



GAHC010082272021

Page No.# 1/25



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

Case No. : WP(C)/3041/2021

RAHIM UDDIN BARBHUIYA
CHAIRMAN OF BHATIRKUPA SAMABAI SAMITY LTD., S/O. LT. TAZAMUL
ALI BARBHUIYA, R/O. NARAYANPUR PART-II, P.O. CHANDPUR WEST, DIST.
HAILAKANDI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM, COOPERATION
DEPTT., DIPUR, GUWAHATI-781006.

2:THE REGISTRAR OF COOPERATIVE SOCIETIES

ASSAM
KHANAPARA
GUWAHATI-781022.

3:THE ZONAL JOINT REGISTRAR OF COOPERATIVE SOCIETIES

SILCHR ZONE
SILCHAR
CACHAR
PIN-788001.

4:THE ASSTT. REGISTRAR OF COOPERATIVE SOCIETIES

HAILAKANDI.

5:THE SECRETARY

BHATIRKUPA SAMABAI SAMITY LTD.
HAILAKANDI



P.O. CHANDPUR WEST
DIST. HAILAKANDI
ASSAM
PIN-788152.

6: DAKSHINA RANJAN CHANDA
S/O. LATE DEBENDRA CHANDRA CHANDA
R/O. VILL. AND P.O. UJANKUPA
DIST. HAILAKANDI
ASSAM
PIN-788152

Advocate for the Petitioner : MR. P K DEKA

Advocate for the Respondent : SC, CO OP

Linked Case : WP(C)/2298/2022

BOARD OF DIRECTORS OF DULLAVCHERRA COOPERATIVE SOCIETY LTD
AND 10 ORS
REPRESENTED BY ITS CHAIRMAN
SRI BIMAL SINHA
AGED ABOUT 45 YEARS
P.O.-DULLABCHERRA
DIST-KARIMGANJ
ASSAM
PIN-788736

2: BOARD OF DIRECTORS OF WANGIRBOND COOPERATIVE SOCIETY LTD.
REPRESENTED BY ITS CHAIRMAN
SRI GAUTAM YADAV
AGED ABOUT 52 YEARS
P.O.-DULLAVCHERRA
DIST-KARIMGANJ
ASSAM
PIN-788736

3: BOARD OF DIRECTORS OF RAMKRISHNANAGAR COOPERATIVE
SOCIETY LTD.
REPRESENTED BY ITS CHAIRMAN
SRI SANKAR PAUL
AGED ABOUT 55 YEARS
P.O.-RAMKRISHNANAGAR



DIST- KARIMGANJ
ASSAM
PIN-788166

4: BOARD OF DIRECTORS OF ANIPUR COOPERATIVE SOCIETY LTD.
REPRESENTED BY ITS CHAIRMAN
SRI SUNIL CHANDRA BIN
AGED ABOUT 33 YEARS
P.O.-ANIPUR
DIST-KARIMGANJ
ASSAM
PIN-788734

5: BOARD OF DIRECTORS OF GANDHIGRAM COOPERATIVE SOCIETY LTD
REPRESENTED BY ITS CHAIRMAN
SRI RATISH CHANDRA DEB
AGED ABOUT 48 YEARS
P.O.-NETAJINAGAR
DIST-KARIMGANJ
ASSAM
PIN-788166

6: BOARD OF DIRECTORS OF DHALCHERRA COOPERATIVE SOCIETY LTD.
REPRESENTED BY ITS CHAIRMAN
SRI ABDUL SALAM
AGED ABOUT 42 YEARS
P.O.-PATHERKANDI
DIST-KARIMGANJ
ASSAM
PIN-788724

7: BOARD OF DIRECTORS OF CHANDKHIRA COOPERATIVE SOCIETY LTD.
REPRESENTED BY ITS CHAIRMAN
SRI BONGSHI DHAR KURMI
AGED ABOUT 49 YEARS
P.O.-CHANDKHIRA
DIST-KARIMGANJ
ASSAM
PIN-788725

8: BOARD OF DIRECTORS OF GOBINDAGANJ-FAKUA COOPERATIVE
SOCIETY LTD.
REPRESENTED BY ITS CHAIRMAN
NONI GOPAL DAS
AGED ABOUT 52 YEARS
P.O.-GOBINDAGANJ BAZAR
DIST-KARIMGANJ
ASSAM



PIN-788733

9: BOARD OF DIRECTORS OF BARAIGRAM COOPERATIVE SOCIETY LTD.
REPRESENTED BY ITS CHAIRMAN
SRI AZAD HUSSAIN
AGED ABOUT 38 YEARS
P.O.-BARAIGRAM
DIST-KARIMGANJ
ASSAM
PIN-788723

