

(2022) 03 GAU CK 0034
In the Gauhati High Court
Case No : Writ Appeal No.31, 33 Of 2019

Jahurul Islam Laskarc

APPELLANT

Vs

Baktar Hussain

RESPONDENT

Date of Decision : 17-03-2022

Acts Referred:

Assam Cooperative Societies Act, 2007 — Section 32, 33, 33(3), 39, 40, 40(4)(a), 42, 43(1), 43(2), 43(3), 43(4), 43(7), 49, 49(1), 49(2), 49(2)(e), 111
Assam Cooperative Societies Act, 1949 — Section 32, 32(2),

Citation : (2022) 03 GAU CK 0034

Hon'ble Judges : Sudhanshu Dhulia, CJ;Soumitra Saikia, J

Bench : Division Bench

Advocate : A. M. Barbhuiya, A. Begum, S. K. Talukdar

Final Decision : Disposed Of

Judgement

1. These writ appeals are directed against the Judgment and order dated 21.01.2019 rendered by the learned Single Judge in WP (C) No. 6603/2018. The learned Single Judge declined to entertain the prayers made in the writ petition and accordingly dismissed the same. Being aggrieved, the two writ appeals are filed against the Judgment and Order dated 21.01.2019 by— the petitioner, in WP(C)/6603/2018—Sri Baktar Hussain, which is numbered as Writ Appeal 33/2019 and the other by respondent no.6 in the writ petition WP(C)/6603/2018 —Sri Jahurul Islam Laskar which is numbered as Writ Appeal 31/2019.

2. Pursuant to an election held on 20.11.2016, the petitioner in WP(C) 6603/2018 namely, Baktar Hussain along with 14 others were elected as Board of Directors of Mangalpur Boalihawar Cooperative Society Ltd. The result of the said election was approved by the Assistant Registrar of Cooperative Societies, Cachar. In the first meeting of the Society held on 28.11.2016, the writ petitioner (appellant in W.A.33/2019, Sri Baktar Hussain), was elected as the Chairman of the said Society. The minutes of the said meeting were approved by the Assistant Registrar of the Cooperative Societies, Cachar. Subsequently, the respondent

no.6 in WP(C) 6603/2018 (appellant in W.A. 31/2019, Sri Jahurul Islam Laskar) along with the 5 others, Directors of the Board submitted a complaint dated 04.07.2017 to the Assistant Registrar of the Cooperative Societies, Cachar that the Chairman namely, Baktar Hussain had failed to hold the Board meeting after 05.08.2017 as per the mandate of Section 43 (1) of the Assam Cooperative Societies Act, 2007. The Assistant Registrar of the Cooperative Societies upon receipt of the complaint passed an order directing that the Chairman and the Vice Chairman of the Board of Directors had ceased to be such and the remaining members of the Board of Directors were permitted to elect a new Chairman from amongst themselves by calling a special Board of Directors meeting. Accordingly, a Board of Directors meeting was held on 17.12.2017, wherein the respondent no.6 i.e. appellant in W.A. 31/2019, Jahurul Islam Laskar was elected the Chairman of the said Society. The petitioner in WP(C) 6603/2018 who is the appellant in W.A. 33/2019—Baktar Hussain, being aggrieved, assailed the said order of the Assistant Registrar by filing WP(C) 7898/2017. The said writ petition was disposed of vide order dated 18.12.2017 permitting the aggrieved party i.e. the Appellant in W.A. 33/2019 to prefer an appeal before the Registrar of Cooperative Societies, Assam against the order dated 08.12.2017 passed by the Assistant Registrar of Cooperative Societies, Cachar. It was further directed therein that if such an appeal was filed within 7 (seven) days, then the appellate authority should consider the same on merit and pass appropriate orders within 4 (four) weeks thereafter and it was also directed that until the appeal was decided, the election of the new chairman in the consequential meeting held on 17.12.2017 will not be operational.

