



## **IN THE GAUHATI HIGH COURT**

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

### **1. WRIT APPEAL NO.111 OF 2019**

1. Assam Flying Club, a Society registered under the Societies Registration Act, 1860, having its registered Office at Lokapriya Gopinath Bordoloi International Airport, Guwahati – 781015, Kamrup (Metro), Assam.

2. Mr. Bikrom Singha Lahkar, Honorary Secretary, Assam Flying Club, Lokapriya Gopinath Bordoloi International Airport, Guwahati – 781015, Kamrup (Metro), Assam.

**.....Appellants**

**-Versus-**

1. The State of Assam through the Secretary, Co-operation Department, Government of Assam, Dispur, Guwahati – 781006.

2. The Registrar, Co-operative Societies, Assam, Dispur, Guwahati – 781006.

3. The Joint Registrar, Co-operative Societies, Assam, Dispur, Guwahati – 781006.

**.....Respondents**

- For the Appellants : Mr. Bikrom Singha Lahkar,  
the appellant No.2 in person.
- For the Respondents : Mr. D. Saikia, Senior Standing  
Counsel, Government of Assam.

**2. WRIT APPEAL NO.149 OF 2019**

1. The State of Assam, represented by the Secretary to the Government of Assam, Co-operation Department, Assam, Dispur, Guwahati – 781006.
2. The Registrar of Co-operative Societies, Assam, Khanapara, Guwahati – 781022.
3. The Joint Registrar of Co-operative Societies, Assam, Khanapara, Guwahati – 781022.

**.....Appellants**

**-Versus-**

1. The Assam Flying Club, a Society registered under the Societies Registration Act, 1860, having its registered Office at Lokapriya Gopinath Bordoloi International Airport, Guwahati – 781015, Kamrup (Metro), Assam, represented by its Honorary Secretary, Mr. B.S. Lahkar.
2. Mr. Bikrom Singha Lahkar, Honorary Secretary, Assam Flying Club, Lokapriya Gopinath Bordoloi International Airport, Guwahati - 781015, Kamrup (Metro), Assam.

**.....Respondents**

- For the Appellants : Mr. D. Saikia, Senior Standing  
Counsel, Government of Assam.
- For the Respondents : Mr. Bikrom Singha Lahkar,  
respondent No.2 in person.

**- B E F O R E -**  
**HON'BLE THE CHIEF JUSTICE MR. SUDHANSHU DHULIA**  
**HON'BLE MR. JUSTICE MANASH RANJAN PATHAK**

Date of hearing and Judgment & Order : **23<sup>rd</sup> March, 2021.**

**JUDGMENT & ORDER (ORAL)**

**(Sudhanshu Dhulia, CJ)**

Both these writ appeals arise out of the order dated 12.04.2019 passed by the learned Single Judge in WP(C) No.4749/2018. The writ petitioner (Shri Bikrom Singha Lahkar) as well as the respondent (State of Assam) have preferred these appeals against the aforesaid order of the learned Single Judge.

**2.** Although the subject under challenge in both these two writ appeals is the same but for the sake of convenience and clarity, the facts which we would be referring here will pertain to Writ Appeal No.149/2019, with a reference to other writ appeal, i.e. Writ Appeal No.111/2019, as and when it is required.

**3.** We have heard Mr. D. Saikia, learned senior counsel appearing for the State and Shri Bikrom Singha Lahkar, appellant in person for himself and for the society he represents, at length.

**4.** This case has a long and chequered history. At the core of the issue is a Flying Club here in Guwahati, Assam, variously referred as "*Assam Flying Club Limited*" or "*Assam Flying Club*". The entire dispute is related to the control of this Flying Club.

What is the nature of this Flying Club, and who should control the Club are the subject matters of dispute and the contesting parties are the State on one hand and Shri Bikrom Singha Lahkar on the other.

5. The undisputed facts here are that this Flying Club was established here in Guwahati in the year 1957-58, with the initiative of some of the prominent residents of Guwahati and Shillong<sup>1</sup>. The Flying Club had the support of the Government, including the then Chief Minister and the Sports Minister of the Government of Assam. It is also very clear that when the Flying Club was started, all necessary approvals, such as the mandatory approval of the Director General of Civil Aviation (DGCA) were taken. It is also necessary to state at this juncture that the exact nomenclature of the Flying Club was "*Assam Flying Club Limited*" and its purpose was not merely recreation and flying for fun or hobby, but the Flying Club was primarily established for the purposes of training Pilots.

6. From its inception till about 1992-93, the Flying Club was running smoothly. More than one hundred certified and trained Pilots have passed out from this Flying Club in the past, some of whom subsequently became commercial Pilots as well as, as this Court has been informed. The first trained Assamese lady Pilot Smt. Dhira Hazarika (Chaliha), was from this Flying Club.

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<sup>1</sup> At the relevant point of time Meghalaya was part of the State of Assam, and the erstwhile State of Assam had Shillong as its capital.

**7.** The records then show towards the early 1990s there was a decline in the activities of the Flying Club. Efforts were then made by the Government, to revive the Club, to which we would come in a while. But meanwhile the land measuring 6 "Bighas" 12 "Lechas" was given to the Flying Club, which was recorded in the land revenue records in the name of "Assam Flying Club - Secretary Joy Kanta Baruah". The specifications of the land are PP No.336, Dag Nos.1038, 1039 and 475, which is in Village - Borjhar, Mouza - Dakhin Rani, Assam, which is adjacent to Lokpriya Gopinath Bordoloi International Airport (hereinafter referred to as "LGBI Airport"). Apart from this land, which is in the name of the Flying Club, there is also a Hangar inside the LGBI Airport. From all available records, it is evident that the Hangar was being used by the Flying Club, although now it has also come on record that there are orders of the Airport Authority for eviction, against the Flying Club.

**8.** In the Hangar, two aircrafts are parked, out of which one is Cessna 152 Ai VT and the other is Puspak MK-1 VT/DMJ. Both these aircrafts, we are told are in disuse as of now and not fit for flying.

**9.** The case of the Government on this issue has been that the Flying Club was being run as a Co-operative Society, which was registered on 01.05.1957 and had its Registration No.R.1/57-58 of 1958 and the registration was done under the Assam Co-operative Societies Act, 1949 (the said Act has now been repealed

by the Assam Co-operative Societies Act, 2007, which is presently in force). The Co-operative Society had a Memorandum of Association, which is on record.

**10.** The Society was being governed under the laws governing a Co-operative Society. The Society had its bye-laws and a Management Committee, although for many years it did not hold its Annual General Meeting (AGM). It is also true that for many years elections were also not held in the Co-operative Society, as is the requirement under the law.