10: BOARD OF DIRECTORS OF KANAIBAZAR COOPERATIVE SOCIETY LTD.
REPRESENTED BY ITS CHAIRMAN
SRI ABDUL MUQUIT
AGED ABOUT 32 YEARS
P.O.-KANAIBAZAR
DIST-KARIMGANJ
ASSAM
PIN-788724

11: BOARD OF DIRECTORS OF PANIGHAT PURAHURIA COOPERATIVE
SOCIETY LTD.
REPRESENTED BY ITS CHAIRMAN
SRI TAJ UDDIN
AGED ABOUT 35 YEARS
P.O.-KARIMGANJ
DIST-KARIMGANJ
ASSAM
PIN-788711
VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM
COOPERATION DEPARTMENT
DISPUR
GUWAHATI-6

2:THE REGISTRAR OF COOPERATIVE SOCIETIES
ASSAM
KHANAPARA
GUWAHATI-22

3:THE ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES
KARIMGANJ
P.O.-RAMKRISHNA NAGAR
DIST-KARIMGANJ
ASSAM
PIN-188166



Advocate for : DR. B AHMED
Advocate for : SC
CO OP appearing for THE STATE OF ASSAM AND 2 ORS

Linked Case : WP(C)/1054/2022

BOARD OF DIRECTORS OF ANANDAPUR COOPERATIVE SOCIETY LTD AND
7 ORS

REP. BY BY ITS CHAIRMAN
SIRAJUL ISLAM TAALUKDAR

AGED ABOUT 58 YEARS
P.O. ANANDAPUR
DIST. KARIMGANJ

2: BOARD OF DIRECTORS OF EAST BADARPUR COOPERATIVE SOCIETY
LTD.

REP. BY ITS CHAIRMAN
SYED KAMARUDDIN
AGED ABOUT 70 YEARS
P.O. BADARPUR
DIST. KARIMGANJ.

3: BOARD OF DIRECTORS OF SEPHINJURI COOPERATIVE SOCIETY LTD.

REP. BY ITS CHAIRMAN
BIJOY KANOO
AGED ABOUT 59 YEARS
P.O. KATALTALI
DIST. KARIMGANJ

4: BOARD OF DIRECTORS OF NORTH EAST BADARPUR COOPERATIVE
SOCIETY LTD.

REP. BY ITS CHAIRMAN
JAYNAL ABEDIN LASKAR
AGED ABOUT 45 YEARS
P.O. SRIGORI
DIST. KARIMGANJ.

5: BOARD OF DIRECTORS OF PATHERKANDI COOPERATIVE SOCIETY LTD.

REP. BY ITS CHAIRMAN
ABDUL HASIB
AGED ABOUT 55 YEARS
P.O. PATHARKANDI
DIST. KARIMGANJ

6: BOARD OF DIRECTOR OF JATKAPAN COOPERATIVE SOCIETY LTD.



REP. BY ITS CHAIRMAN
AKLASUR RAHMAN
AGED ABOUT 47 YEARS
P.O. JATKAPAN
DIST. KARIMGANJ.

7: BOARD OF DIRECTORS OF SOUTH EAST BADARPUR COOPERATIVE
SOCIETY LTD.

REP. BY ITS CHAIRMAN
MANNAF UDDIN
AGED ABOUT 45 YEARS
P.O. BADARPUR
DIST. KARIMGANJ.

8: BOARD OF DIRECTORS OF KANISHAIL JABAINPUR COOPERATIVE
SOCIETY LTD.

REP. BY ITS CHAIRMAN
ABDUL BASIT TAPADAR
AGED ABOUT 55 YEARS
P.O. ANANDAPUR
DIST. KARIMGANJ.
VERSUS

THE STATE OF ASSAM AND 2 ORS
TO BE REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
CO-OPERATION DEPARTMENT
DISPUR
GUWAHATI-6.

2:THE REGISTRAR OF CO-OPERATIVE SOCIETIES

ASSAM
KHANAPARA
GUWAHATI-22.

