

GAHC010134152018



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

Case No. : WP(C)/4193/2018

KASHI RAM TALUKDAR AND 8 ORS.
S/O. LT. KAHRGE TALUKDAR, R/O. VILL. KALAG, P.O. KALAG, P.S.
NALBARI, DIST. NALBARI

2: KASHINATH KALITA
S/O. LT. JOGEN KALITA
VILL. KALAG
P.O. KALAG
P.S. NALBARI
DIST. NALBARI

3: HARESWAR BHUYAN
VILL. KHUDRAKULHATI
P.O. KALAG
P.S. NALBARI
DIST. NALBARI

4: BISHNU MAZARIKA
S/O. NARAYAN HAZARIKA
VILL. KALAG
P.O. KALAG
P.S. NALBARI
DIST. NALBARI

5: RUMI DAS
W/O. RABIN DAS
VILL. BANGNABARI
P.O. KALAG
P.S. NALBARI
DIST. NALBARI

6: BHUPEN KALITA
S/O. LT. SARITRA KALITA
VILL. RANAKUCHI

P.O. KALAG
P.S. NALBARI
DIST. NALBARI

7: SAYED BAHARUL HUSSAIN
S/O. LT. SULTAN ALI
VILL. RAIMADHA
P.O. KALAG
P.S. NALBARI
DIST. NALBARI

8: NAGEN DAS
VILL. ARANGMOU
P.O. KALAG
P.S. NALBARI
DIST. NALBARI

9: DIPAJALI DEKA
W/O. NAGEN DEKA
R/O. BORI DOTRA P.O. KALAG
P.S. NALBARI
DIST. NALBAR

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
CO-OPERATION DEPTT., DISPUR, GUWAHATI-06.

2:THE DY. COMMISSIONER
FOOD CIVIL SUPPLY AND CONSUMER AFFAIRS BRANCH
DIST. NALBARI

3:THE REGISTRAR OF COOPERATIVE SOCIETIES
ASSAM
KHANAPARA
GUWAHATI

4:THE DIST. DY. REGISTRAR OF COOPERATIVE SOCIETIES
NALBARI

5:INQUIRY OFFICER JR. OBSERVER/ACCOUNTANT OFFICE OF THE DIST.
REGISTRAR OF COOPERATIVE SOCIETIES
NALBAR

Advocate for the Petitioner : MR. R GOSWAMI

Advocate for the Respondent : SC, CO OP

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 25-07-2023

Heard Mr. R. Goswami, learned counsel for the petitioners and Mr. S.K. Talukdar, learned Standing Counsel, Cooperation Department for the respondent nos. 1, 3, 4 & 5; and Mr. C.K.S. Baruah, learned Junior Government Advocate, Assam for the respondent no. 2.

2. The petitioners, 9 [nine] in nos., have joined together to institute the present writ petition under Article 226 of the Constitution of India to assail an Order dated 02.06.2018 of the Deputy Commissioner-cum-District Magistrate, Nalbari whereby the said authority withdrew his earlier Order issued on 02.06.2018 itself, apprehending that there was possibility of breach of peace and public order in the event the Annual General Meeting [AGM] of M/s Pub Upper Barbhag BSS Ltd. was allowed to hold on 03.06.2018. By his earlier Order dated 02.06.2018, permission was granted by his office to M/s Pub Upper Barbhag BSS Ltd. to hold the AGM on 03.06.2018.

3. The petitioners were office bearers/Directors of the Board of Directors of M/s Pub Upper Barbhag, BSS Ltd. [‘the Society’, for short], a cooperative society registered under the provisions of Assam Co-operative Societies Act, 2007 [‘the 2007 Act’, for short]. In order to hold its Annual General Meeting [AGM]/Election, a notice dated 10.04.2018 was published inviting all the

shareholders of the Society to submit objections for correction in the Voters List. Thereafter, a number of meetings were held to discuss about holding of the AGM/Election for the year : 2018 – 2019 and in its meetings, different resolutions were adopted. The same was followed by a notice for election to the Board of Directors inviting nominations for the AGM/Election. Against 15 nos. of posts of Directors, 23 nomination papers were received. On scrutiny, 9 nomination papers out of those 23 nos. of nomination papers were declared invalid by the Returning Officer vide a notice dated 23.05.2018 purportedly under the provisions of the 2007 Act and the Bye-Laws of the Society.

4. It is the contention of the petitioners that since out of 23 nos. of nomination papers, 9 nos. of nomination papers were declared invalid by the Returning Officer, the election to the Board of Directors of the Society became needless. Be that as it may, in order to hold the AGM/Election to the new Board of Directors of the Society, a meeting was called for on 03.06.2018. Accordingly, an application was submitted before the Deputy Commissioner-cum-District Magistrate, Nalbari on 10.05.2018 seeking permission to hold AGM/Election on 03.06.2018. Subsequently, a notice was also published on 15.05.2018 informing all the shareholders of the Society about the proposed AGM/Election to be held on 03.06.2018.