**11.** Although there is a Memorandum of Association of this Co-operative Society and a registration number, which has been shown before this Court, what has not been shown to this Court, and what has also been noticed by the learned Single Judge in his order dated 12.04.2019 passed in WP(C) No.4749/2018, is that the State could not produce before this Court the Registration Certificate or any other verifiable document to prove that the Flying Club was ever registered as a Co-operative Society. But how relevant this question would be for our ultimate decision we will discuss at the relevant point of time.

**12.** Though it is true that since its inception, the Flying Club had been imparting flying training and had also been issuing Pilot licences on completion of such training, it is again an undisputed fact that from 1991-92 onwards, there was no proper auditing of the Flying Club and there was no management of the affairs of the

Flying Club. Under these circumstances, the Sports & Youth Welfare Department of the Government of Assam took upon itself to revive the Flying Club. Accordingly, a Governing Body of the Flying Club was thus constituted on 28.07.2005 with its following members:-

- |   |                           |
|---|---------------------------|
| "(1) Chief Minister, Assam  | - Chairman                |
| (2) Capt. Robin Bordoloi, MLA, Adviser to Chief Minister on Sports.         | - Working President       |
| (3) Minister of Transport, Assam  | - Member                  |
| (4) Minister of State Planning, Development and Finance Deptt.              | - Member                  |
| (5) Addl. Chief Secretary, Sports   | - Member                  |
| (6) Commissioner & Secretary, Sports & Y.W.                                 | - Member                  |
| (7) Director, Sports and Youth Welfare, Assam                               | - Honorary Vice President |
| (8) Member Secretary for Students and Youth Welfare.                        | - Member                  |
| (9) Sr. Air Worthiness Officer, Civil Aviation Deptt.                       | - Member                  |
| (10) Regional Director, Airport Authority of India, LGBI Airport, Guwahati. | - Member                  |
| (11) Representative of Aero Club of India                                   | - Member                  |
| (12) Sri P. Hazarika, Asstt. Director of Sports & Youth Welfare, Assam.     | - Honorary Secretary"     |

**13.** This Governing Body of the Flying Club was reconstituted after two years on 19.05.2007 and the Society received grants-in-aid from the State Government as well as from North Eastern Council (NEC) between 2003 to 2009. The reconstituted Governing

Body of the Flying Club (reconstituted on 19.05.2007) is as follows:-

1. *Chief Minister, Assam* - Chairman
2. *Minister of Transport, Assam* - Member
3. *Chief Secretary, Assam* - Member
4. *Additional Chief Secretary Planning & Development Deptt, Assam* - Member
5. *Commissioner & Secretary (I), Sports & YW, Assam* - Member
6. *Commissioner & Secretary (II), Sports & YW, Assam* - Member
7. *Director, Sports & Youth Welfare, Assam* - Member
8. *Member Secretary for Students and YW, Assam* - Member
9. *Sr. Air Worthiness Officer, Civil Aviation Deptt.* - Member
10. *Regional Director, Airport Authority of India, LGBI Airport, Guwahati.* - Member
11. *Representative of Aero Club of India* - Member
12. *Officer Commanding 50 Assam Air Squadron, NCC, Guwahati* -Member
13. *Shri J.N. Borchetiya, Assistant Director, Sports & Youth Welfare, Assam* -Honorary Secretary"

**14.** It is the case of the State Government that from 2007-08 onwards, the Flying Club started limping to normalcy. It once again admitted students, which were to be trained as Pilots. It was also decided to cut down the existing staff of the Flying Club in order to minimise the expenses of the Flying Club, and in order to have an independent functioning and a devoted administrator for running of the Flying Club it was then decided to have a full time Secretary for the Club.

15. Consequently, an advertisement was issued on 03.09.2013 in two newspapers calling for applications for the post of Honorary Secretary. Strangely the eligibility criteria for the advertised post were not specified in the said advertisement. A total of nineteen candidates applied for the said post, including respondent No.2, namely, Shri Bikrom Singha Lahkar. Ultimately, Shri Bikrom Singha Lahkar was selected as the Honorary Secretary of the Flying Club, under Rule 26(e) of the Bye-laws of the Flying Club. It is again an undisputed fact that this selection was to be made under the Bye-laws of the Flying Club, which were framed under the provisions of the Assam Co-operative Societies Act. Chapter-XIII is a Chapter relating to Board of Directors. Rule 26(e) is a provision for appointment of a Secretary, which reads as under:-

"XXXXXXXXXXXX"

*26. The Board of Directors shall consist of:-*

*(a) President-Education Minister, State Government .*

*(b) Vice-President- (nominated by him).*

*(c) Six Directors- (non-official) + 5 Officials.*

*The Directors shall be elected by the members from amongst the members of the classes (a)(b) & (c)(d) of Bye-Laws 4.*

*One third of the members of the Board of Directors shall be "active flying members" which expression shall mean a member of the Club who has qualification for and is in possession of a current*

*licence issued by the Civil Aviation Directorate or has held such a licence or is the owner of an aircraft or possesses a aeronautical experience which, in the opinion of the D.G.C.A., renders him or her eligible.*

*The Directors shall hold office for a term of three years provided however, at the end of the first year, one third and at the end of second year half of the remaining original directors shall be chosen by lot to retire. The retiring members shall be eligible for re-election.*

*(c) Three nominees of the State Government.*

*(d) Two nominees of the Director General of Civil Aviation in India.*

***(e) Secretary who shall be appointed by the State Govt. & shall enjoy all the privileges of a Director or Ex-Officio Member, on such terms and conditions as may be determined by the State Government.***

***(f) Technical Adviser:- The Chief Pilot Instructor & the Chief Maintenance Engineer of the Club shall be the Technical Adviser of the Board but they shall enjoy no right of vote.***

*A nominated Director shall, unless otherwise directed by the State of Central Govt. hold office for a period not exceeding three years. But a retiring nominated Director shall be eligible for re-nomination. All the Directors have equal rights and privileges. No person shall be elected as a Director if he is disqualified under rules and By-Laws."*

*(Emphasise provided)*

**16.** Immediately after his appointment as Secretary of the Flying Club a meeting was called by Shri Lahkar on 03.01.2014, at the residence of the then Chief Minister of Assam, which was attended by Late Tarun Gogoi, the then Chief Minister of Assam, who was the President of the Flying Club amongst others. Those who were present in the meeting were as follows:

<i>Name in Full</i>	<i>Address, Occupation</i>	<i>Designation</i>
<i>1. Tarun Gogoi</i>	<i>Hon'ble Chief Minister, Assam</i>	<i>President, Assam Flying Club</i>
<i>2. Dharendra Nath Bezboruah</i>	<i>Veteran Journalist, Guwahati</i>	<i>Life Member, Assam Flying Club</i>
<i>3. Prafulla Gobinda Baruah</i>	<i>Chairman/Editor, Assam Tribune Group/Son of founder AFC</i>	<i>Life Member, Assam Flying Club</i>
<i>4. Capt. Robin Bordoloi</i>	<i>MLA, Guwahati/Ex Student-AFC</i>	<i>Life Member, Assam Flying Club</i>
<i>5. Iqbal Hazarika</i>	<i>Air Commodore (Retd.), Shillong</i>	<i>Life Member, Assam Flying Club</i>
<i>6. Nitu Lahkar</i>	<i>Director, CAE, Guwahati</i>	<i>Life Member, Assam Flying Club</i>
<i>7. Capt. KKK Singh</i>	<i>Ex Student/Ex Flying Instructor of AFC, Biswanath Chariali</i>	<i>Life Member, Assam Flying Club</i>
<i>8. Jyoti Prasad Sarma</i>	<i>Aircraft Technician, Baksa</i>	<i>Life Member, Assam Flying Club</i>
<i>9. Jyotirmoy Das</i>	<i>Aeronautical Student, Guwahati</i>	<i>Life Member, Assam Flying Club</i>
<i>10. Dilsan Ahmed</i>	<i>Aeronautical Student, Nalbari</i>	<i>Life Member, Assam Flying Club</i>
<i>11. Johnny Basumatary</i>	<i>Aeronautical Student, Udalguri</i>	<i>Life Member, Assam Flying Club</i>

<i>12. Prakash Jaiswal</i>	<i>Aeronautical Student, Tinsukia</i>	<i>Life Member, Assam Flying Club</i>
<i>13. Rahul Roy</i>	<i>Aeronautical Student, Guwahati</i>	<i>Life Member, Assam Flying Club</i>
<i>14. Diganta Saikia</i>	<i>Aeronautical Student, Nagaon</i>	<i>Life Member, Assam Flying Club</i>
<i>15. Diganta Boro</i>	<i>Aeronautical Student</i>	<i>Life Member, Assam Flying Club</i>
<i>16. Dimpal Hazarika</i>	<i>Aeronautical Student, Nalbari</i>	<i>Life Member, Assam Flying Club</i>
<i>17. Arnob Bora</i>	<i>Aeronautical Student, Karbi Anglong</i>	<i>Life Member, Assam Flying Club</i>
<i>18. Dharitri Baishya</i>	<i>Aeronautical Student, Guwahati</i>	<i>Life Member, Assam Flying Club</i>
<i>19. Bikrom Singha Lahkar</i>	<i>Founder, CAE</i>	<i>Secretary/ Life Member, Assam Flying Club</i>

**17.** This meeting, which was called by Shri Bikrom Singha Lahkar, was not a meeting of the Governing Body of the Flying Club which was constituted in the year 2005 and re-constituted in 2007, a reference of which has been given above. Many of the persons, who participated in the so called meeting, had nothing to do with the Governing Body of the Flying Club. For example, from the above mentioned names from serial No.9 to serial No.18 are the names of the students of the Aeronautical Engineering College, which is run by none other than Shri Bikrom Singha Lahkar. They have nothing to do with the Governing Body of the Flying Club. Apart from this fact, it is also an admitted fact that the Registrar of Co-operative Societies, Assam had also attended the said meeting and his opinion was recorded in the meeting. His opinion was that

the Flying Club should run as a Society, registered under the Societies Registration Act, 1860, and not as a Co-operative Society. But then most of the persons who attended the meeting on 03.01.2014 had no authority to decide the future of the Flying Club, or to change the nature of the Flying Club itself which it actually did. It is not a meeting of the Governing Body of the Flying Club and, therefore, all the decisions taken by this Body are *non est* in the eyes of law. Nevertheless twenty resolutions were passed in the said meeting. The important resolutions were Resolution Nos.16, 17, 18, 19 and 20, which reads as under:-

"XXXXXXXXXXXXX

16. *The Assam Flying Club presently possesses 6 Bigha 10 lessa of land bearing Patta No.366 Dag No.475, 1038 and 1039 and is under the occupation of The Assam Flying Club Ltd. (presently 9 numbers of quarters). The ownership of the land is in the name of Secretary of the Assam Flying Club, Sri Jaykanta Baruah, S/O Lokadhar Baruah. A request will be made to the Revenue Department for correction of the name of Pattadar as The Assam Flying Club, LGBI Airport, Guwahati.*

17. *The Registrar of Cooperation Societies, Assam raised the issue that the Assam Flying Club should not have been registered under "Assam Co-Operative Societies Act" because the Assam Flying Club does not involve any profitable business. Hence, being a no-profit entity, Assam Flying Club should be registered under the Societies (Registration) Act. The house took the decision to cancel the existing registration*

*under Assam Co-Operative Societies Act. The Registrar of Cooperative Societies agreed to cancel the registration of Assam Flying Club immediately once their office gets a resolution on this matter. The house took the decision to abide by the suggestion of the Registrar and to cancel the registration under the Assam Co-Operative Societies Act and it will be registered under the Societies (Registration) Act, 1860.*

*18. The Meeting declared that the all existing committees including Board of Directors will stand dissolved with immediate effect.*

*19. The meeting empowered the President of this meeting. Shri Tarun Gogoi, Hon'ble Chief Minister of Assam to act as President of the Assam Flying Club and Sri Bikrom Singh Lahkar, Founder, College of Aeronautical Engineering as Hon. Secretary of the Assam Flying Club for the time being.*

*20. The Hon'ble President assured that all necessary funds will be provide by State Government, but for bigger ventures like establishing of "North East Aviation Training Academy" and procurement of new Aircraft, the Assam Flying Club will approach North Eastern Council through Department of Planning and Development."*

**18.** The above decisions are the decisions which have given rise to a gamut of issues, apart from complicating the matters further, but most importantly this meeting tried to change the very nature of the Flying Club. The most controversial resolution is Resolution No.17, whereby a decision was taken that the Assam

Flying Club should not have been registered under the Assam Co-operative Societies Act as the Flying Club is not doing any profitable business and is a non-profit entity and should be registered as a Society under the Societies Registration Act and, therefore, the decision was taken to cancel the existing registration under the Co-operative Societies Act and the Registrar of Co-operative Societies (who attended the meeting), agreed to cancel the registration of Assam Flying Club, as a Co-operative Society.

**19.** Promptly, after the meeting, an application was moved by the respondent No.2, Shri Bikrom Singha Lahkar, to the Registrar of Co-operative Societies to strike off the name of Assam Flying Club Limited from the list of Co-operative Societies and orders to that effect were also passed. Immediately thereafter, an application was moved for registration of Assam Flying Club as a Society under the Societies Registration Act, 1860. The application, which was moved by Shri Bikrom Singha Lahkar as Honorary Secretary of the Society to the Registrar of Co-operative Societies, Government of Assam, and the very next day the Flying Club was granted its registration as a Society by the Registrar of Societies, Assam, which was valid up to 05.03.2017. The name of the Society was to be "Assam Flying Club". It retained the logo and the address of Assam Flying Club Limited. But in the official letter pad of the new Society, there were some changes. Earlier the Assam Flying Club was being mentioned as Assam Flying Club Limited, address: LGBI Airport, Borjhar, Guwahati - 781015, Assam and in the bracket it was written as "an Organization of Government of

Assam, member of Aero Club of India, New Delhi”, but now under its registration as a Society (under the Societies Registration Act), “an Organisation of Government of Assam” was deleted and it was only written that the Assam Flying Club is a member of Aero Club of India. The claim of Shri Bikrom Singha Lahkar has always been that once the Flying Club stands deregistered as a Co-operative Society and registered as a Society under the Societies Registration Act, it is an entirely new entity. More importantly it is also his case that the control the Government earlier had over the Co-operative Society will no more apply to the new Body.

**20.** Having made the above changes, a requisition was then sent by Shri Lahkar to the Government for recalling all orders passed in the recent pasts such as his appointment of Secretary of the Co-operative Society, etc., and these orders were promptly recalled. Although this Court has also been informed that later the recalling orders were withdrawn. We are only referring to these facts to highlight the efforts which were being made in changing the nature of the Flying Club from a Co-operative Society to a Society.

**21.** Meanwhile, the appointment of Shri Bikrom Singha Lahkar as Honorary Secretary of the Flying Club was challenged before this Court in a writ petition being WP(C) No.6809/2013. This challenge was made by another aspirant to the post Honorary Secretary, whose name is Captain Ved Barua. His writ petition, however, was dismissed by the learned Single Judge by order

dated 21.02.2014 on grounds that the post of Honorary Secretary, is not a Government post and it is not a public employment. The exact findings were as follows:-

*"As per the advertisement issued on 03.09.2013 for appointment as Honourary Secretary of the Assam Flying Club, the person concerned is required to be technically competent. However, no qualification as such was laid down. Admittedly, respondent No.6 is the founder of the College of Aeronautical Engineering having approval of the Directorate of Civil Aviation, Government of India. From the materials on record, it appears that the applications received in response to the advertisement were processed at different levels of the Government and, eventually, with the approval of the Chief Minister of the State, the respondent No.6 was selected for appointment to the said post. As the advertisement itself would indicate, the assignment is only honourary, without any remuneration. If the respondents, in their wisdom, have selected the respondent No.6 as the technically competent person to run the affairs of the Assam Flying Club as its Honourary Secretary, this Court, exercising its writ jurisdiction, cannot interfere with the said wisdom in absence of anything showing arbitrary and/or colourable exercise of power in respect of his selection.*

*Going by the nature of the advertisement and the appointment in respect thereof, it cannot be said to fall within the domain of public employment as is understood in its common parlance. The respondent No.6 has been selected by considering his application and credentials and, in the*

*process, the candidatures of all other applicants were also considered and, eventually, on the basis of the materials furnished by the applicants, the authority decided to appoint the respondent No.6 as the Honourary Secretary of the Assam Flying Club, at Borjhar, Guwahati. That being the case, I do not find anything illegal to interfere with the said decision of the government and the appointment of respondent No.6."*

**22.** The order of the learned Single Judge was taken in a writ appeal being Writ Appeal No.102/2014, which was allowed vide judgment and order dated 04.03.2015. The Division Bench was of the opinion that although apparently it was only an honorary post (Secretary, Flying Club) but it had all the trappings of a public employment and, therefore, the fair and transparent procedure ought to have been followed, which had apparently not been done and, therefore, the writ appeal was allowed and the order of the learned Single Judge was set aside and the order of appointment of respondent No.2 as Honorary Secretary was quashed. The operative portion of the order reads as under:-

*"13. From the documents on record it is seen that clause 26(e) of the Byelaws of Assam Flying Club deals with appointment of the Secretary and the terms and conditions of his appointment. It says that the Secretary shall be appointed by the State Government and shall enjoy all the privileges of a Director or ex-officio member on such terms and conditions as may be determined by the State Government. In other words, it is the State Government which is vested with the power to*

*appoint the Secretary on such terms and conditions as may be determined by the State Government.*

*14. Coming to the advertisement, we find that it was issued by the Deputy Director of Sports and Youth Welfare, Government of Assam. Applications were invited by the Government of Assam for appointment as Secretary of Assam Flying Club. The Government had decided that such appointment would be on honorary basis i.e. without payment of any remuneration under clause 26(e) of the Byelaws.*

*15. The notification dated 07-10-2013 whereby respondent No.6 was appointed as Honorary Secretary shows that it was issued under the signature of the Joint Secretary to the Government of Assam, Sports and Youth Welfare Department. It was a Government notification issued in the name of the Governor of Assam.*

*16. A conjoint reading of clause 26(e) of the Byelaws, the advertisement dated 03-09-2013 and the Government notification dated 07-10-2013 would show that the selection and appointment was made by the Government of Assam. It was an executive decision of the State. It is another matter that under clause 26(e), the State Government has decided to make such appointment on honorary basis i.e. without any salary or remuneration. Though the appointment of Secretary of Assam Flying Club may not fall within the domain of public employment stricto sensu, nonetheless, it was a recruitment made by the Government. Infact under clause 26(e), it is the Government which is vested with the power to make the appointment.*

*Therefore, it had all the trappings of public employment and would have to be judged from that perspective.*

*17. When an appointment partakes the character of public appointment, such appointment must meet the minimum standard of fairness and transparency. In other words, such an appointment must be in conformity with the requirement of Article 14 of the Constitution. The selection must be conducted in a reasonable manner which must not be arbitrary. There has to be a fair assessment of the candidature of the candidates. From the documents placed on record, including the note-sheet of the concerned file, which has not been disputed, 19 applications were received in terms of the advertisement. As per note of the Commissioner and Secretary, Sports and Youth Welfare Department dated 03-10-2013, it is seen that out of the 19 applicants, as per paper sorting, respondent No.6 was found to be the most suitable candidate. A proposal was submitted for appointment of respondent No.6 as Secretary which had the approval of the Sports Minister as well as of the Chief Minister.*

*18. Such a selection, in our view, cannot be said to be a valid selection in the eye of law. When there were 19 applicants, there had to be a comparative assessment of the suitability of the candidates. Such assessment must meet at least minimum acceptable standard and must meet the twin test of fairness and transparency. It is for the authority to decide as to what procedure should be adopted for judging assessment of suitability of the competing claimants. Sorting of papers of the applicants and thereafter taking a view that one of the*

