

(2024) 04 GAU CK 0083
In the Gauhati High Court

Case No : Writ Petition (C) No. 6243 Of 2023, 1975, 2094 Of 2024

Dibru Dangari River Part I Meen Samabay Samity Ltd. APPELLANT
Vs
State Of Assam And 2 Ors RESPONDENT

Date of Decision : 30-04-2024

Acts Referred:

Assam Cooperative Societies Act, 2007 — Section 36(4), 36(5), 39, 41(9), 43(1), 43(2), 43(7), 43(8), 111

Citation : (2024) 04 GAU CK 0083

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : S Banik, N K Kalita

Judgement

1. At the outset, it would be appropriate to mention herein that by a common order dated 19.04.2024, passed in W.P.(C) 1975/2024 and W.P.(C) 2094/2024, the writ petition registered as W.P.(C) No. 6243/2023 was tagged together for consideration. As per the said order, the counsel for the parties had given their consent that since the rival parties have presented their version in a separate writ petition, no counter-affidavit may be necessary. Accordingly, with the consent of the learned counsel for all the parties, W.P.(C) 1975/2024 and W.P.(C) 2094/2024 have been finally heard at the 'motion' stage, and W.P.(C) 6243/2023 has been finally heard at the 'admission' stage.

2) Heard the following learned counsel:-

Writ petition

Name of parties

Learned counsel

WP(C) 6243/2023

Dibru Dangari River Part-I Min Samabay Samity Ltd. (petitioner)

Mr. S. Banik

WP(C) 6243/2023

Cooperation Department (respondent nos. 1,2,3)

Mr. V. Rajkhowa, Standing counsel.

WP(C) 6243/2023

Bikash Das, (impleaded as respondent no. 4 vide order dated 22.01.2024 in I.A. (C)

3458/2023).

A.B.T. Hoque.

WP(C) 1975/2024

Dibru Dangari River Part-I Min Samabay Samity Ltd. (petitioner)

Mr. N.K. Kalita

WP(C) 1975/2024

Cooperation Department (respondent nos. 1,2,3)

Mr. G. Bardoloi, Standing counsel.

WP(C) 1975/2024

Bikash Das

Mr. S. Banik.

WP(C) 2094/2024

Ranjit Das (petitioner)

Mr. S. Banik

WP(C) 2094/2024

Cooperation Department (respondent nos. 1,2,3)

Mrs. M.D. Borah, Standing counsel.

WP(C) 2094/2024

Bikash Das (respondent no.4)

A.B.T. Hoque.

3) These cases have a common thread and a chequered history leading to several writ petitions being filed. It is essentially a clash for the post of Chairman/ President and Secretary of the cooperative society under the name and style of Dibru Dangari River Part-I Min Samabay Samity Ltd. (hereinafter

referred to as DDRPMSS Ltd. for short). The writ petitions are (1) W.P.(C) 4414/2023, disposed of by order dated 04.08.2023; (2) W.P.(C) 4083/2023, disposed of by order dated 25.07.2023, (3) W.P.(C) 5512/2023, disposed of by order dated 20.09.2023, (4) W.P.(C) 5526/2023, disposed of by order dated 25.09.2023; (5) W.P.(C) 3458/2024 stated to be pending; (6) W.P.(C) 6243/2023; (7) W.P.(C) 1975/2024 and (8) W.P.(C) 2094/2024. The orders passed from time to time by the authorities under the Registrar of Cooperative Societies, Assam have lead to filing of these writ petitions.

4) The learned counsel for all appearing sides have submitted that some of the facts which arose in previously disposed of cases have not been elaborately pleaded in these three writ petitions. Hence, the brief facts and prayers in these three writ petitions are as follows:-

a. W.P.(C) 6243/2023:

i. It has been submitted that under the provisions of the Assam Cooperative Societies Act, 2007 ("2007 Act" for short), the proceedings of the meeting of the Board of Directors and the Annual General Meeting ("AGM" for short) are required to be approved by the Registrar of Cooperative Societies, Assam or his subordinate authorities like the jurisdictional Zonal Registrar of Cooperative Societies, Jorhat ("ZRCS, Jorhat" for short) and/or the Assistant Registrar of Cooperative Societies, Tinsukia ("ARCS, Tinsukia" for short).