2.1. In the appeal before the Department, preferred by the petitioner in W.P.(C) 6603/2018 i.e. appellant in W.A. 33/19, Baktar Hussain, the Registrar of Cooperative Societies, Assam, by order dated 18.01.2018 interfered with the order dated 08.12.2017 passed by the Assistant Registrar of Cooperative Societies, Assam directing that the aggrieved party, the appellant in W.A.33/2019 will continue to function as the Chairman along with the earlier Vice Chairman of the said Society. Being aggrieved by the order dated 18.01.2018 passed by the Registrar of Cooperative Societies, the respondent no.6 in W.P (C) 6603/2018, who is the appellant in W.A. 31/2019, preferred a writ petition being W.P (C) 359/2018 assailing the said order dated 18.01.2018 passed by the Registrar of Cooperative Societies. The said writ petition, however, came to be disposed of as infructuous by order dated 14.05.2018 on such prayers made by the petitioner therein. Thereafter, the Assistant Registrar, Cooperative Societies, Cachar again filed a report before the Registrar of Cooperative Societies to the effect that the Board of Directors meeting of the Society held on 31.05.2018 had adopted a resolution to the effect that the appellant in W.A.33/2019—Sri Baktar Hussain had ceased to be a Director as per Section 43 (7) of the 2007 Act for being absent in more than three consecutive meetings held on 05.04.2018, 16.04.2018, 20.04.2018 and 27.05.2018 and that pursuant to removal of Sri Baktar Hussain as the Chairman, the appellant in W.A 31/2019—Sri Jahurul

Islam Laskar was allowed to function as the Chairman of the Society. Aggrieved by the said report and resolution adopted, the appellant in W.A.33/2019—Sri Baktar Hussain filed an appeal before the Zonal Joint Registrar of Cooperative Society, Silchar. In the meanwhile, some members of the Board of Directors issued a Notice dated 07.09.2018 to hold the Annual General Meeting of the Society on 22.09.2018. During this period the appeal preferred by the appellant in W.A 33/2019—Sri Baktar Hussain was disposed of by the Zonal Joint Registrar of Cooperative Society, Silchar vide order dated 14.09.2018, wherein it was held that Sri Baktar Hussain had ceased to be the Chairman and the Director of the said Society along with 6 others as per the provisions of the 2007 Act. Aggrieved, W.P (C) 6603/2018 was filed by Sri Baktar Hussain as the petitioner and the following prayers were made:-

“ Under the circumstances, it is humbly prayed that your lordships would be pleased to admit this petition, call for the records, issue rule, calling upon the respondents, to show causes, as to why a writ in the nature of (i) Certiorari shall not be issued, quashing and setting aside the order dated 14.09.2018 passed by the Zonal Joint Registrar of cooperative Societies, Silchar, the notice dated 07.09.2018 issued by the respondent No. 5 and 6 and the report dated 24.07.2018 submitted by the respondent No.3 to the respondent No.2 and after cause/causes If any being shown, after hearing the parties and on perusal of records make the rule absolute by quashing and setting aside the same and/or may be pleased to pass any other order or orders as your Lordships may deem fit and proper.

AND

Pending disposal of the application, your Lordships may be pleased to pass an interim order suspending operation of the impugned order dated 14.09.2018 passed by the Zonal Joint Registrar of cooperative Societies, Silchar, the notice dated 07.09.2018 issued by the respondent No. 5 and 6 and the report dated 24.07.2018 submitted by respondent No. 3 and/or may be pleased to pass any other order or orders as your Lordships may deem fit and proper.

And for which act of kindness, the petitioner, as in duty bound, shall ever pray:”

i) the order dated 14.09.2018 passed by the Zonal Joint Registrar of Cooperative Societies, Silchar, ii) the notice dated 07.09.2018 issued by the Secretary, Mangalpur, Boalihawar Cooperative Societies Ltd. (respondent no.5) and Jahurul Islam Laskar (respondent no.6), and

iii) report dated 24.09.2018 submitted by the Assistant Registrar of Cooperative Societies, cachar (respondent no.3) to the Registrar of Cooperative Societies, Assam (respondent no.2)”.

3. This Court vide order dated 21.09.2018, while issuing Notice had granted an interim order in favour of the petitioner directing that the impugned order dated 14.09.2018 passed by Zonal Joint Registrar of Cooperative Society, Silchar and

all consequential steps pursuant thereto shall remain stayed. It was directed that the petitioner—Sri Baktar Hussain shall continue to remain the Chairman of the Society until further orders. The order dated 21.09.2018 passed in WP(C) 6603/2018 whereby the interim protection was granted to Sri Baktar Hussain is extracted below:-

“ ORDER

Date : 21-09-2018

Heard Mr M J Quadir, learned counsel for the petitioner, Dr B Ahmed, learned Standing Counsel, Cooperation Department and Mr A M Barbhuiyan, learned counsel for respondent No. 6 on caveat.