3:THE ASSTT. REGISTRAR OF COOPERATIVE SOCIETIES

KARIMGANJ
P.O. RAMKRISHNA NAGAR
DIST. KARIMGANJ
ASSAM

Advocate for : DR. B AHMED
Advocate for : SC
CO OP appearing for THE STATE OF ASSAM AND 2 ORS

Linked Case : WP(C)/4357/2020



BOARD OF DIRECTORS OF JHUNKAIPARA SAMABAI SAMITTEE LTD
REPRESENTED BY ITS CHAIRMAN
KORBAN ALI MONDAL
AGED 43
S/O LATE ABDUL KASIM MONDAL
RESIDENT OF VILLAGE ROUMARI
PO JAYPUR BAZAAR
DIST GOALPARA
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM CO
OPERATION DEPARTMENT
DISPUR
GUWAHATI 6

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

3:THE ADDITIONAL REGISTRAR OF CO OPERATIVE SOCIETIES
BTC
KOKRAJHAR
PO AND DIST KOKRAJHAR ASSAM
4:THE ASSISTANT REGISTRAR OF CO OPERATIVE SOCIETIES
GOALPARA

PO AND DIST GOALPARA
ASSAM

5:THE SECRETARY OF THE JHUNKAIPARA SAMABAI SAMITTEE LTD.
RESIDENT OF VILLAGE JHUNKAIPARA
PO JHUNKAIPARA
DIST GOALPARA
ASSAM

6:ABU SAYED FAKIR
S/O - LATE POLAN FAKIR
R/O - VILLAGE SONAHARA
P.S. - BAGUAN
P.O. - JOYPUR BAZAR
DIST- GOALPARA

Advocate for : DR. B AHMED
Advocate for : SC
CO OP appearing for THE STATE OF ASSAM AND 4 ORS

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT & ORDER (ORAL)

Date : 15.11.2022

Heard Mr.P.K. Deka, the learned counsel appearing on behalf of the petitioner in W.P.(C) No.3041/2021 and Mr. N. Haque, the learned counsel appearing on behalf of the petitioners in W.P.(C) No. 4357/2020, W.P.(C) No.1054/2022 and W.P.(C) No.2298/2022. I have also heard Mr. S.K. Talukdar, the learned standing counsel appearing on behalf of the Cooperation Department, Mr. S. Banik, the learned counsel appearing on behalf of the respondent No.5 in W.P.(C) No.3041/2021 and Mr. H. Das, the learned counsel appearing on behalf of the Respondent No. 6 in W.P.(C) No. 4357/2020.

2. The issue involved in all the writ petitions relates to the interpretation of Section 34 of the Assam Cooperative Societies Act, 2007 (for short 'the Cooperative Societies Act') as regards the quorum of the meeting of the General Assembly. As all the writ petitions raise similar questions of law, all the writ petitions are taken up for disposal by this common judgment and order.

3. Before proceedings further to discuss on the question of law, this Court deems it appropriate to deal briefly on the facts in each of the writ petitions.

W.P.(C) 3041/2021

4. The instant writ petition has been filed by the Ex-Chairman of Bhatikhupa Samabhai Samittee Ltd. challenging the order dated 25/03/2021 passed by the Registrar of Cooperative Societies whereby the resolution adopted on



27/09/2020 was held to be in contravention of the Cooperative Societies Act and a direction was issued to the Zonal Joint Registrar of the Cooperative Societies, Silchar to appoint an officer in the Society as empowered under Section 41(6) of the Cooperative Societies Act to hold the Annual General Meeting of the Society as prescribed. The case of the petitioner is that on 04/09/2020, a notice was issued by the Chairman as well as the Secretary of Bhatikhupa Samabhai Samittee Ltd. informing all members that on 20/09/2020 at 11 AM, the Annual General Meeting for the year 2020-21 would be held in the premises of local Ujankhupa M.E. Madrassa. The meeting, however, was adjourned on account of lack of quorum thereby fixing 27/09/2020 at 11 AM for holding the said Annual General Meeting. Before proceeding further, it would be relevant to take note of that Bhatikhupa Samabhai Samittee Ltd. has 3842 shareholders. Thereupon on 27/09/2020 only 50 of the shareholders were present in the meeting so called and certain resolutions were adopted. It appears from the records that there were various litigations in respect to the resolution adopted on 27/09/2020 which necessitated this Court to pass an order on 09/02/2021 directing the Registrar of Cooperative Societies, Assam to decide the allegations made in the writ petition after hearing both the parties. Pursuant thereto the impugned order was passed on 25/03/2021 holding that the resolution adopted on 27/09/2020 was in contravention of the provisions of the Cooperative Societies Act thereby setting aside the proceedings of the Annual General Meeting of the Bhatikhupa S.S. Ltd, Hailakandi held on 20/09/2020 and 27/09/2020. It is an admitted fact that at present an officer have been appointed by the Zonal Joint Registrar of the Cooperative Society in terms with Section 41(6) of the Cooperative Societies Act who is running the affairs of the said Cooperative Society in question. The Cooperation Department

i.e. the respondent No. 1 had filed a detailed affidavit-in-opposition supporting the order passed by the Registrar of Cooperative Society dated 25/03/2021.

