

GAHC010134212023



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

Case No. : WP(C)/3595/2023

MATIAR RAHMAN
S/O LATE ABAD ALI, R/O NALIGAON, DIST-BARPETA, ASSAM, PIN-781352

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO THE
GOVERNMENT OF ASSAM, CO-OPERATION DEPARTMENT, DISPUR,
GUWAHATI-781006

2:THE REGISTRAR OF CO-OPERATIVE SOCIETIES
ASSAM
KHANAPARA
GUWAHATI-781022

3:THE DISTRICT DEPUTY REGISTRAR OF COOPERATIVE SOCIETIES
BARPETA
DIST-BARPETA
ASSAM
PIN-781301

4:THE ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES
BARPETA
DIST-BARPETA
ASSAM
PIN-

5:KAMAL GOSWAMI
IN-CHARGE SECRETARY
DESHBHAKTA SAMABAY SAMITY LIMITED
BARPETA
NALIGAON

DIST-BARPETA
ASSAM
PIN

Advocate for the Petitioner : MR. U K NAIR

Advocate for the Respondent : SC, CO OP

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 28-06-2023

Heard Mr. U.K. Nair, learned Sr. counsel assisted by Ms. D. Mahanta, learned counsel for the writ petitioner. Also heard Mr. S.K. Talukdar, learned standing counsel, Cooperation Department, Assam appearing for the respondent Nos. 1 to 4.

The writ petitioner who was functioning as the Secretary of the Deshbhakta Samabay Samity Ltd. was suspended on the basis of a resolution adopted by the Board of Directors of the Cooperative Society. However, according to the petitioner the Board did not have the jurisdiction to pass the order of suspension since it was *non est* on the date of initiation of such action.

Taking note of the submission of the learned counsel for the writ petitioner, this Court had passed the following order on 22-06-2023:-

“Heard Shri U.K. Nair, learned Senior Counsel for the petitioner. The petitioner who is the Secretary of the Deshbhakta Samabay Samity Limited in the district of Barpeta had initially approached this Court by filing a Writ Petition being WP(C) No. 3778/2022 challenging a resolution of the Board by which he was suspended. This Court vide order dated 29.06.2022 while accepting the challenge by holding that the resolution was non est in law as the Board was not existing at that time had however directed the Department to conduct an enquiry on the

allegation of misappropriation by the petitioner.

Attention of this Court has been drawn to an order dated 24.03.2023 passed by the Department where a prima facie finding was recorded that there is no direct evidence on the allegation of misappropriation.

It is the case of the petitioner that no action has been taken thereafter and in this aspect, a representation dated 11.05.2023 was also submitted.

Under those circumstances, instead of issuing notice, this Court is of the opinion that the matter perhaps can be disposed of at the motion stage itself for which instructions are required to be placed on the outcome or action taken after the said order dated 24.03.2023 of the Department.

Accordingly, Shri S.K. Talukdar, the learned Standing Counsel is granted time till Wednesday next, i.e., 28.06.2023 to obtain the instructions.

Let an extra copy of the writ petition be served upon the learned Standing Counsel during the course of the day."

Today when the matter is called up, Mr. Talukdar submits on instruction, that although no material has been found against the petitioner in the departmental enquiry so as to sustain the allegation brought against him, yet, since an FIR has been lodged based on which Sarthebari P.S. Case No. 50/2022 has been registered under Section 406/420 IPC, he be granted some time to obtain instruction in the matter.

The fact remains that this Court had earlier directed the department to conduct an enquiry against the petitioner considering the nature of allegation brought against him and the said enquiry has revealed that there is no material to substantiate the allegation. Therefore, merely because a police case has been registered based on an FIR lodged in the matter, the same, in the opinion of this Court, cannot be a justification for keeping the petitioner out of office.

This Court has also noticed that the Board of Directors of the Samabay Samity Ltd. is not a party in this case. However, under Section 38 read with Section 49L of the Assam

Cooperative Societies Act, 2007 the Registrar of Cooperative Societies has wide supervisory jurisdiction over the functioning of the cooperative societies.

Therefore, this writ petition is being disposed of with a direction upon the respondent No. 2, i.e. the Registrar of Cooperative Societies to invoke his power under Section 38 read with Section 49L of the Act of 2007 and pass appropriate order so as to redress the petitioner's grievance, in the light of the observations made hereinabove.

The above exercise be carried out and completed as expeditiously as possible, but not later than 02 weeks from the date of receipt of a certified copy of this order.

Insofar as the respondent No. 5 is concerned, since his engagement as Secretary was as a stopgap arrangement, the said aspect of the matter need not come in the way for passing appropriate order that may be deemed justified in the facts of the case.

With the above observation, this writ petition stands disposed of.

JUDGE

GS

Comparing Assistant