

GAHC010087592023



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

Case No. : WP(C)/2301/2023

IMAN ALI
S/O LATE MAHAMMAD ALI, VILL-BANBAHAR, P.S.-BARPETA, DIST-
BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, CO-OPERATION DEPARTMENT, DISPUR, GUWAHATI-6

2:THE REGISTRAR OF CO-OPERATIVE SOCIETIES ASSAM
KHANAPARA
GUWAHATI-22

3:THE ASSTT. REGISTRAR OF CO-OPERATIVE SOCIETIES
BARPETA
ASSAM
PIN-78130

Advocate for the Petitioner : MR. A R BHUYAN

Advocate for the Respondent : SC, CO OP

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 29.05.2023

Heard Mr. A.R. Bhuyan, learned senior counsel for the
petitioner. Also heard Mrs. M.D. Borah, learned standing counsel for the

respondents.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for directing the respondents to allow the Directors of the existing Board of Directors of Pub Betbari Samabay Samitee Ltd. under the jurisdiction of Assistant Registrar of Cooperative Societies, Barpeta (hereinafter referred to as "ACRS, Barpeta" for short) to hold their tenure/ office for 5 (five) years or five cooperative years with effect from 15.10.2020, the date when they took over charge.

3. The case of the petitioner is that the Board of Directors of their cooperative society consists of 15 elected members. In the elections for the Board of Directors, which was held on 29.05.2018, 13 Board members were elected, but post of two board members could not be filled up as those posts were reserved for women and there was no representation from women. In the first board meeting held on 19.06.2018, for electing President and Vice President, 7 (seven) board members were present and they had elected one Abdul Mannan Khan as President/ Chairman and a resolution dated 19.06.2018 to that effect was forwarded to the ACRS, Barpeta. However, approval was not granted on the ground that requisite quorum to hold the meeting was not there. Therefore, another board meeting was called by the Secretary of the said society on 11.07.2018 for election of President and Vice President of the said cooperative society.

4. The case of the petitioner is that the said Abdul Mannan Khan had approached this Court and by filing W.P.(C) 4364/2018, made a prayer to set aside the notice dated 08.07.2018 and for directing the respondent authorities for giving approval of the resolution dated 19.06.2018. This Court by

an interim order dated 09.07.2018, while allowing the meeting to be held on 11.07.2018, directed the ACRS, Barpeta not to grant approval till further orders. However, by final order dated 07.10.2020, dismissed W.P.(C) No. 4364/2018 and W.P.(C) 4235/2018 and the interim order was vacated. Thereafter, the proceeding of the meeting of elected board of directors held on 11.07.2018 was approved, and the elected members of the board of directors took over charge of their said cooperative society on 15.10.2020.

5. The learned counsel for the petitioner has submitted that the petitioner is the current President of the Board of Directors and that the tenure/term of the Board of Directors should have been from 29.05.2018 to 28.05.2023, was for a short period from 15.10.2020 to 28.05.2023 due to interim order operating in the herein before referred writ petition and therefore, the Court would have power to direct the authorities to extend the duration of the petitioner as President of the Board of Directors of Pub Betbari S.S. Ltd. for a full 5 (five) cooperative year term till 14.10.2025.

6. The learned standing counsel for the respondents has opposed the prayer on the ground that by operation of the provisions of the Assam Cooperative Societies Act, 2007, the petitioner cannot be entitled to such relief.

7. The sole petitioner in this case is *Iman Ali*. No statement has been made in this writ petition to show that the petitioner has filed this writ petition in representative capacity for all the Board of Directors. Therefore, except for himself, the petitioner cannot be permitted to espouse the cause of any other member of the Board of Directors. Therefore, the prayer of the petitioner, in so far as it relates to direct the respondent authorities to allow the existing Board of Directors of Pub Betbari Samabay Samitee Ltd. to hold their

tenure/ office for 5 (five) years or five cooperative years with effect from 15.10.2020, the date when they took over charge would not be maintainable in respect of any other members of the Board of Directors and hence, the prayers made in this writ petition for anyone, save and except the petitioner, is rejected and/or dismissed.