W.P.(C) No.4357/2020

5. The instant writ petition has been filed by the Board of Directors of Jhunkaipara Samabai Samittee Ltd. represented by its Chairman Shri Korban Ali Mondal challenging the order under No. COOP.49/2020/30 dated 16/09/2020 issued by the Secretary to the Government of Assam, Cooperation Department, and the consequent letter dated 01/10/2020 issued by the respondent No. 4. Further the petitioners in the instant writ petition have prayed for a mandamus directing the respondent No. 4 to approve the proceedings of the AGM of Jhunkaipara Samabai Samittee Ltd. held on 28/09/2019 and to allow the petitioners to continue their function as Board of Directors of Jhunkaipara Samabai Samittee Ltd. The facts of the instant case is that on 3/9/2019, a notice was issued by the Chairman as well as the Secretary of Jhunkaipara Samabai Samittee Ltd. informing all shareholders of the said Cooperative Society that on 21/9/2019 at 10 AM the Annual General Meeting would be held in the office of the Samittee. However, on 21/9/2019, the said meeting could not be held due to lack of quorum and the meeting was adjourned to 28/9/2019.

6. At this stage, it may be relevant to take note of that although in the writ petition there is no mention whatsoever as to how many shareholders are there in Jhunkaipara Samabai Samittee Ltd. but the learned counsel for the petitioner has submitted that as per his instruction, it is more than 3000. On 28/9/2019, the Annual General Meeting was held wherein only 104 shareholders were present. From the order dated 30/11/2019 passed by the Additional Registrar of the Cooperative Societies, it transpires that the participation of the shareholders in the said Annual General Meeting of Jhunkaipara S.S. Ltd. on 28/9/2019 was

only 1.68% meaning thereby that the shareholders comprised in the said Cooperative Society exceeds 6000 members. It also appears from the records that the Assistant Registrar of Cooperative Societies vide a Communication dated 21/10/2019 informed the Additional Registrar of Cooperative Societies that as there was no quorum in the meeting held on 28/9/2019, one Shri Khalil Ahmed, the Senior Inspector may be appointed as a one man committee. This Communication dated 21/10/2019 was put to challenge by the Secretary/Chairman of Jhunkaipara S.S. Ltd. by filing an appeal before the Additional Registrar of Cooperative Society dated 31/10/2019. The Additional Registrar Cooperative Society cum CHD, BTC Kokrajhar vide an order dated 30/11/2019 held that the petitioner's society failed to hold the Annual General Meeting as per provision of Section 34(1) of the said Cooperative Societies Act and therefore in order to safeguard the interest of the shareholders of the said Cooperative Society in question, the proceedings of the AGM dated 28/9/2019 were set aside thereby affirming the decision of appointing of an officer to manage the affairs of the Cooperative Society to hold the AGM as per the provisions of Section 41(6) of the Cooperative Societies Act. Thereupon the petitioner challenged the said decision of the Additional Registrar of the Cooperative Society dated 30/11/2019 before this Court in W.P.(C) No. 9366/2019. This Court vide an order directed the Registrar of Cooperative Societies, Assam to look into the matter and pass appropriate directions. In pursuance thereto, on 3rd of February, 2020, the Registrar of Cooperative Societies set aside the order of the Additional Registrar of Cooperative Society, BTC, Kokrajhar dated 30/11/2019. The Registrar of Cooperative Society vide an order dated 03/02/2020 held that Section 34(3) does not require a quorum in an adjourned meeting and accordingly, set aside the order of the Additional



Registrar, BTC, Kokrajhar dated 30/11/2019 against the petitioner. Thereupon one of the shareholders of the petitioner Cooperative Society filed an appeal before the Secretary of the Cooperation Department challenging the order of the Registrar dated 03/02/2020. The Secretary to the Government of Assam, Cooperation Department vide an order dated 16/9/2020 set aside the order dated 3/2/2020. The petitioner being aggrieved, have approached this Court under Article 226 of the Constitution.

W.P.(C) No.1054/2022

7. The instant writ petition has been filed by the Board of Directors of various Cooperative Societies challenging the order dated 08/03/2021 issued by the Registrar of Cooperative Societies holding that the minimum quorum of the meeting of the general assembly as prescribed under Section 34(1) of the Cooperative Societies Act is mandatory for all adjourned meetings of the General Assembly.