5. Just before holding of the proposed AGM/Election scheduled on 03.06.2018, a complaint came to be lodged before the office of the Deputy Commissioner-cum-District Magistrate, Nalbari alleging anomalies in the process of election to the Board of the Society and in the Voters List. On receipt of the said complaint, the Deputy Registrar of Cooperative Societies, Nalbari was directed to cause

enquiry into the allegations made in the complaint and to submit a Report to the Deputy Commissioner-cum-District Magistrate, Nalbari. The Deputy Registrar of Cooperative Societies, Nalbari had, in turn, submitted a Report on 01.06.2018 after causing an enquiry. Upon perusal of the Report so submitted, the Deputy Commissioner-cum-District Magistrate, Nalbari had formed an opinion that there was every possibility of breach of peace and public order during the conduct of the AGM/Election scheduled on 03.06.2018 as there would be a large gathering of shareholders including the complainants who had alleged anomalies in the election process. In respect of the allegations of anomalies in the preparation of the Voters List in the process of election to the Society, a crime case, Nalbari Police Station Case no. 356/2018 was also registered for offences under Sections 120B/166/171[f], Indian Penal Code. In the impugned order dated 02.06.2018, the Deputy Commissioner-cum-District Magistrate, Nalbari had recorded a view, on the basis of inputs purported to have been received by him, that if the AGM/Election scheduled on 03.06.2018 was held, the same might lead to serious law and order problem. Observing that he reached a satisfaction that there was every possibility of breach of peach and public order if the AGM/Election scheduled on 03.06.2018, was held, the permission earlier granted on 02.06.2018 by him for holding the AGM/Election was withdrawn. Assailing the same, the petitioners have instituted the instant writ petition. The petitioners have also sought for a direction to hold the AGM/Election of the Society for the year : 2018 – 2019 so that a new Board of Directors could be validly elected for the Society, M/s Pub Upper Barbhag BSS Ltd.

6. Section 35 of the 2007 Act has prescribed that there shall be a Board of Directors for the management of every cooperative society registered under the

Act. The Directors to the Board shall be elected in accordance with the provisions of the bye-laws. As per Section 39 of the 2007 Act, a general meeting to be termed as Annual General Assembly of a registered Cooperative Society is to 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. Sub-section [2] of Section 41 of the 2007 Act has prescribed that election of Directors to a Board shall be conducted before the expiry of the term of the Board so as to ensure that the newly elected members of the Board assume office immediately on the expiry of the office of members of the out-going Board. Section 31 of the 2007 Act has set forth the term of the Board as 5 [five] cooperative years from the date of election of Directors. Section 39 of the 2007 Act has further provided that the Board of Directors shall automatically stand dissolved if Annual General Meeting in accordance with the provisions of the 2007 Act and bye-laws is not held within 6 [six] months from the expiry of every financial year. Section 42[1] of the 2007 Act states that the tenure of an office of elected members of the Board and its office bearers shall be five years from the date of election and it provides that the tenure of office bearers shall be co—terminus with the tenure of the Board. Sub-section [4] of Section 41 has stipulated that where a Board fails to arrange for holding election of the Directors before the expiry of the term of their office in accordance with the 2007 Act and bye-laws, all Directors shall cease to be Directors on the expiry of the period as specified in Section 42[1]. Sub-section [7] of Section 41 has prescribed that the Directors shall hold office for the period for which they were elected and the newly elected Directors shall assume office on the date of expiry of the said period i.e. 5 [five] years.

7. When the writ petition was moved challenging the Order dated 02.06.2018 of the respondent no. 2, the Court while issuing notice returnable on 18.07.2018, had provided, in the interim, to the effect that as the then Board of Directors had done all that was possible for them to do to hold the AGM/Election before expiry of the term on 03.06.2018, the Board of Directors shall be allowed to continue till the next date fixed.

8. It is the case of the petitioners themselves that the tenure of the then Board of Directors was going to expire on 30.06.2018 as the Election to the said Board of Directors was held for a tenure of 5 [five] years i.e. from 2013 – 2018.

9. A combined reading of the provisions contained in Section 31, Section 41[7] and Section 42[1] goes to demonstrate that the tenure of a Board of Directors of a co-operative society registered under the provisions of the 2007 Act is 5 [five] years and the tenure of a elected member of the Board of Directors being co-terminus with the tenure of the Board, is also for a period of 5 [five] years. The Board of Directors can only hold office for the period for which they were elected. In the case in hand, the tenure of the then Board of Directors of M/s Pub Barbhag BSS Ltd., was for the years : 2013 – 2018. Some of the petitioners were Directors in the said Board of Directors.

10. It is the case of the petitioners themselves that their tenure was up to 30.06.2018. By the impugned order dated 02.06.2018, the respondent no. 2 had directed not to hold the AGM/Election on 02.06.2018. But by the said impugned Order, the respondent no. 2 did not prevent the then Board of Directors to complete its 5 [five] years tenure up to 30.06.2018.

11. The tenure of an elected body, whose tenure is prescribed by the governing statute, cannot be extended beyond the period so prescribed, unless there is any specific provision enabling any extension. As the tenure of the then Board of Directors of the Society elected for the period : 2013 – 2018 had ended as far back as on 30.06.2018 and the 2007 Act mandated that a new Board of Directors of the Society was to be elected after 30.06.2018, as the tenure of the earlier Board of Directors of the Society had expired on 30.06.2018, there could not be any cause of action for the petitioners herein who were members of the said Board of Directors for the period : 2013 – 2018 to maintain the instant writ petition beyond 30.06.2018.

12. In such view of the matter, the writ petition is rendered infructuous by efflux of time, having no cause of action for its survival beyond 30.06.2018. The interim order passed earlier is, therefore, required to be recalled. It is accordingly recalled. Consequently, the writ petition is accordingly disposed of observing that the affairs of the petitioners' Society are to be governed in adherence of the provisions of the 2007 Act, more particularly, Section 41[6] thereof.

JUDGE

Comparing Assistant