8. In respect of the prayer for extension of the term of the petitioner for 5 (five) years from the date of election and/or date of first board meeting, we find that the issue raised by the petitioner is no longer *res integra*. We may profitably refer to the decision of this Court in the case of *Minara Begum Borbhuiya v. The State of Assam*, (2019) 2 GLR 152: 2018 (4) GLT 603: 2019 STPL 7577 Gauhati. A similar point was raised and this Court had held as follows:-

“18. By the Constitution (97th Amendment) Act, 2011, Part IX-B was inserted in the Constitution of India dealing with cooperative societies. Article 243 ZJ provides for the number and term of Members of Board of Directors of a co-operative society. As per Clause (1), Board of Directors shall consist of such number of Directors as may be provided by the Legislature of a State by law. But as per the first proviso the maximum number of Directors of a co-operative society shall not exceed 21. The second proviso deals with reservation of one seat each for the Scheduled Castes and Scheduled Tribes and two seats for women in the Board of Directors of every cooperative society. As per Clause (2), the term of office of the elected Members of the Board of Directors and its office bearers shall be 5 years from the date of election and the term of the office bearers shall be coterminous with the term of the Board of Directors.

19. Thus as per Article 243 ZJ (2), the term of office of elected Members of the Board of Directors shall be 5 years from the date of election and that the term of office bearers shall be coterminous with the term of the Board of Directors. Therefore, the Constitution itself has removed any ambiguity by clearly stating that the term of office of the elected Members of the Board of Directors shall be 5 years from the date of election. The 2007 Act has been enacted repealing the Assam Cooperative Societies Act, 1949. Section 35 of the 2007 Act provides that there shall be a Board of Directors to manage the affairs of the cooperative societies. Members of the Board of Directors shall be elected in accordance with

the provisions of the bye-laws. Sub-section (2) of Section 35 says that Board of Directors shall consist of 15 numbers of Directors with reservation for Scheduled Castes, Scheduled Tribes and women.

20. *Section 31 says that the term of the Board shall be 5 cooperative years. As per Section 36 (1), there shall be a President and a Vice President in a cooperative society to be elected by the Board of Directors from amongst its Members and the term of the President and the Vice President so elected shall be coterminous with the term of the Board. Section 42 (1) says that the tenure of office of elected members of the Board of Directors and its office bearers shall be 5 years from the date of election. As per the proviso, the tenure of office bearers shall be coterminous with the tenure of the Board of Directors.*

21. *Before referring to the other relevant provisions of the 2007 Act and pausing here for a moment, we find that it is both the constitutional as well as the statutory requirement that the term of the elected members of the Board of Directors as well as the term of the Board of Directors, which are coterminous is for 5 years and the period of 5 years is to be counted from the date of election. There is no ambiguity in this regard.*

22. *This position has been made abundantly clear by the Supreme Court judgment in *Abdur Razzaque v. Monir Uddin Ahmed*, Civil Appeal Nos. 10051-10052 of 2014, decided on 07.11.2014. That was also a case from this High Court. In that case, the Board of Directors had successfully challenged before this Court that they were entitled to a full term of 5 years and therefore any loss of period in the interregnum should be compensated to ensure a full term of 5 years. Supreme Court reversed the finding of this Court. Referring to Section 42 of the 2007 Act, Supreme Court observed that it was apparent that the tenure of the office of the members of the Board of Directors is 5 years from the date of election. In that case as the term of 5 years was upto 24.10.2014 which period had expired, Supreme Court directed the competent authority to take steps for holding immediate election of members comprising the Board of Directors. In so far the present case is concerned, there is no hesitation to come to the conclusion that the period of 5 years of the Board of Directors of the Society was over on 18.08.2018. Therefore, the prayer made in the writ petition for extension of the term of the Board is constitutionally and legally not tenable and cannot be granted by the Court.*

23. *However, in view of the submissions made by learned counsel for the petitioner, a reference to Sections 39 and 40 of the 2007 Act would be in order. Section 39 says that a general meeting to be termed as Annual General Meeting (AGM) of a registered co-operative society shall be held at least once in every cooperative year within a period of 6 months of close of the financial year to transact the business of the cooperative society as provided in the 2007 Act. This*

is the first part of Section 39. The second part of Section 39 says that the Board of Directors shall automatically stand dissolved for not holding AGM in accordance with the provisions of the 2007 Act and bye-laws within 6 months from the expiry of every financial year.

23.1. *An analysis of the first part of Section 39 would reveal that AGM of a registered cooperative society is required to be held at least once in every cooperative year. This AGM can be held within a period of 6 months of close of the financial year. Financial year ends on 31st of March and the period of 6 months from the close of the financial year would be upto 30th of September. Therefore, AGM of a cooperative society for a particular cooperative year must be held before 30th of September of the succeeding cooperative year. As per the second part, failure to hold such AGM within 30th of September of the succeeding cooperative year would lead to automatic dissolution of the Board of Directors.*

