

GAHC010236912018



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

Case No. : WP(C)/7439/2018

KRISHNO KANTA BOROOAH AND 5 ORS.
S/O. LT. KESHAB K. BOROOAH 1, K.K. BHATTA ROAD, CHENIKUTHI
GUWAHATI-781003.

2: PRADIP DAS
S/O. LT. SANSESWAR DAS
P.O. REHABARI
GUWAHATI-781008.

3: PRADIP KAKATI

S/O. LT. SATIS CH. KAKATI
(KAKATI NILAY) 1
NABAGRAHA PATH
NEAR VETENARY HOSPITAL
GUWAHATI-781003.

4: NRIPENDRA NATH SHARMA
S/O. LT. KANTESWAR DEV SHARMA
K.K. BHATTA ROAD
H.NO. 4
CHENIKUTHI
GUWAHATI-781003.

5: TRIDEEP CH TALUKDAR

S/O. JITENDRA CH TALUKDAR 7
LUIT PATH
JYOTI NAGAR
BAMUNIMADAM
GUWAHATI-781021.

6: RANJIT NARAYAN DEKA

S/O. LT. BALI NARAYAN DEKA
ASSAM ENGINEERING INSTITUTE ROAD HOUSE NO. 24
SEUJEE PAM
KRISHNA NAGAR GUWAHATI-781003

VERSUS

THE STATE OF ASSAM AND 10 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, COOPERATIVE
DEPTT., DISPUR, GUWAHATI-06.

2:THE REGISTRAR

COOPERATIVE SOCIETIES ASSAM
KHANAPARA
GUWAHATI-22.

3:THE ASSTT. REGISTRAR

COOPERATIVE SOCIETIES
BHANGAGARH
GUWAHATI
ASSAM.

4:THE ZONAL JOINT REGISTRAR OF COOPERATIVE SOCIETIES

GUWAHATI ZONE
BHANGAGARH
GUWAHATI-05
ASSAM.

5:BALADEV SARMA

SENIOR INSPECTOR OF COOPERATIVE SOCIETIES
OFFICE OF THE ASSTT. REGISTRAR OF COOPERATIVE SOCIETIES
BHANGAGARH
GUWAHATI
ASSAM.

6:THE CO-OPERATIVE CITY BANK LTD.

U.N. BEZBARUAH ROAD
SILPUKHURI
GUWAHATI-781003
REP. BY ITS MANAGING DIRECTOR.

7:THE CO-OPERATIVE CITY BANK EMPLOYEES ASSOCIATION
HAVING ITS REGD. OFFICE AT U N BEZBARUAH ROAD
SILPUKHURI

GUWAHATI.

8:THANESWAR SARMA

LAKHINAGAR
P.O. JAPORIGOG
GUWAHATI.

9:NIRMAL RAJBONGSHI
C/O. NIRMAL ENTERPRISE AND TEXTILE
GANESHGURI CHARIALI
DISPUR
GUWAHATI-06.

10:THANESWAR KALITA
C/O. DRUG HOUSE
VILL. AGDALA
P.O. BAIHATTA
DIST. KAMRUP
ASSAM.

11:UMAR ALI

VILL. AND P.O. RANGMAHAL
NORTH GUWAHATI
KAMRUP

For the Petitioners : Mr.R. Dubey, Advocate.

Advocate for the Respondents :Mr. H. Betala, Advocate.
Mr. S.K. Talukdar, Advocate.
Mr. D. Sarma, Advocate.

Date of Hearing & Judgment : **05.08.2023**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
JUDGMENT AND ORDER(ORAL)

The instant writ petition has been filed by the Petitioners challenging the order dated 31.07.2018 issued by the Assistant Registrar of Cooperative Societies disapproving the proceedings of the Annual General Meeting of the Board held on 25.05.2018 and directing the Joint Registrar of Cooperative Societies, Guwahati to constitute a Board of Directors of the Bank by appointing one Departmental Officer as well as for setting aside the order dated 02.08.2018 issued by the Zonal Joint Registrar of Cooperative Societies by which the Respondent No.5 was appointed as the one man committee in terms with Section 41 (6) of the Assam Cooperative Societies Act, 2007 (in short the 'Act of 2007').

2. This Court has duly taken note of the order dated 31.07.2018 passed by the Assistant Registrar of Cooperative Societies. From a perusal of the said order, it reveals that there was an adjourned AGM held on 25.05.2018 and the proceedings of the AGM were submitted before the Assistant Registrar of Cooperative Societies for approval on 31.05.2018. Pursuant thereto, there were various complaint petitions filed against the proceedings of the AGM. The Assistant Registrar of Cooperative Societies vide the order dated 31.07.2018 disapproved the AGM of the Respondent No. 6/Bank held on 25.05.2018. In the said order, the Assistant Registrar of Cooperative Societies also observed that the management waited upto 25.05.2018 to complete the election of the new Board of Directors whereas it should have been completed well ahead so as to

ensure that the newly elected member of the Board assumes office immediately on the expiry of the office of the members of the outgoing Board. It was further observed that the last election of the Board of Directors was held on 25.07.2013 and the Board of Directors did not think about the period to submit the proceedings of the AGM and getting the approval of the same as per the provisions of Section 45 (1) of the Act of 2007. It was further mentioned in the said order that the earlier Board did not take necessary steps against Sri Ganesh Ch. Rahang for his alleged misappropriation of Rs.5 lakhs on 04.07.2016.

3. It further appears from the records that on 02.08.2018, the Zonal Joint Registrar of the Cooperative Societies had in exercise of the power under Section 41(6) of the Act of 2007 appointed the Respondent No. 5 who is the Senior Inspector of Cooperative Societies to perform all the functions of the Board and to convene the Annual General Meeting of the Cooperative City Bank Ltd. to constitute the Board of Directors within ninety days from the date of the issue of the said order. These two orders have been assailed as above mentioned.

4. It further reveals from the records that on 10.10.2018, the Managing Director of the Cooperative City Bank Ltd. had issued a notice stating interalia that the AGM of the Cooperative City Bank Ltd. would be held on 29.10.2018. Under such circumstances, an Interlocutory Application was filed being I.A. (Civil) No. 3768/2018 seeking the stay of all proceedings in relation to the notice dated 10.10.2018 including filing of nominations, holding of AGM cum election of the Board of Directors on 29.10.2018. This Court vide an order dated 12.10.2018 in the writ petition issued notice and in the meantime, stayed the notice dated 10.10.2018 issued by the Managing Director of the Cooperative

City Bank Ltd.

5. While the instant writ petition was pending, a Notification was issued on 13.08.2020 for recruitment for the post of Managing Director of the Cooperative City Bank Ltd. Under such circumstances, the Petitioners herein filed an application before this Court for stay of the recruitment for the post of Managing Director of the Respondent No.6/Cooperative City Bank Ltd. This Court vide an order dated 05.10.2020 passed in IA(Civil) No. 1495/2020 directed that the selection to the post of Managing Director as published by the Advertisement dated 13.08.2020 shall not be finalised till the next date of listing. It further reveals that on 17.12.2020 the said Interlocutory Application being IA(Civil) No.1495/2020 was taken up and taking into account that the earlier order dated 05.10.2020 imposed a blanket embargo on the recruitment process, this Court directed the recruitment process for the post of Managing Director of the Respondent No. 6/Cooperative City Bank Ltd which was initiated may go on, however the final appointment may not be made without the leave of the Court.

6. It further reveals from the records that the Respondent No. 5 who was the one man committee appointed in terms with the Order dated 02.08.2018 filed an application before this Court being IA(Civil) No. 425/2021 seeking leave to allow the Respondent No.5 to finalise the selection process for appointment to the post of Managing Director of the Respondent No. 6/Bank as per the Notification dated 13.08.2020 issued by the Cooperative City Bank Limited in terms with the order dated 17.12.2020 of this Court passed in IA(C) No. 1495/2020. It is however seen from the records that there is no order passed in the said Interlocutory Application.

7. It reveals from the records that the order dated 12.10.2018 passed in the instant writ proceedings whereby the notice dated 10.10.2018 was stayed as

well as the order dated 17.12.2020 passed in I.A.(Civil) No.1495/2020 whereby leave was granted to proceed with the recruitment process but no final appointment to be made continues to hold the field till today.

8. The learned counsel appearing on behalf of the Petitioners submits that taking into account that 5 years have already elapsed from the meeting held on 25.05.2018 which was not approved vide the order dated 31.07.2018, the Petitioners herein would not insist upon the challenge to the order dated 31.07.2018 whereby the approval was not granted as well as the consequential order dated 02.08.2018. It is the specific submission of the learned counsel that the Petitioners are not insisting upon the challenge to the orders dated 31.07.2008 and 02.08.2008 only for the reason that five years had passed by and the Management of the Cooperative Society requires to be restored through a democratic process as per the provisions of the Act of 2007. The learned counsel for the Petitioners however submitted that as regards the observations made in the order dated 31.07.2018 to the effect that no action was taken by the previous Board of Directors against Shri Ganesh Ch. Rahang for his alleged misappropriation of Rs.5 lakhs is incorrect inasmuch as steps were being taken against Shri Ganesh Ch. Rahang and the said Shri Ganesh Ch. Rahang had challenged the decision of initiating disciplinary proceedings against him by way of a Civil Suit being registered and numbered as Title Suit No. 42/2017 which was pending at that relevant point of time before the Court of the Munsiff No. 2, Kamrup(Metro), Guwahati. The learned counsel for the Petitioners further submits that there was also an order of injunction restraining the Bank from taking any action at that relevant point of time. Mr. R. Dubey, the learned counsel, further submitted that in the meantime, after the one man committee

i.e. the Respondent No. 5 had taken over the management, the said suit being Title Suit No. 42/2017 was dismissed and thereupon an appeal was filed which was also withdrawn. He therefore submits that the statement made in the order dated 31.07.2018 to the effect that no step was taken against Shri Ganesh Ch. Rahang needs to be expunged as it may act prejudicially to the interest of the then existing Board of Directors which includes the Petitioners.

9. Mr. H. Betala, the learned counsel appearing on behalf the Respondent Nos. 5 & 6 submits that in view of the pendency of the instant writ petition and there being a stay to the notice issued on 10.10.2018, the one man committee i.e. the Respondent No. 5 could not take steps for holding the election as is required u/s 41(6) of the Act of 2007. He submits that if the embargo which is there on the basis of the orders passed by this Court are lifted, the Respondent No. 5 shall take appropriate steps in that regard.

10. Mr. S.K. Talukdar, the learned counsel appearing on behalf of the Cooperation Department referring to Section 41 (6) of the Act of 2007 submitted that where a Board fails to arrange for holding the election before the expiry of the term of the Board or where there is no Directors remaining on the Board, a statutory duty is cast upon the Registrar of the Cooperative Societies who has to convene a General Meeting by appointing an Officer of the Cooperation Department for constitution of the Board within ninety days from the date of such appointment and the Officer so appointed shall perform all functions of the Board during the said period of ninety days at the cost of the Societies. The learned counsel further referring to Section 41(1) of the said Act of 2007 submits that the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of all election to a Cooperative Society vest upon the Registrar. The learned counsel further submitted that if

this Court fixes a particular period, the Registrar of Cooperative Societies shall do the needful for convening the General Meeting as well as the election of the Respondent No. 6/Bank. He further submitted that as the power exercised by the Respondent No. 5 is on the basis of orders passed by the Registrar of Cooperative Societies, it is the Registrar of Cooperative Societies or his delegate who only has the authority and jurisdiction in terms with the Act of 2007 to convene the General Meeting as well as hold the election of the Respondent No. 6.

11. Mr. P.K. Garodia, the learned counsel appearing on behalf of the Respondent Nos. 7 & 8 submitted that the Petitioners herein having not taken steps against Shri Ganesh Ch. Rahang who was guilty of misappropriation of Rs. 5 lakhs for which the Petitioners herein are disqualified in terms with Section 37 (e) of the Act of 2007.

12. Upon hearing the learned counsels for the parties and taking into account the specific submission of Mr. R. Dubey, the learned counsel appearing on behalf of the Petitioners to the effect that the Petitioners do not insist upon the challenge to the non-granting of the Approval by the Assistant Registrar of the Cooperative Societies to the meeting held on 25.05.2018 due to efflux of time as well as well as the consequential order dated 02.08.2018 for the same reason, this Court is not interfering with the orders dated 31.07.2018 and 02.08.2018. This Court however finds substance in the submissions of Mr.R. Dubey, the learned counsel to the effect that in the order dated 31.07.2018 the observations made that the Petitioners have not taken action against the said Shri Ganesh Ch. Rahang may act prejudicially to the interest of the Petitioners. From the perusal of the records, it is seen that the Petitioners while holding the post of Directors in the Board of the Respondent No. 6 had

duly taken action against the said Shri Ganesh Ch. Rahang by initiating departmental proceedings against the said person. It is on account of the injunction order passed in Title Suit No. 42/2017, that the Petitioners could not take further steps against Shri Ganesh Ch. Rahang. It is further relevant to take note of that pursuant to the dissolution of the Board of Directors and the appointment of the one man committee, the said suit was dismissed and the appeal so filed was withdrawn. Under such circumstances, it is the opinion of this Court that the said remark made in the order dated 31.07.2018 stating that the Board did not take necessary steps against Shri Ganesh Ch. Rahang for the alleged misappropriation of Rs.5 lakhs requires to be expunged. Accordingly, the said sentence in the order dated 31.07.2018 is expunged from the said order.

13. This Court further finds it relevant to take note of that vide order dated 02.08.2018, a one man committee was appointed in terms with Section 41(6) of the Act of 2007. A perusal of the said provision stipulates that the Registrar of Cooperative Societies through the one man committee is required to hold the General Meeting as well as the election to the Board within ninety days from the date of appointment. This Court duly takes note of the submissions made by Mr. H. Betala as regards the difficulties faced for not holding the meeting on account of the proceedings being pending and various interim orders being passed.

14. Be that as it may, taking into account that it is the Board of Directors who should be running the management of the Cooperative Societies in terms with Section 35 of the Act of 2007 and the appointment of a one man committee is only as an interim measure for convening the meeting and holding the election, this Court is of the opinion that the Registrar of the Cooperative Societies who is duty bound in terms with

Section 41 (1) & 41(6) of the Act of 2007 to take appropriate steps for the purpose of convening the General Meeting as well as the holding of the election of the Cooperative Societies in question should do the needful as per the requirement of law. Accordingly, this Court in the interest of justice directs the Registrar of Cooperative Societies to take appropriate steps so that the General Meeting as well as the election of the Respondent No. 6 are held on or before 17th of November, 2023.

15. With the above observations and directions, the instant writ petition stands disposed.

16. The interim orders which have been passed as referred to hereinabove stands vacated.

JUDGE

Comparing Assistant