2. Matter relates to holding of office of Chairman and Vice-Chairman of Mangalpur Boalihowar Cooperative Society Limited (Society).

3. Petitioner had earlier approached this Court by filing a writ petition being WP(C) No. 7898 of 2017, assailing the legality and correctness of an order dated 08.12.2017, issued by the Assistant Registrar of Cooperative Societies, Silchar, declaring that Chairman and Vice-Chairman of the Society had ceased to hold office for failing to hold the required number of meetings of the Board of Directors, within the stipulated period. The writ petition was disposed of by this Court vide order dated 18.12.2017 by giving opportunity to the petitioner to file appeal under Section 111 of the Assam Cooperative Societies Act, 2007 (2007 Act) within 7 (seven) days and till the appeal was decided it was made clear that the election of new Chairman would not be operational.

4. Thereafter, petitioner had filed appeal and after due consideration the appellate authority, i.e., the Registrar of Cooperative Societies, Assam, passed an order dated 18.01.2018, holding that order dated 08.12.2017 of the Assistant Registrar of Cooperative Societies, Silchar, had violated the provisions of the 2007 Act, and, therefore, the same was set aside. It was declared that Sri Baktar Hussain (petitioner) and Sri Mojmil Ali Mazumdar would continue to function as Chairman and Vice-Chairman of the Society and complete their tenure as long as they comply with the provisions of the Act and bye-laws of the Society.

5. This order was passed on 18.01.2018.

6. Order of the Registrar as above was put to challenge by respondent No. 6 and others before this Court in WP(C) No. 359 of 2018. On 14.05.2018, submission was made that the writ petition has become infructuous and therefore, it was disposed of as infructuous. In the meanwhile, Assistant Registrar of Cooperative Societies submitted report dated 24.07.2018 to the Registrar of Cooperative Societies, Assam, vide forwarding letter dated 08.05.2018. It appears that the said report was adverse to the petitioner.

7. Petitioner purportedly filed an appeal before the Zonal Joint Registrar of Cooperative Societies, Silchar, against submission of report by the Assistant

Registrar of Cooperative Societies. The Zonal Joint Registrar of Cooperative Societies passed an order dated 14.09.2018, thereon declaring that petitioner had failed to discharge his duty and, therefore, he disqualified himself as Chairman of the Society under Section 43 (2) of the 2007 Act. Consequently, he had also ceased to be Director.

8. Such interference by the Zonal Joint Registrar cannot be accepted for more than one reason. Firstly, no appeal was maintainable against a report submitted by the Assistant Registrar to the Registrar, that too, before an intermediate authority. Therefore, appeal itself was not maintainable. Consequently, order dated 14.09.2018, is without jurisdiction. Secondly, when the Registrar of Cooperative Societies had passed an order on 18.01.2018, passing of the impugned order dated 14.09.2018 by the Zonal Joint Registrar contrary to the finding of the Registrar was highly improper and virtually amounts to indiscipline, challenging the authority of the Registrar. Thirdly, the report having been submitted by the Assistant Registrar before the Registrar, it was for the Registrar to take a decision, whether to accept the report or not. Interference by the Zonal Joint Registrar is thus totally unwarranted, uncalled for and without jurisdiction. Prima facie, impugned order dated 14.09.2018 appears to be wholly unsustainable in law.

9. Issue notice, returnable within 6 (six) weeks.

10. Dr B Ahmed, learned Standing Counsel, Cooperation Department, accepts notice on behalf of respondent Nos. 1 to 4, whereas, Mr A M Barbhuiyan, learned counsel appears on behalf of respondent No. 6 on caveat. Extra copies within 3 (three) days.

11. Notice to respondent No. 5 by registered post with A/D. Steps within 3 (three) days.

12. Having heard learned counsel for the parties and on due consideration, impugned order dated 14.09.2018 and all consequential steps pursuant thereto shall remain stayed. Petitioner shall continue to remain as Chairman of the Society, until further orders.

(Emphasis Supplied)

13. Though this Court wanted to direct personal appearance of the Zonal Joint Registrar of Cooperative Societies, Silchar, for his unacceptable conduct, Dr B Ahmed, learned Standing Counsel, Cooperation Department has pleaded with the Court to spare him for the time being.

