

GAHC010224812022



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

Case No. : WP(C)/7153/2022

MD. ABDUR REZZAK
S/O- LATE YAKUB ALI,
VILL- BAHABARI, P.O AND P.S- KHARUPETIA,
DIST- DARRANG, PIN-784116

VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY, TO THE
GOVERNMENT OF ASSAM, COOPERATION DEPARTMENT, DISPUR,
GUWAHATI-6

2:THE ADDITIONAL CHIEF SECRETARY

TO THE GOVERNMENT OF ASSAM
COOPERATION DEPARTMENT
DISPUR
GUWAHATI-6

3:THE DEPUTY SECRETARY
TO THE GOVERNMENT OF ASSAM
COOPERATION DEPARTMENT
DISPUR
GUWAHATI-6

4:THE REGISTRAR OF COOPERATIVE SOCIETIES
ASSAM
KHANAPARA
GUWAHATI-22

5:THE JOINT REGISTRAR OF COOPERATIVE SOCIETIES
ASSAM KHANAPARA
GUWHATI-22

6:THE ZONAL JOINT REGISTRAR OF COOPERATIVE SOCIETIES

TEZPUR ZONE
TEZPUR
ASSAM
PIN-784001

7:THE ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES
MANGALDAI
ASSAM
PIN--784105

8:THE DISTRICT DEPUTY REGISTRAR OF COOPERATIVE SOCIETIES
DARRANG
DIST- DARRANG
ASSAM
PIN--784145

9:THE DEPUTY COMMISSIONER
DARRANG
P.O AND DIST- DARRANG
ASSAM
PIN--78414

Advocate for the Petitioner : MR. A SARMA

Advocate for the Respondent : SC, CO OP

**BEFORE
HONOURABLE THE CHIEF JUSTICE (ACTING)
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

For the Petitioner : Mr. A. Sarma, Advocate
: Mr. K. Kalita, Advocate

For the Respondents : Mr. S. K. Talukdar, SC, Co-operative
Department
: Ms. M. Bhattacharyya, Addl. Sr. GA,
Assam

Date of Order : **25.01.2023**

ORDER

(Soumitra Saikia, J)

Heard Mr. A. Sarma and Mr. K. Kalita, learned counsels for the petitioner. Also heard Mr. S. K. Talukdar, learned standing counsel for the Co-operative Department and Ms. M. Bhattacharyya, learned Additional Senior Government Advocate for the State of Assam.

2. The petitioner before this Court was the Chairman of the elected Board of Directors of Bahabari Samabai Samity Limited a Cooperative Society registered under the Assam Cooperative Societies Act in the Darrang District. The onslaught of COVID- 19 Pandemic across the world has affected people from all walks of life. This writ petition is directed against one such peculiar situation claimed to be have been faced by the petitioner and other members of the erstwhile Board of Directors of Bahabari Samabai Samity Limited.

3. The Board of Directors of Bahabari Samabai Samity Limited was duly elected in the elections conducted under the Cooperative Society. The elected Board of Directors had also been duly given approval by the Assistant Registrar of the Cooperative Societies, Darrang. The petitioner was elected as the Chairman of the said elected Board of Directors of the Society. As per the mandate of Section 39 of the Assam Co-operative Societies Act, 2007, the Annual General Meeting of the Cooperative Society is required to be held at least once in every Cooperative Year within a period of six months of the close of the financial year to transact the business as provided under the Act. If the Annual General Meeting is not held within the prescribed period, the Board of Directors of the said Cooperative Society stands automatically dissolved for not holding the Annual General Meeting in accordance with the provisions of the Act

and bye-laws within six months from the expiry of every financial year. Further under Section 41(4) of the Act of 2007 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 specified in Section 42(1) which is five years.

4. According to the petitioner, in terms of the provisions of Section 39 of the Act of 2007, the First Annual General Meeting of the society for the year 2019-20 was required to be held within 30.09.2020. The President and Secretary of the Bahabari Samabai Samity Limited accordingly sought permission from the Deputy Commissioner, Darrang, Mangaldoi to hold the Annual General Meeting. However, because of the COVID-19 restrictions, due permission/approval from the district administration was not accorded to petitioner to hold the Annual General Meeting of the Cooperative Society. Consequently, a resolution was adopted in the General Meeting on 12.07.2021 to request the Registrar of the Cooperative Society, Assam to grant permission to hold the Annual General Meeting. However, no such permission was accorded due to restrictions imposed due to COVID-19 Pandemic.

