

GAHC010016852023



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

Case No. : WP(C)/549/2023

RAJESH KUMAR CHOUBEY AND 9 ORS
S/O- SRI BIPIN BIHARI CHOUBEY,
RESIDENT OF VILLAGE- BORPHUKHURI,
P.O.- BHALUKMARI, P.S. LANKA,
DIST.- HOJAI, ASSAM.

2: DHANESWAR CHAWRA
S/O- LATE BABULAL CHAWRA
RESIDENT OF VILLAGE- BORPHUKHURI
P.O.- BHALUKMARI
P.S. LANKA
DIST.- HOJAI
ASSAM.

3: RABINDRA CHOUDHURY @ RABINDRA DAS
S/O- RASMAY CHOUDHURY
RESIDENT OF VILLAGE- BORPHUKHURI
P.O.- BHALUKMARI
P.S. LANKA
DIST.- HOJAI
ASSAM.

4: SATISH CHOUBEY
S/O- SHYAM BIHARI CHOUBEY
RESIDENT OF VILLAGE- BORPHUKHURI
P.O.- BHALUKMARI
P.S. LANKA
DIST.- HOJAI
ASSAM.

5: BINAKI DAS
D/O- SUKHENDRA DAS
RESIDENT OF VILLAGE- RANIPUKHURI
P.O.- BHALUKMARI

P.S. LANKA
DIST.- HOJAI
ASSAM.

6: KHILESWARI CHETRY
D/O- JANGBAHADUR CHETRY
RESIDENT OF VILLAGE- RANIPUKHURI
P.O.- BHALUKMARI
P.S. LANKA
DIST.- HOJAI
ASSAM.

7: MANTU DAS
S/O- KIRENDRA DAS
RESIDENT OF VILLAGE- JAISAGAR
P.O.- AJARBARI
P.S. LANKA
DIST.- HOJAI
ASSAM.

8: NIRMAL KR. DAS
S/O- KIRENDRA KR. DAS
RESIDENT OF VILLAGE- BONBEGENA ATI
P.O.- BHALUKMARI
P.S. LANKA
DIST.- HOJAI
ASSAM.

9: JIBAN DAS
S/O- LATE UMESH DAS
RESIDENT OF VILLAGE- BURAGAON
P.O.- JARAPUKHURI
DIST.- HOJAI
ASSAM.

10: UTTAM DAS
S/O- LATE RAKESH DAS
RESIDENT OF VILLAGE- RANIPUKHURI
P.O.- BHALUKMARI
P.S. LANKA
DIST.- HOJAI
ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVT. OF ASSAM,

COOPERATION DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE REGISTRAR OF COOPERATIVE SOCIETIES
ASSAM
KHANAPARA
GUWAHATI-22.

3:THE ZONAL JOINT REGISTRAR OF COOPERATIVE SOCIETIES
GUWAHATI ZONE
BHANGAGARH
GUWAHATI-5.

4:THE ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES
HOJAI
P.O.- LANKA
DIST.- HOJAI
ASSAM
PIN- 782446.

5:THE SECRETARY
BURAGAON SAMABAI SAMITY LIMITED
LANKA
P.O.- LANKA
DIST.- HOJAI
ASSAM
PIN- 782446.

6:CHANDAN KUMAR BORAH
SR. INSPECTOR/ AUDITOR OF COOPERATIVE SOCIETIES OF THE OFFICE
OF THE ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES
HOJAI
P.O.- LANKA
DIST.- HOJAI
ASSAM
PIN- 782446

Advocate for the Petitioner : DR. B AHMED

Advocate for the Respondent : SC, CO OP

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 06-02-2023

Heard Mr. N. Haque, learned counsel for the petitioners and Mr. S.K. Talukdar, learned Standing Counsel, Co-operation Department for the respondent nos. 1 – 4.

