

GAHC010099242023



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

Case No. : WP(C)/2595/2023

ARJUMA KHATUN AND 2 ORS.
W/O- ROFIQUL ISLAM,
R/O- VILL. DHUPAGURI,
P.O.- DHUPAGURI,
P.S.- DHING,
DIST.- NAGAON, ASSAM.

2: SADIQUL ISLAM
S/O- ABDUL MOZID

R/O- VILL. DHUPAGURI

P.O.- DHUPAGURI

P.S.- DHING

DIST.- NAGAON
ASSAM.

3: FAIJUL ISLAM
S/O- MOJUDDIN
R/O- VILL. DHUPAGURI PATHER

P.O.- DHUPAGURI

P.S.- DHING

DIST.- NAGAON
ASSAM

VERSUS

THE STATE OF ASSAM AND 13 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM,

CO-OPERATION DEPARTMENT,
DISPUR, GUWAHATI- 781006

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

3:THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES
NAGAON.

4:DHUPAGURI SAMABAI SAMITI LTD.
REPRESENTED BY ITS CHAIRMAN

AND HAVING ITS REGISTERED OFFICE AT
DHUPAGURI
PO- DHUPAGURI

DIST.- NAGAON
ASSAM.

5:WAJIDA KHATUN
W/O- GULZAR HUSSAN

R/O VILL.- BHER BHERI

P.O.- DHUPAGURI

P.S.- BATADRAWA

DISTRICT- NAGAON
ASSAM

PIN- 782123.

6:MAINUL HOQUE
S/O- LATE AFTAB UDDIN

R/O VILL.- BHER BHERI

P.O.- DHUPAGURI

P.S.- BATADRAWA

DISTRICT- NAGAON
ASSAM

PIN- 782123.

7:WAIZUL HOQUE CHOWDARY
S/O- ABDUL AJIT

R/O VILL.- DHUPAGURI PATHER

P.O.- DHUPAGURI

P.S.- DHING

DISTRICT- NAGAON
ASSAM

PIN- 782123.

8:MOJIBUR RAHMAN
S/O- KUDRAT ALI

R/O VILL.- DHUPAGURI PATHER

P.O.- DHUPAGURI

P.S.- DHING

DISTRICT- NAGAON
ASSAM

PIN- 782123.

9:AJIJUL HOQUE
S/O- LATE USMAN GONI

R/O VILL.- DHUPAGURI PATHER

P.O.- DHUPAGURI

P.S.- DHING

DISTRICT- NAGAON
ASSAM

PIN- 782123.

10:AJIJUL HOQUE
S/O- MOHAMMAD ALI

R/O VILL.- DHUPAGURI

P.O.- DHUPAGURI

P.S.- DHING

DISTRICT- NAGAON
ASSAM

PIN- 782123.

11:SALEHA KHATUN
S/O- MOHAMMAD ALI

R/O VILL.- DHUPAGURI

P.O.- DHUPAGURI

P.S.- DHING

DISTRICT- NAGAON
ASSAM

PIN- 782123.

12:MUSLEM UDDIN
S/O LATE MAHAMMAD ALI

R/O VILL.- KADAMONI PATHER

P.O.- KADAMONI

P.S.- BATADRAVA

DISTRICT- NAGAON
ASSAM

PIN- 782123.

13:AJIJUL HAQUE
S/O- LATE ABUL HUSSAIN

R/O VILL.- KADAMONI

P.O.- KADAMONI

P.S.- BATADRAVA

DISTRICT- NAGAON

ASSAM

PIN- 782123.

14:ALI AKBAR
S/O- AMIR UDDIN

R/O VILL.- DHUPAGURI

P.O.- DHUPAGURI

P.S.- DHING

DISTRICT- NAGAON
ASSAM

PIN- 782123

Advocate for the Petitioner : MR S BORTHAKUR

Advocate for the Respondent : SC, CO OP

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

Date : 11-05-2023

Heard Mr. S Borthakur, learned counsel for the petitioners. Also heard Mr. RB Goswami, learned counsel appearing on behalf of Ms. MD Borah, learned counsel for the respondent Nos. 1, 2 & 3, as well as Mr. MK Hussain, learned counsel for the respondent Nos. 5 to 12.

2. Mr. S. Borthakur, learned counsel for the petitioners submits that the impugned order dated 27.04.2023, issued by the Registrar of Co-operative Societies, Assam (respondent No. 2) holding that the disqualification of the private respondent Nos. 5 to 12 from continuing as members of the Board of Directors under Section 43 (7) of the 2007 Act was wrong and not applicable.

3. Mr. S. Borthakur, the learned counsel for the petitioners submits that the petitioners have been nominated/co-opted as members of the Board of Directors of M/s Dhupaguri Samabai Samiti Limited, Nagaon in view of vacancies arising in the Board of Directors, due to the disqualification of the private respondents as members of the Board of Directors. However, in view of the impugned order dated 27.04.2023, the private respondents' membership to the Board of Directors would be restored and the petitioners in turn would lose their membership from the Board of Directors.

