

GAHC010099032020



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

**Case No. : WP(C) 2910/2020**

1:UTTAR BAHJANI AKHANDA BAHUMUKHI SAMABAY SAMITI LTD  
REP. BY ITS SECRETARY HAVING ITS REGD. OFFICE AT VILL. JANIGOG,  
P.O. JANIGOG, DIST. NALBARI, ASSAM, PIN-781334.

VERSUS

1:THE STATE OF ASSAM AND 4 ORS  
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, CO-  
OPERATION DEPTT., DISPUR, GUWAHATI-781006.

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

3:ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES  
NALBARI  
P.O. NALBARI  
DIST. NALBARI  
ASSAM  
PIN-782335.

4:DEPUTY COMMISSIONER  
NALBARI DISTRICT  
P.O. NALBARI  
DIST. NALBARI  
ASSAM  
PIN-782335.

5:JITEN GOSWAMI  
JUNIOR INSPECTOR  
CO-OPERATIVE SOCIETIES OFFICE OF THE ASSTT. REGISTRAR OF CO-

OPERATIVE SOCIETIES  
NALBARI  
P.O. NALBARI  
DIST. NALBARI  
ASSAM  
PIN-781335

**Advocate for the Petitioner** : MR. K M HALOI

**Advocate for the Respondent** : GA, ASSAM

**BEFORE**  
**HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

**JUDGMENT & ORDER (ORAL)**

**Date : 30-07-2020**

Heard Mr. K.M. Haloi, learned counsel for the petitioner. Also heard Mr. S.K. Talukdar, learned counsel for the Cooperation Department as well as Ms. M.B. Bora, for the Deputy Commissioner, Nalbari.

2. The respondent no. 5 being an official of the Cooperation Department, is accepted to be represented by Mr. S.K. Talukdar.

3. The Board of Directors of the Uttar Bahjani Akhanda Bahumukhi Sambay Samiti Limited was elected in the Annual General Meeting of the society held on 14.07.2015 and the committee was formed on 05.08.2015.

4. The Section 31 of the Assam Cooperative Society Act, 2007 (in short Act of 2007) provides the term of the Board of Directors to be 5 cooperative years and Section 39 of the Act of 2007 provides that a general meeting to be termed as annual general meeting (in short AGM) of a registered cooperative society shall be held at least once in every cooperative year within a period of 6 (six) months of the previous financial year to transact the business as provided in the Act. It further provides that the Board of Directors shall stand dissolved for not holding the AGM in accordance to the provision of the Act, which has to be at least within 6 months from the expiry of every financial year. Section 41 of the Act of 2007, provides that the superintendence, directions and control of the preparation of electoral rolls, and the conduct of the election to a cooperative society shall vest in the Registrar and it shall be the duty of the Registrar to prepare the voters list with eligible members for

holding the election. The section 41(2) of the 2007 Act provides that 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 Board assume office immediately on the expiry of office of the outgoing Board.

5. As required under the law, the Board of Management of the Bahjani Akhanda Bahumukhi Sambay Samiti Limited in its meeting held on 16.05.2020 had passed a resolution that AGM and the election of the new Board of Directors shall be held on 25.06.2020. The said resolution of the Board of Management of the society when placed before the District Administration, the permission to hold the election, was refused.

6. Be that as it may, the society held its AGM on 07.07.2020 but by the communication dated 14.07.2020 of the Assistant Registrar of the Cooperative Societies, Nalbari, the election of the new Board of Directors in the AGM held on 07.07.2020 was not approved. The communication dated 14.07.2020 firstly provides that the Board of Directors had not received the permission from the District Administration and secondly between 25.06.2020 and 07.07.2020 there was only a gap of 13(thirteen) days whereas under the Act of 2007 and a notice period of 15(fifteen) days is provided for serving the notice to the shareholders before the AGM.

7. In the circumstance, the AGM held on 07.07.2020 was declared to be a null and void. As a consequence thereof, it was also held that after 14.07.2020 as 5 (five) years had expired, in the circumstance the Board of Directors have no locus-standi to continue.

8. We have read the provisions of Section 31 which provides that term of the Board of Directors shall be 5 (five) cooperative years and that under Section 39 if the AGM is not held at least once in every cooperative year the Board shall stand automatically dissolved. We have also taken note of the provisions of Section 41(4) of the Act of 2007 which provides that where a Board fails to arrange for holding election of the Board of Directors or delegates, as the case may be, before expiry of the term of their office in accordance with the Act and bye-laws, the Directors shall cease to be Directors on the expiry of the period of 5(five) years.

9. Further Section 41(6) provides that where Board fails to arrange for holding election before the expiry of term of the Board of Directors 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 Cooperation Department for constitution of the Board and within 90(ninety) days from the date of such appointment the officer so appointed shall perform all the functions of the Board during the said period of 90(ninety) days at the cost of the society.

10. Provisions of Sections 41(4) and 41(6) are extracted as below:

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

*(6) Where a Board fails to arrange for holding election before the expiry of 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 Co-operative 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.”*

11. Apparently, in the communication dated 14.07.2020 the Assistant Registrar of cooperative Society had invoked the powers under Sections 41(4) and 41(6) to declare that the Board Directors has no locus standi after the expiry of 5(five) years of its terms and to appoint one of the officers of the Cooperation Department to be in-charge of the cooperative society.

12. We have examined the matter in detail and also heard the learned counsel for the petitioner as well as Mr. S.K. Talukdar for the Cooperation Department.

13. Apparently, the provisions of Section 41(4) and 41(6) are applicable when a Board of Directors had failed to arrange for holding of election before expiry of the term of their office in accordance with the Act and the bye-laws. The condition precedent to invoke the powers under Sections 41(4) and 41(6) would be that the existing Board of Directors must have failed to arrange the holding of the election before expiry of the term. As we have already taken note of that the Board of Management of the existing Board of Directors in their meeting dated 16.05.2020 had taken the resolution that the AGM to elect the new Board of Directors would be held on 25.06.2020. Therefore, it cannot be said that the existing Board of Directors had failed to arrange for holding of the election of the Board of Directors. It is another reason that the election that had not taken place as because the District Administration had not given the permission. The act of the District Administration in not giving the permission cannot be construed that the Board of Directors had failed to hold the meeting, in as much as all the endeavour that are required to be made under the Act and bye-laws to hold the meeting had been performed by them in taking the resolution dated 16.05.2020 to hold the AGM on 25.06.2020.

14. In view of the above, a prima facie view can be formed that it is not the appropriate matter before the authorities in the Cooperation department to invoke the provisions of Sections 41(4) and 41(6) of the Act 2007. However, it is also a statutory provision that the term of the existing Board of

Directors would be for 5 (five) years.

15. Considering the matter in its entirety and particularly the conduct of the parties where the Board of Directors of the society concerned had done the required arrangements from their side to hold the meeting before the expiry of the term, but it is the authorities in the respondents who had not responded in the appropriate manner facilitating the holding of the election. We are of the view that the ends of justice would be served if the Assistant Registrar of cooperative Society makes the necessary arrangements for the Board of Directors of the Bahjani Akhanda Bahumukhi Sambay Samiti Limited to hold their AGM on a given fixed date to be notified and informed to all and allow the Board of Directors to conduct the AGM for election of the new Board of Directors. In fixing the date, the Assistant Registrar shall take note of all the requirements of the law for holding such AGM.

16. Till such AGM is held by the Assistant Registrar, the Cooperative Society, the provision in the communication dated 14.07.2020 that the present Board of Directors has no locus standi shall remain suspended.

17. The AGM so fixed by the Assistant Registrar, Cooperative Society, Nalbari shall be held under the existing Board of Directors which was formed on 14.07.2015 in the same manner in which the AGM would have been held on 25.06.2020 is the date that was fixed by the Board of Directors to hold the meeting.

18. The writ petition stands disposed of in the above terms.

**JUDGE**

**Comparing Assistant**