GAHC010023512019

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

Case No. : WP(C)/798/2019

HOMAI DAS AND 12 ORS.
S/O LT. SIDHESWAR DAS, R/O- BIHAGURI, P.O. PITHAKHOWA, DIST. SONITPUR, ASSAM, PIN- 784153.

2: DHIREN DAS
S/O- LT. PANCHANAN DAS
R/O. SINGRI BANGALI
P.O. SINGRI
DIST.- SONITPUR
ASSAM- 784153.

3: BABUL DAS
S/O. LT. DANDIRAM DAS
R/O- KOLIBARI
P.O.- TEZPUR
DIST.- SONITPUR
ASSAM- 784153.

4: JHARU DAS
S/O- LT. SUREN DAS
R/O- SINGRI BANGALI
P.O.- SINGRI
DIST.- SONITPUR
ASSAM- 784153.

5: MOHAN MALO DAS
S/O- LT. MADHU MALO DAS
R/O- BORCHALA
P.O.- BORCHALA
DIST.- SONITPUR
ASSAM- 784153.

6: BETHARAM DAS
S/O LT. SONARAM DAS

R/O- BIHAGURI
P.O. PITHAKHOWA
DIST.- SONITPUR
ASSAM- 784153.

7: NAREN CHANDRA DAS
S/O- LT. BHADRESWAR DAS
R/O- BIHAGURI
P.O. BIHAGURI
DIST. SONITPUR
ASSAM- 784153.

8: KRISHNA DAS
S/O- LATE PREMA DAS
R/O- BONCHOLA
P.O. BONCHOLA
DIST.- SONITPUR
ASSAM- 784153.

9: ROMEN CHANDRA DAS
S/O. LT. BHOLA DAS
R/O.- KOLIBARI
P.O. TEZPUR
DIST.- SONITPUR
ASSAM- 784153.

10: JOYDEV DAS
S/O- LT. BHOGIRAM DAS
R/O- KOLIBARI
P.O. TEZPUR
DIST.- SONITPUR
ASSAM- 784153.

11: AMULYA MALO DAS
S/O- LT. NILAI MALO DAS
R/O- BORSOLA
P.O.- BORSOLA
DIST.- SONITPUR
ASSAM- 784153.

12: RANJIT DAS
R/O- SINGRI BANGALI
P.O.- SINGRI
DIST.- SONITPUR
ASSAM- 784153.

13: BHAKTA DAS
S/O- LT. SUREN DAS

R/O- SINGRI BANGALI
P.O.- SINGRI
DIST.- SONITPUR
ASSAM- 784153

VERSUS

THE STATE OF ASSAM AND 8 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM, COOPERATION DEPARTMENT, DISPUR, GUWAHATI-6.

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

3:THE ADDL. REGISTRAR OF CO-OPERATIVE SOCIETIES (G) ASSAM
KHANAPARA
GUWAHATI-22.

4:THE ZONAL JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES

TEZPUR
DIST.- SONITPUR
ASSAM. 784001.

5:THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES

TEZPUR
DIST.- SONITPUR
ASSAM. 784001.

6:KULESHWAR DAS
S/O JAYGURAM DAS
R/O VILL- BORDUBIA
P.O. PITHAKHUWA
DIST.- SONITPUR
ASSAM
PIN- 784153.

7:BIREN DAS
S/O NIRANJAN DAS
R/O VILLAGE BONMARI
BROJEN NAGAR
P.O. TEZPUR
DIST.- SONITPUR
ASSAM
PIN- 784151.

8:DULAL DAS
S/O LT. JONARAM DAS
R/O. KUMAR GAON
P.O. AND P.S. TEZPUR
DIST.- SONITPUR
ASSAM
PIN- 784151.

9:ARUN DAS
S/O SRI TARUN DAS
R/O VILL- BORDUBIA
P.O. PITHAKHOWA
DIST.- SONITPUR
ASSAM
PIN- 784153

Advocate for the Petitioner : MR B D DAS

Advocate for the Respondent : SC, CO OP

WP(C)/4526/2020

CHARIDUAR BRAHMAPUTRA ARU KHALOIBEEL FISHERY COOPERATIVE SOCIETY LTD AND ANR
REPRESENTED BY ITS CHAIRMAN SRI HOMAI DAS
JAHAJGHAT
TEZPUR
DIST SONITPUR ASSAM 784001

2: THE SECRETARY
CHARIDUAR BRAHMAPUTRA ARU KHALOIBEEL FISHERY CO OPERATIVE SOCIETY LIMITED
JAHAJGHAT
TEZPUR
SONITPUR ASSAM 78400
VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM. CO OPERATION DEPARTMENT
DISPUR
GUWAHATI 6