4. The case of the petitioners is that in the meeting of the Board of Directors convened on 12.01.2023, resolution No. 1 was adopted disqualifying the private respondents from the membership of the Board of Directors, on the ground that they had been absent in three consecutive meetings held by the Board of Directors on 28.11.2022, 30.11.2022 and 02.01.2023, in violation of Section 43(7) of the Assam Co-operative Societies Act, 2007 (hereinafter referred to as "2007 Act"), which provides that if a Director fails to attend three consecutive meetings of the Board without the permission of the President or Chairman, he shall cease to be a Director from the date of the fourth meeting. In view of the disqualification of the private respondents as Directors of the Board, which resulted in there being vacant posts, the three petitioners were nominated as members of the Board of Directors, vide Resolution No. 2 in the Meeting dated 12.01.2023, as per Section 41(9) of the 2007 Act. Notices were thereafter sent to the private respondents regarding their membership as Board of Director had been cancelled. Thereafter, in the Meeting held on 21.03.2023 by the remaining members of the Board of Directors of the Co-operative Society, the cancellation of the membership of the private respondents as Directors of Board was accepted along with the nomination of the petitioners as Directors of

the Board.

5. The petitioners counsel submits that on 02.01.2023, the respondent No. 4, who is the Vice President of the said Co-operative Society submitted a letter before the Assistant Registrar of Co-operative Societies along with a letter addressed to the Chairman of the Society, showing that a meeting of the Board of Directors had been convened, wherein, the private respondents were present and certain resolutions had been adopted. The petitioners counsel submits that the said letter dated 02.01.2023 was never served upon the Chairman of the Co-operative Society or the Office of the Co-operative Society and as such, the said meeting had been done without any permission. The issue was brought to the notice of the Assistant Registrar, i.e. the respondent No. 3, who thereafter passed an order dated 15.03.2023, rejecting the meeting held by the private respondents, as their membership had been cancelled from the Board of Directors. Thereafter, the respondent Nos. 5 to 12 filed an appeal under Section 111 Sub-Section 1 of the 2007 Act before the respondent No. 2. The respondent No. 2 thereafter passed the impugned order dated 27.04.2023, holding that the disqualification of the private respondents to continue as Directors of the Board was wrong, as their disqualification under Section 43(7) of the 2007 Act could not have been done.

6. The petitioners' counsel submits that in view of the impugned order dated 27.04.2023 issued by the respondent No. 2, the respondent Nos. 5 to 12 would be taken back as members of the Board of Directors in the next meeting, which would automatically entail the cancellation of the petitioners' membership in the Board of Directors of the said Co-operative Society. He submits that the impugned order dated 27.04.2023 has to be set aside, inasmuch as, the petitioners have not been given an opportunity of being heard by the

respondent No. 2, prior to taking a decision to the effect that the cancellation of the membership/disqualification of the private respondents could not have been done. He accordingly prays that the impugned order should be set aside and the matter be remanded to the respondent No. 2, who should thereafter take a decision, after hearing the petitioners and the private respondents.

7. Mr. MK Hussain, learned counsel for the caveators/respondent Nos. 5 to 12 submits that no right of the petitioners have been violated, inasmuch as, they have been co-opted as members only on account of the cancellation of the membership of the private respondents. Once the rights of the private respondents have been restored, the membership of the petitioners as Directors, would automatically come to an end. He also submits that the reasons given by the respondent No. 2 for setting aside the cancellation of the membership of the private respondents was in terms of the 2007 Act and as such, the writ petition should be dismissed.

8. Mr. RB Goswami, learned counsel appearing on behalf of Ms. MD Borah, learned counsel for the respondent Nos. 1, 2 & 3 submits that the impugned order dated 27.04.2023 is a reasoned order and there is no requirement for hearing the petitioners, prior to issuance of the said impugned order. He submits that the private respondents had given prior information to the Assistant Registrar of Co-operative Societies, that they would not be able to attend the Board of Directors meeting held on 28.11.2022 and as such, there was no occasion for cancelling their membership from the Board of Directors in terms of Section 43(7) of the 2007 Act.

9. I have heard the learned counsels for the parties.

10. The operative portion of the impugned order dated 27.04.2023 passed

by the respondent No. 2 is reproduced below as follows:-

“Heard the petitioners and the respondents, perused the documents submitted by both the parties. It is found that 8 nos. of directors of the BOD, namely Ajijul Hoque, Mozibur Rahman, Md. Ajijul Hoque, Md. Moinul Hoque, Wazida Khatun, Waizul Hoque Choudhury, Saleha Khatun and Moslemuddin were found absent in the BOD meetings held on 28/11/2022, 30/11/2022 and 02/01/2023 consecutively as stated by ARCS, Nagaon. However, it also reveals from the report of the enquiry officers appointed vide letter no CNG-8/73/PT-VII/417 dated 01/03/2023 that the copies of the letters of the 8 nos. of directors showing their inability to attend the meeting on 28/11/2022 were available in the office of the ARCS, Nagaon.