*candidates is the most suitable cannot certainly be treated as an acceptable selection procedure in conformity with Article 14.*

*19. Accordingly, we are of the view that selection and consequential appointment of respondent No.6 as Secretary of Assam Flying Club in the manner in which it was done, cannot be sustained and is accordingly set aside and quashed. Respondents 1 to 4 would be at liberty to hold fresh selection within a period of 4 months from the date of receipt of a certified copy of this order. During this interregnum, the said respondents would also be at liberty to make temporary arrangement for the post of Secretary as may be deemed fit so that functioning of the Assam Flying Club is not hampered.”*

**23.** In terms of the directions of the Division Bench of this Court, the State Government appointed a Secretary level official to look after the affairs of the Flying Club vide its order dated 27.05.2015. The officer was Shri Ranuj Barkotaky, ACS, who was the Joint Director of Sports & Youth Welfare Department, who was to act as In-charge of Assam Flying Club Limited with immediate effect till a regular selection of Honorary Secretary was made. This order dated 27.05.2017 was challenged by Shri Bikrom Singha Lahkar and the Assam Flying Club, by means of a writ petition being WP(C) No.3218/2015. The said writ petition was dismissed by the learned Single Judge of this Court vide order dated 04.04.2017. The findings of the learned Single Judge were that the Assam Flying Club (the one registered under the Societies Registration Act) and Assam Flying Club Limited (the Co-operative

Society) are two different entities and the order dated 27.05.2015 appointing the Joint Director of Sports & Youth Welfare Department as In-charge of the Assam Flying Club Limited was issued not in respect of the petitioner No.2 Society but in respect of Assam Flying Club Limited, which was a State Level Co-operative Society. Apart from dismissing the writ petition, the learned Single Judge was also of the view that an enquiry must be conducted by the State Government as to how public property of the State Government had been put to misuse, etc. This order was challenged by the Assam Flying Club Limited and respondent No.2 in a writ appeal being Writ Appeal No.99/2017. In the writ appeal, an entirely different view was taken by the Division Bench. The Division Bench came to a conclusion that there was no need for an enquiry as that was not the prayer sought and the order of the learned Single Judge was set aside, but nevertheless the Registrar of Co-operative Societies, Assam was directed to conduct an enquiry and give a finding as to the status of the Flying Club, its operational activities, and the existence of the Co-operative Society. Consequent to the said decision, the Registrar of Co-operative Societies, Assam, passed an order on 21.06.2018, which is a detail and well considered order, where the findings of the Registrar of Co-operative Societies are that the Assam Flying Club Limited is being run as a Co-operative Society and, therefore, in exercise of the powers conferred under Section 41(6)<sup>2</sup> of the Co-

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<sup>2</sup> 41. (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

operative Societies Act, Sri R.K. Majumdar, IAS, Registrar of Co-operative Societies, Assam, an In-charge of the Co-operative Society, i.e. Assam Flying Club Limited, and appointed officials of the State Government to run the affairs of the Society and directed the respondent No.2, Shri Bikrom Singha Lahkar, to hand over all the documents, papers, all assets and properties of the Assam Flying Club to Sri Anil Hazarika, who was the Joint Registrar of Co-operative Societies, Assam.

One of the important findings of the Registrar of Co-operative Societies, Assam, in its order dated 21.06.2018, was that the Assam Flying Club Limited as a Co-operative Society was still in existence and needed to be revived. But if the efforts for the revival fail only then the winding up proceedings be initiated, in terms of the Assam Co-operative Societies Act, 2007.

**24.** This order was again put to challenge by the Assam Flying Club as well as the respondent No.2 by filing WP(C) No.4749/2018 before the learned Single Judge of this Court. The learned Single Judge, before whom this order was challenged, while disposing of the writ petition on 12.04.2019, was of the opinion that the Assam Flying Club was not being run as a Co-operative Society. The learned Single Judge did not agree with the findings of the Registrar that the Assam Flying Club Limited was still in existence as a Co-operative Society. Therefore, the conclusion derived by the learned Single Judge was that when the Co-operative Society was not in existence, there was no purpose of

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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.

reviving or managing the affairs of such a Society. But the important question which was still to be resolved by the learned Single and was formulated by the learned Single Judge in Paragraph 56 is as follows:

*"56. Having said that the question still remains as to what happens to the property which has accrued over the years in the name of Assam Flying Club or Assam Flying Club Ltd., the cooperative society. The properties had accrued over the years on the basis of funds received from the Government. Question is what happens to such properties since the entity has become non-existent."*

**25.** The learned Single Judge then came to the conclusion that Section 95 of the Assam Co-operative Societies Act, 2007 deals with winding up, appointment of liquidator and his powers and functions, directed that the liquidator be appointed to wind up the affairs of the Co-operative Society and passed the following order:

*"57. Section 95 of the 2007 Act deals with winding up, appointment of liquidator and his powers and functions. As per sub-section (1), when registration of a society is cancelled under Section 94(1), Registrar may appoint a liquidator of the cooperative society. Under sub-section (2), the liquidator so appointed shall have power from the date of his appointment to take immediate possession of all assets, properties etc. of the cooperative society including documents pertaining to the business of the cooperative society and shall hold charge of*

*the cooperative society. Power of the liquidator is provided in sub-section (3). Under the general control of the Registrar, he shall have the power so far as is necessary for the winding up of the cooperative society including settlement of claims etc. He under the general control of the Registrar can negotiate with any person, including juristic person, or body for sale of the land and property of the cooperative society in the best public interest and the money generated through such sale shall be deposited in the Government account through the Registrar. However, in such a situation, it will also be open to the petitioners to negotiate with the liquidator for purchase of such assets."*

58. *Therefore, having regard to the discussions made above, the proceedings are summed up as under: -*

- 1. The cooperative society by the name of Assam Flying Club or Assam Flying Club Ltd. is not in existence.*
- 2. Registrar of Cooperative Societies, Assam shall appoint a liquidator of Assam Flying Club or Assam Flying Club Ltd., who shall carry out his mandate under Section 95(2) of the Assam Cooperative Societies Act, 2007 as deliberated upon in paragraph 57 above."*

**26.** This order of the learned Single Judge has been put to challenge by the State of Assam in Writ Appeal No.149/2019 (*State of Assam & Ors. -Vs- Assam Flying Club & Anr.*) as well as by the Assam Flying Club in Writ Appeal No.111/2019 (*Assam Flying Club & Anr. -Vs- The State of Assam & Ors.*).

**27.** We are afraid that the order of the learned Single Judge has an apparent contradiction. While the learned Single Judge was of the opinion that the Flying Club was not a Co-operative Society then how could it be wound up as a Co-operative Society under the provisions of Section 95(2) of the Assam Cooperative Societies Act, 2007.