W.P.(C) No.2298/2022

8. This writ petition is also filed by the Board of Directors of various Cooperative Societies challenging the order under No. CNP.39/2019/10 dated 08/03/2021 issued by the Registrar of Cooperative Societies, Assam wherein it was mentioned that the minimum quorum of the meeting of the General Assembly as prescribed under Section 34(1) of the Cooperative Societies Act is mandatory for all adjourned meetings of the General Assembly.

9. Taking into consideration that in WP(C) No.1054/2022 and WP(C) No.2298/2022, the order of the Registrar of the Cooperative Societies dated 08.03.2021 had been put to challenge, this Court would like to refer to the contents of the said order. A perusal of the order dated 08.03.2021 would show

that on account of the Board of Directors of the Cooperative Societies giving a wrong interpretation of Section 34(3) of the Cooperative Societies Act, the Registrar of Cooperative Societies vide the said order directed the Board of Directors of the Cooperative Societies to refrain themselves from practicing about AGM or the adjourned AGM amongst the shareholders that without the mandatory minimum quorum the adjourned AGM could be held. It can also be seen from the said order that the Registrar of Cooperative Societies had explained the application of Section 34(1), (2) & (3) of the Cooperative Societies Act and held that the provisions of the minimum quorum of the meeting of the General Assembly as prescribed under Section 34(1) is mandatory for all adjourned meetings of the General Assembly.

10. It may be mentioned that no affidavits have been filed in W.P.(C) No. 4357/2020, W.P.(C) 1054/2022 and W.P.(C) No.2298/2022. The learned standing counsel for the Cooperation Department submits that the affidavit which is filed in W.P.(C) No. 3041/2021 shall suffice as regards the question involved in the instant proceedings.

11. I have heard the learned counsel for the parties and have also perused the materials on record.

12. Mr. P.K. Deka, the learned counsel appearing on behalf of the petitioner in W.P.(C) No. 3041/2021 had submitted that the meeting which was held on 27/9/2020 was a subsequent meeting and as such there was no requirement of a quorum as is necessary in terms to Section 34(1) of the Cooperative Societies Act. He submitted that the first meeting which was called on 20/9/2020 was adjourned on account of lack of quorum in terms to Section 34(2) of the Cooperative Societies Act and irrespective there being a quorum in the meeting held on 27/9/2020, the business could be transacted in view of 34(3) of the

Cooperative Societies Act. He further submitted that the Registrar of Cooperative Societies failed to notice Section 34(3) in the proper perspective and consequently had passed the impugned order setting aside the resolution adopted on 27/9/2020. The learned counsel also submitted that pursuant to the order dated 25/3/2021, which was almost 1 year 9 months ago, no steps has been taken, which is mandatorily required under Section 41(6) of the Cooperative Societies Act inasmuch as a one man committee is still running the affairs of the Cooperative Societies which violates the very principles of the Cooperative Societies Act.

13. Mr. N. Haque, the learned counsel appearing on behalf of the writ petitioners in W.P.(C) No. 4357/2020, W.P.(C) No.1054/2022 and W.P.(C) No.2298/2022 had submitted that the respondent authorities failed to take note of Section 34(3) read with Section 39 of the Cooperative Societies Act in the proper perspective. He submitted that though Section 34(1) stipulates a particular quorum and Section 34(2) is in relation to a meeting where there is no quorum present within 1 hour of the meeting being called but the meeting in question i.e. the meeting dated 28/9/2019 was a meeting in terms with Section 34(3) and as such the requirement of a quorum does not arise. Drawing the attention of this Court to Section 39 of the Cooperative Societies Act, the learned counsel submitted that it is the requirement of law that the Annual General Meeting has to be held in accordance with the provisions of the Cooperative Societies Act and its byelaws within 6 months from the expiry of every financial year. He therefore, submitted that if an interpretation which is being sought to be given by the respondent authorities is to be accepted, some unscrupulous shareholders of a Cooperative Society may not allow the holding of an AGM by remaining absent in the Annual General Meeting and

consequently Section 39 would become unworkable.

