

GAHC010224672013



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

Case No. : WP(C)/4753/2013

GENERAL SECRETARY MANTRI
ASSAM RASTRABHASA PRASAR SAMITY, RUPNAGAR, GHY-32, DIST-
KAMRUP METRO

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY ITS SECRETARY TO THE GOVT. OF ASSAM, FINANCE
AND TAXATION DEPARTMENT, DISPUR, GHY-6

2:REGISTRAR
FIRMS AND SOCIETIES
ASSAM
HOUSFED COMPLEX
GHY-6

3:ASSAM RASTRABHASA PRASAR SAMITY KARMI SABHA
HOUSE NO.5
BYE LANE NO.2
NABAGRAHA ROAD
CHANIKUTHI HILL SIDE
GHY-3
REPRESENTED BY ITS GENERAL SECRETARY

4:SUBODH SARMA
MEMBER
EX-OFFICIO PRESIDENT OF ASSAM RASTRABHASA PRASAR SAMITY
KARMI SABHA
BYE LANE NO.2

NAVAGIRI ROAD
CHENIKUTHI HILL SIDE
GHY-3
DIST- KAMRUP

5:DISRECTOR OF AUDIT
GOVT. OF ASSAM
GHY-

Advocate for the Petitioner : MR.L P SHARMA

Advocate for the Respondent : SC, FINANCE

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

JUDGMENT

Date : 18.04.2024

None appears on call for the petitioner.

2. We take note of the submissions recorded in the order dated 04.01.2024 that the counsel holding the brief had expired. Although on that date, the matter was adjourned to enable the petitioner to engage a new set of counsel, none appears on call for the petitioner.

3. We have heard Mr. R. Borpujari, learned standing counsel for the Finance Department, respondent nos.1 and 5; and Ms. U. Das, learned Govt. Advocate appearing for respondent nos.2. None appears on call for the respondent nos.3 and 4.

4. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the order dated 08.07.2013, passed by the Registrar of Firms and Societies, Assam, thereby cancelling the renewal of

registration of the petitioner society and transmission of the order to the learned Chief Judicial Magistrate, Kamrup (M), Guwahati for prosecuting the petitioner society.

5. The case of the petitioner is that the petitioner society is a charitable educational institution, registered under the Societies Registration Act. It has running its affairs without any financial assistance or grant from either the Central Govt. or from State Govt. It is projected that by order dated 26.12.2012, passed in WP(C) 45/2010, which was filed by respondent nos.3 and 4, this Court had permitted the writ petitions in the said WP(C) 45/2010 to submit a representation along with supporting documents to the Registrar of Firms and Societies, Assam and the said authority was directed to pass an appropriate order in accordance with law. In this writ petition, it is projected that the Registrar of Firms and Societies, Assam, without granting any opportunity to the present petitioner to participate in the proceedings, passed the impugned order dated 08.07.2013, cancelling the renewal of registration of the petitioner and the matter was forwarded to the Court of learned Chief Judicial Magistrate, Kamrup (M), Guwahati for taking necessary action as per Sections 4(B)(2) and 5(A)(3) of the Societies Registration Act.

6. The learned Govt. Advocate has submitted that as per the impugned order dated 08.07.2013, opportunity of hearing was granted to the petitioners, thereafter, final order was passed. It is further submitted that as per the amended provision of Societies Registration Act, 1860, every society is required to apply for renewal as the validity of the certificate is for 3 (three) years and that every registered society is required to submit documents relating to

changes in the managing body and to maintain books of account to have it audited and to forward the balance-sheet and auditor's report to the Registrar of Firms and Societies, Assam.

7. On a perusal of the order dated 08.07.2013, it is evident that notice of hearing was served on the petitioner and that both sides were heard on 16.11.2012 and the statement of the concerned persons from the petitioner society was also recorded.

8. It would be relevant to quote the provisions of Section 4A and 4B of the Societies Registration Act, which were brought in vide Assam Act 11 of 1952, w.e.f. 15.10.1952; Act 7 of 1957, w.e.f. 17.07.1957; and Assam Act 13 of 1967, w.e.f. 18.08.1967:

“Sections 4A and 4B

Assam.-(i) After section 4, insert the following sections, namely:-

"4A. Changes in managing body and rules to be filed.- (1) Together with the list there shall be sent to the Registrar of Societies a statement mentioned in section 4, showing changes during the year to which the list relates in the personnel of the governors, council, directors, committee or other governing body to whom the management of the affairs of the Society is entrusted and also a copy of the rules of the society corrected up-to-date and certified to be a correct copy by not less than three of the members of the governing body.

(2) A copy of every alteration made in the rules of the society, certified to be a correct copy by not less than three members of the governing body, shall be sent to the Registrar of Societies within fifteen days of the making of such alteration."

[Vide Assam Act 11 of 1952, sec. 2 (w.e.f. 15-10-1952); Act 7 of 1957, sec. 2(ii) (w.e.f. 17-7-1957).]

(ii) After section 4A, insert the following section, namely:-

"4B. Balance-sheet and auditor's report to be forwarded to Registrar-(1) Within thirty days after the holding of every annual general meeting there shall be filed

with the Registrar of Societies a copy each of the balance-sheet and auditor's report certified by the auditor under sub-section (2) of section 5A.