ii. By resolution no. 1 adopted in the BoD meeting of DDRPMSS Ltd. held on 16.06.2023, Bikash Das was removed from the post of Secretary of the said Society. Vide resolution no. 3 taken in the same meeting, Sanjay Das was appointed as the Secretary of DDRPMSS Ltd. The said resolution no. 1 was temporarily suspended by the ARCS, Tinsukia by order dated 27.06.2023, and Bikash Das was allowed to function as Secretary. Thereafter, on 04.07.2023, the ARCS, Tinsukia had withdrawn the order dated 27.06.2023 and Bikash Das was allowed to continue to function as Secretary.

iii. By an order which was communicated by the ARCS, Tinsukia by letter dated 27.06.2023, suspended the resolution no.1 dated 16.06.2023 and allowed Bikash Das to act as Secretary of DDRPMSS Ltd.

iv. The ZRCS, Jorhat, by order dated 05.07.2023, inter alia, vacated the order dated 04.07.2023 by the ARCS, Tinsukia for 10 days. The said order dated 05.07.2023 by the ZRCS, Jorhat was assailed by Ranjit Das, Biju Choudhury and Sanjay Das by filing W.P.(C) 4083/2023.

v. Be it mentioned that on 05.07.2023, the BoD took a resolution to authorize the Chairman/ President to remove and take action against Ranjit Das and Biju Choudhury and to confiscate their shareholding. The said Ranjit Das and Biju Choudhury had also challenged the said resolution in W.P.(C) 4083/2023.

vi. The said Ranjit Das and Biju Choudhury had also filed an appeal under section 36(5) of the 2007 Act before the Registrar of Cooperative Societies, Assam

against the said resolution of BoD dated 05.07.2023.

vii. This Court, by judgment and order dated 25.07.2023, stayed the BoD resolution dated 05.07.2023 of DDRPMSS Ltd. till final outcome of appeal filed before Registrar of Cooperative Societies, Assam.

viii. Thereafter, by order dated 30.08.2023, the Registrar of Cooperative Societies, Assam had held that the removal of the President and Vice-President of DDRPMSS Ltd. was not as per procedure under section 36(4), 43(1) and 43(2) of the 2007 Act. Accordingly, the BoD meeting held on 05.07.2023, was rejected. It is projected that the said decision of the Registrar of Cooperative Societies, Assam has attained finality.

ix. Bikash Das, as Secretary of DDRPMSS Ltd., by notice dated 01.09.2023, convened a BoD meeting on 07.09.2023. However, vide notice issued on 02.09.2023, Ranjit Das and Sanjay Das, acting as President and Secretary of DDRPMSS Ltd., also convened a meeting of BoD on 07.09.2023.

x. Thereafter, Ranjit Das and Sanjay Das, as President and Vice-President, by notice dated 14.09.2023, convened the AGM of the DDRPMSS Ltd. on 29.09.2023.

xi. In the meanwhile, the ARCS, Tinsukia heard the BoD in the matter on 28.09.2023 and 29.09.2023 and vide letter dated 29.09.2023, forwarded the outcome of hearing conducted on the said dates to the Registrar of Cooperative Societies, Assam with his opinion that termination of Bikash Das and appointment of Sanjay Das as Secretary was illegal and that Bikash Das is the present legal Secretary of DDRPMSS Ltd.

xii. Sanjay Das, the dislodged Secretary had also moved this Court by filing W.P. (C) 5512/2023. This Court by order dated 20.09.2023, without commenting on the merit of claims and counter-claims of the parties, directed the Registrar of Cooperative Societies, Assam or his authorized to decide the question of legitimacy of Sanjay Das vis-à-vis Bikash Das to continue to function as Secretary of DDRPMSS Ltd. Be it stated that in the said order, this Court had taken note of the submission made by the learned counsel for the petitioner that AGM was stated to be held on 29.09.2023.

xiii. In the AGM that was held on 29.09.2023, Ranjit Das (petitioner in WP(C) 2094/24) was appointed as the President of DDRPMSS Ltd. The said resolution was not approved by the ARCS, Tinsukia by letter dated 07.10.2023. The said communication has been assailed in this writ petition.

xiv. The Registrar of Cooperative Societies, Assam (respondent no.2), in the affidavit-in-opposition took a stand that Ranjit Das had unlawfully removed 8 BoD members and co-opted two members in their place just for the sake of making a quorum. It was stated that the procedure of admission of two members was not in accordance with the provisions of section 43(7) and 41(9) of the 2007 Act. It was also stated that the three meetings called by Sanjay Das on

23.06.2023, 07.09.2023 and 11.09.2023 were without any authority. It was also stated that the representation (Annexure-K), referred to in the writ petition does not bear any date and that the ARCS, Tinsukia was not made aware of the said representation submitted before the Registrar of Cooperative Societies, Assam.