14. In view of the submission of Dr B Ahmed, Court would refrain from summoning the Zonal Joint Registrar of Cooperative Societies, Silchar, for the time being.

15. List this case in the admission column, on 02.11.2018".

4. The Interim Order granted was not vacated/modified. The matter came to be

finally heard and disposed of vide Judgment and Order dated 21.01.2019 passed by the learned Single Judge, which is impugned in the present Writ Appeals. The learned Single Judge held that the allegation that the petitioner (appellant in W.A 33/2019) failed to hold the Board of Directors meeting, cannot be sustained in view of the order dated 18.01.2018 passed by the Registrar of Cooperative Societies, wherein the sequential dates of the Board of Directors meeting held on the various dates were reflected and consequently, the learned Single Judge held that the allegation that there was a violation of the provision of Section 43 (1) of the 2007 Act, was negated. However, in respect of the allegation that the petitioner failed to hold the special requisitioned meeting, the learned Single Judge held that the specific averments denying the said allegation not being available in the pleadings of the petitioner, it must be concluded that there was a failure on the part of the petitioner to hold the specially requisitioned meeting. It was held that consequently as per the provisions of Section 43 (3) and 43(4) of the 2007 Act, the petitioner ceased to be the Chairman on the expiry of the date of the period specified in the requisition for the Special Meeting and further in terms of the provisions of Section 43 (3) and 43(4) of the 2007 Act, the petitioner—Sri Baktar Hussain had ceased to be the Chairman for a period of 3 years.

5. The learned Single Judge held that the report dated 08.05.2018 submitted by the Assistant Registrar, Cooperative Societies, Cachar, Silchar (Respondent no.3.) to the Registrar of Cooperative Societies, Assam, Khanapara, Guwahati (respondent no.2) also specified that no special Board of Directors meeting with specified agenda was convened in terms of the written requisition dated 24.03.2018, within the time specified under Section 43 (2) of the 2007 Act and therefore, by operation of Section 43(3), the petitioner had ceased to be the Chairman. It was also held by the learned Single Judge that in the reconvened Board of Directors meeting earlier scheduled on 24.04.2018, which was projected to be the adjourned/suspended Board of Directors meeting held on 05.04.2018, the no confidence motion was not put to discussion as required under Section 43 (2) of the 2007 Act as was evident from the agenda itself. The learned Single Judge referred to a Judgment of a Division Bench of this Court rendered in—Shahirul Islam & 2 ors. Vs. The State of Assam & 5 ors. [W.P.(C) No. 6918/2017, delivered on 12.10.2018], and accepted the views of the Division Bench to be a binding precedent in respect of the interpretation of Section 39 of the 2007 Act to the effect that failure to hold the meeting within the period specified under Section 39 of the 2007 Act, will entail an automatic dissolution of the Board of Directors of the said society. The learned Single Judge held that in view of the findings of the Division Bench of this Court rendered in Shahirul Islam (Supra), on the facts of the case the writ petition had become infructuous upon the automatic dissolution of the Board of Directors with effect from 30.09.2018 and legal consequences arising out of such a situation is bound to follow. The writ petition was accordingly dismissed as being infructuous.

6. The learned counsel appearing for the appellant in W.A 31/2019 submits that in terms of the mandate of 2007 Act, the Annual General Meeting was required

to be held as per the time specified under Section 39 of the Act i.e. within a period of 6 months of the close of the financial year of the Cooperative Society. To that extent the learned counsel appearing for the appellant in WA 31/2019 fairly submits that the issue of whether the Board of Directors has been dissolved or not is no longer a question to be decided in terms of the mandate of Section 39. He, however, submits that the responsibility of holding the Annual General Meeting is vested on the Chairman or in his absence the Vice Chairman of the Board of Directors of the Society. If for some reason the said office bearers failed in their responsibilities to hold the Annual General Meeting within the period specified, then the entire Board of Directors gets dissolved for no fault on their part. It is submitted that furthermore there is a strong apprehension that because of the automatic dissolution of the Board of Directors in terms of Section 39 of the Act, although the appellant in W.A 31/2019—Sri Jahurul Islam Laskar is not opposed to holding fresh elections for electing the members/directors of the Cooperative Society, in view of the provisions of Section 40(4) (a) of the Act of 2007, there is an apprehension that the appellant may not be permitted to participate in the elections, which will be held in the near future for the Cooperative Society. It is submitted that the Appellant in W.A 31/2019—Sri Jahurul Islam Laskar is aggrieved by the disposal of the WP(C) 6603/2018 by the learned Single Judge as being infructuous without deciding the issue as to whether automatic dissolution of the Board of Directors in terms of the provisions of Section 39 will operate as per Section 40 (4) (a) of the 2007 Act in respect of a member of a Cooperative society to become a Director until 5(five) years have elapsed from the date such a member ceased to be a Director. He, therefore, submits that to that extent the impugned Judgment and Order of the learned Single Judge is erroneous and therefore needs to be interfered with and set aside.