5. In the meantime, a new Section i.e. Section 130A was inserted in the Assam Co-operative Societies Act, 2007 by the State Legislature. By virtue of the said newly inserted Section 130A, the State Government in exceptional circumstances like the pandemic may by general or special order exempt any Registered Cooperative Society or a class of Registered Cooperative Societies from the operation of provisions of Section 39 and Section 41(2) of the Act, for such period not exceeding six months at a time. The said period can be further extended by another six months, if the situation so requires. Section 130A is

extracted below:-

“130A. *Exemption of certain provisions by general or special order:* *The State Government, in exceptional circumstances like pandemic may by general or special order, exempt any registered cooperative society or class of registered cooperative societies from the operation of the provisions of Section 39 and Section 41(2) of this Act, for such a period not exceeding six months at a time which shall not further be extended for more than another six months, as may be specified in the said order or may direct that such provisions shall apply to such Society with such modifications and for such a period either from a prospective or retrospective date as may be specified in the order as per the need of the situation.”*

6. It is the case of the petitioner that although the State Government had relaxed COVID-19 guidelines in the State of Assam but in spite of the petitioner Societies’ approach to the authorities for according permission to hold Annual General Meeting for the year 2019-20 and 2020-2021, the respondent authorities refused to permit the society to hold their Annual General Meeting for reasons best known to them.

7. Thereafter, vide order dated 01.04.2022 issued by the Zonal Joint Registrar of the Cooperative Societies, Tezpur Zone, Tezpur, the Board of Directors of which the petitioner was the Chairman of Bahabari Samabai Samity Limited was dissolved and one Junior Inspector/Auditor of Cooperative Societies was appointed as a one man Committee of the Cooperative Society to manage the affairs of the Society and also to hold Annual General Meeting election within 90 days in terms of Section 41(6) of the Act of 2007. However, no Annual General

Meeting of the Society has yet been held so far.

8. It is the claim of the petitioner that some of the other similarly situated Cooperative Societies in other districts were granted the benefit of extension of time for holding Annual General Meeting as prescribed under Section 130A of the Cooperative Societies Act. However, the Bahabari Samabai Samity Limited of which the petitioner was the Chairman of the Board of Directors, was not granted exemption as sought for. Being aggrieved, the petitioner approached this Court by filing WP(C) No. 2902/2022. The said writ petition was disposed of vide order dated 27.05.2022 directing the petitioners to submit a representation before the Additional Chief Secretary, Government of Assam, Cooperation Department within a period of 7 days from the date of the order and in the event such a representation is filed, the Additional Chief Secretary, Government of Assam, Cooperation Department shall take into consideration the reasons and explanations furnished by the society of the petitioner for being unable to hold the Annual General Meeting and the election during the stipulated/prescribed period under the Act of 2007 and thereafter pass appropriate orders in terms of the provisions of the Act of 2007 read with Section 130A, Section 39 and Section 41(2) of the Act of 2007. The said order was directed to be passed within a period of 2(two) weeks from the date of receipt of such order.

9. Pursuant to the directions of this Court in WP(C) No. 2902/2022, the Board of Directors of the Bahabari Samabai Samity Limited submitted their representations on 06.06.2022 praying for allowing the elected Board of Directors of the Society to hold the Annual General Meeting for the year 2019-20 and 2020-21 within 3(three) months and further not to give effect to the order dated 01.04.2022 issued by the Zonal Joint Registrar of the Cooperative Societies, Tezpur Zone, Tezpur dissolving the Board of Directors of the Bahabari

Samabai Samity Limited of which the petitioner was the Chairman. The Deputy Secretary to the Government of Assam, Cooperation Department had also called for reports from the Assistant Registrar, Cooperative Society, Mangaldoi and the Joint Registrar of the Society. A hearing was also conducted on 01.06.2022. The representation dated 06.06.2022 filed by the petitioner on behalf of the Cooperative Society came to be disposed of vide order dated 30.06.2022 by the under Secretary to the Government of Assam, Cooperation Department. By the said order, the prayer for extension of the Cooperative Society was rejected and the Society was given liberty to submit their grievances before the Registrar of the Cooperative Society as per provisions of Section 29(4). The Registrar of Cooperative Societies, Assam was directed to take necessary action as per the provisions of the Act. It was also reflected that the said representation was disposed of as per the order of Additional Chief Secretary to the Government of Assam, Cooperation Department.