**28.** As we have already stated above, there is absolutely no doubt in our mind that whatever be the juristic personality of Assam Flying Club Limited, be it in form of a Co-operative Society or a Society or just a Club, the undisputed fact is that it has always been under administrative as well as financial control of the Government. The land which is in the name of the Flying Club is of the Government, and so are all the other assets. The efforts being made through a resolution of a meeting held at the residence of the then Chief Minister of Assam on 03.01.2014 has no legal sanction. It is in this meeting that resolutions were passed changing the character of the Flying Club from a Co-operative Society to that of a Society (to be registered under the Societies Registration Act). But ultimately what matters is the substance and not the form or the nomenclature given to the Flying Club. This long trail of litigation has taken us nowhere. Till now the parties to the litigation were contesting on the form or the legal personality, on the juristic personality of the Flying Club. Is the Flying Club a Co-operative Society or a Society? The matter has now reached a situation where the important question to be answered is what was the purpose of this Flying Club, why was it brought to

existence, who controls it, and where it ultimately belongs. What matters is the substance and not the form or the nomenclature. *".....a juristic veil worn for certain legal purposes cannot obliterate the true character of the entity for the purposes of constitutional law".*<sup>3</sup> In *Som Prakash Rekhi*, a judgment of the Apex Court delivered by Justice V.R. Krishna Iyer, although in a different context, it was held that the Constitutional Court must lift the veil to see what lies at the substance. The Apex Court in that case was examining whether Bharat Petroleum, a successor of Burmah Shell was actually an "other authority" under Article 12 of the Constitution of India and while holding that indeed it was an authority, a test was laid down for that determination. *"The true test is functional. Not how the legal person is born but why it is created. Nay more."*<sup>4</sup>

**29.** Right from its very inception as a Co-operative Society in 1958, the membership speaks for itself. The following were the founding members:-

<b><i>"Name of the individual member</i></b>	<b><i>Address</i></b>
<i>1. Shri Debeswer Sarma</i>	<i>Minister of Finance, Assam, Shillong.</i>
<i>2. Shri R.G. Barua</i>	<i>Prop, Assam Tribune, Guwahati.</i>
<i>3. Shri I.K. Bezbarua</i>	<i>Prop, Natun Assamiya, Guwahati.</i>
<i>4. Shri R.B. Vaghaiwalla</i>	<i>Secretary, Community Project</i>
<i>5. Berother J. Foley</i>	<i>Principal, St. Admunds College, Shillong.</i>
<i>6. Shri B.K. Barua</i>	<i>Secretary, University Classes, Guwahati.</i>
<i>7. Md. Narual Islam</i>	<i>Inspector of Schools, Shillong.</i>

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<sup>3</sup> *Som Prakash Rekhi -Vs- Union of India & Anr. :: (1981) 1 SCC 449.*

<sup>4</sup> *ibid*

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| 8. Shri S.C. Rajkhowa | Additional D.P.I. Assam.                                |
| 9. Shri A.C. Sen      | Resident Director, Shillong,<br>Hydro Electric Co. Ltd. |
| 10. Shri P.C. Goswami | Special Officer, D.T.I's Office.                        |
| 11. Shri J.N. Bawri   | Member, Mawkhar Shillong.                               |
| 12. Sri A.N. Kidwal   | Chief Secretary, Govt. of Assam.                        |
| 13. Shri M. Sultan    | Secretary, Education, Assam.                            |
| 14. Shri K.C. Barua   | Secretary, Rural and Co-operative D.P.T.                |
| 15. Shri K. Barua     | Additional Chief Engineer, P.W.D., Assam.               |
| 16. Sri F.H. Hazarika | C.O., IGP, Assam, Shillong.                             |
| 17. Shri D.C. Bhuyan  | Special Officer, NCC, Assam.                            |
| 18. Shri P.I. Shome   | Dy. Secretary, Finance, Assam."                         |

**30.** The bye-laws of the Club inter alia states as under:-

*"18. The President of the Club shall be the Education Minister of the State and he shall nominate the Vice-president. The president shall preside over the General Meeting and his absence the Vice-President will preside. In the absence of both, any other member elected as Chairman of the meeting shall preside.*

*The Club shall not take into consideration at its Annual General Meeting a balance sheet which has not been audited and in which the auditor's certificate has not been incorporated nor published the name."*

**31.** The Flying Club right from 1991-92 has been getting regular Grant-in-Aids from the Government and that has only sustained the Club for twenty long years. The details of the grants are as follows:-

**Details of GIA to Assam Flying Club Ltd.**

Sl. No.	Financial Year	Sanction No. & Date of sanction	Gross Amount
1	1991-92	DSY/29/77/pt-III/85/260 dtd. 30.05.1991	150000.00
2	1991-92	SYW/84/90/132 dtd. 07.11.1991	500000.00
3	1991-92	SYW/84/90/140 dtd. 31.03.1991	500000.00
4	1992-93	SYW/84/90200 dtd. 23.12.1992	450000.00
5	1993-94	SYW/106/92/25 dtd.31.07.1993	115200.00
6.	1993-94	SYW/84/90/220 dtd.31.03.1994	50000.00
7	1994-95	SYW/84/90/247 dtd.25.03.1995	450000.00
8	1994-95	SYW/106/92/42 dtd.31.03.1995	866000.00
9	1995-96	SYW/84/90/308 dtd.31.03.1996	1300000.00
10	1996-97	SYW/106/92/53 dtd.30.07.1996	70000.00
11	1996-97	SYW/106/92/64 dtd.15.03.1997	53000.00
12	1996-97	SYW/84/90/341 dtd.13.03.1997	850000.00
13	1997-98	SYW/106//92/81 dtd.07.10.1997	210000.00
14	1998-99	SYW/106/92/92 dtd.22.05.1998	52000.00
15	1998-99	SYW/106/92/88 dtd.14.07.1988	158000.00
16	1998-99	SYW/84/90/pt-I/76 dtd.07.01.1999	400000.00
17	1998-99	SYW/84/90/pt-I/88 dtd.11.03.1999	100000.00
18	1999	SYW/106/92/93 dtd.03.07.1999	225000.00
19	1999	SYW/84/90/pt-I/116 dtd.08.10.1999	1300000.00
20	2000	SYW/100/92/96 dtd.10.08.2000	100000.00
21	2000	SYW/106/92/96 dtd.10.08.2000	125000.00

