEMENT OF RONGPUR,
SAMABAY SAMITY LTD., RONGPUR,
P.O. SAHABAD, DIST.- HAILAKANDI
ASSAM, PIN- 788163.

For the Appellant(s) : Mr. M.J. Quadir, Advocate in WA No. 180/2022.
Mr. S.K. Talukdar, Standing Counsel, Co-operation
Department in WA No.98/2022

For the Respondent(s) : Mr. M.K. Choudhury, Senior Advocate assisted by Mr. M. Khan, Advocate for respondent No.7 in WA No.180/2022 and for respondent No.1 in WA No.98/2022.

- B E F O R E -

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

01.06.2023

The instant two intra-Court writ appeals are directed against the judgment and final order dated 10.02.2022 passed by the learned Single Bench, whereby the writ petitions, WP(C) No.5607/2021 and linked case WP(C) No.86/2022, were disposed of with the following directions:

“28. As regards the grievances made in the WP(C) 86/2022, it is the opinion of this Court that taking into consideration that the State Government has been directed to appoint a Chief Executive/Secretary within a period of twenty days of this judgment, the Petitioner shall be permitted to carry out the functions of the Secretary (In-charge) of the Society till such time. Difficulties expressed that on account of stopping of the operation of the bank, the salary of the employees of the Society and the transportation charges could not be made, it is directed that the Officer-on-Management shall operate the bank account with the approval of the Zonal Joint Registrar i.e. Respondent No.4 herein till such time the State Government makes appointment as directed hereinabove. The respondent no. 4 while granting the approval shall take into consideration that this direction for operating the Bank account is in the interim till a regular appointee is made by the State Govt.”

2. Learned counsel representing the parties, apprised the Court that in compliance of the directions given by this Court in the aforesaid writ petitions, the new Board of the Society has already been formed and thus, on merits, the cause of action does not survive.

3. However, Mr. S.K. Talukdar, learned counsel representing the appellant in Writ Appeal No.98/2022 and respondent Cooperation Department in WA No.180/2022 raised an issue regarding legality and propriety of the observations made by the learned Single Bench at para No.27 of the impugned order dated 10.02.2022, which are reproduced hereinbelow:

“27. Considering the above, this Court is therefore of the opinion that the order impugned dated 08.10.2021 or the order dated 23.07.2020 or even the order dated 15.07.2020 are in excess of the jurisdiction conferred under the Act of 2007 in as much as, neither the Respondent No.2 or the Respondent Nos.3 and 4 have the authority to appoint or give even the charge of the Secretary to any person. It has to be either done by the Board or in absence of the Board by the officer appointed under Section 41(6) or the State Government who has the authority to appoint the Chief Executive/ Secretary of the Society. Consequently this Court therefore directs the State Government to appoint the Secretary/Chief Executive of the Society in question within a period of 20 (twenty) days from the date of the instant judgment.”

4. The contention of Mr. Talukdar was that the finding recorded by the learned Single Bench that the State Government has the authority to appoint the Chief Executive/Secretary of the Society, is contrary to the mandate of law, to be specific Sections 49 of the Assam Cooperative Societies Act, 2007.

He, thus, urged that a clarificatory observation may be made that as and when, any question arises regarding interpretation of the provisions of the the

Assam Cooperative Societies Act, 2007, the above observations made by learned Single Bench, will not be treated as a precedent.

5. Learned Senior counsel Mr. M.K. Choudhury representing the respondent No.7 in WA No.180/2022 and respondent No.1 in WA No.98/2022 does not dispute the contention of Mr. Talukdar.

6. We have given our thoughtful consideration to the submissions advanced at Bar and have gone through the impugned order and more particularly, the contentious observations made in para No.27 of the impugned order.

We have also perused the scheme of the Assam Cooperative Societies Act, 2007, more particularly, Sections 2(f), 41 and 49 thereof, which are reproduced herein below for the sake of ready reference:

“2(f) “bye-law” refers to the registered bye-laws of a Society for the time being in force and includes registered amendments of bye-laws of a Society;

41. Elections.— *(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of all election to a Co-operative Society shall vest in the Registrar. It shall be the duty of the Register to prepare the voters list with eligible members to arrange for holding election of Directors, delegates, or representatives to the delegate general body and representative of the society, if fallen vacant.*

(2) The election of Directors to a Board shall be conducted before the expiry of the term of the Board so as to ensure that the newly elected members of the Board assume office immediately on the expiry of the office of members of the out-going Board.

(3) Subject to the provisions of the Constitution of India and the provisions of this Act, the State Government may make rules to provide for the procedure

and guidelines for the conduct of elections to the Cooperative Societies.