(2) If the President, Secretary or any other person authorised in this behalf by a resolution of the governing body of the society fails to comply with the provisions of sub-section (1) he shall be punishable with fine which may extend to five hundred rupees."

[Vide Assam Act 13 of 1967, sec. 3 (w.e.f. 18-8-1967).]"

9. It also appears that by virtue of Societies Registration (Assam Amendment) Act, 2019, new sections 3B, 3C, and 3D have been inserted in the Societies Registration Act, 1860. The said provisions are quoted below:

"3B. Validity of Registration.- *Subject to compliance with the provisions of section 4, a certificate of registration issued under section 3 shall remain valid for a period of three years from the date of issue, but shall be subject to renewal for further periods of three years at a time in accordance with the provisions of section 3C:*

Provided that no such registration shall be renewed if the provisions of section 4 has not been complied with in full.

3C. Renewal of registration.- *(1) A society registered under section 3 shall, on application made to the Registrar within the validity period of registration or within one month of the expiration of the validity period of registration referred to in section 3B and on payment of the fee as fixed under section 3, and on filing the required documents as specified in the website <https://rfsfinance.assam.gov.in>, be entitled to have its certificate of registration renewed for three years at a time, subject to compliance of section 4.*

(2) The Register may refuse to renew the registration of a society,-

(i) if such society files the application for renewal of registration beyond one month of the expiration of the validity period of registration as referred to in section 3B:

Provided that the Registrar may condone the delay in filing application for renewal by a society upto one year of the expiration of validity period of registration, if he is satisfied on an application for condonation of delay filed by the society and on payment by the Society an additional fee equal to the amount of fee fixed for renewal of registration as under sub-section (1) of this section that the society was prevented by sufficient cause in filing the

application within the validity period of the registration:

Provided further that in case of rejection of the application for condonation of delay, the Registrar shall give the society concerned a reasonable opportunity of being heard and pass a speaking order;

(ii) if after giving an opportunity of being heard, he is satisfied that any of the grounds as mentioned in sections 3A and 4 exists for refusal of renewal of registration.

(3) There shall be paid to the Registrar with every application for renewal of the certificate of registration.-

(a) a fee equal to the registration fee payable under section 3 if such application is filed within the period specified in section 3C(1), which shall be accounted for to the State Government of Assam;

(b) an additional fee for delayed filing of application for renewal under the first proviso to clause (1) of sub-section (2) of this section, which shall be accounted for to the State Government of Assam.

(4) Every application for renewal of the certificate shall be accompanied by a list Of the names, addresses and occupations of the Governors, councils, directors, committees and other governing body then entrusted with the management of the affairs of the society, elected after the registration of the society or after the renewal of certificate sought to be renewed, unless dispensed with by the' Registrar for sufficient cause to be recorded in writing.

(5) In the event of refusal of renewal of registration of a society, by the Registrar under sub-section (2), the aggrieved society may prefer an appeal before the Government of Assam, in the Finance (Establishment-B) Department whose decision thereon shall be final.

3D. Effect of failure to Renew Registration.- *A Society which fails to get its certificate of Registration renewed in accordance with section 3C, its Registration lapses, and it shall cease to be a registered society with effect from the actual date of expiration of its original registration or renewal thereof and its name and other particulars shall be struck off from the Register in which it was earlier registered or renewed:*

Provided that no such registration shall be struck off before the expiry of twelve months from the date of expiry of the validity of the previous registration whether original or renewed.

Explanation:- For the purpose of calculating the twelve months period, the month in which the previous registration whether original or renewal, had expired shall be taken as one full month irrespective of the day of the month of such expiration of the registration or renewal."

10. Therefore, the State Govt. has prescribed the period of validity of registration and has incorporated provision for renewal of registration and the effect of failure to renew registration is also provided.

11. Therefore, if the requirement of law has not been complied with, the Registrar of Firms and Societies, Assam has been vested with power to pass appropriate orders as provided under the Societies Registration Act, 1860 as amended vide Assam Amendment Acts.

12. At this stage, the learned standing counsel for the Finance Department has submitted that by the impugned order dated 08.07.2013, the registration of the petitioner no.1 society has already been given effect to. It is further submitted that the registration of the firm was cancelled because of non-compliance of the various requirement of law.

13. Having taken note of the submissions made the learned standing counsel for the Finance Department as well as the learned Govt. Advocate, who have both supported the impugned order, this Court taking note of the various requirements of the Societies Registration Act, 1860, as amended from time to time by the Assam Amendment Acts, the Court is inclined to provide that notwithstanding the order dated 08.07.2013, passed by the Registrar of Firms and Societies, Assam, the said order shall not be a bar for the petitioner society to apply for a fresh registration by filing a fresh application supported with requisite documents and also show compliance of the various requirements as

provided under Sections 3B, 3C, 3D, 4A, 4B, and 5A of the Societies Registration Act, 1860, as amended vide Assam Amendment Acts from time to time. It is further provided that if the petitioner society applies for a fresh registration, the Registrar of Firms and Societies, Assam shall pass appropriate orders thereon in accordance with law.

14. With the aforesaid observation, this writ petition stands disposed of.

15. The interim order dated 28.03.2013, by which the operation of the impugned order dated 08.07.2013 was suspended stands vacated.

JUDGE

Comparing Assistant