22	2000	SYW/84/90/pt-I/135 dtd.02.02.2001	150000.00
23	2001	SYW/106/92/100/dtd.06.08.2001	225000.00
24	2001-2002	SYW/106/92/107 dtd.03.01.2002	100000.00
25	2001-2002	SYW/84/90/pt-I/163 dtd.10.03.2003	300000.00
26	2002-2003	SYW/106/92/122 dtd.23.09.2002	225000.00
27	2002-2003	SYW/84/90/pt-I/146 dtd.10.03.2003	300000.00
28	2003-2004	SYW/21/97/36 dtd.12.11.2003	225000.00
29	2003-2004	SYW/84/90/pt-I/177 dtd.11.12.2003	500000.00
30	2003-2004	SYW/21/97/55 dtd.18.01.2004	425000.00
31	2004-2005	SYW/84/90/pt-I/197 dtd.04.03.2005	850000.00
32	2005-2006	SYW/84/90/pt-I/111 dtd.06.09.2005	200000.00
33	2005-2006	SYW/21/97/93 dtd.07.10.2005	225000.00
34	2005-2006	SYW/84/90/pt-I/243 dtd.06.01.2006	3000000.00
35	2005-2006	SYW/32/2006/64 dtd.27.03.2006	630000.00
36	2006-2007	SYW/21/97/109 dtd.26.09.2006	800000.00
37	2007-2008	SYW/21/97/124 dtd.03.10.2007	808000.00
38	2008-2009	SYW/21/97/134 dtd.16.07.2008	808000.00
39	2009-2010	SYW/21/97/153 dtd.26.11.2009	816000.00
40	2011-2012	SYW/21/97/255 dtd.13.01.2012	832000.00
41	2013-2014	SYW/21/97/266 dtd.20.09.2013	848000.00
42	2013-2014	SYW/41/2014/22 dtd.27.03.2014	3047000.00
Grand total			2,42,38,200.00

**32.** There is evidence which shows that Assam Flying Club Limited was a Co-operative Society registered under the society registered under the Assam Co-operative Societies Act, 1949, which the Registrar of Co-operative Societies in his order dated 21.06.2018 has relied upon. But it is also a fact that somewhere down the line those who were running this Club lost the plot. They had no idea whether to run it simply as a Club or a Co-operative Society, inasmuch as, they were not furnishing the annual accounts to authorities, nor was there general body meetings of the Co-operative Society, as was required in law. But the fact remains that when the Club was falling into disuse and was getting defunct, efforts were made by none other but the Government albeit in a very ad-hoc and non-committal manner, but nevertheless there were efforts in 2005, 2007 and 2013, on record where the clear intention of the Government was to somehow arrest the downfall of this Club, which was earlier a functional institution of Assam. We have also noticed a consistent control of the State authorities over this Club. It has already been referred above that the President of the Club were the Sports Minister or Education Minister and later the Chief Minister himself. There was a large body of high ranking civil servants who were given the control of the Club by inducting them as members of its Governing Body. A different path was taken when efforts were made to change the nature of this Club from a Co-operative Society to a Society registered under the Societies Registration Act. It is not in doubt that these efforts to change the nature of the Club from a Co-operative Society to a Society (registered under the Societies

Registration Act), was to give more control and authority to the Secretary of the Society Shri Bikrom Singha Lahkar. We say this because by its very nature a Co-operative Society is committed towards the interest and welfare of its members, unlike a Society. Further it has stronger control by the Government and its authorities. Even an elementary level Co-operative Society has to work under control and supervision of State authorities, particularly under the Registrar of Co-operative Societies. The present case was of a State Level Co-operative Society, which had most of its members as functionaries of the State Government and hence the control was even stronger. Unlike this, a Society has much less control by the Government and for this reason there is always a danger of powerful elements within the Society taking control of the Society. Now as we have seen, that the society was formed largely due to the efforts of Shri Bikrom Singha Lahkar, and it had the following members in the Executive Committee:-

<i>Name in Full</i>	<i>Address, Occupation</i>	<i>Designation</i>
<i>1. Tarun Gogoi</i>	<i>Hon'ble Chief Minister, Assam</i>	<i>President, Assam Flying Club</i>
<i>2. Dhirendra Nath Bezboruah</i>	<i>Veteran Journalist, Guwahati</i>	<i>Life Member, Assam Flying Club</i>
<i>3. Prafulla Gobinda Baruah</i>	<i>Chairman/Editor, Assam Tribune Group/Son of founder AFC</i>	<i>Life Member, Assam Flying Club</i>
<i>4. Capt. Robin Bordoloi</i>	<i>MLA, Guwahati/Ex Student- AFC</i>	<i>Life Member, Assam Flying Club</i>
<i>5. Iqbal Hazarika</i>	<i>Air Commodore (Retd.), Shillong</i>	<i>Life Member, Assam Flying Club</i>

<i>6. Nitu Lahkar</i>	<i>Director, CAE, Guwahati</i>	<i>Life Member, Assam Flying Club</i>
<i>7. Capt. KKK Singh</i>	<i>Ex Student/Ex Flying Instructor of AFC, Biswanath Chariali</i>	<i>Life Member, Assam Flying Club</i>
<i>8. Jyoti Prasad Sarma</i>	<i>Aircraft Technician, Baksa</i>	<i>Life Member, Assam Flying Club</i>
<i>9. Jyotirmoy Das</i>	<i>Aeronautical Student, Guwahati</i>	<i>Life Member, Assam Flying Club</i>
<i>10. Dilsan Ahmed</i>	<i>Aeronautical Student, Nalbari</i>	<i>Life Member, Assam Flying Club</i>
<i>11. Johnny Basumatary</i>	<i>Aeronautical Student, Udalguri</i>	<i>Life Member, Assam Flying Club</i>
<i>12. Prakash Jaiswal</i>	<i>Aeronautical Student, Tinsukia</i>	<i>Life Member, Assam Flying Club</i>
<i>13. Rahul Roy</i>	<i>Aeronautical Student, Guwahati</i>	<i>Life Member, Assam Flying Club</i>
<i>14. Diganta Saikia</i>	<i>Aeronautical Student, Nagaon</i>	<i>Life Member, Assam Flying Club</i>
<i>15. Diganta Boro</i>	<i>Aeronautical Student</i>	<i>Life Member, Assam Flying Club</i>
<i>16. Dimpal Hazarika</i>	<i>Aeronautical Student, Nalbari</i>	<i>Life Member, Assam Flying Club</i>
<i>17. Arnob Bora</i>	<i>Aeronautical Student, Karbi Anglong</i>	<i>Life Member, Assam Flying Club</i>
<i>18. Dharitri Baishya</i>	<i>Aeronautical Student, Guwahati</i>	<i>Life Member, Assam Flying Club</i>
<i>19. Bikrom Singha Lahkar</i>	<i>Founder, CAE</i>	<i>Secretary/ Life Member, Assam Flying Club</i>

**33.** We can easily notice that out of the nineteen members of the Executive Committee, eleven are directly associated with a

college called "College of Aeronautical Engineering" of which Shri Bikrom Singha Lakhar is the Accountable Manager who also refers himself as the founder of this Engineering College, which is also located near the Flying Club.