2. In the instant writ petition preferred under Article 226 of the Constitution of India, the petitioners, 10 [ten] in nos., have claimed that they are stakeholders of M/s Buragaon Samabai Samittee Ltd. [‘the Society’, for short], a co-operative society registered under the Assam Co-operative Societies Act, 2007 [‘the Act, 2007’ or ‘the 2007 Act’, for short]. They have further asserted that they were elected as Directors to the Board of Directors in the Annual General Meeting [AGM] of the Society held in the year 2019. The Board of Directors of the Society of which the petitioners were Directors, could not convene the AGM of the Society for the year : 2020-2021 within September, 2021, as stipulated by the provisions of the Act, 2007 due to the situation then prevailing due to emergence and continuance of Covid-19 pandemic. The State Government by a Notification dated 21.01.2022 had, however, exempted the Society from operation of the provisions of Section 39 and Section 41[2] of the 2007 Act for a period of 6 [six] months from 01.10.2021 to 29.03.2022, in exercise of the powers conferred by the newly inserted Section 130A of the Assam Co-operative Societies Act, 2007, as amended by the Assam Co-operative Societies [Amendment] Act, 2021.

3. It is the case of the petitioners that subsequent to grant of exemption, the Board of Directors of the Society made all arrangements to hold

the AGM of the Society on 20.03.2022 at the office premises of the Society. But during the course of the proceedings of the AGM of the Society in presence of the Official Observer, the proceedings of the AGM of the Society could not be completed due to disruption/disturbance created by some persons. It is the case of the petitioners that the petitioner no. 1 who was the Chairman of the Board of Directors of the Society, lodged one First Information Report [FIR] immediately before the Officer In-Charge, Lanka Police Station about the said incident and the said FIR was registered as Lanka Police Station Case no. 110/2022 under Sections 143/352/294/336/506/427, Indian Penal Code [IPC]. The Board of Directors of the Society had thereafter, taken a resolution on 29.04.2022 in the meeting held on that day, to hold the AGM of the Society within September, 2022 and the said resolution was forwarded to the respondent no. 4 for approval. On receipt of the resolution dated 29.04.2022, the respondent no. 4 wrote to the Joint Registrar of Co-operative Societies, Guwahati on 18.06.2022 with a copy of the resolution dated 29.04.2022 of the Board of Directors of the Society observing that the Board of Directors of the Society failed to conclude the proceedings of the AGM on 20.03.2022 due to disruption/disturbance at the venue of the AGM. By his letter dated 18.06.2022, the respondent no. 4 requested the Joint Registrar of Co-operative Societies, Guwahati to issue necessary instructions in the matter of holding of the AGM by the Board of Directors of the Society where the petitioners were Directors. The petitioners had also submitted a representation before the respondent no. 1 on 01.07.2022 seeking *inter alia* extension of the term of the Board of Directors of the Society w.e.f. 30.03.2022 for another 6 [six] months. Responding to the said representation, the Government had also written to the respondent no. 2 on 19.07.2022 with the request to submit a detailed report/proposal in that

connection. The respondent no. 4 had also forwarded a report to the respondent no. 2 on 30.07.2022 highlighting the event of disruption/disturbance which occurred when the AGM of the Society was in progress on 20.03.2022 and as regards the resolution taken by the Board of Directors of the Society on 29.04.2022.

4. But on 09.12.2022, the respondent no. 3 passed the impugned order whereby the said authority in exercise of the powers conferred under Section 41[6] of the Act, 2007 appointed one Officer-on-Management in respect of the Society to perform all the functions of the Board of Directors of the Society and to convene the AGM and to hold Election of the Society and further, to constitute the Board of Directors of the Society within 90 [ninety] days from 09.12.2022. By the order dated 09.12.2022, the respondent no. 3 had held that due to failure on the part of the earlier Board of Directors of the Society, represented by the petitioners, to hold the AGM within the stipulated time period, the Board of Directors of the Society stood automatically dissolved by operation of the provisions of Section 39 read with Section 32 of the Act, 2007. The petitioner no. 1 had thereafter, submitted a representation before the respondent no. 2 with a prayer *inter alia* to grant the erstwhile Directors of the dissolved Board of Directors of the Society to grant eligibility and also to hold the AGM/election.