14. On the other hand, Mr. S.K. Talukdar, the learned standing counsel for the Cooperation Department as well as Mr. S. Banik, the learned counsel appearing on behalf of the respondent No. 5 in W.P.(C) No. 3041/2021 had submitted that the submission made by the learned counsels on behalf of the writ petitioners if allowed would lead to a disastrous result. Taking into account that if in an adjourned meeting there is no requirement of quorum, Section 34(1) would be made redundant. It is the submission of the learned counsel that the legislative intent as could be seen from Section 34(1) is that there should be a minimum of 10% of the members eligible to vote at the meeting to be present at the quorum. The learned counsel submitted that Section 34(2) and Section 34(3) cannot be made applicable to the same set of circumstances as it is a well settled principle of law that a legislature does not enact a provision unnecessarily. It is the submission of the learned counsels that Section 34(2) would apply in respect to a meeting which is yet to commence, whereas Section 34(3) applies to a meeting which has commenced. It is the further submission that unless there is a quorum, a meeting cannot take place and therefore, it is the mandate of Section 34(2) to wait for a period of 1 hour and if the quorum is even then not reached, it is the mandate of Sub-Section (2) to adjourn the meeting, reason being the compliance to Section 34(1) which stipulates the requirement of 10% of the members eligible to vote at the meeting. In the same breath, the learned counsel also submitted that a reading of Section 34(3) would show that it is in respect to a situation where the meeting has commenced meaning thereby that there was a quorum initially else by virtue of Section 34(1) and 34(2), a meeting cannot commence sans a quorum being reached. It was submitted that the words "if at any time in a meeting there is

no quorum” clearly shows that Section 34(3) visualizes a situation during the course of the meeting. In such circumstances, the meeting has to be stalled by the presiding authority with a discretion being given to him/her to fix such time or date and to immediately announce the same so that there is a quorum for proceeding with the business of the said meeting in question. It was further submitted that once the presiding authority informs about such time or date for holding the subsequent meeting, the said subsequent meeting can only proceed upon there being a quorum, else any other interpretation would violate the mandate of Section 34(1) and 34(2) of the Cooperative Societies Act. It is further submitted that once there is a quorum in the subsequent meeting, Section 34(3) enables the business of the meeting to be carried out thereafter irrespective of there being a quorum present or not.

15. The learned standing counsel for the Cooperation Department further submitted that the impugned order No.CNP.29/2019/10 dated 8/3/2021 is in consonance to the provisions of Section 34 of the Cooperative Societies Act wherein it was held that the requirement of mandatory compliance to Section 34(1) of the Cooperative Societies Act in the adjourned meeting. Further to that, the learned counsel appearing on behalf of the respondents has drawn the attention of this Court to the fact that in both the cases i.e. W.P.(C) No. 3041/2021 and W.P.(C) 4357/2020, the question of Section 34(3) being applicable does not arise as both the meeting cannot be said to be subsequent meetings. He submitted that both the meetings were adjourned meetings where there was no quorum at all taking into consideration that in the Society involved in W.P.(C) No. 3041/2021 there were 3842 shareholders and only 50 shareholders had participated in the adjourned meeting held on 27/9/2020. Similarly in W.P.(C) No.4357/2020 there were more than 6000 shareholders of

the Society in question and only 104 shareholders had participated as would be seen from the order dated 30/11/2019 of the Additional Registrar of the Cooperative Society, the percentage of participation of the shareholders in the said meeting held on 28/9/2019 was a paltry 1.68%. Therefore the resolutions so adopted by the Cooperative Societies in those two writ petitions on the face of it were contrary to the provisions of Section 34 (1) and 34 (2) of the Cooperative Societies Act.

16. Before further proceeding, to deal with the contentions, this Court would like to take note of the provisions of Section 34 which is reproduced below:-

“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."

17. This Court would also like to take note of Section 33 (4) of the Cooperative Societies Act, to which reference was made by Mr. S. Banik, the learned counsel appearing on behalf of the respondent No. 5 in W.P.(C) No. 3041/2021. Section 33(4) is reproduced below :-

"(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."

18. Before proceeding to Section 34, this Court upon a perusal of the above quoted Section 33(4) finds that 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 such date as may be provided in [the byelaws] but no business other than that left over at the adjourned meeting shall be transacted at the next meeting. This Section mandates specifically in respect to a General Meeting being adjourned with the consensus arrived at by the majority of the shareholders present. This meeting having been adjourned with the consent of the majority would be an adjourned meeting. This aspect of the matter is further clear from the second paragraph of Section 33(4) which stipulates that 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.

