

GAHC010026582022



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

Case No. : I.A.(Civil)/899/2022

ABHIJIT CHAKRABORTY
S/O ANATH BANDHU CHAKRABORTY
VILL AND P.O.-BIHARA BAZAR
P.S.-KATIGORAH
DIST- CACHAR
ASSAM

VERSUS

THE BIKRAMPUR COOP SOCIETIES LTD AND 4 ORS.
-BIHARA BAZAR
DIST-CACHAR
ASSAM (REPRESENTED BY BILLAL UDDIN BORBHUIYA
THE PRESENT CHAIRMAN OF THE ABOVE SOCIETY).

2:BILLAL UDDIN BORBHUIYA
S/O ABDUR RUP BORBHUIYA OF VILL-SENTI PART-I
P.S.-KATIGORAH
DIST-CACHAR
ASSAM.

3:THE STATE OF ASSAM
THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
CO OPERATION DEPARTMENT
DISPUR.

4:THE REGISTRAR OF COOP. SOCIETIES
ASSAM
KHANAPARA
GUWAHATI-22.

5:THE ASSTT. REGISTRAR OF COOPERATIVE SOCIETIES
CACHAR
SILCHAR

ASSAM.

Advocate for : MS. S T BOKTH

Advocate for : MR. S. K. TALUKDAR appearing for THE BIKRAMPUR COOP SOCIETIES LTD AND 4 ORS.

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 22.05.2023

Heard Mr. J.M.A. Choudhury, learned counsel for the applicant-respondent no. 4; Mr. B. Sinha, learned counsel for the opposite party nos. 1 & 2-writ petitioners; and Mr. S.K. Talukdar, learned Standing Counsel, Co-operation Department for the opposite party nos. 3, 4 & 5-respondent nos. 1, 2 & 3.

2. The applicant who is the respondent no. 4 in the connected writ petition, has preferred the interlocutory application seeking modification/alteration/vacation of the interim order dated 11.02.2022, whereby, the order dated 10.01.2022 passed by the opposite party no. 4-respondent no. 2 has been stayed. While staying the order dated 10.01.2022, reference has been made to the provisions of Section 38[2] and Section 49 of the Assam Co-operative Societies Act, 2007 [‘the Act, 2007’, for short].

3. In so far as the facts, in brief, are concerned, it is stated that the applicant came to be appointed as a Secretary of M/s Bikrampur Co-operative Society Limited [‘the Society’, for short], a co-operative society registered under the provisions of the Assam Co-operative Societies Act, 2007, by an order dated 07.10.2021 issued under the hand of the Chairman of the Society. The order dated 07.10.2021 had reflected that the appointment of the applicant was pursuant to a resolution vide Resolution no. 01 adopted by the Board of Directors of the Society in a Meeting held on 07.10.2021.

4. It is the case of the applicant that pursuant to the order dated 07.10.2021, he joined his duties as the Secretary of the Society by submitting a joining report, the receipt of which

was acknowledged by the Assistant Registrar of Co-operative Societies, Silchar on 08.10.2021. By order dated 22.10.2021, the Assistant Registrar [In-Charge] of Co-operative Societies, Silchar intimated the Senior Inspector/Auditor of Co-operative Societies to hand over the charges of the Society to the applicant, appointed by the Board of Directors of the Society, within 3 [three] days therefrom. On 09.11.2021, the applicant as the Secretary of the Society had also issued notices for general information that a meeting of the Board of Directors of the Society was scheduled on 16.11.2021. But on 01.12.2021 6 [six] Directors of the Society in a meeting of the Board of Directors purportedly held on that day, took a resolution vide Resolution no. 1 to cancel the appointment of the applicant under Section 38[2] of the Act, 2007. It was further resolved that the necessary steps be taken to fill up the vacant post of the Secretary within 15 [fifteen] days therefrom by making advertisement to invite applications from interested candidates. The resolution was followed by an order dated 01.12.2021 issued under hand of the Chairman of the Society, addressed to the applicant, whereby it was informed to the applicant that his appointment as a Secretary of the Society stood cancelled.

5. Aggrieved by the cancellation of his appointment in the manner mentioned above, the applicant preferred an appeal before the Registrar of Co-operative Societies, Assam on 14.12.2021 under Sections 49 [2][I] of the Act, 2007. The Registrar of Co-operative Societies, Assam had admitted the said appeal under Section 111 of the Act, 2007 and had thereafter, by his order dated 10.01.2022, set aside the order of cancellation of the applicant's appointment, passed by the Society on the ground that there was violation of the principles of natural justice prior to such cancellation of the applicant's appointment.

