

GAHC010205862023



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

Case No. : WA/348/2023

THE GUWAHATI CO OPERATIVE URBAN BANK LTD. AND 2 ORS
HAVING REGISTERED OFFICE AT K.C. ROAD, CHATTRIBARI GUWAHATI-1,
REP. BY ITS CHAIRMAN

2: THE CHAIRMAN
GUWAHATI CO OPERATIVE URBAN BANK HAVING ITS REGISTERED
OFFICE AT K.C. ROAD
CHATTRIBARI GUWAHATI-1

3: THE BOARD OF DIRECTORS
GUWAHATI CO OPERATIVE URBAN BANK HAVING ITS REGISTERED
OFFICE AT K.C. ROAD
CHATTRIBARI GUWAHATI-

VERSUS

ANIL KUMAR KALITA AND 6 ORS.
S/O LT. SONARAM KALITA, R/O SATTRIBARI, HOUSE NO. 228, P.O.
REHABARI, P.S. PALTAN BAZAR, DIST. KAMRUP (M) ASSAM, PIN-781008

2: THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
CO OPERATIVE DEPARTMENT
DISPUR
GUWAHATI 6

3: THE DEPUTY COMMISSIONER
KAMRUP (M)
ASSAM

4: THE COMMISSIONER OF POLICE
CITY GUWAHATI
KAMRUP (M) ASSAM

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

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

7:THE ASSISTANT REGISTRAR OF CO OPERATIVE SOCIETIES
GUWAHAT

- B E F O R E -

HON'BLE THE CHIEF JUSTICE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

For the Appellants : Mr. K.N. Choudhury, Senior Advocate, assisted
by Mr. J. Patowary, Advocate.

For the Respondents : Mr. J.I. Barbhuiya and Mr. L. Mohan,
Advocates for respondent No.1.

: Mr. S.K. Talukdar, Standing Counsel, Co-
operation Department for respondent Nos.2, 5,
6 & 7.

Date of Hearing : 15.09.2023.

Date of Judgment & Order : 19.10.2023

JUDGMENT & ORDER

[Sandeep Mehta, C.J.]

Heard Mr. K.N. Choudhury, learned senior counsel, assisted by Mr. J. Patowary, learned counsel for the appellants. Also heard Mr. J.I. Barbhuiya, learned counsel representing the respondent No.1 and Mr. S.K. Talukdar, learned standing counsel, Co-operation Department, representing the respondent Nos.2,

5, 6 & 7.

2. The instant intra-Court writ appeal poses question to the legality and validity of the judgment & order dated 25.08.2023 passed by the learned Single Judge in WP(C) No.5940/2021 filed by the private respondent No.1, whereby the resolution adopted in the Annual General Meeting (for short, "AGM") held on 18.09.2020 of the Guwahati Co-operative Urban Bank Limited as well as the approval granted by the Co-operation Department to such resolutions adopted in the aforesaid AGM were declared to be invalid and were quashed. Consequently, the Registrar of Co-operative Societies was also directed to take action in terms with Section 41(6) of the Assam Co-operative Societies Act, 2007 (for short, "the Act of 2007").

3. The legal issue involved in the matter revolves around interpretation of the provisions contained in Sections 33 and 34 of the Act of 2007, which are reproduced herein below for the sake of ready reference:-

"33. Special General Meeting— (1) The Board may call a special general meeting and shall be bound to do so within forty five days of the date of receipt of a written requisition,-

(a) signed by not less than twenty five percent of the members having right to vote; or

(b) from the Registrar.

(2) Such requisition shall contain the reasons why the meeting is felt necessary and the proposed agenda and no subject other than the subjects included in the proposed agenda shall be discussed at the special general meeting.

(3) If the Board fails to hold a special general meeting on requisition under sub-section (1) or any of the Annual General Meeting under Section 32

within the period specified therein all directors shall cease to be directors on the date of expiry of the said specified period.

(4) Any meeting of the General Assembly other than the Special General Meeting may, with the consent of the majority of the members present, be adjourned from time to time to a later hour on the same day or to any other date as may be provided in this bye-laws, but no business other than that left over at the adjourned meeting shall be transacted at the next meeting.