2:THE REGISTRAR
CO OPERATIVE SOCIETIES
ASSAM
KHANAPARA
GUWAHATI 22
DIST KAMRUP M ASSAM
3:THE DISTRICT DEPUTY REGISTRAR OF CO OPERATIVE SOCIETIES
SONITPUR
TEZPUR
DIST SONITPUR
ASSAM 784001
4:THE ASSISTANT REGISTRAR OF CO OPERATIVE SOCIETIES
TEZPUR
TEZPUR
DIST SONITPUR
ASSAM 784001

Advocate for : MR B D DAS
Advocate for : SC
CO OP appearing for THE STATE OF ASSAM AND 3 ORS

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

Date : 15-12-2020

Both the writ petitions being connected where the contesting parties are same, both are heard together and disposed of by this common order.

2. Heard Shri BD Das, learned Senior Counsel for the petitioners. Also heard Shri G Bordoloi, learned Standing Counsel, Cooperation Department, Assam as well as Shri RP Sarmah, learned Senior Counsel for the private respondents, who are shareholders.

3. The principal grievance raised in WP(C) No.798/2020 is against an order dated 30.01.2019 passed by the Addl. Registrar of Co-operative Societies (G), Assam, by which the order of approval dated 02.08.2018 of the Assistant Registrar of Co-operative Societies, Tezpur was set aside. The reason for passing the impugned order is non-adherence to the

requirement of having at least two women members in the Co-operative Society.

4. The second writ petition, being WP(C) No.4526/2019 was filed by the petitioners' Society and its Secretary challenging an order dated 19.10.2019 issued by the District Deputy Registrar of Cooperatives Societies, Tezpur, by which the Board of Directors of the petitioners' Society were restrained from discharging its functions unless the final outcome of WP(C) No.6088/2019. It is the case of the petitioners' Society that the aforesaid WP(C) No.6088/2019 was disposed of by this Court vide an order dated 28.02.2019. It is to be mentioned that by order dated 30.01.2019, the Addl. Registrar of Cooperative Societies, Assam had held the election for 13 numbers of posts of Directors of the Board of the petitioners' Society, leaving two posts vacant for women, as erroneous and accordingly, set aside the said order. The said order dated 30.01.2019, as indicated above, is the subject matter of WP(C) No.798/2019 in which the learned Single Bench had refused to pass an interim order. Against the same, the petitioners had preferred WA No.54/2019 whereby the Hon'ble Division Bench vide order dated 22.02.2019 had stayed the impugned order dated 30.01.2019. The writ petition was finally disposed of on 06.05.2019 in terms of the interim order dated 22.02.2019. On the strength of the order dated 22.02.2019, the petitioners Society started functioning and the WP(C) No.798/2019 was still pending. The respondent no. 3, District Deputy Registrar had issued an order dated 19.10.2019 restraining the Board of Directors from discharging its functions and kept the Board as non-functional on the alleged ground that the issue was *sub judice*.

5. Shri BD Das, learned Senior Counsel for the petitioners submits that though sub-section (2) of Section 35 of the Assam Co-operative Societies Act, 2007 (Act), provides that out of fifteen members of Directors, two seats shall be reserved for women, in the case of the petitioners' Society where there is no woman member, the same requirement of law was not able to be adhered to. In any case, after the orders were passed by the Hon'ble Division Bench as recorded above, the Board was constituted and is functioning.

6. Shri RP Sarmah, learned Senior Counsel contends that there is a mandatory

requirement to hold the Annual General Meeting (AGM) every year as laid down in Section 39 of the Act. For ready reference, Section 39 of the Act is quoted hereinbelow: -

> "*39. Annual General Meeting. — A general meeting to be termed as Annual General Assembly of a registered Cooperative Society shall 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 this Act. The Board shall automatically stand dissolved for not holding Annual General Meeting in accordance with the provisions of the Act and bye-laws within six months from the expiry of every financial year.*"

7. Shri Sarmah, learned Senior Counsel submits that taking advantage of the pendency of this writ petition, the AGM has not been held by the petitioners Society in question and the requirement to hold the AGM every year has got nothing to do with the merits of the writ petition. He further submits that even on merits, the contention of the learned counsel for the petitioners Society is not correct as there are women shareholders in the Society who had filed application before the Registrar.

8. Be that as it may, in view of the orders passed by the Hon'ble Division Bench of this Court, it may not be necessary to make further observation on the merits of the case. However, it is directed that during the specified tenure of five years, as stipulated in the Act, the AGM of the petitioners Society be held strictly in accordance with the requirement of Section 39 of the Act.

9. In view of the above, both the writ petitions are disposed of by interfering with the impugned orders. No costs.

JUDGE

Comparing Assistant