b. W.P.(C) 1975/2024:

i. In this writ petition instituted by DDRPMSS Ltd., the said society is represented by Sudhangshu Das.

ii. Apart from some of the facts narrated in connection with W.P.(C) 6243/2023, it is stated that the ARCS, Tinsukia, by letter dated 01.11.2023, directed Ranjit Das (respondent no.4) to keep himself away from the post of President of DDRPMSS Ltd.

iii. It is alleged that by letter dated 04.11.2023, Bikash Das asked the said Ranjit Das to return the seal and some other articles. Thereafter, Sudhangshu Das, as President of DDRPMSS Ltd., issued show cause notice dated 09.11.2023 and reminder dated 08.12.2023.

iv. Thereafter, the BoD, by resolution dated 25.12.2023, terminated Ranjit Das (respondent no.4) and Biju Choudhury from the Board on their failure to attend five consecutive Board meetings.

v. The aggrieved Ranjit Das filed an appeal before the Registrar of Cooperative Societies, Assam under section 111 of the 2007 Act. The Advocate of the petitioner in W.P.(C) 3458/2023, produced a copy of order dated 22.01.2024 to project that the said writ petition is pending. Accordingly, the Registrar of Cooperative Societies, Assam, vide order dated 13.02.2024, provided that the decision of the subject matter shall be subject to the outcome of W.P.(C) 3458/2024.

vi. Thereafter, vide order dated 21.03.2024, the proceeding dated 25.09.2023, thereby removing the President of the Society was cancelled. The said order is assailed in this writ petition.

c. W.P.(C) 2094/2024:

i. Apart from referring to some of the facts which are mentioned in the hereinbefore referred two writ petitions, in this case it has been stated that during the pendency of W.P.(C) 6243/2023, Ranjit Das, the petitioner has come to know that he has been removed from the post of Chairman/ President vide resolution dated 25.09.2023 and vide resolution taken by the AGM on 30.09.2023, another Chairman was selected, which has been approved by the ARCS, Tinsukia. Hence, he has preferred two statutory appeals before the Registrar of Cooperative Societies, Assam, one to challenge the approval granted to the AGM held on 30.09.2023 and the other to challenge the resolutions adopted on 25.09.2023 and 30.09.2023.

ii. It has also been stated that in the order dated 13.02.2024, passed by the

Registrar of Cooperative Societies, Assam, it was observed that the decision of the matter would be subject to outcome of W.P.(C) 3458/2023. It is projected that he has filed a statutory appeal/ review against the said order dated 13.02.2024.

iii. The Registrar of Cooperative Societies, Assam, by order dated 21.03.2023, disposed of the said appeal filed by Ranjit Das, thereby cancelling the resolution dated 25.09.2023, as the procedure of removal of the President of the society was in violation of the provisions of the 2007 Act.

iv. This writ petition has been filed to project that the Registrar of Cooperative Societies, Assam did not deal with his challenge to the approval granted to the AGM held on 30.09.2023 and resolution adopted on 30.09.2023.

5) Submissions before the Court:

a. In support of their respective stand, lengthy submissions had been made by all the learned counsel for the appearing parties.

b. However, in view of the nature of order proposed to be passed, there is no need to burden this order with narration of the submissions.

6) Reasons and decision:

a. On a perusal of the "Hearing Report and Findings" of the ARCS, Tinsukia, which is appended to the communication dated 29.09.2023, issued by the said authority, it is noted that while declaring Bikash Das as the legitimate Secretary of DDRPMSS Ltd., it has been observed that the Government has more than 50% share capital. The relevant finding contained in answer no. 2 to issue/query no.8 framed by the ARCS, Tinsukia, is extracted below:-

"As per section 43(8), the State Government and Registrar may appoint nominee to the Board or any sub-committee of a Cooperative Society on its own motion when the Government has subscribed more than 50% of the paid-up share capital or when there is provision of Government nominee by its bye-laws. The Society, however, did not notify the O/o. ARCS, Tinsukia about the meeting ahead of time. Also, the Society did not submit an official invitation for the Government nominee to be present during the proceedings of the said meeting, to the concerned authority in the O/o. ARCS, Tinsukia, beforehand, whereas Government has above 50% share capital in that Society."

b. In these three writ petitions, there is no whisper that whenever the rival BoD meetings were called or when rival AGMs were held on 29.09.2023 and 30.09.2023 respectively, the persons who were acting as President/ Chairman and/or Secretary had send notice to the office of the ARCS, Tinsukia, soliciting the presence of nominee of the Government in those meetings.