A notice of such adjournment posted in the notice board of the Head office of the cooperative society on the day on which the meeting is adjourned shall be deemed sufficient notice of the next adjourned meeting.

34. Quorum of meetings of General Assembly—*(1) The quorum for a meeting for the General Assembly shall be specified in the bye-laws, but shall not be less than ten percent of the members eligible to vote at the meeting.*

(2) If within one hour from the time fixed for meeting of the General Assembly a quorum is not present, the meeting shall stand adjourned ordinarily to the same day in the next week at the same time and place. But the Chairman of the meeting may, however, decide to adjourn the meeting to a later date not later than fifteen days or as may be specified in the bye-laws of the society:

Provided that a meeting of the Special General Assembly called on the requisition of members under sub-section (1) of Section 33 shall not be adjourned but dissolved.

(3) If at any time in a meeting there is no quorum the presiding authority shall adjourn it to such time or date as it thinks fit and announce the same at once and the business set down for the meeting shall be brought forward at the subsequent meeting whether at such meeting there is a quorum or not.

(4) No business other than the business fixed for the original meeting shall be transacted at such subsequent meeting.

(5) A notice of such adjournment posted in the notice board of the Head office of the cooperative society on the day on which the meeting is adjourned shall be deemed sufficient notice of the next subsequent meeting.

(6) The quorum for a delegate general body meeting shall not be less than

twenty five percent of the delegate eligible to vote at the delegate general body meeting. If at any time in the meeting of delegate general body meeting there is no quorum, the procedure laid down in sub-section (1) to (5) shall be followed.

(7) At the meeting of the General Assembly, the President shall preside over the meeting. If the President is absent the Vice-President shall preside. If both the President and the Vice-President are absent from the meeting of the General Assembly, the members present shall choose one of them to preside the meeting.”

4. The brief factual background relevant and essential for disposal of the appeal are noted herein below.

The tenure of the Board of Directors, Guwahati Co-operative Urban Bank Limited (for short, “BOD”) of the Bank was scheduled to expire in the year 2020. Prior to expiry of the tenure of the BOD, a notice dated 31.07.2020 was issued by the Managing Director of the Bank inviting all shareholders/members to be present at the 51st AGM of the Bank scheduled to be held on 11.09.2020 at 11:00 AM at the Conference Hall of the Sanatan Dharma Sabha (Hari Sabha) situated at S.C. Goswami Road, Panbazar, Guwahati. In the very same notice, it was also indicated that if for any unavoidable circumstances, the meeting could not be held, then it would be re-scheduled at the same time and place on 18.09.2020. The agenda fixed for discussion in the meeting included a proposal for election/ constitution of a new Governing Body of the Bank in terms of the Act of 2007.

5. As per Section 34(1) of the Act of 2007, the minimum requisite quorum required to constitute a valid meeting of the AGM is not less than 10% of the members eligible to vote at the meeting. The Co-operative Bank comprised of 4265 shareholders as on 31.03.2020. In the meeting convened on

11.09.2020, only 22 shareholders were present presumably because of the prevailing COVID pandemic. Thus, for a valid meeting of the AGM to be constituted, presence of minimum of 10% shareholders, i.e. 426 members, was essential. The Chairman of the Bank adjourned the proposed 51st AGM dated 11.09.2020 to be held at the same time and same venue to discuss the same agenda on 18.09.2020.

6. The respondent No.1 had submitted certain representations to the Deputy Commissioner, Kamrup (Metro), Guwahati as well as the Police Commissioner, Guwahati City Police on 17.09.2020 flagging the issue that in view of the COVID pandemic and the restrictions imposed thereunder, no permission could be granted for the purpose of convening the AGM on 18.09.2020. Nonetheless, on 18.09.2020, the meeting of the 51st AGM was purportedly held. The proceedings of the said meeting, which have been enclosed to the writ petition, reflect that only 101 shareholders were present, which is less than 1/4th of the minimum requirement of 426 shareholders so as to complete the quorum essential to constitute a valid AGM.