19. Now, coming to Section 34, it would show that Sub-Section (1) of Section 34 mandates the requirement of having the presence of not less than 10% of the shareholders eligible to vote in the meeting. It would further show that by dint of the byelaws of the Cooperative Societies in question, the quorum can be more than 10% but by virtue of Sub-Section (1) of Section 34, the quorum cannot be less than 10%. Section 34(2) starts with the words "*If within one hour from the time fixed for the meeting of the General Assembly a quorum is not present*", meaning thereby that the meeting has not started. Further, if within one hour from the time fixed for the meeting, there is no quorum, the meeting by virtue of Section 34(2) shall stand adjourned ordinarily to the same day in the next week at the same time and place. In view of the said Section 34(2), the meeting of the General Assembly sans a quorum being present has to be adjourned by operation of law and any meeting held sans a quorum reached within one hour from the time fixed would be in conflict with Section 34(2) of the Cooperative Societies Act. There is however, a discretion being given to the

Chairman to adjourn the meeting to a later date i.e. after 1 week but before 15 days or as may be specified in the byelaws of the Society. Taking into account that there was no meeting which commenced for want of quorum, the meeting is adjourned to the same day of the next week at the same time and place or as per the discretion of the Chairman to some other date but not later than 15 days or as may be specified by the byelaws of the society would have to be considered as an adjourned meeting.

20. Now coming to Section 34(3), it would be seen that the said Sub-Section starts with the word "*If at any time in a meeting, there is no quorum*" meaning thereby the meeting has commenced with the quorum being present initially and during the continuance of the said meeting, the quorum falls, then in such case, the Presiding Authority shall adjourn it to such time or date as he/she thinks fit and forthwith announce the same. It further stipulates that the business set down in the meeting shall be brought forward at the subsequent meeting whether at such meeting there is quorum or not. At this stage, this Court finds it relevant to draw a comparison with the words used by the Legislature in Section 33(4) and 34(2) with Section 34(3) of the Cooperative Societies Act in as much as the term "subsequent meeting" can only be found in Section 34(3) which however do not find place in Section 33(4) and 34(2) of the said Act. The difference in treatment to the meeting adjourned under Section 34(3) vis-à-vis Section 33(4) and 34(2) can also be seen from a reading of Section 34(4) and 34(5) of the said Act wherein also there is reference made to the term "subsequent meeting". Section 34(4) stipulates that no business other than the business fixed for the original meeting shall be transacted at such subsequent meeting.

21. Section 34(5) is very pertinent to the issue in hand taking into account

that a notice of the 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 to be sufficient notice of the next subsequent meeting. At this stage, it is relevant to take note that in second paragraph of Section 33(4), it would be seen that a notice of such adjournment pasted in the notice Board of the Head Office of the Cooperative Society on the day on which the meeting was adjourned shall be deemed to be sufficient notice of next adjourned meeting. Again Section 34(2) statutorily mandates the notice of the adjourned meeting to the same day of the next week at the same time or place. Therefore, Section 34(5) of the Cooperative Societies Act has to be construed to be in relation to Section 34(3) and in respect to subsequent meetings only.

Another very important aspect is the proviso to Section 34(2) which stipulates that a meeting of the General Assembly called on the requisition of the members under Sub-Section (1) of Section 33 of the Act shall not be adjourned but dissolved which is a clear pointer to the status of the meeting adjourned for lack of quorum.

22. In the backdrop of the above, it would transpire that Section 34 (1) of the Cooperative Societies Act would show that there has to be a minimum quorum of 10% of the members eligible to vote. The said minimum quorum can be enhanced by the byelaws of the Society in question but it cannot fall below 10%. Under Section 34(2) of the Cooperative Societies Act applies to a situation where the meeting had not commenced on account of there being no quorum and accordingly adjourned statutorily to the same day in the next week at the same time and place. However the Chairman of the meeting has the discretion to adjourn the meeting to a later date not later than 15 days or as may be specified in the byelaws of the Society. It is interesting to note that Section

34(2) of the Cooperative Societies Act though stipulates that the Chairman of the meeting can adjourn the meeting to a later date than statutorily mandated of seven days but the Cooperative Societies Act is silent as to how a Chairman of a meeting is appointed. In Section 43 of the Cooperative Societies Act, the terms, 'President' and 'Chairman' have been used interchangeably.

23. Be that as it may, Section 34 (3) of the Act as observed earlier arises in a situation where the meeting has commenced. If this Court takes into account Section 34 (7) of the Act, it would be seen that in a meeting of the General Assembly, the President shall preside and in his/her absence the Vice-President shall preside. However, if both the President and Vice-President of the Cooperative Society are absent then the members present shall choose one of them to preside. In the said backdrop, if this Court peruses Section 34 (3) of the Act, it be seen that once the meeting has commenced and during the course of the meeting the quorum has fallen then the Presiding Authority, i.e. the authority as mentioned in Section 34 (7) of the Act, shall adjourn the meeting to such time or date as the Presiding Authority thinks fit and has to announce the same at once. By virtue of Section 34(5) of the Act, a notice of such adjournment shall be pasted in the Notice Board of the Head Office of the Cooperative Society on the day on which the meeting is adjourned which shall be deemed sufficient notice of the next subsequent meeting. Therefore, the announcement so made of adjournment of the meeting has to be pasted in the form of notice in the Notice Board of the Head Office of the Cooperative Society on the day on which the meeting was adjourned to be deemed sufficient notice of the subsequent meeting.