24. *Section 40 deals with eligibility for being a Director in a cooperative society. It would appear that inability of a Member of the Board of Directors who ceases to be a Member of the Board of Directors for not conducting or for wrongly conducting AGM during the tenure of 5 years would act as an eligibility bar for becoming a Director. But as pointed out earlier in this judgment, this is not an issue arising out of the pleadings calling for adjudication in this proceeding. The issue which has fallen for consideration in this case was summarized in the order dated 23.07.2018 as extracted above.*

25. *That being the position and in the light of the discussions made above, contention of the petitioner that the period of 5 years of the elected Board of Directors should be counted from the date of the first meeting of the Board of Directors is legally unsustainable and is accordingly rejected.*

26. *Since the term of the Board of Directors has expired, Assistant Registrar of Cooperative Societies, Silchar shall take steps to hold AGM and Election of the Society for the year 2018-19 before September 30th, 2018."*

9. In the present case in hand, election of the Board of Directors of Pub Betbari S.S. Ltd. was held on 29.05.2018. Therefore, we have no hesitation to come to the conclusion that the tenure/ term of 5 years of the petitioner as member of the Board of Directors of the Society had expired for all intents and purpose on 28.05.2018. The prayer in respect of the entire board of directors has already been rejected. In view of the decision of the Supreme Court of India in the case of *Abdur Razzaque (supra)* and the case of *Minara*

Begum Borbhuiya (supra), decided by this Court, there is no scope for any extension of the tenure/term of the petitioner as President/member of Board of Directors beyond 5 (five) years from the date of election. Therefore, the prayer to extend the tenure/ term of the petitioner as President/member of the Board of Directors of Pub Betbari S.S. Ltd. is liable to be and is hereby rejected.

10. The prayer for extension of the tenure/ term of the petitioner as President/member of the Board of Directors is also liable to be rejected on the ground of non-joinder of all the members of the said Pub Betbari S.S. Ltd. as respondents in this writ petition. All the members of the said cooperative society would be proper and necessary parties because the prayer so made, if granted would adversely affect their legal and constitutional right to have a board, whose term is coterminous with the expiry of the tenure of the Board of Directors, i.e. with the end of 5 years from the date of election by operation of Section 31 read with clause (1) of Section 42(1) of the Assam Cooperative Societies Act, 2007. Moreover, the petitioner claims to be aggrieved by the pendency of W.P.(C) No. 4364/2018 and W.P.(C) 4235/2018. However, even the writ petitioners of the said writ petition were not arrayed as respondents in this writ petition, for which the petitioner has become disentitled to the reliefs as prayed for on account of non-joinder of proper and necessary parties. Therefore, the Court does not find any merit in this writ petition.

11. The learned counsel for the petitioner had submitted that this matter was listed on 26.05.2023, but did not reach and therefore, he had prayed for early listing of the matter as the tenure of Board of Directors would expire and hence, on his prayer, the matter was listed today and that during mention hours today morning, he had prayed for upgrading the matter. It has

been submitted that as the petitioner had approached this Court for directing the respondents to extend the tenure/ term of the Board, there was a good reason not to hold the elections. Accordingly, the learned counsel for the petitioner has prayed that the respondent authorities may be directed not to treat the petitioner as disqualified from seeking re-election to the Board of Directors of Pub Betbari S.S. Ltd. on account of inability to hold AGM and/or to hold elections.

12. The learned standing counsel for the respondents had vehemently opposed the said prayer. In this regard, the Court is of the considered opinion that the learned counsel for the petitioner did make a prayer on 26.05.2023 for an early listing of this matter and today, prayer for upgrading the matter was made. Therefore, considering the steps taken by the learned counsel for the petitioner to have an early hearing of the matter, the Court is inclined to allow the verbal prayer made by the learned counsel for the petitioner because while exercising writ jurisdiction, this Court is also a Court of equity. Therefore, as the explanation of the petitioner for not holding elections is plausible, the Court is inclined to direct the respondent authorities not to treat the petitioner, namely, Iman Ali to be disqualified by operation of Section 40 of the Assam Cooperative Societies Act, 2007. However, this relief to the petitioner shall not be construed as if any other member of the erstwhile Board of Directors of Pub Betbari S.S. Ltd., whose tenure had expired on 28.05.2023, and have been granted and/or extended similar relief. The Court also hastens to add that the observations contained in this order, in so far it relates to saving the petitioner from the rigours of the provisions of Section 40 of the Assam Cooperative Societies Act, 2007 is concerned, the said relief has been granted under the facts unique to this case and therefore, this order is not intended to

be cited and/or followed as a precedent in any other case.

13. Therefore, in light of the discussions above, this writ petition is dismissed.

14. There shall be no order as to cost.

JUDGE

Comparing Assistant