10. Being aggrieved by the impugned order dated 30.06.2022 and by non-consideration of their prayers for grant of extension beyond the stipulated period prescribed under Section 130A, which the petitioner had prayed for, due to the peculiar and unprecedented situation of COVID-19 Pandemic, the present writ petition has been filed whereby the petitioner has challenged the vires of Section 130A of the Assam Cooperative Societies Act, 2007 (as amended) and for a further direction for setting aside the impugned orders 01.04.2022 issued by the Zonal Joint Registrar of the Cooperative Societies, Tezpur Zone as well as the order dated 30.06.2022 and passed by the Deputy Secretary, Government of Assam, Cooperation Department and also for a further direction to the respondent authorities to enact fresh provision in the Assam Cooperative Societies Act, 2007 or to incorporate a provision for providing the exemption for

two years period. The prayers made in this writ petition by the petitioner are extracted below:-

“In the premises aforesaid, it is humbly prayed that Your Lordship’s would be pleased to call for the records and upon hearing the parties upon the cause and or causes and on perusal of the records be pleased to grant the petitioners the following relief/reliefs:-

(A) A Writ in the nature of Certiorari for setting aside and quashing the Section 130A of the Assam Cooperative Societies (Amendment) Act, 2021;

(B) A Writ in the nature of Certiorari for setting aside and quashing the impugned order dated 01.04.2022 issued by the Zonal Joint Registrar of Cooperative Societies, Tezpur Zone;

(C) A Writ in the nature Certiorari for setting aside and quashing the impugned order dated 13.06.2022 passed by the Deputy Secretary to the Govt. of Assam, Co-operation Department;

(D) A Writ in the nature of Mandamus should not be issued directing the Respondent authorities to enact a fresh provision in the Assam Cooperative Societies Act, 2007 for providing the provision of exemption for 2 years period;

(E) A writ of Mandamus should not be issued directing the Respondents to allow the Petitioner to hold their Annual General Meeting for the year 2019-2020 and 2021-22;

(F) A Writ of Mandamus should not be issued directing the Respondents to allow the Board of Directors of the Petitioner’s Society to hold their respective Annual General Meeting within such exempted period i.e., within 30.09.2022;

(G) any such other or further order should not be issued as may be deemed fit and proper under the facts and circumstances of the case.

-AND-

Upon perusal of the records and hearing the parties the Rule may be

made absolute.

-AND-

Pending disposal of the Rule, Your Lordships may be pleased to:

- i. Suspend the operation of the impugned Order under No.ZTCG.2/2003-2020/89 dated 01.04.2022 issued by the Zonal Joint Registrar of Cooperative Societies, Tezpur Zone, Tezpur;*
- ii. Allow the Board of Directors of the Petitioner's Society to continue in the capacity of existing Board of Directors in office with full force;*
- iii. Allow the Petitioners to hold their respective Annual General Meeting within 30.11.2022.*
- iv. Restrain the one-man committee from conducting a fresh election of the Petitioner's Society."*

11. The learned counsel for the petitioner strongly urged that Section 130A was inserted only to give benefit to the selected Cooperative Societies as have been done by the Government and to deny the same benefit to other similarly situated Cooperative Societies like the Bahabari Samabai Samity Limited of which the petitioner was the Chairman of the elected Board of Directors. The learned counsel for the petitioner strenuously urged that such colourable exercise of power and grant of benefit on a chosen few cannot be permitted under any statute enacted by the State, more particularly, in respect of a beneficial legislation like the Cooperative Societies Act, 2007. The learned counsel for the petitioner submits that the same is violative of Articles 14 and 19 of the Constitution of India and consequently the same cannot be permitted to be operated and it deserves to be struck down as being unconstitutional and ultra vires the Constitution of India. The petitioner has also made an alternative prayer to direct the State to extend the exemption for 2(two) years to enable the benefit to be availed of by the society for the entire COVID-19 Pandemic period.