Nonetheless, the agenda set out in the notice dated 31.07.2020 was discussed and the appellants herein (respondent Nos.8 to 10 in the writ petition) were elected as Board of Directors of the Bank for the period from 2020 to 2025. The Managing Director of the Bank issued a communication dated 21.09.2020 to the Assistant Registrar of Co-operative Societies seeking approval of the 51st AGM of the Bank held on 18.09.2020. The Assistant Registrar accorded approval to the said minutes vide communication dated 25.09.2020, upon which the respondent No.1 being one of the shareholders,

preferred the captioned writ petition for assailing the minutes dated 18.09.2020 as well as the approval thereof by the Assistant Registrar of Co-operative Societies.

7. The learned Single Judge, after considering the submissions of the learned counsel for the parties, the pleadings filed on record and the statutory provisions, proceeded to interpret the provisions of Sections 9, 33 and 34 of the Act of 2007 and concluded that the subsequent AGM held on 18.09.2020, wherein resolution was adopted electing the respondent Nos.11 to 24 as Board of Directors of the Bank for the period from 2020 to 2025, did not constitute a valid meeting because the requirement of having 10% of the shareholders to be present to constitute the quorum for a valid AGM was not complied and consequently the resolutions adopted in the AGM held on 18.09.2020 were quashed and the Registrar of Co-operative Societies was directed to take follow up action in terms of Section 41(6) of the Act of 2007.

The judgment dated 25.08.2023 rendered by the learned Single Judge is subjected to challenge at the instance of the Co-operative Bank, the Chairman and the Board of Directors, who were the respondent Nos.8, 9 and 10 in the writ petition.

8. Mr. K.N. Choudhury, learned senior counsel representing the appellants, vehemently and fervently contended that the interpretation given by the learned Single Judge to the provisions of Sections 33 and 34 of the Act of 2007 is absolutely erroneous.

9. Mr. Choudhury contended that the proceedings of the AGM convened on 11.09.2020 and rescheduled to 18.09.2020 would have to be governed by

sub-section (3) of Section 34 of the Act of 2007, which clearly stipulates that if there is no quorum at any time in a meeting, the presiding authority shall adjourn it to such time or date as it thinks fit and announce the same at once and the business set down for the meeting shall be brought forward at the subsequent meeting whether at such meeting there is a quorum or not. He also referred to sub-section (4) of Section 34, which mandates that no business other than the business fixed for the original meeting shall be transacted at such subsequent meeting.

Mr. Choudhury urged that in the first meeting convened on 11.09.2020, the business fixed to be transacted included the agenda of election of the Board of Directors of the Bank. He urged that since in the first meeting the quorum could not be completed, the presiding authority rightly adjourned the meeting to 18.09.2020 for discussing the same agenda in terms of sub-section (4) of Section 34 of the Act of 2007. As per Mr. Choudhury, sub-section (4) of Section 34 prohibits transaction of any business other than what was fixed for the original meeting. Thus, he contended that the view taken by the learned Single Judge interfering in the resolutions drawn in the meeting dated 18.09.2020 and as approved by the Registrar of Co-operative Societies, is absolutely unjustified and invalid and hence, this Court should feel persuaded to interfere in the judgment passed by the learned Single Judge and to restore the resolutions taken in the meeting dated 18.09.2020.

10. Per contra, Mr. J.I. Barbhuiya, learned counsel representing the respondent No.1 and Mr. S.K. Talukdar, learned standing counsel, Co-operation Department representing the respondent Nos.2, 5, 6 and 7, vehemently and fervently opposed the submissions advanced by Mr. Choudhury, learned senior

counsel for the appellants. They contended that there is a clear distinction in the language of sub-sections (2) and (3) of Section 34 of the Act of 2007. By referring to sub-section (2) of Section, they urged that the situation prevailing in the case at hand is squarely covered by the said provision, which clearly postulates that if quorum is not present within one hour from the time fixed for the meeting of the General Assembly, the meeting shall stand adjourned ordinarily to the same day in the next week at the same time and place. However, the Chairman of the meeting may decide to adjourn the meeting to a later date not later than 15(fifteen) days or as may be specified in the Bye-laws of the Society. They contended that sub-section (2) is governed by sub-section (1) of Section 34 of the Act of 2007, which mandates that the quorum for a meeting of the General Assembly shall be specified in the Bye-laws but shall not be less than 10% of the members eligible to vote at the meeting. It was urged that the number of members present at the meeting dated 18.09.2020 were well below the required 10% and hence, the said meeting was not a valid AGM in the eyes of law. On these grounds, learned counsel for the respondents implored the Court to dismiss the appeal and affirm the judgment passed by the learned Single Judge.

11. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the impugned judgment and the material placed on record.

12. The short controversy posed for adjudication in this appeal is as to whether the subsequent meeting held on 18.09.2020 constituted a valid AGM entitled to transact the business set down for discussion in the earlier meeting

dated 11.09.2020. The mandate to limit the discussion of business to the agenda fixed in the earlier meeting is stipulated in sub-sections (3) and (4) of Section 34 of the Act of 2007. The opening words of sub-section (3) give a clear indication that it caters to a situation, wherein during the course of a meeting, the quorum falls below the required 10% in which situation, the presiding authority would be required to adjourn the meeting and to carry forward the very same business to be transacted at the subsequent meeting to be fixed. In such a situation, the subsequent meeting can be held to discuss the very same business fixed for discussion in the earlier meeting irrespective of quorum. However, sub-section (2) deals with a situation, wherein the quorum is not present at the very inception of the meeting of the General Assembly and is not completed within an hour of commencement of the meeting, in which situation, the meeting would be adjourned without any requirement that the subsequent meeting would be held to discuss the same business. Clearly thus, if there is no quorum at the beginning and within one hour of the proposed AGM, the meeting cannot be said to have commenced.

13. The learned Single Judge analyzed the provisions of Section 34 of the Act of 2007 in the following manner:-

“24. Therefore, from the above analysis, it would be crystal clear that in a meeting held pursuant to adjournment under Section 34(2) of the Act of 2007, there is a requirement of having a quorum of 10% of the members eligible to vote in the meeting or any other quorum as mandated in the byelaws of the Cooperative Society whichever is higher.

25. In the backdrop of the above analysis and proposition of law laid down, let this Court consider the submission of Mr. K. N. Choudhury, the learned Senior counsel on merits. In the opinion of this Court, the said submission made to the effect that the meeting adjourned under Section

34(2) and 34(3) of the Act of 2007 to be given the same status, is misconceived inasmuch as already held supra, there is no meeting of the General Assembly if within the time stipulated under Section 34(2) of the Act of 2007, there is no quorum. As such, the said meeting would not come within the ambit of an adjourned meeting of the General Assembly or can by any standards be said to be a meeting of the General Assembly. Further to that as observed supra, as the meeting was called by the Board in terms with Section 32 of the Act of 2007, the said meeting which otherwise ought to have been dissolved does not get dissolved and stands adjourned by operation of law to the same day of the next week at the same time and venue. On the other hand, the proviso to Section 34(2) of the Act of 2007 is in relation to a Special General Meeting held in terms with the requisition made under Section 33(1) and Section 33(2) of the Act of 2007 which gets dissolved. Therefore, a meeting adjourned due to lack of initial quorum under no circumstances can be equated to an adjourned meeting or a subsequent meeting. Now coming to the meeting referred to in Sub-Section (3) of Section 34 of the Act of 2007 is a meeting of the General Assembly as there was initial quorum and as such the legislature in its wisdom had mentioned the meeting so adjourned by Presiding Authority as a subsequent meeting which means a continuation of the previous meeting. Therefore, the contention of the learned Senior counsel for the Private Respondents as observed earlier is misconceived.”

14. Having considered and analyzed the statutory provisions in context to the facts of the case at hand, we are of the firm view that on the first date fixed for the AGM, i.e. 11.09.2020, since only 22 shareholders were present, quorum for constituting a valid AGM was not completed and hence the said meeting was not an AGM in the eyes of law.

15. In the meeting dated 18.09.2020, only 101 shareholders were present out of the 4265 shareholders entitled to vote and thus, the meeting held on 18.09.2020 could also not be said to be a meeting of the General Assembly of the Bank. As a consequence, the resolutions adopted therein and the approval given to such resolutions by the Assistant Registrar of Co-operative Societies are invalid in the eyes of law and were rightly interfered with by the learned Single Judge.

Resultantly, we find no reason to interfere in the judgment dated 25.08.2023 passed by the learned Single Judge in WP(C) No.5940/2021.

16. The appeal fails and is dismissed as being devoid of merit.

JUDGE

CHIEF JUSTICE

Comparing Assistant