c. The provisions of section 43(8) of the 2007 Act is quoted below:-

"The State Government and Registrar may appoint nominee to the Board or any

sub-committee of a cooperative society on its own motion when the Government has subscribed more than 50% of the paid-up share capital or when there is provision of Government nominee in its bye-laws.”

d. There cannot be a dispute that to hold an AGM, a notice is mandatorily required to be served to the members. Since the State Government is a major shareholder, it is imperative that the State Government should also receive a notice of holding of AGM.

e. On a specific query of the Court, it could not be brought to the notice of the Court that any of the litigating parties herein have assailed the finding of the ARCS, Tinsukia in answer no. 2 to query/ issue no. 8 of the “Hearing Report and Findings” of the ARCS, Tinsukia, which is appended to the communication dated 29.09.2023 by ARCS, Tinsukia. Thus, the said part of the finding has attained finality.

7) Therefore, in view of the discussions above, the holding of the AGM either on 29.09.2023 or on 30.09.2023 by the rival groups of DDRPMSS Ltd., are both found not sustainable and the imprimatur of the Court cannot be given to the manner in which such AGMs were held either on 29.09.2023 or on 30.09.2023. Both the said AGMs held by the rival groups are found to be hit by non compliance of the provisions of sub-section 8 of section 43 of the 2007 Act.

8) As both the AGMs have been held to be not valid, it will lead to another legal consequence. The requirement and mandate of section 39 of the 2007 Act is that a general meeting termed as AGM of the general assembly of the registered cooperative society is required to be mandatorily held within 120 days from the date of expiry of every cooperative year, failing which the Board shall automatically dissolve for not holding AGM. Notwithstanding that two AGMs cannot be held by the DDRPMSS Ltd., an AGM, which is defective for not issuing notice to the Government of the AGMs purportedly held on 29.09.2023 and 30.09.2023, cannot be said to be a properly convened. Therefore, as a fall out, by operation of the provisions of section 39 of the 2007 Act, the BoD of the DDRPMSS Ltd. stands dissolved on and from 30.09.2023, i.e. on expiry of 120 days from the close of cooperative year, which for the said year was 30.09.2023.

9) The provisions of section 39 of the 2007 Act is quoted below:-

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.

10) This Court in paragraph 23.1 of the case of *Minara Begum Borbhuiya v. The State of Assam & Ors.*, (2019) 2 GLR 152: 2018 (4) GLT 603: (2018) 0 Supreme

(Gau) 1384, had held as follows:-

23.1 An analysis of the first part of section 39 would reveal that AGM of a registered cooperative society is required to be held at least once in every cooperative year. This AGM can be held within a period of 6 months of dosage of the financial year. Financial year ends on 31st of March and the period of 6 months from the close of the financial year would be upto 30th of September. Therefore AGM of a cooperative society for a particular cooperative year must be held before 30th or September of the succeeding cooperative year. As for the second part, failure to hold such AGM within 30th of September of the succeeding cooperative year would lead to automatic dissolution of the Board of directors.

11) Therefore, the Court is of the considered opinion that as the BoD of DDRPMSS Ltd. stands dissolved on and from 30.09.2023 by operation of section 39 of the 2007 Act, all these three writ petitions have become infructuous and need not be answered and/or decided.

12) Accordingly, it would be open to the Registrar of Co-operative Societies, Assam and/or its other authorities like the Assistant Registrar of Cooperative Societies, Tinsukia to pass such appropriate order or orders, as it may deem fit and proper to ensure proper management of the affairs of Dibru Dangari River Part-I Min Samabay Samity Ltd. till a fresh Board of Directors of the said society is constituted in accordance with law.

13) The new Board of Directors shall be constituted preferably within a period of 3 (three) months from the date of communication of certified copy of this order by any of the respective parties or from the learned standing counsel of the Cooperation Department. However, leave is granted to the Registrar of Cooperative Societies, Assam to pray before this Court for extension of time to constitute a new Board of Directors, by showing cause.

14) Before parting with the records, the Registrar of Co-operative Societies, Assam and/or its other authorities like the Assistant Registrar of Cooperative Societies, Tinsukia are further directed to close all those pending appeal and/or review filed to question the appointment and the functioning of any member of the Board of Directors of Dibru Dangari River Part-I Min Samabay Samity Ltd. (i.e. DDRPMSS Ltd.).

15) The parties are left to bear their own cost.