7. Mr. S. K. Talukdar, learned Standing counsel appearing for the Cooperation Department submits that the entire matter has become infructuous and therefore, both these appeals should be dismissed accordingly since the issue as regards the automatic dissolution of the Board of Directors in respect of the Cooperative Society has already been decided by a Co-Ordinate Bench of this Court in the Judgment rendered in Shahirul Islam (Supra). The same having attained finality in law, in respect of the interpretation of Section 39 of the 2007 Act, there is no provision under Section 39 for grant of any extension for holding Board of Directors meeting. As such, the appeals are required to be dismissed, as being infructuous. He further submits that any legal consequence that may arise because of the failure of the Board of Directors to perform their duties as mandated under Section 39 of the Act 2007 as well as under the other provisions of the Act, will have to be faced by the appellants. He submits that there being no infirmity in the learned Single Judge's Judgment and Order, the appeals therefore ought to be dismissed.

8. We have heard the learned counsels appearing for the parties and have carefully perused the pleadings on record as well as the impugned Judgment dated 21.01.2019 rendered by the learned Single Judge. Since both the writ

appeals arise out of the same impugned Judgment, the writ appeals are taken up together for disposal.

9. Having heard the learned counsels for the parties it will be apposite to refer to the relevant provisions of the Act of 2007.

Sections 32, 33, 39 and 40 of the 2007 Act are extracted below:-

"32. General Meeting—The Board may, at any time, call a general meeting of the members of the cooperative society. However, one general meeting in every cooperative year must be convened by the Board.

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 subsection (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 of 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".

"39. Annual General Meeting. A general meeting to be termed as Annual General Assembly of a registered Co-operative Society shall be held at least once in every Co-operative 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 byelaws within six months from the expiry of every Financial year.

40. Eligibility for a Director in cooperative society— Subject to such other conditions as may be specified in the bye-laws a member of a cooperative society shall be eligible for being chosen as a Director of the cooperative society, if-

- (1) such member has the right to vote in the affairs of the cooperative society;
- (2) such member has patronised the services of the cooperative society during the previous financial year to the extent and in the manner specified in the bye-laws and has attended at least two Annual General Meetings in the previous five years;
- (3) such member has no pecuniary interest in any subsisting contract made with, or work being done for the cooperative society except as otherwise specified in the bye-laws;
- (4) the period of five years has elapsed from the date such member ceased to be a Director for the following reasons:-
 - (a) not conducting or wrongly conducting the Annual General Meeting under Section 39 or Special General Meeting under sub-section (3) of Section 33 and Board meetings under sub-section (3) of Section 43 ;
 (Emphasis Supplied)
 - (b) non submission of annual report of activities, annual financial statement of accounts to the general body under sub-section (4) of Section 30;
 - (c) not conducting the meeting of the Board under sub section of Section 43 of delegates or representative under sub-section (3), of Section 41;
 - (d) absence from Board meetings under sub-section (7) of Section 43;
 - (e) automatic dissolution under sub-section (3) of Section 41;
 - (f) for failure to take follow up action on audit report as specified in Section 85.
- (5) such member is free from default of any payment due to the society”.

10. It is seen from the pleadings that the Board of Directors including both the appellants were elected on 20.11.2016 and the said results were approved by the Assistant Registrar of Cooperative Societies on 23.11.2016. In terms of Section 42 of the Act of 2007, the term of the Board of Directors of the Cooperative Society and its office bearers will be five (5) years from the date of election. Under provisions of Section 39 as discussed above, the Annual General Meeting is mandated to be held at least once in every cooperative year within a period of 6 (six) months from the date of the close of the financial year to transact the business as provided in this Act. In the event, no Annual General Meeting is held as mandated, the Board shall automatically stand dissolved for not holding the Annual General Meeting in accordance of the provisions of the Act and the byelaws. From the pleadings it is not discernable as to the date for the close of the financial year of the society. Ordinarily, 31st March, is considered to be the close of the financial year. In some cases 30th September is also considered to be the close of the financial year. The dispute between the two rival groups arose due to the failure on the part of the appellant in WA 33/2019, namely, Sri Baktar Hussain to convene a special meeting and/or a meeting to