6. Assailing the said order dated 10.01.2022, the Society has preferred the connected writ petition, W.P.[C] no. 332/2022. When the writ petition came up for consideration on 11.02.2022, the said interim order had been passed.

7. Mr. Choudhury, learned counsel for the applicant has, by referring the provisions of Section 49, Section 92 and Section 111 of the Act, 2007, submitted that the Registrar of Co-operative Societies, Assam in exercise of the powers conferred on him by the provisions

above, had rightly passed the order dated 10.01.2022 and as such, the interim order dated 11.02.2022 needs to be recalled.

8. Section 111 of the Act, 2007 has inter alia provided for appeal. Sub-section [1] of Section 111 has provided that except where otherwise expressly provided to the contrary, an appeal shall lie to the Registrar from the decisions made under the Act or the rules framed thereunder by any Government officer or Liquidator appointed under Section 95 of the Act, 2007. It is noticed that the order of cancellation of the appointment of the applicant as the Secretary of the Society, was not passed by any Government Officer under the provisions of the Act, 2007 or any rules framed thereunder. Rather, the order of cancellation of appointment was passed by the Chairman of the Board of Directors of the Society pursuant to a resolution taken in a meeting of the Board of Directors of the Society held on 01.12.2021. The applicant also came to be appointed as a Secretary of the Society by an order dated 07.10.2022 pursuant to a resolution adopted by the Board of Directors of the Society in a meeting held on 07.10.2021.

9. Section 49[1][a] of the Act, 2007 has provided that there shall be a Chief Executive, by whatever designation called, of every co-operative society to be appointed by the Board or by the State Government. In the event of appointment of the Chief Executive by the Board, he shall be a full time employee of the Society. The applicant herein is undisputedly a full time employee of the Society and he came to be appointed by the order dated 07.10.2021, referred above. Clause [I] of sub-section [2] of Section 49 of the Act, 2007 has provided that the Chief Executive shall be under general superintendence, direction and control of the Board of the Society and he exercises the powers and functions laid down therein and in case of a dispute between the Chief Executive and the Board in any matter, the decision of the Registrar of the Co-operative Societies, Assam shall be binding on the both. Sub-section [3] of Section 49 has stated that subject to other laws regulating employer-employee relations, all employees of a co-operative society shall be appointed, regulated and removed by and be accountable to authorities within the co-operative society in accordance with the service conditions approved by the Board of the concerned co-operative society. The proviso to sub-section [3] of Section 49 has provided that in case of co-operative societies where State

Government holds more than 50 [fifty] percent of share capital or guarantees repayment of loans secured from any financial institution, any upward revision of pay and allowances of staff, shall require prior approval of the State Government. The Society herein does not come under proviso to sub-section [3] of the Section 49 of the Act.

10. Section 92 contained in Chapter VIII : Settlement of dispute reads as under :-

92. Any dispute touching the business of a registered society, other than a dispute regarding disciplinary action taken by a society against an employee of the society, or of the liquidator of a society shall be referred to the Registrar for decision if the parties thereto are among the following :-

- [a] the society, its past or present controlling or managing body any past or present officer, agent or employee or the liquidator of the society, or
- [b] member, past member or persons claiming through a member, past member or deceased member of the society, or
- [c] a surety of a member, a past member or deceased member of a society, or
- [d] any other registered society or the liquidator of the society, or
- [e] a registered society and a financing bank.

11. A reading of Section 92 makes it evident that the disputes of the nature, outlined in Clauses [a], [b], [c], [d] & [e], can be referred to the Registrar for decision which touches upon the business of a registered Society, other than a dispute regarding disciplinary action taken by a society against an employee of the society. The applicant herein is an employee of the Society. The dispute herein is the cancellation of appointment of the petitioner as the Secretary of the Society and the same was a disciplinary action. Prima facie, a dispute of the nature in question cannot be referred to the Registrar of Co-operative Societies, Assam for decision under Section 92 of the Act, 2007 and as such, the Registrar cannot decide such a dispute under Clause [a] of Section 93 of the Act, 2007.

12. In view of the above discussion and for the reasons indicated, this Court finds no good

and sufficient reason to vacate the interim order dated 11.02.2021 at this stage of the proceedings. Consequently, the instant interlocutory application is dismissed.

JUDGE

Comparing Assistant