12. The learned standing counsel for the Cooperation Department, however, disputes the contention of the learned counsel for the petitioner and submits that the grievance of the petitioner really is in respect of the Bar of election as a Member of the Board of Directors of a Cooperative Society, as prescribed under Section 40(4)(a) of the Cooperative Societies Act. The learned counsel for the respondent department submits that while it is not disputed that because of COVID-19 Pandemic and the restrictions imposed by the State and the District Administration, the procedure prescribed under the Act of 2007 to hold Annual General Meeting within the time framed may not have been possible for some Cooperative Societies, it is with this avowed policy and to give fillip to such Cooperative Societies who may be facing such hardships due to COVID- 19 Pandemic that the legislature had inserted a new Section, namely, Section 130A. The learned counsel for the respondent disputes the contentions of the learned counsel for the petitioner and submits that the newly inserted Section of 130A is not in conflict with any of the constitutional provisions and, therefore, the challenge to the vires of Section 130A is totally uncalled for. The learned counsel for the respondent submits that the question of disqualification prescribed under Section 40(4)(a) of the Act of 2007, which a Member of the Board of Director may entail in the event of the failure of the Board of Directors of a Cooperative Society to hold Annual General Meeting as prescribed under Section 39 or Special General Meeting under Section 33(3) or Board of Directors meeting under Section 43(3) had already been answered by a Co-ordinate Bench of this Court. The learned counsel for the department refers to the Judgment rendered in "Jahirul Islam Lasker" (W.A. No. 31/2019.)

13. The learned counsels for the parties have been heard. Pleadings on record have been duly perused. The relevant provisions of the Assam Cooperative

Societies Act, 2007 have also carefully perused. Judgments referred have also been carefully perused.

14. From the pleadings, we find that the Board of Directors had already been dissolved vide order dated 01.04.2022 and an Officer of the Cooperation Department has already been appointed by the department to manage the affairs of the Cooperative Societies and to conduct the elections within a period of 90 days. In the Judgment and Order dated 17.03.2022 passed in W.A. No. 31/2019 which is referred by the learned counsel for the Department, we find that a Co-ordinate Bench of this Court had interpreted the embargo under Section 40(4)(a). The Co-ordinate Bench of this Court after examining the provisions of the Act and referring to the definition provided in the measure like the Major Law Lexicon, 4th Edition 2010, as no specific definition of the term conduct/conducting of a meeting, prescribed under the Act of 2007 held that this embargo is essentially for not conducting or wrongly conducting an Annual General Meeting or Special Meeting or Board Meetings. This Court held that in the event of situations beyond the control of the Board of Directors and for which the prescribed meeting could not be conducted, the embargo prescribed under Section 40(4)(a) of the Cooperative Societies Act will not be applicable. Such embargo prescribed under Section 40(4)(a) will be applicable in those cases where any such meeting including Annual General Meeting was convened but was not conducted or wrongly conducted. It is submitted by the learned counsel for the department that no further appeal has been preferred by contesting parties against the Judgment and Order dated 17.03.2022 passed in W.A No. 31/2019. It is further submitted by the learned counsel for the respondent department that in respect of some Cooperative Societies where the grounds and reasons were found to be germane and genuine, appropriate

orders have been passed by the department.

15. Upon such submissions made by the learned counsel for the department, the learned counsel for the petitioner submits that if liberty is granted to the petitioner to approach the department/Government referring to the various orders and judgments passed by this Court in this respect, he would not like to press the challenge to the vires of Section 130A of the Assam Cooperative Societies Act, 2007.

16. In view of such submissions at the Bar, we deem it appropriate to dispose of the writ petition permitting the petitioner to approach the respondent authorities ventilating their claims and grievances afresh. The respondent authorities upon receipt of such claims by the petitioner shall upon giving an opportunity of being heard and pass detailed and appropriate orders keeping in view the orders passed by this Court in other similarly situated writ petitions as well as the Judgment and Order dated 17.03.2022 passed in W.A. No. 31/2019.

17. In terms of the above, the writ petition stands disposed of. The question of law in respect of the challenge to the vires of Section 130A of Assam Cooperative Societies Act, 2007 is kept open.

18. The writ petition is accordingly disposed of in terms of the above. No order as to cost.

JUDGE

CHIEF JUSTICE (ACTING)

Comparing Assistant