discuss the no-confidence motion against him, as requisitioned in writing by the appellant in W.A. 31/2019, namely, Sri Jahurul Islam Laskar along with other members. The matter travelled to the Registrar of the Cooperative Societies. While allegations and counter allegations were being made against each other by the rival parties, what perhaps was lost sight of by both the appellants and their followers was the mandate under Section 39 of the Act of 2007. The provisions of Section 39 of the Act 2007 specifically mandates that there shall be an Annual General Meeting in at least once in every cooperative year within a period of 6 months from the close of the financial year to transact a business as provided for under the Act. Section 32 and Section 33 of the Act of 2007 provides for General Meeting and Special General Meeting respectively. As discussed above the dispute between the two rival groups essentially was the failure of the Chairman and Vice Chairman of the Board of Directors to hold a special General Meeting as requisitioned by the appellant in W.A. 31/2019—Sri Jahurul Islam Laskar and his fellow Directors. The allegations and counter allegations against both the groups was to the effect of justifying that the special meeting sought for by the written requisition could not be held because of several intervening reasons including the interim order dated 21.09.2018 passed by this Court in WP(C) 6603/2018. However, in the tumult that arose between the rival groups what was lost sight of is the mandate under Section 39 of the Act which provides for holding of an Annual General Meeting at least once in every cooperative year within a period of the 6 months of the close of the financial year and the automatic dissolution of the Board for failure to hold the Annual General Meeting as mandated under the Section. The Annual General Meeting not having been conducted, admittedly as is evident on the facts of the case, the Board automatically stood dissolved. In Shahirul Islam (Supra), the following questions of law arose before a Co-ordinate Bench of this Court :-

1. Whether Section 39 of the Assam Cooperative Societies Act, 2007 is pari materia to the provisions of Section 32 of the Assam Cooperative Societies Act, 1949 ?
2. Whether the provisions of Section 39 of the Assam Cooperative Societies Act, 2007 would not be attracted to an adjourned Annual General Meeting of a Cooperative Society?
3. Whether the time limit prescribed under Section 39 of the Assam Cooperative Societies Act, 2007 is inflexible and whether no time can be granted beyond the prescribed period for holding Annual General Meeting of a Cooperative Society?

The Co-Ordinate bench of this Court after a detailed consideration of the provisions of Section 32 (2) of the Assam Cooperative Societies Act, 1949 and Section 39 of the Assam Cooperative Societies Act, 2007 held that the two provisions are not identical. While under Section 32 (2) of the Assam Cooperative Societies Act, 1949 there was a provision for seeking extension for holding the Annual General Meeting beyond the time limit prescribed for holding such a Annual General Meeting, whereas under Section 39 of the 2007 Act there is no

such provision for extension. Language of Section 39 is precise and clear leaving no room for ambiguity. If there is a failure to hold the Annual General Meeting within the period prescribed, it would lead to automatic dissolution of Board of Directors.

11. We have carefully perused the Judgment rendered by the Coordinate Bench and we see no reason to differ with the views and the reasoning given by Co-Ordinate Bench of this Court in *Shahirul Islam (Supra)* in its interpretation of the time limit prescribed for holding the Annual General Meeting as mandated by Section 39 of the 2007 Act. The learned Single Judge has recorded in the impugned Judgment and Order that although the Special General Meeting as per the written requisition was called on 05.04.2018 initially which was deferred to 20.04.2018, but on perusal of the Notice, it was seen that the issue regarding the "No-confidence" motion in respect of the Chairman i.e. Baktar Hussain was not even an agenda item and therefore no discussion could have been held in such a meeting. As such the learned Single Judge came to a finding that the contention of the petitioner that the meeting held on 20.04.2018 which was projected to be the deferred Special General Meeting is totally incorrect as the same is not supported by the materials available on record. Consequently, neither Annual General Meeting nor Special General Meeting was held as mandated under the provisions of 2007 Act. As such by virtue of the provisions of Section 33 (3) and 39 of the Act, the Board of Directors comprising of the appellant in W.A 33/2019 and as well as the appellant in W.A. 31/2019 had ceased to be Directors by automatic dissolution as prescribed under the provisions of the Act and has been interpreted by this Court in *Shahirul Islam (Supra)*. Consequently, we upheld the findings of the learned Single Judge that the writ petition has essentially become infructuous and does not call for any other order to be passed in respect of whether either of the appellants or both should continue as Directors.