**34.** The Assam Flying Club was to be under control of College of Aeronautical Engineering (of which Shri Bikrom Singha Lahkar was the founder and the Accountable Manager), is further evident from the fact that in the bye-laws of the Assam Flying Club (which was to run as a Society), it is clearly mentioned that the Secretary of the Society shall be from the College of Aeronautical Engineering. Rule 17 reads as follows:-

*"17. The President or Chairman of the Assam Flying Club shall be the Hon'ble Chief Minister of Assam. If the Hon'ble Chief Minister of Assam declines to be President or Chairman then General Assembly will elect a President or Chairman. The General Assembly shall elect two Vice-Presidents or Vice-Chairmen at the Annual General Meeting. The President or Chairman shall preside over the General Meeting and Annual General Meeting and in his absence the Vice President or Vice Chairman will preside. In the absence of both, any other member elected as Chairmen of the meeting shall preside. **The Secretary shall be from the College of Aeronautical Engineering, who took whole initiative or restarting of Assam Flying club in the year of 2013. Thus, Club was defunct for more than two decade and Government constituted Governing body decided in the year 2011 to close Assam***

***Flying Club permanently and merged with NEC proposed Aviation manpower training institute at Lilabari.***

*The Club shall not take into consideration at its Annual General Meeting a balance sheet which has not been audited in which the auditor's certificate has not been incorporated nor publish the same."*

*(Emphasis provided)*

**35.** There were hence ingenious efforts on part of Shri Bikrom Singha Lahkar to take control of the affairs of this Flying Club, and to bring it under the control of his College of Aeronautical Engineering, which he was running. This was neither just nor proper. The Assam Flying Club Limited is an instrument of none other but of the State, in whichever form it exists. The property which were in the name of the Flying Club belong to the Government in the form of the land, aircraft, the movable and immovable assets and even intangible assets in the form of the goodwill of the Club, its trademark, its logo. All this cannot go into private hands.

**36.** Strong words have been used by the State authorities against Shri Bikrom Singha Lahkar. His motives and intentions have been questioned. There are also counter allegations by Shri Lahkar as well. But we are not here to deal with these aspects. We have already noticed the efforts of Shri Lahkar, in gaining control over the Club. Yet it is possible that Shri Lahkar may have had nothing but good intentions to run the Flying Club. We only do not

approve the manner in which the control of the Flying Club was sought to be taken away, though as we have said it is possible that the intention behind these efforts may have been only to revive an institution. Before this Court Shri Lahkar has argued his case in person. He was forthright and never dodged a question put to him by the Court. He had done his study well, and was ready with his papers. But all this does not help his case. His induction as the Secretary of the Club was wrong, as held by the Division Bench of this Court in Writ Appeal No.102/2014. What is more important is the fact that Shri Lahkar also runs an Aeronautical Engineering College, which is located not very far from the Airport. In fact, ten of the members who attended the meeting held on 03.01.2014 at the residence of the then Chief Minister, were the students of the said Engineering College. His efforts to change the Co-operative Society into a Society (registered under the Societies Registration Act, 1860), were again wrong. Moreover, his efforts have not improved the condition of the Flying Club. Pilots were not trained, aircrafts did not fly. The undue favours shown towards Shri Lahkar are evident by the manner Shri Lahkar was inducted as an Honorary Secretary and the manner in which the meeting of 03.01.2014 was called and the decisions taken therein. The Club always had a deep and pervasive control, both financially as well as administratively, of the State. All the immovable and movable properties of the Club are of the State, Shri Lahkar has no claim on these.

**37.** Consequent to the conclusions and the findings we have arrived at we allow the writ appeal of the State (i.e. Writ Appeal No.149/2019) and dismiss the Writ Appeal No.111/2019. The order of the learned Single Judge dated 12.04.2019 is hereby set aside.

**38.** We also direct as follows:

- (i) The entire control and administration of the Flying Club shall now vest with the Government of Assam.
- (ii) The entire property of the Flying Club, which is in the form of land measuring 6 *Bighas* 12 *Lechas* (PP No.336, Dag Nos.1038, 1039 and 475) situated at Village - Borjhar, Mouza - Dakhin Rani, Assam, adjacent to LGBI Airport, shall vest in the name of the State. It is now for the Government to revive the present Flying Club in whichever manner it deems best, but keeping the financial and administrative control of the Club with itself.
- (iii) The respondent No.2, Mr. B.S. Lahkar, shall handover the entire property, which is in the name of the Flying Club, all documents, articles, etc., of the Flying Club, which are in his possession, including the keys of the Hangar to the Chief Secretary of the State. Let the handing and taking over be done within ten days from the date and time the order is uploaded on the website

of the High Court. Let the handing and taking over be done under the supervision of the Registrar General of this Court. It is then for the State Government to take up the matter with the Airport Authority of India (AAI), and with other concerned authorities for revival of the Flying Club, and for other issues such as the one relating to the Hangar.

**39.** The learned Single Judge of this Court while deciding a related matter of this Flying Club (in WP(C) No.3218/2015), had directed that an inquiry be done by the State Government or the Upa-Lokayukta, Assam. This order when it was taken in the writ appeal i.e. Writ Appeal No.99/2017 was set aside as the Division Bench of this Court was of the opinion that such a relief neither sought by any of the parties, and hence it is not proper for the learned Judges to order for an inquiry. Before us, however, both Shri Bikrom Singha Lahkar as well as the State Government represented by Shri D. Saikia, learned Senior Standing Counsel, Government of Assam during their arguments expressed their desire that they would welcome an inquiry into this matter. In view of this, we leave it open to the State Government that while making every effort to revive the Flying Club without diverting their effort from the revival of the Flying Club, in case they deem it fit and proper nothing would stop them from holding an inquiry into the matter as to how this institution fell into disuse and who were responsible for it. We have been told that till now a grant of more than two crores have been given to this Club from Plan and

Non-Plan expenditure. What use was made of these grants should also be explained.

**40.** Considering the past history of this Flying Club, which has produced many Pilots, it would be in the best interest of Assam and Guwahati, and in fact the entire North East India that it has a functional and running Flying Club which would cater to the needs of the North Eastern Region, particularly of its youth. We hope and trust that the Government will not spare any effort in reviving the Assam Flying Club. The Assam Flying Club had a glorious past; we hope and trust that its future becomes even more glorious than its past!

**41.** Writ appeals stand disposed of in terms of the above.

**42.** *Interim* orders, if any, passed earlier stand vacated.

**JUDGE**

**CHIEF JUSTICE**

**Comparing Assistant**