5. Mr. Haque, learned counsel for the petitioners has referred to an order dated 18.01.2023 passed in another writ petition, W.P.[C] no. 177/2023 to submit that the petitioners therein, who were similarly situated like the petitioners herein, were allowed liberty to approach the respondent no. 2 by filing a representation to seek exemption from the purview of the provisions of

Section 40[4] and Section 41[8] of the 2007 Act to save them from being declared ineligible to contest in the next Election of the Society.

6. Section 39 of the Act, 2007 has prescribed for an Annual General Meeting [AGM] of a Registered Co-operative Society. Section 39 of the Act, 2007 has provided that a General Meeting to be termed as Annual General Assembly of a registered cooperative society shall be held at least once in every Cooperative year within a period of six months of close of the financial year to transact the business as provided in the Act, 2007. It has further provided that the Board of Directors of the Society shall automatically stand dissolved for not holding Annual General Meeting [AGM] in accordance with the provisions of the Act, 2007 and bye-laws within six months from the expiry of every financial year. Section 40[4] of the Act, 2007 has stipulated that a member of the Co-operative Society shall not be eligible for being chosen as a Director of in the Boards of Directors in a Co-operative Society if it is found that the Annual General Meeting [AGM] under Section 39 of the 2007 Act has not been conducted within the stipulated time period. Sub-Section [8] of Section 41 has laid down that the Directors of the Society shall not be eligible for re-election, if so specified in the bye-laws.

7. Mr. Haque, learned counsel for the petitioners has submitted that the Board of Directors of the Society came to be dissolved for reasons beyond the control of Directors, as highlighted above. The petitioners who were part of the Board of Directors of the said Society, may be given an opportunity to represent before the respondent no. 2 seeking their exemption from disqualification as envisaged by Section 39 read with Section 40[4] and Section 41[8] of the Act, 2007.

8. Having regard to the submissions advanced on behalf of the petitioners, Mr. Talukdar, learned Standing Counsel, Co-operation Department has submitted that the petitioners are at liberty to submit such a representation and in the event such a representation is submitted, the respondent no. 2 may be directed to consider such representation in accordance with the provisions of the Act, 2007 and the bye-laws of the Society by taking into purview the fact situation obtaining in the case, for grant of exemption or otherwise to the petitioners to submit their nominations to contest in the next AGM/Election of the Society.

9. Having regard to the above submissions advanced by the learned counsel for the parties, I am of the considered view that the writ petition can be disposed of at the motion stage itself without hearing the other respondents i.e. the respondent no. 5 and the respondent no. 6 at this stage. This Court is of the considered view that it will be appropriate to relegate the petitioners to approach the respondent no. 2 by filing a fresh representation preferably within a period of 10 days from today seeking their exemption from disqualification, as envisaged under the 2007 Act, to submit their nominations for the purpose of contesting the Election to be held for the Board of Directors of the Society in the next AGM/Election. It is provided that on receipt of such a representation, if any, the respondent no. 2 shall examine as to whether the petitioners can be exempted from the purview of the provisions regarding disqualification envisaged under Section 40[4] and Section 41[8] of the Act, 2007 to save them from being declared ineligible to contest in the next Election for the Board of Directors of the Society. It is further observed that the respondent no. 2 shall pass a reasoned order within a period of 2 [two] weeks from the date of receipt of such a representation by hearing all the stakeholders. It is further provided

that the eligibility of the petitioners to participate in Election to the Board of Directors of the Society shall be subject to that order that the respondent no. 2 would pass. The petitioners shall also furnish a copy of this order to the respondent no. 5 and the respondent no. 6 so as to apprise them about disposal of the writ petition in the afore-stated manner and the said respondents would also be at liberty to place their versions before the respondent no. 2. It is accordingly ordered. It is, however, made clear that this Court has not made any observations regarding the merits of the claim of the petitioners and the respondent no. 2 will consider the representation of the petitioners on its own merits and in accordance with the extant provisions of law.

10. This order disposes of the writ petition. No cost.

JUDGE

Comparing Assistant