12. Having said that, on the facts of the case we do not find that the embargo under Section 40 (4) (a) is attracted in respect of the appellants as well as the other members of the erstwhile Board of Cooperative Society. The embargo under Section 40 (4) (a) is essentially for 'not conducting or wrongly conducting' an Annual General Meeting or Special General Meeting or Board meetings. The term "Conducting a Meeting" is not defined under the Act of 2007. Recourse to the dictionary meaning is therefore required to be made in the absence of any specific definition prescribed under the Act.

12.1. The Major Law Lexicon, 4th Edition, 2010 defines conduct as – " 'Conduct' means nothing else than 'control'. The word 'conduct' imports an idea of management, a guidance and overall supervision. 'Conduct' is wide enough to include and is synonymous with both manage and control and manage as it seems means an overall supervision even to the details of solving the problems as also take the detail decisions. *Raja Mahapatra Vs Board of Secondary Education Orissa, AIR 1988 Ori 65*".

12.2. The Chambers dictionary, 1983 Edition defines conduct as – “ to lead or guide, to convey, to direct, to manage, to behave, to carry or transmit to beat time for and coordinate, the Act or method of living or managing.....”

12.3. As such it is clear that the meaning which can be ascribed to the term ‘not conducting or wrongly conducting’ as specified under Section 40(4) (a) will have to be understood to mean that a meeting was duly called for and the issues raised in the agenda were brought up for discussion and the resolutions thereon are recorded in minutes and such other requirements and procedures as may be prescribed by law are adhered to. In the event a meeting is called for and the procedures mandated by law are not adopted or followed as prescribed, then it will amount to “not conducting or wrongly conducting” any meeting including Annual General Meeting and Special General Meeting. Under Section 49 (1) of the Act of 2007 a Chief Executive of the society by whatever designation is to be appointed by the Board or the State Government. The Chief Executive appointed under Section 49 of the Act is under the General Superintendence, Direction and Control of the Board and responsible for the day to day management of the business of the Co-operative, operating the accounts and making arrangements for safe custody of cash, signing documents for and on behalf of the Co-operative societies Under Section 49 (2) (e) it is the Chief Executive, who is responsible for convening meetings of the General Body of the Co-operative Society, the Board and the Executive Committee and other Committees and sub-Committees constituted under the provisions of the Act, byelaws and maintain proper records for such meetings. The powers and functions are prescribed under Section 49(2) of the Act of 2007. “Convening the meeting of the General Bodies of the Co-operative societies” is inter-alia one of the functions prescribed under the Act. In view of such specific provisions under the Act, it is the Chief Executive who is required to convene the meetings. In the facts of the present case as is evident from the pleadings it is seen that no meeting as prescribed under Section 39 was at all called for. As such, it cannot be said that any meeting was held and conducted as per the provisions of the Act of 2007. Consequently since no meeting was held, the question of any meeting being conducted or wrongly conducted by the Directors, in the facts of the present case did not arise.

13. In view of our findings that no Special General Meeting or Annual General Meeting having been called for as required under the provisions of the Assam Cooperative Societies Act of 2007, the embargo prescribed under Section 40 (4) (a) will not be applicable to the appellants and the members of the erstwhile Board of Directors of Mangalpur Boalihawar Cooperative Society Ltd. in the facts of the present proceedings.

14. Accordingly, both the writ Appeals are disposed of in terms of the above. The respondent Cooperation department is directed to conduct the elections as per the provisions of Act 2007. We hold that while the Board of Directors of Mangalpur Boalihawar Cooperative Society Ltd. stood automatically dissolved by operation of law as mandated under Section 33 (3) and Section 39 of the Assam

Cooperative Societies Act, 2007, the embargo under Section 40 (4) (a) however will not be applicable to the members of Board of Directors of Mangalpur Boalihawar Cooperative Society Ltd. in the facts of the present proceedings.

15. Writ appeals are accordingly disposed of in terms of the above.

16. No order as to cost.