24. In the backdrop of the above scheme envisaged under Section 34(3) of the Cooperative Societies Act, it would be seen that the words "*and the*

business set down for the meeting shall be brought forward at the subsequent meeting whether at such meeting there is quorum or not” has to be interpreted to mean that in the subsequent meeting upon compliance to the first part of Section 34(3) and Section 34(5) of the Cooperative Societies Act, there is no requirement of the quorum. The Legislature intent is clear to give an additional opportunity to the shareholders of the Cooperative Society to present in the subsequent meeting. However, if the shareholders of the Cooperative Society fail to remain present the Legislature intent is clear that the subsequent meeting can proceed irrespective of there being a quorum or not. At the cost of repetition, it is clarified that the Legislature had clearly demarcated the status of an adjourned meeting and subsequent meeting. In an adjourned meeting, there has to be compliance to Section 34(1) of the Cooperative Societies Act whereas in subsequent meeting there is no necessity for a quorum in terms with Section 34(1) of the said Act provided the first part of Section 34(3) and Section 34(5) of the Cooperative Societies Act is complied with.

25. Therefore, from the above analysis, it would be clear that in an adjourned meeting i.e. a meeting adjourned under Section 33(4) and 34(2) of the Cooperative Societies Act, 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 which even is higher. The orders dated 25.03.2021 and 16.09.2020 impugned in WP(C) No.3041/2021 and WP(C) No.4357/2020 respectively are in consonance with Section 34 of the Cooperative Societies Act as admittedly in the adjourned meetings, there was no quorum. Therefore, the said writ petitions i.e. WP(C) No.3041/2021 and WP(C) No.4357/2020 are devoid of any merits and accordingly stands dismissed.

26. The order dated 08.03.2021 assailed in WP(C) No.1054/2022 and WP(C)

No.2298/2022, in the opinion of this Court is also in consonance with the provisions of law taking into consideration that in the adjourned meetings, there is a requirement of the minimum quorum as stipulated in Section 34(1) of the Cooperative Societies Act. Accordingly, the said writ petitions being WP(C) No.1054/2022 and WP(C) No.2298/2022 are also dismissed.

27. Taking into account the submissions made by the learned counsel Mr. S. Banik that even in the subsequent meeting, it is the requirement of law to have the initial quorum in the subsequent meeting, this Court is of the opinion that the said contention is misconceived because if the said contention is accepted, it would result in doing violence to the legislature intent enshrined in Section 34(3) of the Cooperative Societies Act and would amount to legislating by this Court. The words "and the business set down for the meeting shall be brought forward at the subsequent meeting whether at such meeting there is quorum or not" clearly mandates that in the subsequent meeting, the requirement of the quorum is not essential and the business set down for the meeting can be brought forward. Further accepting the said contention may result in a situation at the instance of some shareholders, difficult to hold the meeting for the General Assembly. Under such circumstances, this Court therefore holds that in a subsequent meeting held upon being adjourned under Section 34(3) of the Cooperative Societies Act, there is no requirement of a quorum provided, there is compliance to the requirement by the Presiding Authority announcing the time or date at once and the notice of adjournment is pasted in the notice board in terms with Section 34(5) of the Cooperative Societies Act.

28. Before concluding, this Court also would like to observe that during the hearing of the matter, a specific query was put to the standing counsel of the Cooperation Department as regards the continuation of a one man committee



pursuant to the order dated 25/3/2021 in W.P.(C) No.3041/2021 and 16/9/2020 in W.P.(C) No.4357/2020 impugned in the instant proceedings, which on the face of it, was in conflict with Section 41 (6) of the Cooperative Societies Act. The learned standing counsel for the Cooperation Department submitted that on account of the pendency of the instant writ petitions, the election could not be held in respect to the Cooperative Societies in question. However within 1 month from today, the Cooperation Department shall take appropriate steps for holding the election in respect to the Cooperative Societies and thereupon form the Board of Directors in accordance with law.

29. On the basis of the above observations, all the writ petitions being devoid of any merits stands dismissed. In view of the dismissal of the instant writ petitions, the interim order(s) if any stands vacated.

JUDGE

Comparing Assistant