(4) Where a Board fails to arrange for holding election of the Directors or delegates, as the case may be, before the expiry of the term of their office in accordance with the Act and bye-laws, all Directors shall cease to be Directors on the expiry of the period as specified in Section 42(1).

(5) The election of Directors and delegates shall take place at the General Meeting called for the purpose.

(6) Where a Board fails to arrange for holding election before the expiry of the term of the Board or delegates or where there are no Directors remaining on the Board, the Registrar shall convene a General Meeting by appointing an Officer of the Cooperative Department for Constitution of the Board within ninety days from the date of such appointment and the officer so appointed shall perform all functions of the Board during the said period of ninety days at the cost of the Society.

(7) The Directors shall hold office for the period for which they were elected and the newly elected Directors shall assume office on the date of expiry of the said period.

(8) The Directors shall not be eligible for re-election, if so specified in the bye-laws.

(9) Where there are vacancies in the office of the Directors and where there are no sufficient number of Directors to constitute a Quorum for Board meeting, the Board may co-opt maximum three eligible members for constituting quorum or arrange for holding election to fill up the vacancies for the un-expired term of the Board.

(10) Notwithstanding anything contained in this Act, no person shall be eligible to hold; at the same time, office of a President or Vice-President of the Board of more than two Co-operative Societies.]

49. Chief Executive, his powers and functions and staff- (1) (a) There shall be a Chief Executive, by whatever designation called of every cooperative society to be appointed by the Board or by the State Government. In the event of appointment of the Chief Executive by the Board, he shall be a full time

employee of the society.

- (b) The Chief Executive shall be the ex-officio member of the Board;*
- (c) Where the State Government stands guarantee for repayment of any loan secured from any financial institution the Chief Executive may be appointed by the State Government and salary and allowances payable to other terms and conditions of service including pension, gratuity and other benefits of the Chief Executive shall be prescribed by the Government;*
- (d) Notwithstanding anything contained in any law in force or bye-laws of the society, the Chief Executive appointed by the Government shall have full administrative control over the employees of the society in all matters including transfer, posting and disciplinary action. However, in case of dismissal of employees approval of the Board shall be necessary.*

(2) The Chief Executive shall be under the general superintendence, direction and control of the Board and exercise the following powers and the functions, namely:-

- (a) day-to-day management of the business of the cooperative society;*
- (b) operating the accounts of the co—operative society and be responsible for making arrangements for safe custody of cash;*
- (c) signing on the documents for and on behalf of the cooperative society;*
- (d) making arrangements for the proper maintenance of various books and records of the cooperative society and for the correct preparation, timely submission of periodical statements and returns, in accordance with the provisions of this Act, the rules and the byelaws;*
- (e) convening meetings of the general body of the cooperative society, the Board and the Executive Committee and other committees or sub-committees constituted under provision of the Act and bye-laws and maintaining proper records for such meetings;*

- (f) *making appointments to the posts in the cooperative society in accordance with the bye-laws;*
- (g) *assisting the Board in the formulation of policies, objectives and planning;*
- (h) *furnishing to the Board periodical information necessary for appraising the operations and functions of the cooperative society;*
- (i) *to sue or be sued on behalf of the cooperative society; in*
- (j) *present the draft annual report and financial statements for the approval of the Board within thirty days of closure of the cooperative year;*
- (k) *performing such other duties, and exercising such other powers, as may be specified in the bye-laws of the cooperative society;*
- (l) *in case of dispute between the Chief Executive and the Board in any matter, the decision of the Registrar shall be binding on the both.*

(3) Subject to other laws regulating employer—employee relations all employees of a cooperative society shall be appointed, regulated and removed by and be accountable to authorities within the cooperative society in accordance with the service conditions approved by the Board :

Provided that in case of cooperative societies where State Government holds more than fifty percent of Share Capital or guarantees repayment of loan secured from any financial 'institution, any upward revision of pay and allowances of staff, shall require prior approval of the State Government. The controlling authority of all staff shall be the Chief Executive of the society.

NOTE Section

49.— The Chief Executive may be the head of a society but he is under the general superintendence, direction and control of the Board. Nevertheless he is the disciplinary authority for the staff in the society.”

7. On perusal of the Rules (supra), it is clear that the State Government has got the power to appoint the Chief Executive/Secretary only in the situation as provided in Section 49 of the Assam Cooperative Societies Act, 2007. However,

for all other purposes, the authority and power to appoint the Chief Executive/Secretary is vested in the newly constituted Board of the Co-operative Society.

8. Thus, with the above observations and clarifications, the instant writ appeals, WA No.180/2022 and WA No.98/2022, are closed.

JUDGE

CHIEF JUSTICE

Comparing Assistant