It is further revealed from the report of the ARCS, Nagaon and the enquiry officers that the BOD meetings held on 02/01/2023 and 12/01/2023 cannot be considered as BOD Meetings due to lack of quorum as only Five directors of the Board signed the attendance of the meeting. There is no evidence on record that the Board had co-opted 3 shareholders as directors to form quorum for the board meeting.

It is clear from the aforementioned facts that two valid board meetings were conducted, ie. on 28/11/2023 and 30/11/2023 which were not attended by the above mentioned 8 directors of the Board and no valid third meeting has been conducted. Moreover, it has been observed that on 28/11/2023 and 30/11/2023 i.e. within a period of 3 days two Board meetings were held, whereas it is mandated by the Bye-laws of the society that minimum 4 days prior notice should be given to the members of the BOD for a Board meeting. Therefore, the disqualification to continue in the office as director of the Board as invoked by Sec 43(7) of the Assam Cooperative Societies Act 2007 does not apply in this case.

Therefore, the directors of the BOD of Dhupaguri S.S Ltd., namely Ajijul Hoque, Mozibur Rahman, Md. Ajijul Hoque, Md. Moinul Hoque, Wazida Khatun, Waizul Hoque Choudhury, Saleha Khatun and Moslemuddin are hereby allowed to continue as directors till the completion of the term subjected to the fact they are otherwise not disqualified under any other section of the act, 2007.

The Petition is hereby disposed off.”

11. On a perusal of the impugned order dated 27.04.2023, it is seen that various reasons have been given by the respondent No. 2, for holding that the cancellation of the membership of the private respondent Nos. 5 to 12 could not have been made. Without going into all the points and reasons given by the respondent No. 2 in the impugned order dated 27.04.2023, this Court is only confining itself to the 2nd last para of the impugned order, wherein it states that the meeting of the Board of Directors was held on 28.11.2022 and 30.11.2022, i.e., within a period of three days, two Board meetings were held. However, it was mandated by the Bye-Laws of the Societies that a minimum of four days prior notice was to be given to the Board of Directors for a Board meeting.

12. Rule 34 of the Assam Co-Operative Societies Rules, 1952, which has been made in exercise of the powers conferred by Section 100 of the Assam Co-Operative Societies Act, 1949 provides that at least four days notice for all meetings of the Managing Body of the Co-operative Society with the statement of the business to each members should be given, specifying the date and place of the meeting. Rule 2(f) of the Assam Co-Operative Societies Rules, 1952 provides that Directors means a member of the Administrative Council, Managing Committee or any Managing Body of the Society as the case may be

vested with the powers of its Management. Rule 2(e) of the Assam Co-Operative Societies Rules, 1952 provides that Society means a registered co-operative society registered or deemed to have been registered under the Act.

13. The 2007 Act was promulgated and came into existence from 10.03.2012 and the same repealed the earlier Assam Co-Operative Societies Act, 1949. Section 120(2) of the 2007 Act provides that all appointment, rules and orders made, notification and notices issued, all transactions entered into and all suits and other proceedings instituted under the said Act shall continue and shall, so far as may be, deemed to have been respectively made, issued, entered into or instituted under the 2007 Act.

14. As can be seen from Rule 34 of the Assam Co-Operative Societies Rules, 1952, four days notice was a mandatory requirement for holding meetings of the Board of Directors. Though, the respondent Nos. 5 to 12 were absent in the Board of Directors' meeting held on 28.11.2022, 30.11.2022 and 02.01.2023, the date of holding the Board of Directors meetings between 28.11.2022 and 30.11.2022 is only three days.

13. In the case of ***Laskar Bhalukmari Samabai Samiti Ltd. Vs. State of Assam & Ors.***, reported in ***2009 (4) GLT 622***, this Court has held that Rule 34 of the 1953 Rules requires at least four days notice. It also held that a meeting of the Managing Committee convened in contravention of Rule 34 was enough justification for the Registrar of the Co-operative Society to pass the impugned order setting aside the action taken by the Managing Committee. In view of the decision of this Court in ***Laskar Bhalukmari Samabai Samiti Ltd. (supra)***, and keeping in view the fact situation of this case, this Court holds that the Board of Directors meeting held on 30.11.2022 is not a valid meeting. As such, any action or resolution made in the said meeting cannot be

said to be valid. Accordingly, the respondent Nos. 5 to 12 cannot be held to have missed three consecutive Board of Directors meetings. Thus, Section 43(7) of the 2007 Act could not have been made applicable to the private respondents by the Resolution No. 1, as adopted in the Board of Directors meeting held on 12.01.2023. This Court accordingly does not find any infirmity with the impugned order dated 27.04.2023, issued by the respondent No. 2. The nomination of the petitioners as Directors of the Board had been made only due to the vacancies that arose out of the cancellation of the respondent Nos. 5 to 12 as members to the Board of Directors. As such, there was no requirement for the respondent No. 2 to hear the petitioners, as their membership to the Board of Directors was due to the disqualification of the private respondents. Due to the above reasons, this Court does not find any reason to set aside the impugned order, just because the petitioners were not heard by the respondent No. 2. The fact remains that the cancellation of the membership of the private respondents had been done in violation of law and the same having been corrected, this Court does not find any merit in the writ petition.

15. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant